Part C Annexes

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Part C - Annex 26

The cost of originating mobile calls to Freephone numbers

Introduction

A26.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of our assessment of the costs of originating calls to 080 numbers. It also sets out our comments and our updated analysis in response to the issues raised. Our analysis is used as an input in our assessment of the likely origination payments for a free-to-caller range in Annex 27 and Section 12. It is also used to determine the Maximum Mobile Price ('MMP') when estimating the tariff package effect associated with this option in Annex 28.

A26.2 In the April 2012 consultation we asked stakeholders the following question:

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

A26.3 This Annex addresses stakeholder comments in relation to our analysis of the costs of origination developed in Annex 22 of the April 2012 consultation. Our response to comments regarding the assessment of origination charges can be found in Annex 27.

A26.4 In light of stakeholder comments, we have considered it appropriate to structure this Annex by:

- first, summarising our analysis in Annex 22 of the April 2012 consultation;
- second, responding to stakeholder detailed comments; and
- third, updating our cost analysis in light of stakeholder comments and further developments since the April 2012 consultation.

A26.5 We look into each of these issues in turn below.

The April 2012 consultation

A26.6 In the April 2012 consultation we assessed the costs incurred by mobile OCPs when they originate a 080 call on their network.[1] This informed our discussion of mobile origination payments and the maximum price for mobile calls to a Maximum Mobile Price number range. We said that our analysis involved weighing up a wide range of factors and that there was also uncertainty about the extent to which

[1] The April 2012 consultation considered the cost of originating 080/0500 calls. However, we have separately consulted on our proposals for the 0500 range in the intervening period, so do not refer to 0500 calls in the remainder of this Annex (see section 2 for further details on our 0500 consultation, and also Annex 29 where we respond to comments from EE on this range). We also said in the April 2012 consultation that we considered our origination cost estimates to a free to caller 080 number to be relevant to the cost of originating 116 calls.

certain cost categories (e.g. acquisition and retention, 'A&R' costs) should be included.[2]

Cost categorisation

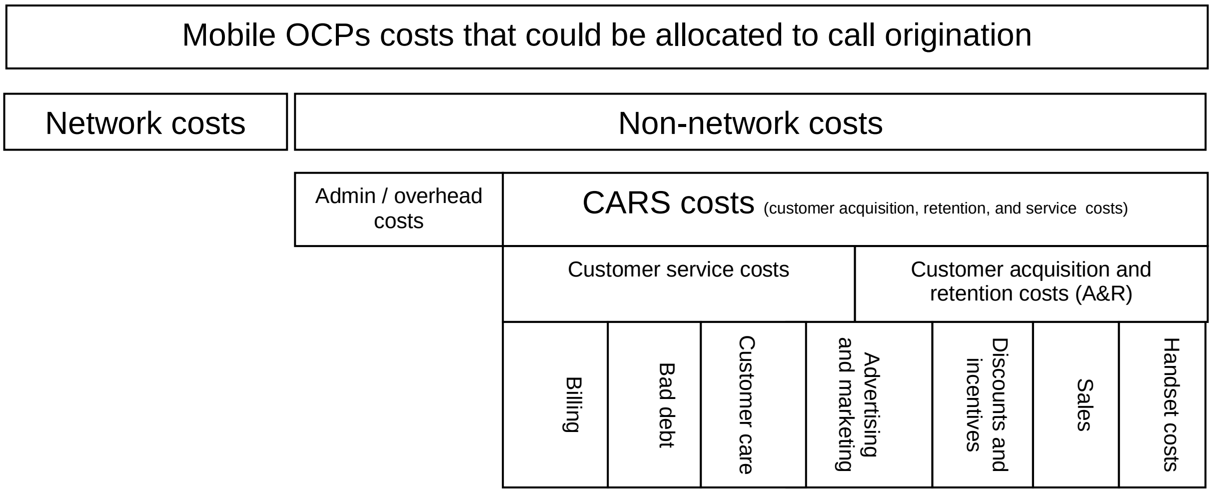
A26.7 We classified the activities that mobile OCPs need to perform to originate a call into two types of costs, namely:

- network costs: operating cost and capital costs of maintaining, running, and operating the mobile network the call is originating on; and

- non-network costs: costs associated with customer acquisition, customer retention, and the administration and distribution activities associated with selling and providing mobile telecommunications services.

A26.8 We explained that non-network costs could further be divided into two categories: (i) customer acquisition, retention and service costs ("CARS costs"); and (ii) administration and overhead costs. All of the above costs could be classified as shown in Figure A26.1 below.[3]

Figure A26.1: Mobile call origination costs



A26.9 We explained that the difference between customer acquisition and retention costs and customer service costs, shown in Figure A26.1 above, was that the former were incurred to win new subscribers or incentivise existing subscribers to stay whereas the latter were incurred in the ordinary course of servicing existing subscribers.[4]

Cost quantification

A26.10 We said that the cost model used to derive the efficient cost of mobile termination provided a suitable estimate of the efficient network costs of mobile origination.

[2] See paragraphs A22.1 to A22.4 of the April 2012 consultation for a description of our general approach to assessing the cost of originating mobile calls to Freephone numbers.
[3] We noted however that in light of the 2009 CC Determination, it was only appropriate to consider net handset costs (i.e. gross handset costs less any revenues associated with the subsequent sale of those handsets) rather than gross handset costs.
[4] See paragraphs A22.8 to A22.19 of the April 2012 consultation for a description of the categorisation of origination costs.

However, we proposed to use an amended version of the cost model which supported our 2011 MCT Statement (the ‘2011 MCT Cost Model’) that would provide estimates of the origination costs on a pure LRIC (in addition to LRIC+) basis.[5]

A26.11 We noted that the 2011 MCT Cost Model did not incorporate CARS costs. For these we estimated the CARS costs of a ‘typical’ operator based on the average of the costs provided to us by the largest mobile OCPs in 2009, uplifted to 2011/12 prices.[6]

A26.12 Our estimates of mobile OCPs’ call origination costs, including non-network CARS costs together with network costs were as shown in Table A26.2 below.[7]

Table A26.2: Cost estimates relating to mobile OCPs (2013/14 costs in 2011/12 prices)

COST CATEGORY	£	Implied ppm cost
CARS COSTS ALLOCATED ON EPMU BASIS		
CARS: customer service costs		
Billing	£42m	0.06
Bad debt	£42m	0.06
Customer care	£152m	0.23
CARS: A&R costs	£1,057m	1.57
Other CARS	£309m	0.46
Subtotal: non-network costs	£1,602m	2.38
NETWORK COSTS FROM THE 2011 MCT COST MODEL		
Network costs on pure LRIC basis	NA	0.67
Admin and overheads	£181m	0.25
Network costs on LRIC+ basis	NA	1.45

Comparison with BT’s 080 origination costs

A26.13 In the April 2012 consultation we compared the mobile OCPs’ origination costs with BT’s costs of originating 080 calls. Using the charge control model from the NTS

[5] We explained that in the LRIC+ approach we used a large increment (all voice and data traffic) to calculate incremental costs and common costs were then allocated using several methodologies. In contrast, in the pure LRIC approach all incoming voice traffic was considered as a ‘final increment’ with no common costs.
[6] Data provided by the major mobile OCPs in response to a formal information request submitted in November 2009.
[7] See paragraphs A22.20 to A22.31 of the April 2012 consultation for a description of the quantification of origination costs.

Retail Uplift Statement and uplifting our estimate to 2011/12 prices we calculated that BT's non-network cost per call was 0.22 ppm. Deducting this from the average origination payment received by fixed OCPs (i.e. 0.5 ppm) we obtained an estimate of BT's average network costs of originating 080 calls of approximately 0.28 ppm.

A26.14 We said that the difference between BT's network costs of 0.28 ppm and mobile OCPs' 1.45 ppm (on a LRIC+ basis) was mainly due to:

- mobile origination covering costs from the customer's handset into the core of the network; and
- the estimate of BT's fixed costs not covering costs from the customer's premises to the local exchange (recovered from the monthly line rental charge).

A26.15 We explained that the difference between BT's non-network costs of 0.22 ppm and mobile OCPs' non-network costs (which could be over 2ppm, depending on which cost categories were included) was due to the characteristics of the fixed and mobile telecommunications sectors and the way customers are served. In particular, mobile CPs spend more to promote their service through, for example, discounts and promotions, subsidised handsets, loyalty discounts or high street shops.[8]

Identification of different cost measures

A26.16 We estimated several measures of mobile OCPs' costs of originating 080 calls, mainly:

- Pure LRIC;
- LRIC differential;
- LRIC+ (no A&R costs);
- LRIC+ (50% A&R costs); and
- LRIC+ (100% A&R costs).

A26.17 For each of these cost measures we calculated the cost of calls to (i) a free to caller number range; and (ii) a Maximum Mobile Price number range. We explained that the difference between the two was that in the case of the latter bad debt and consumer billing costs could be attributable to the costs of originating calls but not in the case of the former.

Pure LRIC

A26.18 In the case of calls to a free to caller number range, we said that it was unclear whether non-network costs were incremental to the origination of 080 calls. We therefore produced a range for incremental costs, the lower bound excluding all non-network costs and the upper bound including an allowance for customer care costs. We allocated non-network costs using the 'EPMU down-lift approach' which

[8] See paragraphs A22.32 to A22.44 of the April 2012 consultation for a description of the comparison between BT's and mobile OCPs' origination costs for 080 calls.

assumed that the ratio of LRIC to LRIC+ costs is the same for non-network elements as for network costs.[9]

A26.19 For calls to a Maximum Mobile Price number range, again we considered that it was unclear the extent to which non-network costs were incremental. We produced a range excluding all non-network costs at the lower end and including an allowance for customer care costs and bad debt at the upper end. We applied the 'EPMU down-lift approach' to allocate these costs on the basis that the contribution of these calls to bad debt was likely to be relatively low.[10]

LRIC differential

A26.20 We explained that the rationale behind this measure of cost was that fixed and mobile OCPs received the same pence per minute contribution to their fixed and common costs. We estimated the LRIC differential by first estimating the contribution made by 080 calls to fixed OCPs' fixed and common costs. We did this by (i) subtracting some network and non-network costs from our 0.5ppm estimate of BT's origination costs to arrive at an estimate of the pure LRIC of originating a fixed call to 080 of 0.1ppm and then (ii) deducting this estimate of the pure LRIC of fixed calls to 080 from the average 0.5ppm origination payment for calls to 080 originated from fixed CPs to obtain a contribution of 080 calls to fixed CPs' fixed and common costs of 0.4ppm. We then added this 0.4ppm to our estimate of the pure LRIC of calls originated from mobile CPs to arrive at an estimate of the LRIC differential.[11]

LRIC+ measures

A26.21 We indicated that the purpose of the LRIC+ measure is to estimate an average cost of originating traffic when using an all network traffic increment. Compared to the pure LRIC method, LRIC+ includes a contribution to costs that are fixed and common with traffic other than 080 calls.

A26.22 In the case of calls to a free to caller number, we included network costs and network administration costs as well as two CARS cost categories (customer care and Other CARS costs). Non-network costs were allocated on an EPMU basis. For calls to a Maximum Mobile Price number range, we also included two more CARS costs categories (billing and bad debt) both allocated on an EPMU basis.

A26.23 We considered the impact of including A&R costs by calculating three LRIC+ estimates with different contributions to A&R costs: 0%, 50% and 100%. We allocated these costs using EPMU.[12]

Our cost measures

A26.24 Table A26.3 below presents the estimates we set out in the April 2012 consultation for mobile call origination costs under each cost measure considered.[13]

[9] We estimated this ratio, and hence the downlift factor, at 39% in 2013/14. Our revised estimate for 2014/15 unit costs is 47%,

[10] See paragraphs A22.47 to A22.50 of the April 2012 consultation for a description of our approach to estimating the pure LRIC origination costs.

