

Telephone Numbering – Safeguarding the future of numbers

Vodafone’s response to Ofcom’s consultation

Summary and conclusions

1. Vodafone welcomes the opportunity to respond to this consultation. There is much in the consultation that we agree with and support, in particular the emphasis on ensuring continued availability of numbers and recognition of the need to minimise unnecessary disruption for end users¹.
2. We broadly support the majority of Ofcom’s proposals concerning service description and allocation policy including:
 - Conservation measures for 01/02 geographic numbers
 - New countrywide non-revenue share 03 range
 - Relocation of personal numbers to the 06 range
 - Consumer protection test for 09 number allocation
3. We welcome Ofcom’s recognition that there is no shortage of mobile numbers in the 07 range, due among other things to the efficient use enabled by the lack of complicated sub-designations within the range². We also welcome Ofcom’s stated intention to revisit and refine service designations³. In particular, we believe the 07 ‘mobile’ range should be clearly bounded. Service designation should be technologically neutral while clearly demarcating fully functional mobile services from purely static or partially nomadic services for which other geographic and non-geographic ranges are available.
4. Our main reservation about Ofcom’s proposals concerns the proposed extension of retail price controls to all originating operators in the name of price transparency. While we welcome Ofcom’s assertion that the intention is not to impose price controls on non-dominant operators⁴, the ‘transparency’ proposals presented in the consultation threaten to have precisely that effect in practice.
5. The National Telephone Numbering Plan (NTNP) is, we submit, a blunt and inappropriate instrument for achieving the degree of price transparency Ofcom apparently envisages. There is a fundamental mis-match between *service* designations that present a menu choice for terminating communications providers (TCPs) and end-users and *pricing* designations that constrain originating communications providers (OCPs)⁵. At a time when Ofcom is lifting

¹ Ofcom’s market research findings suggest the average cost to businesses from code changes in 2000 was around £5,000, while consumers reckoned they would have to be offered £600 to compensate them from the hassle involved. See Numbering Review – Report of Market Research Findings, 23 Feb 2006, paragraphs 1.10 – 1.11.

² See Review Condoc at A3.12: “. . . availability of mobile numbers is not a significant concern for Ofcom. The numbers are relatively well-utilised, at around 30 per cent, and plenty of spare capacity is available on the 07 range.”

³ Condoc, paragraph 5.88

⁴ “Ofcom’s intention in doing this is not to use the Numbering Plan to regulate the prices which communications providers charge. Communications providers should be free to determine what price they wish to charge for their services, subject only to any price controls imposed following a finding of Significant Market Power (‘SMP’)” Condoc, at paragraph 5.92

⁵ A certain confusion is evident in Ofcom’s statement that communications providers can choose what price they like “and then chose a number range which is consistent with that price” (paragraph 5.92,

remaining retail price controls on dominant operators such as BT, extending retail price controls to all OCPs appears as a perverse and retrograde step⁶.

6. Vodafone recognises that Ofcom's proposals are advanced in the name of price transparency. Nevertheless, we seriously question whether the NTNP can provide anything other than a rough and ready guide to the relative cost of calls to different numbers.
7. The available evidence suggests that there is some recognition of broad relativities but that consumer perception of absolute call costs is poor for all types of call⁷. For instance, according to Ofcom's market research, nearly half of those surveyed overestimate the cost of calls to a normal landline, with the mean estimate approximately five times the actual cost⁸. Despite such findings, there is no suggestion that there is a general mistrust of using the telephone or that calls are significantly deterred by an imprecise understanding of pence per minute call charges.
8. Evidence that consumers do not have perfect knowledge of call prices is neither surprising, nor is it *prima facie* evidence of market failure that might justify regulatory intervention. Price transparency is primarily about availability of pricing information rather than spontaneous consumer perception. In a competitive market, one would expect competing providers to focus their proactive pricing messages on those price elements and call types that matter most to customers.
9. Less than 5 per cent of calls to 08 NTS numbers are from mobiles⁹, while an even smaller proportion of call minutes originated on Vodafone's network are destined for 08 NTS numbers¹⁰. Against this background, it is clearly disproportionate to single such call types out for specific price controls and/or pre-call announcements.
10. Ofcom would do well to reflect on the fact that past attempts to convey accurate retail price information to consumers through a combination of NTNP digit structure and specific regulation of BT prices in the 08 range have been conspicuously unsuccessful¹¹. Given that BT still accounts for the lion's share of

following on from 4 above). Originating communications providers ('OCPs') who set origination prices have no control over the destination number chosen by the receiving party end-user.