[11] See paragraphs A22.51 to A22.52 of the April 2012 consultation for a description of our approach to estimating the LRIC differential origination costs

[12] See paragraphs A22.53 to A22.56 of the April 2012 consultation for a description of our approach to estimating the LRIC+ origination costs

Table A26.3: Cost estimate breakdown for different approaches (2013/14 ppm costs in 2011/12 prices)[14]

Free to caller / Max mobile price	Pure LRIC	LRIC Differential	LRIC+ (no A&R)	LRIC+ (50% A&R	LRIC+ (100% A&R)
Non-network costs					
CARS costs					
Customer service costs					
Billing	0.00	0.00	0 - 0.06	0 - 0.06	0 - 0.06
Bad Debt	0 - 0.02	0 - 0.02	0 - 0.06	0 - 0.06	0 - 0.06
Customer care	0 - 0.09	0.09	0.23	0.23	0.23
A&R costs	0.00	0.00	0.00	0.79	1.57
Other CARS	0.00	0.00	0.46	0.46	0.46
Sub-total non-network costs	0 - 0.11	0.09 - 0.11	0.69 - 0.81	1.48 - 1.60	2.26 – 2.38
Network and admin costs from the 2011 Cost Model					
Administration costs	0.00	0.00	0.17	0.17	0.17
Network costs on pure LRIC basis	0.67	0.67	NA	NA	NA
Network costs on LRIC+ basis	NA	NA	1.45	1.45	1.45
Network costs on differential basis	NA	0.40	NA	NA	NA
Total	**0.7 - 0.8**	**1.1 - 1.2**	**2.3 - 2.4**	**3.1 - 3.2**	**3.9 - 4.0**

Our response to stakeholder comments

A26.25 Detailed below is a summary of the responses made by stakeholders to our assessment of the costs incurred by mobile OCPs when they originate a 080 call on their network.

A26.26 Stakeholders have commented on the following issues of our analysis, namely, the:

- version of the 2011 MCT Cost Model used and other general comments;
- inflation assumed;
- estimates of CARS costs; and
- recovery of fixed and common costs.

A26.27 We respond to each of these issues in turn below.

[13] See paragraphs A22.57 to A22.61 of the April 2012 consultation for a description of our origination cost estimates.

[14] The lower end of the range for each cost estimate is the estimated cost of originating a call to a free to caller number range, which excludes a contribution to billing and bad debt. The cost of calls to a Maximum Mobile Price number range includes a contribution to bad debt and billing. In the case of the pure LRIC estimates, the lower end of the range excludes non-network costs on the basis that these may not be incremental to 080 call origination.

The version of the 2011 MCT Cost Model used and other general comments

Stakeholder comments

A26.28 EE consider that our estimates of network and administration costs were likely to be too low.[15] The reason for this, EE argue, is that the figures in Table A23.1 were clearly derived from the more detailed breakdown in Table A22.9 in Annex 22 (which is reproduced as Table A26.3 above). EE considered that Table A22.9 presented ranges, whilst Table A23.1 simply used the lower end of these ranges without adequate explanation.

A26.29 In addition, both EE[16] and Vodafone[17] argued that the 2011 MCT Cost Model used should be the latest version of the model, adjusted in light of the CAT's May 2012 judgment disposing of the appeals against our Mobile Call Termination Statement ('the CAT MCT Judgment').[18]

A26.30 Vodafone argued that when calculating the pure LRIC of mobile origination, we should treat mobile origination as the second to last increment. Given MCT is treated as the final increment, Vodafone argued, origination can not also be treated as the final increment. Consequently, when using the 2011 MCT Cost Model to calculate the pure LRIC of origination, Ofcom should first remove the MCT increment.[19]

Ofcom's response

A26.31 We disagree with EE's comment that the figures used in Table A23.1 of the April 2012 consultation incorrectly reflected the more detailed cost breakdown presented in Table A22.9. In fact, Table A22.9 presented a range of costs for the two options for 080 calls that we considered in the April 2012 consultation, namely, (i) free to caller; and (ii) Maximum Mobile Price.

A26.32 The lower end of the figures in Table A22.9 estimated the cost of originating a call to a free to caller number range, which excluded a contribution towards billing and bad debt costs (as explained in footnote 68 of Annex 22 of the April 2012 consultation). In contrast, the higher end related to the costs of a MMP range.

A26.33 In Annex 23 we presented Table A23.1, which used the lower end cost estimates associated with a free to caller range, because in this Annex we assessed the origination charges for a free to caller 080 range.

A26.34 We recognise that the distinction between the lower and upper end of the ranges in Table A22.9 may not have been sufficiently clear in the April 2012 consultation. For this reason we present a separate column for the MMP option in Table A26.5 below, which sets out our updated cost estimates.

A26.35 We agree with Vodafone and EE's comment that we should use the version of the 2011 MCT Cost Model adjusted for the CAT MCT Judgment (this post-dated our April 2012 consultation).[20] In paragraphs A26.73 to A26.76, where we present the

[15] EE, response to the April 2012 consultation, pp. 46-47
[16] EE response to the April 2012 consultation, page 46-47
[17] Vodafone response to the April 2012 consultation, section 4.
[18] *BT and others v Ofcom (Mobile Call Termination)* [2012] CAT 11, 3 May 2012.
[19] Vodafone response to the April 2012 consultation, sections 4.2 to 4.3 and 4.18.
[20] This is release version 4 of the 2011 MCT Cost Model.

updated costs of origination, we have adjusted our estimates of the costs of origination to take into account the CAT's judgment. In particular, these changes relate to:

- a change to the modelled operator's datacard market share; and
- a decrease in the amount of data traffic in the network busy hour.
- an uplift to some network element capital costs.[21]

A26.36 We disagree with Vodafone's comment that, when calculating the pure LRIC of mobile origination, we should first remove the MCT increment. When calculating the pure LRIC of any service, we are only interested in the costs that are incremental to that service. It is not relevant when calculating the pure LRIC of a service whether we have or have not allocated common costs to another service. We may consider how these common costs are to be recovered as a separate exercise, but this does not change the way we calculate pure LRIC.

A26.37 If we were to calculate the pure LRIC of origination after we had already removed the termination traffic increment, then all the intra common costs shared between origination and termination only would be allocated to origination. With these common costs being allocated to origination, we would not be calculating the pure LRIC of origination.

Inflation

Stakeholder comments

A26.38 In the April 2012 consultation in footnote 39 we explained how we increased costs to take account of inflation. The forecast inflation estimate used was based on the assumptions in the 2011 MCT Cost Model, which were 2.5% per annum.

A26.39 EE[22] and Vodafone[23] believed that our approach to inflation was 'misconceived'. EE considered that the appropriate inflator should be actual RPI, and argued that the assumption made in the 2011 MCT Cost Model was simply "an assumption for modelling purposes". EE noted that inflation has in fact been above 2.5% over the relevant period, and therefore this would represent a non-trivial under-estimate of current nominal prices.

A26.40 In addition, Vodafone believed that we should report unit cost estimates in nominal prices for each year (i.e. 2013/14 unit cost estimates should be presented in 2013/14 prices).[24]

A26.41 Three similarly believed that it would be inconsistent for Ofcom to base its assessment of origination charges on outdated forecast inflation figures and argued that we should use actual figures instead.[25]

[21] For a detailed description of the model changes see the 2012 CC Determination, Sections 7.21 to 7.116 and 7.160 to 7.352.
[22] EE, April 2012 consultation response, p. 47
[23] Vodafone, April 2012 consultation response, p.56.
[24] Vodafone, April 2012 consultation response, p.56.
[25] Three, April 2012 consultation response, paragraphs 77-82.

Our response

A26.42 Considering the comments made by Three, Vodafone and EE we have updated the inflation assumptions used in our model. We note that Three and Vodafone each used slightly different approaches to calculating inflation and have provided different adjustment factors. We are now estimating unit costs for 2014/15 which we present in 2014/15 prices and have therefore calculated our own inflation adjustment factor. The updated cost model we present in paragraphs A26.73 to A26.76 below uses actual inflation figures for the years available. We have calculated an inflation factor of 1.197[26] to convert from 08/09 prices to 2014/15 prices.[27]

CARS costs

Stakeholder comments

A26.43 EE, Vodafone and O2 argued that the estimates of CARS costs that we presented in the April 2012 consultation were too low.

A26.44 EE made two comments on the level of CARS costs:

- EE argued that it was not clear how Ofcom calculated CARS costs but it appeared as though the methodology used was based on out of date figures and warranted greater transparency. EE commented that its own simple calculation indicated that CARS costs should be significantly higher.

- EE considered that the efficient costs of origination should include CARS costs and that these should be allocated according to revenues rather than using a rule linked to volumes such as EPMU. It said an allocation by volume had no economic justification and it had been rejected by Ofcom in some charge controls (which had later been supported by the CC). In its view, an allocation by revenues would provide a better approximation of the relative willingness to pay of SPs and would approximate pricing in line with Ramsey principles. It estimated that using an allocation based on revenues, 080 call origination should recover at least 3.12ppm of CARS costs.[28]

A26.45 Vodafone argued that Ofcom understated the full recovery of CARS costs and that a cost of over 5p was more representative of "LRIC+ 100% A&R", rather than 3.9p as estimated by Ofcom. Accordingly, Vodafone disagreed with Ofcom's view that the mobile outpayment of [✂] negotiated under the DWP arrangement was significantly above cost - Vodafone argued it was in fact below cost. Vodafone highlighted two reasons why our CARS cost data was understated.

- Vodafone pointed out[29] that the total CARS costs expressed in the April 2012 consultation[30] of £1,602m should be the same as the total CARS costs we identified in the April 2010 consultation on Mobile Call Termination ('MCT'). In the April 2010 MCT consultation they were in fact significantly higher at £1,827m.[31]

[26] When calculating the inflation factor, we use the RPI all item index.
[27] For 2012/13 and 2013/14, we assume inflation of 2.5%.
[28] EE, April 2012 consultation response, p. 49.
[29] Vodafone April 2012 consultation response, p. 52, paragraph 4.11.
[30] April 2012 consultation Table A22.4 of Annex 22.
[31] Reference to CARS costs in April 2010 MTR document required.

- Vodafone believed there was a missing element to our CARS cost stack, highlighting that the April 2010 MCT consultation[32] identified administration costs of £421m. Vodafone argued that the MCT consultation separated these administration costs into those that related to network activities, and those that related to CARS administration. Vodafone believed that the estimates we presented in the April 2012 consultation had incorrectly not accounted for the portion of costs relating to CARS administration (£251m).

A26.46 O2 argued that Ofcom's costs of origination had underestimated net handset costs. O2 highlighted that its net handset costs had increased markedly over the last few years following the introduction of popular but more costly smartphones. Using the cost definitions set out in Annex 22 of the April 2012 consultation, O2 estimated that its "A&R costs" [✂].[33]

A26.47 BT considered that the data provided by mobile CPs was inaccurate. In particular, it argued that no confidence could be attributed to the numbers provided by MNOs, particularly, in the case of "other CARS" costs which the MNOs had not specifically identified.[34]

Ofcom's response

A26.48 In relation to CARS costs, we do not consider that A&R costs are relevant to origination charges for calls to 080 numbers, as further discussed in Section 12. We have reflected this in our updated cost estimates presented in paragraphs A26.65 to A26.76 below.

A26.49 In response to EE's comment that our CARS costs are based on out of date figures, we note that we have estimated the costs of origination with the best evidence available.[35] We recognise that we might have sought to update this data by way of a formal information request to the mobile OCPs. However, we did not do so for three reasons:

- First, updating the CARS costs would have required an extensive data request to the mobile OCPs and considerable economist resource in analysing the responses. We were also mindful that the CARS cost data submitted by the mobile OCPs to the CC in 2009 was not comprehensive, contained data omissions from some of the operators and reflected significant discrepancies between them in terms of cost allocation.[36] In addition, we are using forecast unit costs for 2014/15 (in line with the expected date of implementation) and there is always the likelihood of discrepancies between forecast and actual costs. We therefore considered that the exercise of updating the CARS cost data would be disproportionate to the additional clarity it was likely to provide.