⁶ In its recent NTS statement Ofcom notes that in September 2005 it specifically rejected UKCTA's proposal that it should regulate the retail price of 0870 calls made from BT lines "on the grounds that it would be inconsistent with Ofcom's commitment to use the least intrusive mechanism available for achieving its objectives". (paragraph 1.39). Paradoxically, however, Ofcom appears to consider that substituting controls on all OCPs for controls on BT alone involves less regulatory intrusion.

⁷ See Section 4 of Ofcom's market research findings.

⁸ See in particular Figure 4.1

⁹ See annex 5 of Ofcom's original 'NTS – Options for the future' consultation. Ofcom estimated that in 2003, roughly 2,700 call million call minutes to NTS numbers were made by mobile subscribers. This represents around 4.5% of all call minutes to NTS numbers, taking fixed and mobile origination together, and around 6% of total mobile originated call minutes to all numbers at the time.

¹⁰ More exact data made available to Ofcom in confidence. This is below Ofcom's industry estimate for 2003 of 6% noted above. Vodafone only has visibility of its own more recent data, but has no reason to believe this is unrepresentative.

¹¹ See market research findings discussed at paragraphs 4.6 to 4.10. More than half (54%) of the consumers questioned said that they are unable to distinguish between the cost of *any* of the different types of NTS numbers.

call origination to such numbers, this result cannot realistically be ascribed to the greater pricing freedom currently afforded to OCPs other than BT.

11. Vodafone submits that Ofcom's preoccupation with intricate price transparency proposals in the present consultation is misdirected and not supported by a close examination of the evidence. It is also highly questionable whether proposals advanced in the name of transparency will be particularly effective in meeting their declared aim. Even in the extreme case where all OCPs were required to price calls to any given number range identically, there is no guarantee of a dramatic improvement in the accuracy of consumer price perceptions.
12. This is not to suggest that numbering does not play *some* role in providing broad price indications, merely that the NTNP cannot realistically be expected to deliver the degree of precision Ofcom appears to envisage, and that this should not be its aim.
13. A less ambitious but arguably more realistic approach would be to focus on broad service distinctions at the leading digit level, to provide clear distinctions between geographic and non-geographic, revenue share and non-revenue share, mobile and non-mobile, premium and non-premium numbers¹².
14. There will be a rough and ready correspondence between such service characteristics and the resultant costs facing OCPs. These costs do not directly determine retail pricing, but are nonetheless an important influence – higher termination rates reflecting outpayments on revenue share ranges tending to be reflected in higher retail prices. Thus although consumers may not be able to 'read off' the exact price of a call from the number alone, they nevertheless have useful signposts about likely order of magnitude and the option of obtaining more precise information from their OCP should they require it.

¹² According to Ofcom's market research findings "When asked how much calls to different number types cost, consumers tended to over-estimate the cost of calls to number types. Broadly speaking, consumers appear to understand the relative cost differentials; 64% recognise 0800 numbers as free to call from fixed line phones and estimates of the cost of calling other number types were ranked broadly correctly, with normal geographic landline numbers being perceived the cheapest to call and 09 premium rate numbers perceived most expensive. Consumers made relatively little distinction between prices for calls to 0844, 0845, 0870 and 0871." (Executive summary, paragraph 1.4 - original emphasis)

15. The more detailed comments below are structured thematically around Ofcom's proposals for particular number ranges. Miscellaneous issues are discussed briefly in the final section.

01, 02, 03

16. We support the broad thrust of Ofcom's proposals in relation to geographic 01/02 numbers which focus on ensuring continued availability while minimising the need for number changes.

17. Of course, it has to be recognised that the convention of applying geographic meaning to numbers through their structure leads to inherent inefficiency in number utilisation¹³. If the convention did not already exist, its value would need to be set against the efficiency drawbacks to which it gives rise. However, given that the convention exists, does appear to be valued by consumers¹⁴ and that no drastic efficiency improvement is available without resorting to widespread number changes, Ofcom's proposals seem sensible.

18. It is important to recognise that there is no longer a one for one correspondence between 'geographic' numbers and 'fixed' services. Nor are the conventions surrounding geographic numbers purely to do with geography; local dialling and local/national tariff distinctions are also part of the 'meaning' consumers attach to geographic numbers, and which those choosing geographic ranges in preference to non-geographic ranges presumably recognise and value.

19. In this context, we welcome the proposal to designate the 03 range for countrywide non-revenue share services¹⁵. Other than 05 'corporate' numbers that have not proved popular in practice, non-geographic non-mobile numbers have been associated with revenue share. The proposed 03 range opens up a new and distinctive choice for end-users, allowing them to choose whether or not they wish to combine call management and resilience features of NTS numbers with revenue share.

20. Ofcom is inviting views on a substructure with 03¹⁶. Vodafone's initial view is to query the value of such a substructure. At a retail level, a differential between revenue share and non-revenue share ranges could well turn out to be more significant than any local/national rate distinction within the 03 range (a distinction which typically has no meaning in relation to calls from mobiles).

21. In this context, we particularly regret Ofcom's decision to eliminate revenue share on 0870 since it has the effect of polluting the otherwise clear and meaningful distinction between 03 and 08 in terms of revenue share¹⁷. Indeed, it is curious that Ofcom feels able to announce a decision that will take effect 18 months after a final statement on the present consultation, yet not subject to influence by it.

¹³ As Ofcom discusses at 4.2 to 4.6 of the consultation document, this is a general consequence of subdividing number ranges to provide meaning. However, Ofcom further notes at A1.3 that the problem is most acute for geographic numbers due to the combination of area codes, block size and the number of competing providers.

¹⁴ See market research findings, section 5 and main condoc discussion at 5.23 to 5.26.

¹⁵ Subject to the general caveat on freedom of origination pricing for non-SMP OCPs. Ofcom moots a 'tight link' to geographic rates at 5.42 but is unspecific as to how this would be achieved.

¹⁶ See discussion at 5.46 of the consultation.

¹⁷ As Ofcom itself recognises at 5.44 of the consultation.

Notwithstanding Ofcom's NTS recent statement, it would be far better, in Vodafone's view, to open the new 03 range and allow end-users currently on 0870 to decide for themselves whether or not they wish to move to a non-revenue share range.

06, 07

22. We welcome Ofcom's proposal to relocate personal numbers from the 07 range, where they risk being confused with mobile numbers, to the new 06 range.
23. Personal numbers have in the past been used as pseudo premium rate numbers, but this form of abuse has been outlawed since the banning of end-user revenue share¹⁸. We support the proposal to retain the restriction on end-user revenue share for personal numbers on the 06 range.
24. Ofcom suggests, however, that personal numbers may remain a target for abuse as a consequence of being poorly understood by consumers and the lack of any retail tariff ceiling¹⁹.
25. Relocating personal numbers away from 07 should address the problem of their being mistaken for mobile numbers. It is true that 06 numbers may initially be unfamiliar to consumers, but this is something end-users choosing such numbers will need to take into account in opting for personal numbers if they are concerned about call deterrence. Mobile numbers are, of course, much more prevalent than when the concept of personal numbers was first introduced and provide one alternative means of being contactable anywhere behind a single number. In future, similar functionality will increasingly be available on geographic and potentially 03 ranges, although the receiving party end user is likely to have to meet some proportion of inbound call costs.
26. Vodafone shares Ofcom's concern about abuse of personal numbers. However, we do not see this as principally a problem of origination pricing but of ineffective enforcement of the prohibition on end-user revenue share and/or simple fraud. For reasons discussed more fully elsewhere in this response, we do not believe it is appropriate to use NTNP to enforce retail tariff ceilings. Transparency can be better addressed by other means.
27. We note Ofcom's suggestion that 060 might be provisionally earmarked for personal allocation direct to end users. We see a number of conceptual and practical problems with such direct allocation, however. Ofcom has highlighted the issue of call routing, and suggested this may be overcome by new technology²⁰. Be that as it may, there are wider issues concerning the commercial model that need to be addressed for any services operating behind numbers allocated to individuals rather than CSPs. There is a basic question of who would determine the termination charge, and on what basis. There is also a question as to whether individuals would be prepared to accept the compliance responsibilities associated with adoption and use of numbers, and if they were whether Ofcom could effectively hold them to account²¹. Other issues to be considered include allocation policy and portability rights and obligations (if any).

¹⁸ As Ofcom notes at 5.62 the revenue share ban has not been wholly effective in practice.