- Second, the cost data taken from the 2011 MCT Cost Model is also not entirely up to date, as it is based on data collected from the mobile OCPs in late 2010. If we were to update the CARS cost data, then an update of the MCT cost data

[32] Reference to CARS costs in April 2010 MTR document required £421m administration costs.
[33] O2, April 2012 consultation response, p.25.
[34] BT, April 2012 consultation response, p.46.
[35] We used total CARS cost data provided by the major mobile OCPs in response to an information request in 2009 and allocated these to individual CARS cost elements using a percentage split derived from data from the 2009 CC Determination. See paragraphs A22.26 to A22.30 of the April 2012 consultation for further detail.
[36] See Table A22.3, paragraph A22.29 and footnote 56 of the April 2012 consultation.

might also have been in order. This would have engaged us in a full cost modelling exercise, of the kind that we would typically carry out to support the imposition of a charge control.

- Third, we are not setting a charge control in this document[37] and therefore do not consider that a full cost modelling exercise (nor an update to the CARS cost data only) is appropriate or proportionate in this context. We are seeking to produce estimates of mobile origination costs which we use as underlying assumptions when assessing the two regulatory options we put forward for the 080 range – free to caller and MMP – against various assessment criteria such as consumer price awareness, efficient prices and service quality, variety and innovation (see Section 13). We consider that our cost estimates are sufficiently robust for this purpose.

A26.50 Finally, we also note that, while EE submitted that our cost figures were out of date, it has not provided any further cost evidence that would suggest that our CARS cost estimates are inaccurate.

A26.51 We disagree with EE's view that CARS costs should be allocated according to revenues, rather than volumes, because this would better approximate Ramsey principles. Contrary to EE's assertion, revenue levels are not necessarily related to elasticity (the rule used to decide how common costs should be allocated between services under Ramsey pricing). For example, higher revenues may simply reflect the fact that the service is more costly to provide. We have used a volume cost allocation based on EPMU in many of the charge controls we have set and we continue to believe that this is appropriate for origination charges as well.

A26.52 The issue raised by Vodafone relates to the difference between the CARS costs in our April 2012 consultation and those referred to in the April 2010 MCT consultation. As explained in our April 2012 consultation[38] the CARS costs in this consultation included 'net handset costs', whereas the CARS costs in the April 2010 MCT consultation, to which Vodafone refers, included 'gross handset costs'. This explains the difference in CARS costs between the April 2010 MCT consultation and our April 2012 consultation highlighted by Vodafone.

A26.53 We agree with Vodafone's second comment that our estimates of the costs of origination should include CARS administration costs, which we detailed in the April 2010 MCT consultation. Our updated cost model outputs include a mark-up for non-network administration costs which is scaled for the quantity of non-network costs recovered by each of our cost measures.

A26.54 O2 stated that our A&R costs should reflect the higher net handset costs they incur as a result of their subsidies of costlier smartphones. As discussed further in Section 12, we do not consider that A&R costs are relevant for the determination of origination charges. This is mainly because SPs, who will now be responsible for paying origination charges, do not benefit from these costs. This is particularly the case of smartphone handsets with mobile internet, which are most likely to reduce

[37] In particular, we note that we are not setting actual origination charges in this document. These will be set by commercial negotiation (against the backdrop of the wholesale access condition, which will require the charges to be fair and reasonable) or, where negotiations fail and the parties refer the matter to us, by dispute resolution. In determining any such dispute, we would take into account any cost evidence submitted by either party.
[38] See paragraph A22.28 of the April 2012 consultation.

(rather than increase) the number of calls to non geographic numbers. Therefore, we have not considered this issue further.

A26.55 In relation to BT's comment that no confidence can be attributed to the data provided by mobile CPs, especially regarding "other CARS" costs, we note that this data is sourced from the CC's 2009 MCT determination. The "other CARS" cost item BT specifically mentions relates to the amount of costs (relating to costs from smaller financial cost categories) added to reconcile the detailed costs to the total costs in the mobile CP's financial system. We believe the CARS cost data we have used to be the most accurate reflection of mobile CP's CARS costs we have available.

A26.56 In light of the fact that we do not have sufficient granularity on what is included in these "other CARS" costs to determine the extent to which they relate to A&R costs, our updated cost estimates in paragraphs A26.65 to A26.76 below show different LRIC+ measures, each with a different share of "other CARS" costs allocated to it, namely:

- LRIC+ with no "other CARS" costs;
- LRIC+ with a share of "other CARS" costs which is in line with the proportion of total CARS costs included;
- LRIC+ with all "other CARS" costs included.

Recovery of fixed and common costs

<u>Stakeholder comments</u>

A26.57 EE commented that, in light of the CAT MCT Judgment[39], shared and common costs were no longer recovered from pure LRIC derived mobile termination rates (MTRs). EE argued that such costs should be recovered through call origination. Without access to Ofcom's model, EE commented that it was not clear if and how this had been taken into account, and whether the 0.3ppm calculated by Ofcom was the correct adjustment to make.[40]

A26.58 Vodafone similarly argued that there was a risk that we would distort prices or, worse, mobile operators would fail to recover a proportion of their fixed and common costs if these share and common costs were not reallocated.[41]

A26.59 Three suggested that the best way of reallocating these common costs from mobile termination to call origination was to run the 2011 MCT Cost Model without the MCT increment.[42]

<u>Ofcom's response</u>

A26.60 In view of these comments made by stakeholders and the recent CAT MCT Judgment we have added to the mobile call origination cost stack a proportion of these common and fixed costs that are no longer recovered by pure LRIC MTRs.

[39] Competition Appeal Tribunal, BT et al v Ofcom, Judgment, 3 May 2012.
[40] EE, April 2012 consultation response, p.48.
[41] Vodafone, April 2012 consultation response, pp.1.10.
[42] Three April 2012 consultation response, paragraphs 83 to 88.

These common and fixed costs can relate to the following types of asset in the 2011 MCT Cost Model:

26.60.1 Unitary assets – A single asset is required to run the network. These assets are not incremental to traffic and so cannot be incremental to the MCT increment (e.g. the network management system).

26.60.2 Non-traffic driven assets – These are a class of asset that are used by network traffic, but have some other dimensioning driver. For instance, the radio access layer in rural areas is driven by coverage rather than volume of traffic passing over it.

26.60.3 Modular assets – Some assets have high capacities and so are very modular. Although these assets may be traffic driven, the MCT increment is often too small to cause additional assets to be purchased. Consequently, the MCT increment does not cause any additional costs and so these assets are not incremental to MCT.

A26.61 Vodafone[43] and Three[44] suggest that the best way of reallocating these costs is to run the MCT model without the MCT increment and use the resulting origination unit costs. We do not consider this is the best approach.

A26.62 It is true that, by doing this, common costs will be reallocated to other services, and it is a relatively simple way to perform the calculation. However, we do not believe it is as conceptually favourable approach as the approach we used in the April 2012 consultation.

A26.63 In the April 2012 consultation, we calculated the ppm mark-up for the reallocation of common costs from MCT to mobile call origination as approximately 0.3ppm. We calculated this mark-up in three stages:

26.63.1 **Stage 1**: Calculate the difference between the LRIC+ and pure LRIC of MCT on a year by year basis;

26.63.2 **Stage 2**: Calculate the total yearly cost under-recovery; and

26.63.3 **Stage 3**: Allocate these costs across all network services on an EPMU basis.

A26.64 This approach ensures that we maintain the same annual cost recovery (i.e. the under-recovered costs in a particular year are recovered in the same year). Although Vodafone and Three's approach recovers the same amount of common costs over the life of the model, by removing a traffic increment, the path of cost recovery will be changed. This will mean that in any particular year, the total cost recovery using the approach suggested by Vodafone and Three may be different from that recovered by the all traffic model. However, notwithstanding our preference, we note that these two approaches do produce similar results.

Update of our estimates of the costs of origination

A26.65 In light of the responses from stakeholders and the final CAT ruling on mobile termination rates we have updated the model used to produce our estimates of

[43] Vodafone response to the April 2012 consultation, section 4
[44] Three response to the April 2012 consultation, paragraphs 83 to 88

mobile origination costs under each of the options of making the 080 range: (i) free to caller; and (ii) MMP.

A26.66 In addition, since the April 2012 consultation we are now consulting on the removal of the NTS Call Origination Condition within the Narrowband Market Review.[45] For the reasons discussed in detail in Section 12, we consider that it is therefore appropriate to estimate fixed origination costs using the same approach that we have used for mobile origination costs.

A26.67 In light of this, below we present our updated estimates of:

- fixed origination costs for a free to caller range; and,
- mobile origination costs for a free to caller and MMP range.[46]

Updated estimates of the fixed costs of originating a call to a free-to-caller number range

Updated LRIC and LRIC differential

A26.68 In the April 2012 consultation we assumed that the incremental cost to BT to originate calls to 080 would be approximately 0.1ppm. Since then, we have published a consultation on BT's network charge controls as part of the Narrowband Market Review.[47] In that consultation we have estimated that the pure LRIC cost of terminating a call on BT's network is between 0.002-0.076ppm (in 2014/15 prices).[48] We believe it is more appropriate to use this as a proxy for the pure LRIC network costs of originating a 080 call on BT's network.

A26.69 In relation to the non-network costs, we have used the same approach as we used for mobile origination in the April 2012 consultation (i.e. we have only considered that customer care costs could be incremental and we have applied a downlift factor to the LRIC+ customer care costs to approximate the pure LRIC costs, as shown below).

A26.70 This means that we estimate the total pure LRIC costs of fixed origination between 0.0-0.1ppm (to the closest first decimal). This compares to a LRIC+ estimate ranging between 0.3-0.6ppm. In light of this, depending on the final values of the pure LRIC and LRIC+ estimates in the NMR, BT will recover approximately between 0.2-0.6ppm of common costs for calls originated from its network. We use this to estimate the LRIC differential mobile origination charge below.

Updated cost model

A26.71 In the April 2012 consultation we presented estimates of the fixed origination costs for calls to a 080 number in Table A22.6. However, the estimates presented

[45] See http://stakeholders.ofcom.org.uk/consultations/nmr-13/

[46] Our cost estimates are based on current volumes of calls to 080 originated from fixed and mobile CPs. We recognise however that the pattern of calls would be likely to change significantly following the implementation of either free-to-caller or MMP (see Section 13 where we set out our assumptions on fixed-mobile substitution under each option). However, we do not expect this to have a material impact on our estimates of origination costs for fixed and mobile CPs, given that non-geographic calls represent a small share of fixed and mobile origination.

[47] See http://stakeholders.ofcom.org.uk/consultations/nmr-13/

[48] See Figure 9.6 of our consultation document, available at http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/summary/NMR_Consultation.pdf

included an allocation for fixed CARS costs. In Table A26.4 below we present these estimates using the same approach we use to estimate mobile origination costs for a free to caller range (as described in paragraphs A26.48 to A26.56 above).

A26.72 In addition, we have included the network costs as estimated in the current NMR consultation. We note that these estimates may be subject to change in the statement, expected later this year.