¹⁹ See paragraph 5.63

²⁰ See discussion at A3.33.

²¹ See discussion at A3.36

28. In the light of these considerations, Vodafone is sceptical at this stage about the merits of individual allocation which, if pursued, would appear to require a fundamental rethink of traditional approaches to number management.
29. So far as mobile numbers are concerned, Vodafone welcomes Ofcom's recognition that there is no current shortage²², but agrees that it may be prudent to allocate smaller 100k blocks to new entrants who cannot use 1 million blocks efficiently to avoid undue fragmentation²³.
30. We note Ofcom's suggestion that sub-ranges might be reserved for different services²⁴. However, we are concerned that this is unnecessarily restrictive and undermines the successful current model where the same number can act as a gateway to multiple services (voice, messaging, video, etc).
31. We see no problem in principle with different services behind the same number being differently tariffed. This happens already with time based voice charges and event based messaging, and we do not foresee significant consumer confusion between voice and video calling for example, as the calling party will have to be aware what service they are using. On the other hand, we do see a significant risk of consumer confusion if multiple numbers are needed to support various services on a single customer account.
32. We note Ofcom's general intention to refine and clarify service designations²⁵ and welcome this in principle. For mobile numbers, we see two main issues. The current rubric surrounding mobile services could be seen as precluding some fully functional mobile services to which Ofcom has nevertheless been content to allocate mobile numbers²⁶. This is an anomaly that should be corrected. At the same time, however, the mobile number range continues to be used inappropriately for services that are not 'mobile' in any ordinary sense of the term²⁷. The services in question have none of the costs associated with 'proper'

²² See A3.12 "availability of mobile numbers is no a significant concern for Ofcom. The numbers are relatively well utilised, at around 30 per cent, and plenty of spare capacity is available on the 07 range."

²³ As the Intercali study of 100k block allocation notes at section 5.1 "Given that the networks believe they are efficiently utilising these 1M blocks, it makes no sense to impose 100k blocks on them. This would not only lead to a tenfold increase in administrative work, but would potentially add decode complexity where it was not necessary. Therefore, if 100k allocation is justified in some cases, it should be applied not in a blind 'non-discriminatory' way to everyone, but in a proportionate way when objectively justified." We trust that this is, in fact, how Ofcom intends to proceed.

²⁴ See A3.9

²⁵ See main condoc at 5.88 "This review will also ensure that numbering policy encourages competition, by ensuring that service definitions do no inappropriately favour particular types of communications provider, or particular networks and technologies. . . . Tight service definitions will make it easier to take enforcement action against communications service providers who allow their number allocations to be used in ways that do not comply with the Numbering Plan".

²⁶ Mobile services are currently defined in the Numbering Plan as follows: "'**Mobile service**' means a service consisting in the conveyance of Signals, by means of an Electronic Communications Network, where every Signal that is conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from Apparatus designed to be used or adapted to be capable of being used while in motion."

²⁷ In particular, Vodafone understands that certain mobile number ranges are being used solely to provide a destination address for various gateway services, none of which involve mobile termination by the range holder. This is qualitatively different from termination of an individual call to a mobile number on non-mobile network, for example, as a result of call divert. In such circumstances, how calls to such number ranges may have originated has little obvious bearing on whether the mobile

mobile services, such as mobility management and the need to maintain a ubiquitous radio access network, yet manage to command unregulated termination rates in excess of those available to 'proper' mobile operators.

33. The challenge for Ofcom is to find a technologically neutral way of allowing proper mobile services while excluding those that are not mobile at all or offer such limited functionality that they are tantamount to nomadic fixed services. Within that broad framework, the question is how loose or tight the definition of mobile services should be.
34. Ofcom has already identified a new class of Location Independent ECS which are neither fully fixed nor fully mobile²⁸. The important issue here is that they are not fully mobile. We believe callers calling mobile numbers have a good understanding and clear expectation of what a mobile services is. This understanding also drives tariff expectations, which differ between calls from fixed lines and calls from other mobiles. Calls to mobile numbers from fixed lines are typically charged at a higher rate than calls to geographic numbers, whereas calls from mobiles to mobiles will often be included in bundled minutes.
35. We would not wish to see any significant erosion of functionality in the range of services allowed to operate behind mobile numbers. Nomadic services already have the opportunity to forge a distinctive identity on other non-geographic ranges, or alternatively benefit from the familiarity of geographic numbers if they prefer. Vodafone has supported access to geographic numbers for such services²⁹, and believes that this already provides sufficient choice and flexibility without diluting the essential distinctive features of mobile services operating behind mobile numbers.
36. In particular, Ofcom should be careful not to create artificial incentives for non-mobile or 'cut down' services to run behind mobile numbers in the hope of securing termination revenues at or above those available to real mobile operators but without the associated costs. While termination charges could, in principle, be regulated just as they are for conventional mobile operators, there would be practical challenges with cost modelling. In addition, there may be little incentive for OCPs to pass on lower costs in origination rates if the nature of the service cannot be easily identified from the number range³⁰.
37. Although we think Ofcom's concern with the role of numbering in price transparency is somewhat overdone, it should not throw the baby out with the bathwater by abandoning service transparency. As outlined above, service transparency can usefully contribute to consumer understanding and price expectations, albeit indirectly.

numbers in question can be held to be 'used' to provide 'mobile services'. Mobile call origination itself is a mobile service, and may use a mobile number e.g. to provide CLI, but this has little to do with whether the terminating service is mobile in any meaningful sense.

²⁸ The Numbering Plan defines LIECS thus: "**Location Independent Electronic Communications Service**' means a service where: (i) the Numbering Plan of the Communications Provider offering the service has no geographic significance; (ii) the location of the Customer's Apparatus identified by a given Telephone Number at the time of use is not necessarily permanently associated with a particular Network Termination Point; (iii) number translation to a Geographic Number is not involved; *and (iv) the service is not a Mobile Service (emphasis added)*

²⁹ See, for example, Vodafone's response to Ofcom's consultation on Numbering Arrangements for Voice over Broadband services, March 2004

³⁰ The value consumers place on platform distinction is discussed in Ofcom's market research findings, beginning at 5.9.

08, 09

38. It is in the area of NTS and PRS that Ofcom's proposals go most seriously awry, and give rise to real difficulties that Ofcom does not so far appear to have considered.
39. Although the consultation document itself is by no means clear on this point, Ofcom's unspoken premise for both ranges appears to be that end users select and thus set the retail price they want and then negotiate with OCPs over a retention that is consistent with that retail price³¹.
40. Such a model may be possible in theory, but it does not describe how these markets operate currently. In many if not most cases there will be no direct contractual relationship between OCP and TCP, let alone OCP and the end user of the number. Transit operators do not currently support differential charging by OCP and lack any real incentive to develop this capability³². It seems unlikely, therefore, that markets will evolve towards this model spontaneously. The only way such a model could be made to work would be as a result of detailed and prescriptive regulatory intervention from which Ofcom is generally, and rightly, trying to move away.
41. The main problem we see with Ofcom's concept of NTS and PRS number ranges is that it seems to rely heavily on retail price regulation through designations in the NTNP. Ofcom recognises that currently such regulation only applies directly to BT, but sees this as a 'problem' which it can solve by extending retail price controls to all OCPs.
42. The essential problem with Ofcom's 'solution' however, is that there is no basis for imposing retail price controls on non-SMP operators. So Ofcom is forced (judging by the recent NTS statement³³) to deny that it is seeking to regulate OCPs while simultaneously attempting to do just that.
43. Vodafone fundamentally disagrees with Ofcom's assertion that application of price controls to BT only is an anomaly that should be corrected by extending similar controls to all OCPs.

³¹ This is one interpretation of 5.92 of the consultation, although as noted at 4 and 5 above there is some ambiguity as to which communications providers Ofcom has in mind in relation to price setting and number selection. Ofcom seems to assume that it is the same CP in either case, but actually this will be the exception rather than the rule. TCPs and end users choose which numbers to use, OCPs set origination charges.

³² At 4.209 of the recent NTS statement, Ofcom comments "*Ofcom notes that none of the OCPs provided evidence to support the contention that their costs are higher than those incurred by BT. It nevertheless accepts that more flexible interconnect arrangements would help OCPs to manage the implications of extending the designations for 0844 and 0871 to other providers. In particular, changes that would make it easier to agree on OCP-specific termination payments for NTS calls would help to ensure that the disruptive effects of extending the designations would be minimised.*" Vodafone assumes that Ofcom had fixed OCPs in mind when questioning the contention that their origination costs are higher than BT's and is not seriously questioning that mobile origination is more costly than fixed origination.