Table A26.4. Fixed origination costs for a 080 free to caller range (2014/15 prices)

Free to caller / Max mobile price	Pure LRIC	LRIC+ (no 'other CARS')	LRIC+ (share 'other CARS')	LRIC+ (all 'other CARS')
Non-network costs				
CARS costs				
Administration costs[49]	N/a	N/a	N/a	N/a
Billing	0.00	0.00	0.00	0.00
Bad Debt	0.00	0.00	0.00	0.00
Customer care	0 - 0.02[50]	0.02	0.02	0.02
A&R costs	0.00	0.00	0.00	0.00
Other CARS	0.00	0.00	0.01	0.06
Sub-total non-network costs	0 - 0.02	0.02	0.03	0.08
Network and admin costs from the 2011 Cost Model				
Administration costs[49]	N/a	N/a	N/a	N/a
Network costs on pure LRIC basis	0.00-0.08	N/a	N/a	N/a
Network costs on LRIC+ basis	N/a	0.23-0.48	0.23-0.48	0.23-0.48
Total[51]	**0.0 - 0.1**	**0.3-0.5**	**0.3-0.5**	**0.3-0.6**

Updated estimates of the mobile costs of originating calls to a free to caller and MMP range

A26.73 In Table A26.5 below we present our updated mobile origination cost estimates for a 080 free to caller range.[52] The main changes since the April 2012 consultation are as follows:

- changes to the 2011 MCT Cost Model following the CAT MCT Judgment, discussed in paragraphs A26.31 to A26.37 above;

- inflation assumptions, discussed in paragraph A26.42 above;

[49] There are no separately identifiable Administration costs in the case of fixed origination.
[50] In the case of mobile origination costs, to obtain the pure LRIC customer care costs, we applied a downlift factor of 39% to our estimate of LRIC+ costs reflecting the ratio of LRIC to LRIC+ network costs (assuming that it is the same as for non-network costs). As we do not have the same level of detailed information for fixed origination, we have decided to include a range for the fixed customer costs where the upper bound is the full LRIC+ estimate (with no downlift adjustment).
[51] These figures are rounded up to the closest first decimal.
[52] See paragraphs A26.17 to A26.24 above for an explanation of the cost categories that were included in our estimates for a free to caller range in the April 2012 consultation.

- no cost recovery of A&R costs, discussed in paragraphs A26.48 to A26.56 above;
- recovery of CARS administration costs, discussed in paragraph A26.53 above;
- three different LRIC+ measures depending on the share of "other CARS" costs included, as discussed in paragraph A26.56; and
- additional common costs reallocated from mobile termination, discussed in paragraphs A26.60 to A26.64 above.

A26.74 In addition, in the April 2012 consultation we further consulted on two options for a MMP 080 range. In the case of Option B[53] this consisted of a maximum retail price of zero for fixed calls to 080 and for mobile calls one of the following possible designs:

- a MMP of either 4.2ppm or 5.0ppm (including VAT) and the same origination payment for mobile and fixed (equal to the current fixed origination payment of 0.5ppm); or
- a MMP equal to the access charge (i.e. subjecting the retail price to the tariff principles we specified for the unbundled tariff, without us specifying the level of the maximum price), with a fixed origination payment of 0.5ppm and mobile origination payment of 0ppm.[54]

A26.75 We note that the assessment of the level of mobile origination costs was only relevant in the case of the assessment of a free to caller range and in the case of the assessment of the first variant for MMP under Option B. In fact, the 4.2ppm and 5.0ppm figures for the MMP resulted from:

- **4.2ppm:** the LRIC+ with 100% A&R costs and including VAT;[55]
- **5.0ppm:** the LRIC+ with 100% A&R costs, including VAT, an allowance for common costs no longer recovered from termination and slightly rounded up (which we argued would facilitate consumer price memorability).[56]

A26.76 We continue to believe that in the case of the MMP, where callers (rather than SPs) continue to pay for calls to the free to caller number, it is appropriate for CPs to recover A&R costs. In light of the above, in Table A26.5 below we provide the update cost estimates relevant to the free to caller option (i.e. LRIC, LRIC differential and different measures of LRIC+) and (in the last column) we provide the updated cost estimate for the MMP option (i.e. LRIC+ including 100% A&R costs). We note that the cost categories included in the MMP are the same we used in the April 2012 consultation[57] (with the only exception of CARS administration costs). The updates to the cost estimates are due to the changes described in paragraph xx above for the free to caller option.

[53] We note that the other option we discussed in the April 2012 consultation (Option C) did not require any cost modelling.
[54] See paragraphs A21.11 to A21.14 of the April 2012 consultation.
[55] See paragraph A24.46 and A24.66 to A24.71 of the April 2012 consultation.
[56] See paragraph A24.70 of the April 2012 consultation.
[57] See paragraphs A26.17 to A26.24 above for an explanation of the cost categories that were included in our estimates for a MMP range in the April 2012 consultation.

Table A26.5: Mobile origination costs for a 080 free to caller and MMP range (2014/15 prices)

Free to caller / Max mobile price	Pure LRIC	LRIC Differential	LRIC+ (no 'other CARS')	LRIC+ (share 'other CARS')	LRIC+ (all 'other CARS')	Max. Mobile Price[58]
Non-network costs						
Administration costs	0.00	0.00	0.00	0.04	0.31	0.31
Billing	0.00	0.00	0.00	0.00	0.00	0.08
Bad Debt	0.00	0.00	0.00	0.00	0.00	0.08
Customer care	0 - 0.09	0 - 0.09	0.29	0.29	0.29	0.29
A&R costs	0.00	0.00	0.00	0.00	0.00	1.99
Other CARS	0.00	0.00	0.00	0.06	0.58	0.58
Sub-total non-network costs	0 - 0.09	0 - 0.09	0.29	0.39	1.18	3.33
Network costs						
Admin. costs	0.00	0.00	0.21	0.21	0.21	0.21
Pure LRIC network	0.76	0.76	N/a	N/a	N/a	N/a
LRIC+ network	N/a	N/a	1.63	1.63	1.63	1.63
Unrecovered common costs	N/a	N/a	0.31	0.31	0.31	0.31
LRIC differential network	N/a	0.2-0.6	N/a	N/a	N/a	N/a
Sub-total network costs	0.76	0.96-1.36	2.15	2.15	2.15	2.15
Total[59]	**0.8 - 0.9**	**1.0 - 1.5**	**2.4**	**2.5**	**3.3**	**5.5**

[58] As discussed above, the MMP includes LRIC+ with all CARS costs on an EPMU basis.
[59] Figures are rounded up to the closest first decimal.

Part C - Annex 27

Assessment of origination charges for free to caller 080 and 116 ranges

Introduction

A27.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of our Impact Assessment Range for origination charges for free to caller 080 and 116 ranges. In this Annex we set out our comments in response to the issues raised by stakeholders. In Section 12, we set out a revised Impact Assessment Range for each of fixed and mobile origination charges and describe the framework we have used to generate these assumptions.

A27.2 The analysis we presented in the April 2012 consultation assumed that fixed origination charges would remain the same as at present (i.e. approximately 0.5ppm).[60] In light of potential changes to BT's NTS Call Origination Condition, we no longer believe this assumption is appropriate, as further discussed in Section 12. For this reason, the comments and analysis presented in this Annex relate to the assumptions we make about origination charges for both fixed and mobile calls to 080 and 116 numbers for the purposes of our impact assessment, unless otherwise specified.

A27.3 In the April 2012 consultation we explained that our analytical framework for specifying the Impact Assessment Range for 080 mobile origination charges consisted of the three cumulative principles that we had used in the 080 Dispute Determination (which had been supported by the CAT), namely:

- **Principle 1:** mobile OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free to caller number range.
- **Principle 2:** the mobile origination payment should, taking into consideration our statutory duties:
  - o provide benefits to consumers, taking into account indirect and tariff package effects; and
  - o avoid a material distortion of competition either among OCPs or among TCPs.
- **Principle 3:** the mobile origination payment should be reasonably practicable to implement.[61]

A27.4 In the April 2012 consultation we asked stakeholders the following questions relating to our derivation of the Impact Assessment Range for 080 and 116:

Q16.2: Do you have any comments on the analysis used to develop the Impact Assessment Range for the mobile origination charge and the Mobile

[60] See paragraph A23.13 of the April 2012 consultation.
[61] See paragraph A23.28 of the April 2012 consultation.

Maximum Price range for 080 calls as set out in Annexes 21 to 25? Please provide evidence to support your comments.

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

A27.5 In their responses to our April 2012 consultation, stakeholders provided comments relating to each of the three principles described above. For this reason, we have structured this Annex, and our responses to stakeholder comments, following these three principles.

Principle 1: recovery of efficient costs of origination

Summary of our position in the April 2012 consultation

A27.6 In the April 2012 consultation we argued that there was not a unique measure of the costs of originating a mobile call to a free-to-caller range but a number of possible measures that varied in terms of the fixed and common costs they included.[62]

A27.7 We noted that we had estimated the long run incremental costs ('LRIC') of originating a mobile call in the region of 0.7-0.8ppm. We explained that all other measures of costs included some contribution to fixed and common costs, and that choosing between these measures would involve a consideration of what contribution SPs should make to mobile OCPs' fixed and common costs. We considered it appropriate to assess this issue under Principle 2.[63]

Stakeholder comments

A27.8 We received comments from several stakeholders. The Helplines Association ('THA') indicated that they did not have the evidence, experience or expertise to comment on our assessment of origination charges.[64] The remaining responses referred mainly to the issue of whether the efficient costs of mobile origination for 080 calls under Principle 1 should include customer acquisition, retention and services ('CARS') costs.

A27.9 Several fixed CPs considered that CARS costs should not be recovered through mobile origination charges. BT disagreed with the inclusion of CARS costs for several reasons:

- they could not be considered efficient because they reflected excess marketing costs which were mainly directed at handsets and data services and thus in no way associated with 080 numbers;[65]
- including them in origination charges could potentially act as a barrier to entry to smaller MNOs/MVNOs without the range of services the large MNOs have to offer to their customers;[66]

[62] Annex 22 of the April 2012 consultation assessed the costs of originating a call to a 080 number, although we said that we also considered our estimates to be relevant to 116 calls.
[63] See paragraphs A23.30 to A23.35 of the April 2012 consultation.
[64] THA, April 2012 consultation response, p.21.
[65] BT, April 2012 consultation response, p.45.
[66] BT, April 2012 consultation response, p.45.

- no confidence could be attributed to the numbers provided by MNOs, particularly, in the case of "other CARS" costs which the MNOs had not specifically identified;[67] and

- it considered that if we were to include any of these costs it should be done on an equal basis across all OCPs and that these costs should be scrutinised.[68]

A27.10 BT said that LRIC+ was the absolute upper limit of what was reasonable for any CP to charge and a LRIC differential was more appropriate. It expressed concerns that Ofcom intended to allow the MNOs to set an origination payment which was not justified by costs. It noted that the MNOs effectively admitted that they had treated NGCS calls as a revenue source in an "aftermarket" and argued that the likelihood of OCPs having market power would indicate that a payment above the LRIC+ standard would require justification.[69]

A27.11 Magrathea agreed that CARS costs should in principle be added to the mobile termination rate ('MTR') as an uplift when calculating the cost of mobile origination. However, it considered that SPs should not pay for this in the form of origination charges because:

- the vast majority of these costs were unrelated to the policy objectives of the 080 number (e.g. providing access to socially important services);

- SPs derived no benefit from this expenditure (e.g. A&R costs are spent on customers moving between mobile networks and not actually growing the market, which has become fairly saturated).[70]

A27.12 In contrast, several mobile CPs argued that CARS costs should be recovered through origination charges. Vodafone disagreed with Ofcom's view that some of the CARS costs should not be recovered through origination charges because SPs did not benefit from them, in particular, because:

- SPs benefited from the fact that mobile customers were attracted and retained by the existing structure of mobile prices, including handset subsidies (A&R costs) and, as a result of this structure, mobile ownership was widespread; and

- our approach to determining the proportion of A&R costs relating to activities that were likely to increase mobile subscription, and therefore for which making SPs pay was more justified, was flawed.[71]

A27.13 In relation to the 116 range, EE and Vodafone said they were concerned that they would under-recover their costs of origination, under a free to caller option on 116, and submitted that our guidelines on fair and reasonable origination charges should allow efficient cost recovery.[72] EE also submitted that, in any event, these guidelines would not prevent OCPs from voluntarily agreeing to waive or reduce mobile origination charges for 116 services if they so choose to do so.[73]

[67] BT, April 2012 consultation response, p.46.
[68] BT, April 2012 consultation response, p.47.
[69] BT, April 2012 consultation response, p.44.
[70] Magrathea, April 2012 consultation response, p.12.
[71] Vodafone, April 2012 consultation response, paragraph 1.10.
[72] Vodafone, April 2012 consultation response, p.34.
[73] EE, April 2012 consultation response, p.55.