³³ NTS statement, paragraph 4.20 "*Several fixed and mobile CPs and some SPs argued that the proposed extension of the geographic linkage so that it applies to all OCPs amounts to retail price regulation of non-dominant providers, in contravention of Ofcom's duty under the Act not to impose such regulation on non-dominant providers. Ofcom disagrees with this view.*"

44. As we have argued previously in the NTS consultation, the ‘anomaly’ is not that retail price designations only bind BT, but that they are not explicitly linked to BT’s dominance. BT still accounts for the lion’s share of NTS origination³⁴, so if such a form of regulation can be justified at all it is arguably justifiable for BT, even if it does sit uncomfortably alongside other moves to deregulate BT’s retail pricing.
45. Perhaps Ofcom’s concern is how regulation would operate in a future world were BT’s market share to become eroded to such an extent that it could no longer be considered dominant. However, while Ofcom is obliged to keep market developments under review, it is not obliged to anticipate the result of reviews that it has not yet carried out.
46. The whole point of market reviews is to assess whether particular markets are effectively competitive and, if not, what remedies should be imposed on SMP operators. A general desire to future proof numbering regulation where possible is understandable. It is quite another thing, however, to anticipate the conclusions of market reviews that have not even commenced. Worse still, Ofcom appears to want to future proof against hypothetical future loss of SMP by BT by proposing that all OCPs should be subject to price designations in the NTNP *irrespective* of SMP.
47. As noted, Ofcom seeks to deny that its proposals are a form of retail price control, preferring instead to portray them as transparency measures³⁵. What matters, however, is not how the proposals are described but their substantive effect.
48. As Vodafone understands it, two distinct forms of control are currently being proposed by Ofcom. The present consultation suggests a ladder of ascending price bands within the 08 range, designated in maximum pence per minute terms. However, elsewhere (in its recent NTS statement) Ofcom has announced a decision to require all OCPs to price 0870 calls identically to geographic calls.
49. It would seem, therefore, that in seeking to maintain that these designations do not amount to price controls, Ofcom must be placing heavy reliance on the proviso that prices can differ from designations in the NTNP *if and only if* OCPs provide pre-call announcements³⁶. Clearly, this provision does modify the effect of the designation compared to a strict rule that the price ceiling must be adhered to come what may, but does that mean it is no longer a price control? It is not clear to us that it does.
50. It is not necessary to set or specifically constrain individual call prices to apply a price control. BT price controls have long applied to retail baskets rather than individual calls or call types. Tying NTS pricing to geographic pricing would

³⁴ While BT’s market share may be declining, Ofcom notes at 5.89 that by mid-2005 BT retail customers accounted for about 60 per cent of all retail fixed call volumes (not specifically NTS).

³⁵ See, for example, NTS statement at 4.21 “*Ofcom considers that it has proposed to establish a numbering convention (i.e. that 0870 calls should be charged at the same rate as national calls to geographic numbers) rather than regulate retail prices.*”

³⁶ 4.22 of the NTS statement continues “*All OCPs who currently have the ability to charge 0870 calls at lower or higher rates than national calls to geographic numbers will retain this pricing freedom. They will, however, now be subject to a requirement to make a pre-announcement to consumers where they decide to charge 0870 calls at rates higher than national calls to geographic numbers, which will increase pricing transparency.*”

represent a similar constraint³⁷. Imposing costly and prescriptive requirements for pre-call announcements only where pricing departs from designations set out in a numbering plan might well be seen as a penal deterrent. In any event, it is a non-market constraint on pricing freedom – which is essentially the same thing as a regulatory price control.

51. Even if Ofcom manages to convince itself that its proposals do not amount to price control and so do not require a finding of SMP, it must still satisfy itself that they are objectively justified, proportionate, transparent and non-discriminatory. Presenting its proposals as ‘transparency’ measures in no way side steps these tests, which Vodafone believes the present proposals are prone to fail.
52. It is difficult for Ofcom to maintain that its proposals are objectively justified and proportionate when its own research concludes that NTS issues are a low engagement area for consumers and not a major concern³⁸. NTS calls account for a small proportion of all calls (for which no similar ‘transparency’ measures are proposed) and an even smaller proportion of calls from mobiles³⁹.
53. The proposals also threaten to discriminate against mobile operators, both by ignoring higher mobile origination costs⁴⁰ and, in respect of pricing identically to geographic calls, the prevalence and importance of call bundles with inclusive minutes. Requiring 0870 calls to be priced as geographic calls, for example, would typically require mobile OCPs to originate such calls at a loss. It could also have other unforeseen consequences if, for example, longer calls to 0870 numbers cause consumers to use up their inclusive minutes much quicker than for other call types
54. It is also open to question whether Ofcom’s proposals are actually transparent in relation to what they are intended to achieve. The stated intention, remember, is transparency *not* price control. Pre-call announcements might be thought ‘transparent’ in this respect, but they are not required when NTNP designations are adhered to. Where OCPs stick within these designations, accurate pricing information can only be gleaned from the number if one assumes consumers have a sophisticated understanding of the subtleties of the NTNP at the three digit level. This flies in the face of all the evidence to date⁴¹. As a means of delivering ‘transparency’ it is, to put it mildly, obscure and, we suggest, unrealistic.

³⁷ Explaining its decision not to pursue proposed interim measures 1.25 in the NTS statement, Ofcom states: “*We do not believe that it is necessary to impose price ceilings in the manner proposed, because BT’s standard rates for geographic calls have been on a downward trend for many years, and are subject to competitive pressures in the retail market, which are likely to ensure that this trend continues. Decoupling the 0870 designations from the standard geographic rates could have reduced the competitive pressure on 0870 call prices and resulted in 0870 charges being higher than would otherwise have been the case. This would not have been in the interests of consumers.*” This seems contrary to Ofcom’s earlier stance, that 0870 charges were not subject to competitive pressure because hardly anyone pays BT’s standard rates, but clearly demonstrates that the intent of the designation is precisely to control the absolute level of prices.

³⁸ See Ofcom’s market research published with the previous NTS consultation, paragraph 1.8 “*The qualitative research indicated that overall NTS numbers are a low engagement area for consumers and one which is not of major importance. NTS numbers only seem to come to the fore in relation to media coverage, a particularly bad call experience or a very high bill associated with an NTS number.*”

³⁹ See references at footnotes 9 and 10 above.

⁴⁰ See note 32 above.

⁴¹ See Section 4 of Ofcom’s market research findings, also referred to above. More than half of those questioned could not distinguish between the cost of *any* of the different types of NTS number.

55. There are, of course, precedents for pre-call announcements in respect of 0800 calls, where there is currently a requirement to have such an announcement if the call is not free to the caller. This is qualitatively different to what Ofcom now proposes, however. The idea behind 0800 call announcements is to correct any misapprehension due to the 'freephone' tag that the call will not be charged (and will not appear on an itemised bill) and to provide the caller with the opportunity not to proceed. The purpose is not to give precise call price information.
56. Although the present consultation does not go into detail on the form of pre-call announcement, the recent NTS statement strongly suggests that generic announcements, such as those currently used for freephone, will not be deemed sufficient and that any announcement would have to deliver precise call price information⁴². This introduces a whole new degree of complexity. Either it would be necessary to match the individual caller to their individual price plan on a per call basis, or a single rate could be cited if it applied across all call plans. The former course would be certainly be costly to set up, administer and keep up to date, possibly prohibitively so. The latter would be highly restrictive; tying all price plans to common NTS call pricing. This smacks of price control.
57. Notwithstanding these objections, if Ofcom is nevertheless tempted to proceed with the broad approach it is currently proposing it should at least step back from highly prescriptive requirements for pre-call announcements.
58. One of the most unfortunate aspects of Ofcom's decision to eliminate revenue share on 0870 numbers is that it perpetuates and exacerbates the current problem of expecting consumers to understand the arcane mysteries of the NTNP at the three digit level to have any useful guidance on call prices.
59. The proposed 03 range provides a valuable opportunity to distinguish between 'non-revenue share non geographic' (03) and 'non-revenue share non premium' (08) services that customers have a chance of understanding and remembering. Yet this attractively simple concept is at risk of being polluted by requiring non revenue share 0870 calls to be priced as geographic calls, while numbers in the same two digit range (e.g. 0871, 087X) could be priced entirely differently.
60. This is hardly a recipe for 'restoring trust in NTS'. It looks instead like a recipe for confusion. The more customers come to understand and expect that the more prevalent and visible 0845 and 0870 NTS calls are priced like geographic calls, the more they will expect the same to be true of other calls in adjacent 08 ranges. They will be sadly disappointed. We therefore urge Ofcom not to let its numbering strategy become derailed by its misconceived NTS policy, but to seize the opportunity to forge a simpler and more coherent numbering plan that makes sense to industry and consumers alike.
61. To this end, Ofcom should focus on re-establishing 08 as essentially a non-premium revenue share range, with 09 as its companion premium counterpart. Presented in this way, there is at least a realistic chance that consumers will gradually come to understand that 08 calls are generally priced above calls to 01, 02 and 03 numbers, but below calls to 09 numbers. There may be odd exceptions, but generally they will be proved right.