Ofcom's response

A27.14 Since the April 2012 consultation, we have slightly revised our framework for determining the Impact Assessment Range for origination charges, as further discussed in Section 12. We note that under our revised framework, in Principle 1 we set out a range for the costs that we believe it is efficient for CPs to recover through origination charges, whereas in Principle 2 we consider the level of efficient cost-based charges within that range that provides benefits to consumers and avoids material distortions of competition.

A27.15 For the reasons described in Section 12, we have concluded that it is efficient for CPs to recover costs between pure LRIC and LRIC+ through origination charges for a free to caller range and that the LRIC+ measure should make no allowance for acquisition and retention ('A&R') costs.

A27.16 We therefore agree with BT, under Principle 1 of our revised framework, that we should exclude A&R costs from our measures of origination charges. Although we consider that A&R costs should be excluded, we disagree with BT that these costs may act as a barrier to entry for smaller MNOs/MVNOs, as shown by the fact that there currently exist a significant number of MVNOs in the mobile market in the UK. We similarly disagree that their inclusion within origination charges could act as barrier to entry in future as our Impact Assessment Range is below mobile CPs' current retention on 080 calls.

A27.17 In relation to other CARS costs, we remain of the view that some recovery of customer care costs should be taken into account.[74] As we discussed in the April 2012 consultation, these relate primarily to call centre costs, and therefore they should be included within the range of costs that it is efficient for OCPs to recover through origination charges for a free to caller range.

A27.18 We have further investigated the categories of costs included under mobile CPs' "other CARS" in Annex 26. We recognise, as highlighted by BT, that we have no clear information on the types of costs included under this category. Under these circumstances, we cannot reach a definitive view on whether it would be appropriate to recover these costs from 080 origination charges. For this reason, we have presented several LRIC+ measures in Annex 26, each including a different level of cost recovery, as further explained in that Annex. We have applied the same approach to non-network administration costs.

A27.19 Regarding BT's comment that our position on CARS costs for mobile CPs should apply to all OCPs, we note that our revised framework in Section 12 treats CARS costs consistently across both fixed and mobile CPs.

A27.20 In addition, we consider that BT has not provided sufficient evidence to support its claim that OCPs generally have market power and that this would indicate that a payment above LRIC+ would require justification. We have not conducted an assessment of OCPs' market power because such an assessment is beyond the scope of this review. However, as discussed under our revised framework, we have assumed for the purposes of our Impact Assessment Range that it would not be efficient for A&R costs to be recovered from origination charges, which is broadly in line with the view expressed by BT.

[74] As described in Annex 26, we have excluded billing and bad debt costs, as there would not be any of these costs associated with a free to caller 080 number.

A27.21 In relation to Magrathea's comments about CARS costs, we have addressed these when responding to BT's comments in paragraph A27.16 above.

A27.22 In relation to Vodafone's comment that SPs do benefit from mobile CPs' expenditure on CARS, we respond to these arguments when explaining the reasons why we have excluded most CARS costs from our measures of origination charges for 080 and 116 under Principle 1 in paragraphs 12.24 to 12.42 in Section 12.

A27.23 In relation to EE's and Vodafone's comments about charges for originating calls to the 116 range, we respond to these in Section 12 where we set out the reasoning behind the derivation of the Impact Assessment Range for these calls.

Principle 2: benefit consumers and avoid material distortions of competition

Summary of our position in the April 2012 consultation

A27.24 In the April 2012 consultation we explained that our assessment of Principle 2 was based on a trade off between the criterion of service quality, variety and availability on the one hand, and the criterion of efficient prices on the other. We assessed this by looking at the impact of different origination charges on:

- service availability and other retail mobile prices;
- price signals sent to SPs; and
- competition.

A27.25 We then discussed each of these in turn for 080 numbers (in Annex 23) and 116 (in Annex 27).[75] Below we summarise our position in the April 2012 consultation, first, on 080 and, secondly, on 116.

<u>Impact on service availability and other retail mobile prices</u>

Impact on service availability

A27.26 We used the 2011 SP survey to assess how SPs would react to changes in the prices they pay to receive calls originating from mobile CPs.

A27.27 We explained that, to interpret the evidence in the survey, we had to make an assumption about the likely increase in the share of calls originated from mobile CPs following a decision to make the 080 range free to caller, as this would determine what SPs paid in practice. We concluded that it was reasonable to assume that the share of mobile originated calls to 080 numbers would increase from the current 5% to 40% - 50% in the medium term, in light of:

- the evidence on the changes in the mix of calls to DWP helplines as a result of these being made free to caller, which showed that the share of mobile originated calls had increased to 40-45% between November 2010 and June 2011; and

[75] See paragraphs A23.36 to A23.40 and Annex 27 of the April 2012 consultation.

- the fact that in 2011 approximately 50% of all voice calls were originated from mobiles.[76]

A27.28 Assuming that 40% - 50% of calls would be originated from mobile after making 080 free to caller, we then assessed how different levels of mobile origination charges were likely to affect SPs' decisions to exit the 080 range by looking at SPs' responses to the 2011 SP survey, as shown in Table A27.1 below.

Table A27.1: Likelihood of SPs 'getting rid of' free to caller 080 number in response to higher origination payments (% of all 080 SPs)

Implied mobile origination payment (50% from mobiles)	1.5ppm	2.5ppm	3.5ppm	4.5ppm
Implied mobile origination payment (40% from mobiles)	1.75ppm	3ppm	4.25ppm	5.5ppm
Increase in average outpayment	0.5ppm	1ppm	1.5ppm	2.0ppm
Very likely	8%	11%	18%	24%
Fairly likely	10%	7%	10%	12%
Unsure	10%	13%	14%	15%
Fairly unlikely	16%	24%	19%	15%
Very unlikely	55%	44%	38%	34%
Net likely	19%	19%	28%	36%
Net unlikely	71%	68%	57%	49%

A27.29 On the basis of this evidence we considered that even fairly low mobile origination payments (1.5-1.75ppm) were likely to result in a reasonable minority of SPs getting rid of their free to caller number(s). Beyond this point, the incremental impact on availability seemed limited until a threshold a little above the 2.5-3.0ppm level was reached. This level corresponded to an increase in SPs' average outpayments of 1ppm. From that point onwards, SPs' responses suggested that higher origination payments would result in a steady decline in availability.[77]

Impact on other mobile prices

A27.30 We observed that an increase in mobile origination payments would generally increase mobile OCPs' profits from calls to the free to caller range and that this, in turn, was likely to support lower mobile prices for other services. However, we also said that changes in origination charges were likely to have different effects on different consumers and that it was difficult to draw clear conclusions about which particular telecoms prices were likely to be affected by these changes. We also noted that recent regulatory changes meant mobile OCPs had already been required to rebalance their pattern of retail prices, which made it harder to judge where further changes may fall.[78]

[76] See paragraphs A23.49 to A23.57 of the April 2012 consultation.
[77] See paragraphs A23.58 to A23.65 of the April 2012 consultation.
[78] See paragraphs A23.68 to A23.79 of the April 2012 consultation.

Trade off between service availability and the tariff package effect

A27.31 We noted that we had placed particular emphasis on the 2011 SP survey results. In particular, on the fact that an increase in mobile origination charges above 2.5-3.0ppm (assuming 40%-50% of calls originated from mobiles, respectively) resulted in a significant rise in the number of SPs that said they would get rid of their 080 number. We weighed the negative effects on consumers of this steeper reduction in service availability against the moderate consumer benefits in terms of lower prices for other mobile services (via the tariff package effect). We considered that on the basis of the evidence available to us, a mobile origination payment in the region of 2.5-3.0ppm represented a reasonable trade off between the impact on service availability and the price of other mobile services.[79]

Price signals for SPs

A27.32 In relation to price signals for SPs, we looked at the following issues:

- price signals and the recovery of mobile OCPs' fixed and common costs;
- the impact of setting MTRs on a pure LRIC basis; and,
- efficient price signals in relation to blocking calls from mobiles.

A27.33 We discussed each of these in turn.

Price signals and the recovery of mobile OCPs' fixed and common costs

A27.34 We noted that some stakeholders argued that because callers to 080 numbers were relatively price insensitive, then SPs should make a relatively high contribution to mobile OCPs' fixed and common costs. However, we considered that where SPs did not benefit from particular categories of expenditure it was questionable whether they should contribute to these costs.

A27.35 We argued that SPs would benefit from expenditure on network costs since these allowed callers to contact them using mobile phones. In the case of non-network costs, we explained that we were particularly concerned about the A&R component of CARS costs as the evidence suggested that only a small proportion of this expenditure was likely to benefit SPs in the form of additional calls to SPs from mobile subscribers.

A27.36 We noted that there was a parallel between this discussion and the uplift that used to be applied to MTRs to reflect the positive externality created by growing the overall number of mobile subscribers (the "network externality surcharge" or "NES"). We explained that the Competition Commission ('CC') had previously determined that the network externality surcharge should be removed. The CC had argued that "even without a NES, MNOs would still have strong incentives to attract new subscribers to (and retain existing subscribers on) their networks even if those subscribers would have a willingness to pay for a subscription which is lower than the costs that would be incurred by an MNO in providing that subscription". Further "[...] the NES is not a proportionate regulatory mechanism for achieving its ends [...]".[80]

[79] See paragraphs A23.80 to A23.82 of the April 2012 consultation.
[80] See paragraph A23.98 of the April 2012 consultation.

A27.37 We indicated that a 2.5ppm origination charge would cover mobile OCPs' network costs on a LRIC+ basis (around 1.5ppm) and would still make an allowance of 1.0ppm for non-network costs. We considered that more weight should be placed on this figure than 3.0ppm for the purposes of our impact assessment because 3.0ppm would include an excessive contribution towards A&R costs (it would cover around 45% of these costs), which we considered were unlikely to benefit SPs.[81]

The impact of setting MTRs on a pure LRIC basis

A27.38 We explained that we had set MTRs on a pure LRIC basis in the 2011 MCT Statement. As these services no longer made a contribution to mobile OCPs' fixed and common costs, there was a question of whether mobile origination charges should be adjusted to reflect these unrecovered network costs. We had estimated that, if we made an adjustment to reflect these unrecovered network costs, this was likely to raise the origination cost figures by 0.3ppm. We said that deciding which services should make up for these costs was a complex task and we noted however that the upper end of our Impact Assessment Range (i.e. 3.0ppm) would potentially still allow for these costs (as well as 25% of A&R costs) to be recovered through mobile origination charges. We still considered however that recovering 25% of A&R costs from mobile origination charges was too high, given that SPs did not benefit from these.[82]

Efficient price signals in relation to blocking calls from mobiles

A27.39 We explained that, if the difference between origination charges for fixed and mobile calls was greater than the difference in the incremental costs of fixed and mobile origination, then the price signal given to SPs would not be efficient. This was because SPs would block calls from mobiles even where the benefits of receiving a call exceeded the incremental resource costs of a 080 call being made from a mobile instead of a landline. On these grounds, we argued that setting origination charges at the LRIC differential level created incentives for SPs to only block calls when it was efficient to do so.