⁴² See NTS statement at 4.108. Interestingly, two paragraphs earlier, Ofcom states that "*allowing pre-announcements may in some ways make it more difficult to achieve price transparency*"

62. In principle, there are two ways in which this rough price banding for 08 and 09 can be achieved. One approach would be to retain the existing retail price designations for BT only, acknowledging that they are retail price controls and linking them explicitly to SMP. An alternative approach might be to abandon retail price designations entirely, and transpose the price banding to maximum termination rates.
63. The difference between these two approaches may not be as great in practice as would first appear. NTS termination is already regulated, in effect, as a residual given that BT retail pricing, retail retention and transit charges are all currently regulated in one way or another. Under either approach it would be possible for PRS SPs to use BT pricing as reference pricing in their advertising, even if it is not specifically regulated.
64. As Ofcom acknowledges in the consultation document, the requirement on PRS SPs to include price information in promotions and advertisements means there is little need for consumers to understand the intricacies of NTNP banding structures within 09.
65. Ofcom's proposals to subject 0871 to regulation by ICSTIS suggest this concept could be extended more generally to the 08 range. Alternatively, Ofcom might consider a much simpler banding structure within 08 with just two key price points (freephone excepted), perhaps corresponding roughly to the current 0844 5ppm and 0871 10ppm from BT lines. This could be achieved under either the retail designation or the termination designation approach, although the retail approach is admittedly more direct.
66. The key point under either scenario is that BT prices would be a guide, but only a guide, to the relative price of calls to the number range in question. Consumers would be reminded that, just as with calls to geographic and mobile numbers, 'other networks may vary', and those particularly anxious to know the likely cost of a particular call would be advised to contact their OCP.
67. In relation to 09 specifically, while indicating that consumer recognition of particular ranges is less important due to the separate obligations on PRS SPs, Ofcom indicates a preference for banding first by service type and then by price.
68. If there were not already a substructure in place for 09, then there might be a good case for not inventing one given the complicated and fragmented structure that has developed. However, given the disruption that would ensue from radical changes to the range it is probably better to take the status quo as a starting point.
69. Although pricing bands may not (and do not need to be) well understood by consumers, they do hold some significance on the supply side at various levels of the value chain. Similarly, service type (e.g. content) may not be self-evident to consumers from the number alone, but it is still necessary to have some structure within the range to support selective barring facilities.
70. Given the recent decision to require all adult content to be behind 09 numbers even where payment for that content is not through the call price, it will probably be necessary to create a new non-revenue share range for such content. It would also be helpful to have a non-revenue share range available for non-adult content, to cater for pay for product by reverse billed SMS, credit card or other means.

71. Having non-revenue share ranges available within 09 does mean the range would not strictly be exclusively a premium rate revenue share range. However, this is a consequence of similar public policy issues around charging advice and content applying whether or not payment is effected exclusively through call charges. As a result, 09 has effectively come to signify the gateway to premium and adult content, however paid for. Call deterrence is unlikely to be a significant problem on non-revenue share 09 ranges so long as the services operating behind these numbers are subject to ICSTIS advertising guidelines, since the numbers should not be publicised in isolation from the service to which they relate.

Other issues

Charging for numbers

72. We note Ofcom's discussion of the possibility of charging for numbers at some future date. We note also, and agree, that there are many practical and conceptual issues that would have to be addressed before going down this path. While there may come a time where this has to be considered, we do not believe that time has yet come.

73. Rationing numbers by price would be a response to scarcity. However, as Ofcom notes scarcity is not a current problem in the 07 range. Ofcom can help mitigate the problem of scarcity in other ranges by keeping sub-designations within broad initial digit categories to a minimum, thereby favouring efficient utilisation.

Consumer protection test

74. We note, and approve, the principle of the proposed consumer protection test in relation to number allocation, particularly in relation to premium rate ranges.

Vodafone
May 2006