A27.40 We noted however that the 2011 SP survey suggested that only 20% of SPs would block calls from mobile when the origination charge was higher than they were willing to bear. We therefore concluded that incentivising efficient blocking decisions was not the most important factor, although it had some relevance and supported lower mobile origination payments. We indicated however that we had not made any adjustments to the Impact Assessment Range to reflect this factor.[83]

The impact on competition

A27.41 We considered that competition in the retail origination of 080 calls was unlikely to be affected by the level of the origination charges, as there would be no difference in retail call prices between landlines and mobiles in the case of a free to caller range.

A27.42 We recognised that different origination charges could have an impact on competition between fixed and mobile CPs. Higher mobile origination charges could allow mobile OCPs to reduce the price of other telephony services, leading to a

[81] See paragraphs A23.85 to A23.104 of the April 2012 consultation.
[82] See paragraphs A23.105 to A23.110 of the April 2012 consultation.
[83] See paragraphs A23.111 to A23.118 of the April 2012 consultation.

competitive advantage over fixed OCPs. We argued that there were two potential ways to address this, namely, by:

- setting origination charges for both at one of the LRIC+ measures we had discussed, but reflecting the higher costs of mobile origination; or
- setting mobile origination charges at the LRIC differential level, such that they made the same contribution to common costs as the existing fixed origination charges.

A27.43 We did not consider that the first option was appropriate because it implied that SPs would have to pay for a significant share of A&R costs, which they did not benefit from, and it did not represent an origination payment at which fixed and mobile OCPs were on an equal competitive footing. For example, it would support mobile OCPs' subsidising handsets in a way that fixed OCPs did not engage in.

A27.44 In the case of the second option, we argued that a mobile origination payment at the LRIC differential was unlikely to distort competition. However, we recalled that Principle 2 involves avoiding a *material* distortion of competition and considered that a mobile origination charge at 2.5-3.0ppm (i.e. above the LRIC differential by 1.3-1.9ppm) was unlikely to materially distort competition, given that:

- fixed and mobile OCPs operate in different retail markets; and
- the revenues from origination payments are comparatively small, compared to overall mobile revenues.[84]

Conclusion on Principle 2

A27.45 We therefore concluded that an Impact Assessment Range of 2.5-3.0ppm for the mobile origination charge under Option A (making 080 free to caller) was appropriate because it:

- traded off the impact on SPs, and ultimately service availability, against the impact of the tariff package effect on consumers;
- included a contribution to some fixed and common costs, but it correctly did not fully reflect the A&R costs incurred by mobile OCPs (given that much of this expenditure may not benefit SPs); and
- was unlikely to materially distort competition between fixed and mobile CPs or provide excessive incentives to SPs to block calls from mobiles.[85]

Assessment of Principle 2 for 116

A27.46 In the case of the 116 range, we did not engage in the same level of detailed analysis as we did for 080. We noted that we had assumed that the origination payment for 116 should cover the incremental cost of originating mobile calls but should not include a contribution to mobile OCPs' fixed and common costs. We indicated that we had adopted the pure LRIC of mobile call origination (i.e. 0.7-

[84] See paragraphs A23.119 to A23.141 of the April 2012 consultation.
[85] See paragraphs A23.142 of the April 2012 consultation.

0.8ppm) as our Impact Assessment Range for 116.[86] We considered that this was appropriate as it would mitigate the risk of reduced service availability.[87]

Stakeholder comments and Ofcom's response

A27.47 Stakeholders made comments relating to several aspects of how we derived the Impact Assessment Range for mobile origination charges. These comments can be grouped under the following topics, namely:

- assumed fixed to mobile substitution;
- treatment of the tariff package effect;
- results of the 2011 SP survey; and
- appropriate level of mobile origination charges.

A27.48 We discuss each of these issues in turn below. In addition, some stakeholders made other comments unrelated to these issues, which are addressed at the end of this section.

Stakeholder comments on the fixed to mobile substitution assumed

A27.49 Verizon considered that we should have taken into account the likely increase in the share of calls originated from mobile, as shown by the example of the Department of Work and Pensions ('DWP'), when determining what is a fair and reasonable origination charge.[88]

A27.50 BT argued that the percentage of calls to 080 numbers from mobile could be considerably higher than the 40% to 50% that we had assumed in the April 2012 consultation.[89]

A27.51 Vodafone noted that there was an inconsistency in the DWP data that we presented in paragraph A2.91 of the December 2010 consultation, which showed that 15% of calls to DWP were originated from mobiles before its number was made free to caller, and the data we presented in paragraph A23.52 of the April 2012 consultation, which indicated that this figure was 7%.[90]

A27.52 Vodafone argued that the relative increase in the share of calls originated from mobile depended on whether the figures from the December 2010 or April 2012 consultation were used. This increase in share ranged from potentially a threefold increase (if we assumed that the change was from 15% to 42.5% of calls originated from mobile) to a sevenfold increase (if we assumed the change to be from 7% to 52%).[91]

A27.53 However, Vodafone considered that evidence from the DWP example should be interpreted with caution for several reasons. First, due to the characteristics of DWP's customers, calls to DWP included a high percentage of calls (38%)

86 See paragraph A27.30 of the April 2012 consultation.
87 See paragraph A27.39 of the April 2012 consultation.
88 Verizon, April 2012 consultation response, p.4.
89 BT, April 2012 consultation response, p.46.
90 Vodafone, April 2012 consultation response, pp.43-44.
91 Vodafone, April 2012 consultation response, p.44.

originated from payphones. Vodafone considered that it was unlikely that there would be such a high share of calls originated from payphones across all 080 numbers. Instead, it proposed to exclude payphones from the analysis and it estimated that in this case the increase in the share of calls originated from mobile would be only two and a half fold.[92] Second, because DWP customers were likely to be atypical and more price sensitive than other 080 callers and, as a result, the DWP data was likely to include a higher proportion of calls from mobile only households (for example, benefits claimants facing tight budget constraints).[93]

A27.54 Vodafone argued that the extent of fixed to mobile substitution would vary on a case by case basis. It considered that its analysis of the DWP data demonstrated that the increase in mobile originated calls experienced by DWP was likely to be on the high side of the average change in the mobile proportion of 080 calls. Therefore it considered that it was not appropriate to assume that the share of calls originated from mobiles across all 080 numbers would increase from 5% to 40%-50% (i.e. an increase between eightfold and tenfold). Instead, it proposed we should assume that around 35% of 080 calls would be mobile originated (i.e. a sevenfold increase) if we were to make the 080 range free to caller.[94]

Ofcom's response

A27.55 In relation to Verizon's comment that we should have taken into account the likely increase in the share of calls originated from mobile, we note that our estimation of the Impact Assessment Range both in the April 2012 consultation and in Section 12 takes this into account already.[95]

A27.56 Regarding BT's comment that the share of calls to 080 numbers from mobile could be considerably higher than the 40% to 50% assumed in the April 2012 consultation, we note that we now assume that the share of calls originated from mobile is likely to be between 45% to 60% as further discussed in Section 12.

A27.57 In terms of Vodafone's comments, they can be summarised as follows:

- inconsistencies between the DWP data that we used in the December 2010 consultation and that used in the April 2012 consultation;

- use of the DWP experience to inform the likely levels of fixed to mobile substitution on a free to caller range.

A27.58 We discuss each of these in turn below.

Inconsistencies in the DWP data used

A27.59 We acknowledge that there are differences between the data we presented in paragraph A2.91 of the December 2010 consultation and the evidence we used in paragraph A23.52 of the April 2012 consultation, as indicated by Vodafone. The reasons for the difference are, first, the source of the data. In the December 2010

[92] It calculated this using the data presented in the December 2010 consultation, which showed that there were initially 15% and 47% of calls originated from mobile and fixed, respectively, and 52% and 30% after making the DWP number free-to-caller. Taking only into account the mobile and fixed shares, it estimated that the initial share of calls originated from mobiles was 24% (i.e. 15%/(15%+47%)) and the final share was 63% (i.e. 52%/(52%+30%)).
[93] Vodafone, April 2012 consultation response, p.44.
[94] Vodafone, April 2012 consultation response, pp.44-46.
[95] See for example our discussion in paragraphs A23.48 to A23.57 of the April 2012 consultation.

consultation we initially used evidence from Citizens Advice Bureau ('CAB'). However, due to the relative importance of this information for our proposals, we decided to request DWP call volume data directly from BT for use in the April 2012 consultation.[96] Second, both datasets refer to a different period of time. Whereas the December 2010 consultation data referred to a "sample week before the agreement" in January 2010 (as indicated in paragraph A2.91), the evidence in the April 2012 consultation related to a much longer period of time in 2009 (this is shown in Figure 16.1 of the April 2012 consultation).

A27.60 We consider that it is more appropriate to use the evidence we presented in the April 2012 consultation, given that it was obtained directly from BT (rather than the CAB) and it reflects a longer period of time. Therefore, there were around 7% of call minutes to DWP helplines originated from mobile before its agreement with mobile CPs in January 2010, and this increased to around 40-45% between November 2010 and June 2011 after such agreement. In other words, there was broadly a sixfold increase in the share of calls originated from mobiles after DWP's agreement with the mobile CPs.

Use of the DWP experience

A27.61 Vodafone argued that the DWP experience was likely to be on the high side of the average change in the proportion of 080 calls from mobile that would result from zero-rating. This was because it argued that the nature of the service provided by DWP meant that a greater proportion of callers were likely to use payphones than callers to other 080 numbers, and that removing payphone calls from our analysis suggested a much lower degree of fixed to mobile substitution. In addition, it argued that DWP callers were more likely to be mobile-only than callers to other 080 ranges, and that the DWP experience would therefore overstate the average degree of substitution to mobile. Vodafone therefore considered that a sevenfold increase from 5% of total calls originated from mobile to 35% if the 080 range is made free to caller would be a more appropriate assumption. We disagree with this for several reasons:

- We recognise that, as argued by Vodafone, the degree of fixed to mobile substitution is likely to vary by SP depending on the nature of the services offered. However, a feature of the 080 number range is that it hosts a large number of SPs offering socially important services to callers who may share similar characteristics to DWP callers. We therefore continue to consider the DWP example provides a useful guide. We recognise there are also SPs active on 080 with different characteristics from DWP (e.g. commercial organisations). We therefore consider there is some merit in Vodafone's suggestion of considering the percentages of fixed and mobile traffic excluding calls from payphones. In line with Vodafone's proposal, if we removed payphone callers from the data this would imply that the mobile proportion is around 51%.[97]

- the data from DWP is only one of the pieces of evidence that we use to assess the extent of fixed to mobile substitution that is likely to result from making 080 free to caller. In addition to this, in Section 12 we have relied on the share of all voice calls originated from mobiles as well as other anecdotal evidence;

[96] We requested this data from BT as BT is the host TCP for the DWP and therefore holds the relevant information on call volumes from fixed lines and from mobiles.

[97] This uses the data on August 2012 (the latest available), which showed 45% of minutes of calls from fixed, 47% from mobile and 8% from payphones. In other words, removing payphones results in 51% = 47%/(45%+47%).

- the latest data from DWP shows that the share of calls originated from mobile continues to increase, although at a slower rate than at the initial stages after DWP's agreement with mobile CPs. This is consistent with our revised assumption that the share of calls from mobile to 080 numbers is likely to be around 45% to 60%, as further discussed in Section 12;

- as well as the potential for the share of mobile 080 calls to DWP to be higher than for other 080 numbers, we consider that there are other factors that may explain why the speed of fixed to mobile substitution of DWP's calls, or its magnitude, may be lower than that which may result across all 080 numbers. We note that a decision to make the 080 range free to caller will be accompanied by a communications campaign involving industry (including communications between OCPs and callers, as further discussed in Annex 10 (Part A)), the media and Ofcom. We consider that this is likely to increase consumer awareness that 080 numbers are free from all devices and this could potentially result in higher fixed to mobile substitution than in the case of DWP; and

- we have used a range, rather than a point estimate, for our assumption about likely fixed to mobile substitution to reflect the fact that the average experience on a free to caller range may be higher or lower than the examples we have considered, for the reasons set out above.

Conclusion on fixed to mobile substitution

A27.62 In summary, we continue to believe that it is appropriate to use the DWP data, in conjunction with other evidence, to inform our view on the likely degree of fixed to mobile substitution that would result from a free to caller approach. The DWP experience is consistent with our revised assumption, discussed in Section 12, that the share of 080 calls originated from mobile is likely to increase over time from current levels of 5% to around 45% to 60%.

Stakeholder comments on the treatment of the tariff package effect

A27.63 Magrathea disagreed that we should take the tariff package effect into account when assessing the costs and benefits to consumers of our decision. It considered that we should ignore the fact that mobile origination payments could be used to subsidise the price of other services because this was generally not relevant to the formulation of a cost-based charge and it should not be allowed to influence policy making. Instead, it considered that we should only have regard to the benefit to 080 callers, rather than the benefit to consumers overall. In its view, if cost-based origination payments resulted in increases in the price of other services this should be regarded as an appropriate and desirable adjustment.[98]

A27.64 BT argued that our approach implied that mobile CPs were being treated more favourably than fixed CPs because our assessment took account of the mobile waterbed effect but did not take into account an equivalent fixed effect. It argued that we should ensure that all players were treated fairly and that subsidies did not flow from one sector to another given the degree of overlap between the fixed and mobile OCPs.[99]

[98] Magrathea, April 2012 consultation response, p.13.
[99] BT, April 2012 consultation response, p.47.

Ofcom's response

A27.65 We disagree with Magrathea's comment that we should limit our assessment to 080 callers only and that we should not take into account the tariff package effect when assessing the level of origination charges. In general, mobile and fixed consumers call a variety of numbers (including, for example, geographic and non-geographic numbers) and use a bundle of telecommunications services. Therefore, we disagree that we should ignore the implications that our decision may have on the prices of other telecommunications services purchased by consumers. This accords with our principal statutory duty, which requires us to further the interests of citizens and consumers. In addition, we note that our approach is consistent with this aspect of our analysis in the 080 Dispute Determination, which was later upheld by the CAT, as recognised by Magrathea.

A27.66 We disagree with BT that our assessment in the April 2012 consultation[100] did not take into account the impact of our decision on fixed CPs through the tariff package effect (see also Section 12). In addition, we note that we are currently consulting, as part of the Narrowband Market Review, on the potential removal of the NTS Call Origination Condition from the date on which the remedies set out in this document (unbundled tariff and free-to-caller) would take effect.[101] For this reason, we have updated our position in the April 2012 consultation, where we assumed that the fixed origination charge would remain unchanged (i.e. 0.5ppm), and now consider it appropriate to reach an assumption about the Impact Assessment Range for fixed origination charges in Section 12. Insofar as BT may refer to the existence of a tariff package effect operating via vertically integrated TCPs[102], we explained why there is no clear mechanism for this effect to occur in practice in Annex 10 of the April 2012 consultation.[103]

Stakeholder comments on the results of the 2011 SP survey

A27.67 We received numerous responses from stakeholders relating to our 2011 SP survey and its results. These can be grouped into the following categories:

- framing of the survey questions;
- weight to be given to the question on willingness to pay;
- interpretation of the results; and
- expected accuracy of the results.

A27.68 We discuss each of these in turn below.

The framing of the survey questions

A27.69 EE[104] and Vodafone[105] considered that there were weaknesses in the way the SP survey questions had been framed. In particular, they criticised the fact that the

[100] See Annex 26 of the April 2012 consultation.
[101] Narrowband Market Review consultation, paragraphs 5.280-5.297, see: http://stakeholders.ofcom.org.uk/consultations/nmr-13/
[102] In other words, a vertically integrated TCP using increased profits for 080 call termination to fund lower prices for consumers for fixed access, calls or broadband.
[103] See paragraphs A10.77 to A10.78 of the April 2012 consultation.
[104] EE, April 2012 consultation response, p. 53.

survey expressed the total cost increase to the SP, rather than the additional cost that the SP would be willing to pay specifically in relation to mobile originated calls. EE therefore considered that it was incorrect to extrapolate from a finding that a SP would be prepared to pay an extra 1ppm on top of the amount the SP “currently pays” (as established by the survey) to a finding that the same SP would be happy to pay an increased origination charge of between 2.5-3.0ppm for mobile calls. In particular, this was because the fixed to mobile substitution underlying this extrapolation may prove to be inaccurate.

A27.70 For example, EE considered that the answer to our question in the 2011 SP survey would not reflect the mix of mobile and fixed inbound traffic and, hence, the costs for individual SPs. For example, some services such as those offering a “bad driver” or traffic reporting hotline could find that nearly all of their calls were made from mobiles, whereas 080 conference call numbers were likely to be predominantly dialled from landlines. EE therefore considered that we should re-run this survey question to ask SPs specifically what level of compulsory origination charge for mobile originated 080 calls would be likely to make them to get rid of their 080 number. Vodafone concluded that if the question had been asked in a more neutral manner, the degree of willingness of SPs to get rid of their line could have been lower.

The weight to be given to the question on the willingness to pay

A27.71 Vodafone criticised the fact that information on SPs’ willingness to pay had only been sought from 47% of all SPs (that is, those who had responded that they felt that mobile call charges were a disadvantage), and not from the 52% of SPs that did not regard mobile call charges as a disadvantage. It considered that it was unclear why we had used the first question as a filter for the question on the willingness to increase the outpayment.

A27.72 Vodafone argued that those SPs that were asked about their willingness to pay more had not been given a range of outpayments, but were asked to name an incremental amount. It noted that the responses indicated that 35% were not willing to pay more and 36% were willing to pay. Vodafone interpreted Figure 16.9 of the April 2012 consultation as meaning that the mean increase in willingness to pay of 2.9ppm included those respondents that were not willing to pay more than zero, whereas excluding these would result in a mean willingness to pay of 5.7ppm.[106]

A27.73 Vodafone argued that we should have given more weight to the 2011 SP survey question on the SPs’ willingness to pay, given that it directly related to the issue of future average outpayments.[107]

The interpretation of the results

A27.74 EE referred to the survey question relating to the mean willingness to pay. EE noted that the mean willingness to pay of 2.9ppm was obtained among the 36% of SP respondents who said they were willing to pay a positive call origination charge (i.e. 17% of all 080 SPs surveyed). EE considered that the results showed that there was a bimodal distribution, with two distinct groups of SPs, and that this implied that it was inappropriate to use a simple average across both groups. In its view, the

[105] Vodafone, April 2012 consultation response, p. 61.
[106] Vodafone, April 2012 consultation response, pp.63-64.
[107] Vodafone, April 2012 consultation response, p.63.

data suggested that there were two[108] levels of willingness to pay: the highest 4-5ppm (12%), the second highest 2-3ppm (9%) and the third highest 10-19ppm (8%). EE considered that it was not appropriate to assume that the simple average was an important input to deriving the Impact Assessment Range.[109]

A27.75 In addition, Vodafone noted that the survey suggests that the same proportion of respondents (namely around 19%) are likely to exit the 080 range at a 1ppm and 0.5ppm increase in average outpayments. Vodafone considered that this could be interpreted as meaning that there are 19% of respondents unwilling to accept any change in cost. In light of this, Vodafone argued that these respondents should not be considered in our analysis. It argued that, if we did this, then there would not be a material change in the share of respondents willing to get rid of their number for increases in outpayments of 1ppm, 1.5ppm or 2ppm.[110]

A27.76 In addition, it similarly considered that excluding these SPs from the survey question on willingness to pay would imply that the average willingness to pay for the remaining SPs would appear to be 5.7ppm, compared to the mean willingness to pay of 2.9ppm that we estimated in the April 2012 consultation.[111]

The expected accuracy of the survey results

A27.77 BT was concerned that the survey results would not appropriately reflect the impact of higher mobile origination charges on SPs. It considered that even at a mobile origination charge of 2.5ppm there was likely to be more migration from the 080 range than suggested by our 2011 SP survey.[112] It cited several reasons why our SP survey could understate SPs' reaction, namely:

- SPs are especially price sensitive and can react very sharply (e.g. when Ofcom removed revenue sharing on 0870).[113]

- Our survey did not account for the impact of the likely fluctuation of origination charges over time and the uncertainty in outpayments. In BT's view these two factors will create considerable instability and may entice SPs to migrate from the range. [114]

- Ofcom's proposals would have a more adverse effect on SPs the larger their size (BT provided several examples to illustrate this).[115]

A27.78 On these grounds, BT argued that Ofcom should err on the low side for origination payments. [116]

A27.79 In contrast, Vodafone considered that the survey could overstate the extent of migration by SPs, for the following reasons:

[108] As can be seen, EE's response mentions two modes of response but then goes on to describe three different levels of willingness to pay.
[109] EE, April 2012 consultation response, p.50.
[110] Vodafone, April 2012 consultation response, pp.62-63.
[111] Vodafone, April 2012 consultation response, p.64.
[112] BT, April 2012 consultation response, p.31.
[113] BT, April 2012 consultation response, p.46.
[114] BT, April 2012 consultation Response, p.31 and Annex 5.
[115] BT, April 2012 consultation response, p.32.
[116] BT, April 2012 consultation Response, p.31 & Annex 5.

- The fact that SPs could have overstated their reaction to increases in origination charges in order to knowingly influence Ofcom's assessment. In fact, Vodafone noted that, for this reason, the 2011 SP survey was potentially the last survey that could be usefully conducted.[117]

- The level of origination charges was likely to be a small share of the total costs of operating a 080 number. For example, assuming a total cost of the 080 service of 50ppm,[118] then an increase of 0.5 to 2.5ppm would be equivalent to just a 4% increase in total cost. It considered that increases in costs of this magnitude were unlikely to result in a radical shift in behaviour for a large proportion of SPs, particularly taking into account the benefit that would arise to the SP from zero-rating mobile calls.[119]

- Our SP survey did not contain any response from SPs who were not using 080 currently but may become users if 080 was made free to caller from mobiles. It argued that these SPs would clearly value free calls from mobile and be willing to make an appropriate outpayment to support it.[120]

Ofcom's response

A27.80 We respond to each of the comments raised by stakeholders in turn below.

The framing of the survey questions

A27.81 We agree with EE and Vodafone that the mix of mobile and fixed inbound traffic is likely to vary by SP and that this is likely to result in differences in origination costs for individual SPs. However, we disagree that we should have framed the survey question in a different manner, for example, by asking SPs specifically about the mobile origination charge that would have made them get rid of their line. We consider that adopting this approach would have made the survey question more complicated for SPs to interpret because:

- SPs generally do not pay a separate charge for receiving fixed and mobile calls but rather pay a hosting charge that applies independently from the traffic mix they receive. As a result, framing the question in the way suggested by Vodafone and EE would have required SPs to make an assumption regarding the impact of origination charges on the hosting charge they pay; and

- SPs would have had to predict the proportion of calls they would receive from mobile and fixed CPs as a result of a free to caller approach.[121]

A27.82 In light of this, we considered that it was more appropriate to frame the question to SPs as a general increase in the hosting charges they pay. We believe that as long as our assumption about the extent of fixed to mobile substitution across the entire 080 range is appropriate, the results of the 2011 SP survey should not overstate SPs' willingness to get rid of their 080 line, as suggested by Vodafone.

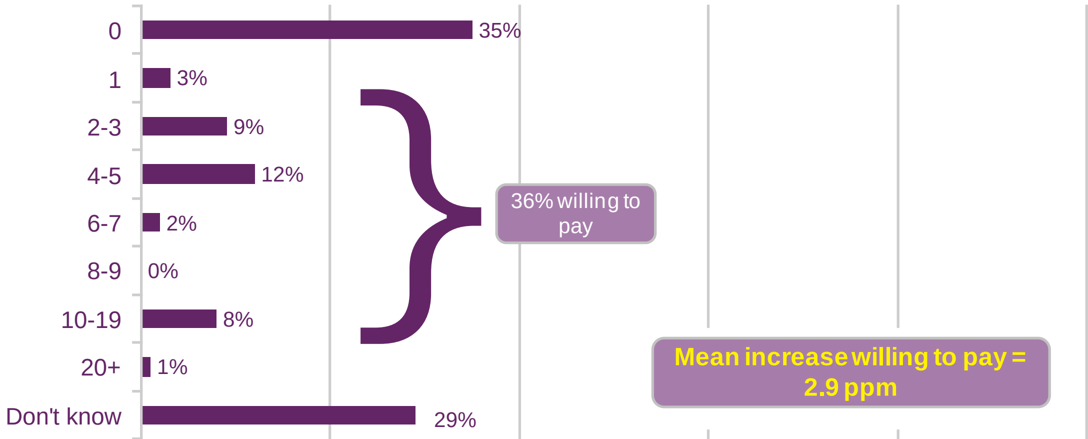
[117] Vodafone, April 2012 consultation response, p.48.
[118] Estimated assuming a service agent employment cost of £19k, 100% overheads and oncost, 220 effective working days a year, a 7 hour day, and 80% call occupancy gives 51 pence per minute.
[119] Vodafone, April 2012 consultation response, p.59.
[120] Vodafone, April 2012 consultation response, p.49.
[121] The SPs' assumptions may not have been transparent or based on relevant evidence of which the SPs might not be aware when answering the survey question (such as the evidence considered in this document on the future proportion of calls from mobile and fixed CPs).

The weight to be given to the question on the willingness to pay

A27.83 We recognise, as suggested by Vodafone, that we only posed the question on willingness to pay[122] to those SPs that said they were disadvantaged by mobile call charges (i.e. 47% of all respondents to the survey) and not to those respondents that did not regard mobile call charges as a disadvantage (i.e. 53% of respondents). The reason for this was that we considered that the latter were unlikely to be willing to pay higher origination charges for mobile calls to be free, as they did not regard mobile call charges as a disadvantage. We note that Vodafone has disputed this approach but has not provided any reason or evidence to substantiate its view.

A27.84 We reproduce Figure 16.9 of the April 2012 consultation, to which Vodafone refer in their response, in Figure A27.2 below.

Figure A27.2: How much organisations who say they are disadvantaged are willing to increase the pence per minute (ppm) amount they pay in return for mobile callers paying zero



Source: Q.16 By how much would you be willing to increase the pence-per-minute amount that you pay to receive calls
Base: All 080 that stated "disadvantage" at Q.14 (145)

A27.85 We confirm, as suggested by Vodafone, that the mean willingness to pay of 2.9ppm in Figure A27.2 above includes those respondents that were not willing to pay more than zero (35% of respondents) and excluded those responding that said they don't know (29% of respondents). We estimate that excluding those respondents that were not willing to pay more than zero would have resulted in a mean willingness to pay of 5.8ppm (we respond to Vodafone's comments on whether excluding these respondents would be appropriate below).

A27.86 We disagree however with Vodafone's suggestion that more weight should have been given to the question on willingness to pay. The main reason for this is that, as further discussed in Section 12, a significant element of our framework for generating an Impact Assessment Range for origination charges is the trade-off between the impact of higher origination charges on the prices of other telecoms services (through the tariff package effect) and service availability. We consider that

[122] This relates to Question 16 of the 2011 SP survey. This question was posed to those SPs that had answered that they were disadvantaged by mobile charges in response to Question 14, and asked them by how much they were willing to increase their ppm hosting charges in return for mobile callers paying zero.

the question on willingness to exit[123] is more directly relevant to the service availability effect that we are seeking to quantify, as it measures the proportion of SPs surveyed who stated they would exit the 080 range at different levels of increases in their hosting charges (or different levels of origination charges). We disagree with Vodafone that the question on willingness to pay is more directly relevant, as our objective is not to maximise the revenues obtained from SPs on the 080 range but to assess the extent of the negative effect on callers resulting from SPs exiting the range as a result of higher origination charges.

A27.87 We consider that it is difficult to draw any conclusions about the impact of higher origination charges on service availability by looking at the answers to the question on willingness to pay. Furthermore, if we were to consider that SPs that are not willing to pay for free mobile calls to 080 would exit the range, this would be likely to overstate the reduction in service availability. This can be seen if we compare the answers to both questions. In Table A27.3 below we present the results of the questions on the willingness to pay and willingness to exit as proportions of the full sample of SPs in the 2011 SP survey.

Table A27.3: Comparison of willingness to pay and willingness to exit (% of all SPs)

Increase in hosting charge (ppm)[124]	0.5	1.0	1.5	2.0	4.0	6.0	Don't know
Willing to pay at least[125]	N/a	17%	N/a	15%	11%	5%	14%
Willing to pay at least (inc. "don't know")[126]	N/a	24%	N/a	22%	16%	7%	N/a
Willing to pay at least (inc. "not disadvantaged")[127]	N/a	51%	N/a	46%	33%	16%	N/a
Net unlikely to exit at[128]	71%	68%	57%	49%	N/a	N/a	N/a

Base: All SPs

A27.88 For example, if we take an increase in hosting charges of 1ppm, Table A27.3 above shows that there is a large gap between the proportion of SPs that stated a

[123] This relates to Question 17 of the 2011 SP survey. This question asked to all SPs their likelihood of getting rid of their number if their cost per minute increased.
[124] Questions 17 and 18 of the 2011 SP survey were asked in relation to different increments in hosting charges. For this reason, some of the values in the table appear as not available (N/a).
[125] As discussed above, the question on the willingness to pay (Question 16 of the 2011 SP Survey) was only posed to 47% of all SPs (i.e. those that answered they were disadvantaged by mobile charges in response to Question 14 of the 2011 SP survey). To obtain the proportions of SPs willing to pay relative to the full sample we have multiplied the percentage shares shown in Figure 16.9 of the April 2012 consultation (i.e. responses to Question 16 of the 2011 SP survey) by the 47% of respondents who said they are disadvantaged by mobile charges (see response to Question 14 of the 2011 SP survey). For example, the 17% of respondents who are willing to pay at least 1ppm for mobile calls to be free was obtained by multiplying 47% x 36% (i.e. the 47% of SPs who said that they were disadvantaged by mobile call charges and the 36% of respondents to the willingness to pay question who were willing to pay an increase in hosting charges of 1ppm). This assumes that the 53% of SPs who said they were not disadvantaged by mobile call charges in response to Question 14, and consequently were not asked Question 16, were not willing to pay a 1ppm increase in hosting charges.
[126] These figures are obtained by redistributing the 29% of "don't knows" in proportion to other answers.
[127] This includes both a redistribution of those saying that they "don't know" and assumes that those that said they were not disadvantaged (53% of respondents to Question 14 of the 2011 SP Survey) would have the same willingness to pay as those SPs that said they were disadvantaged.
[128] This is the sum of those responding "very unlikely" and "fairly unlikely" to Question 17 of the 2011 SP Survey (i.e. the question asking all SPs their likelihood of getting rid of their number if the cost per minute increased; or the so-called "willingness to exit" question).

willingness to pay an increase of 1ppm (17%) and the proportion that stated they were unlikely to exit at such an increase (68%). Note that a large gap exists even if we redistribute those that answered “don’t know” to the question (in this case the difference is 24% compared to 68%). Even if we took those SPs who said they were not disadvantaged by mobile call charges in response to Question 14 of the 2011 SP survey (and therefore were not asked the question on willingness to pay) and assumed they had the same willingness to pay as those SPs who responded that they were willing to pay (which is likely to overstate their willingness to pay), there would still be material differences between the responses to both questions (e.g. 51% compared to 68% in the case of a 1.0ppm increase in hosting charges).[129]

A27.89 In other words, if we used the question on willingness to pay to understand SPs’ likelihood to exit the 080 range this would be likely to overstate the impact on service availability of higher origination charges. This may be explained by the fact that SPs may not take into account the costs of migration to another number range (or the costs of the other alternatives if they decided to exit the 080 range or get rid of their line entirely) when answering the question on willingness to pay, but they may do so when answering the question on willingness to exit.

A27.90 We consider that this suggests that answers to the question on willingness to pay are likely to be significantly less reliable about the effects on service availability than answers to the question on willingness to exit, and accordingly we continue to rely on the latter.

The interpretation of the results

A27.91 In relation to EE’s comment that the 2011 SP survey showed that there was a bimodal distribution, we note that EE is referring to the results of the 2011 SP survey on the question relating to the willingness to pay, reproduced in Figure A27.3 above.

A27.92 EE considers that the results show that the SPs who are willing to pay are clustered into three different groups: largest group (12%) willing to pay 4-5ppm, the second largest group (9%) willing to pay 2-3ppm and third largest group (8%) willing to pay 10-19ppm. We recognise that the responses to this question reflect to some extent the features described by EE. However, our presentation of the mean willingness to pay was simply a means of summarising responses to this question rather than an input to our analysis. As discussed above in paragraphs A27.83 to A27.90, our assessment of the appropriate level of the origination charges for our Impact Assessment Range relied mainly on the assessment of how likely SPs were to get rid of their number at different levels of increase in their hosting charges, that is, the willingness to exit rather than the willingness to pay question.

A27.93 Vodafone argues that the 2011 SP survey shows that roughly the same percentage of respondents (around 19%) are likely to exit for 0.5ppm and 1ppm increases in average outpayments. On this, we note that although the sum of those responding that they are “fairly likely” or “very likely” to get rid of their 080 number is the same for increases of 0.5ppm and 1ppm in average outpayments, the relative weight of

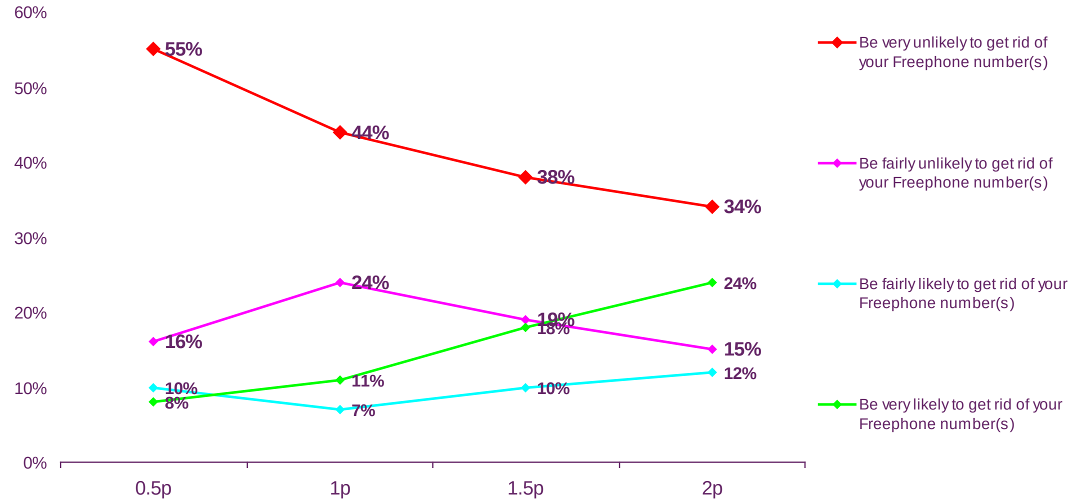
[129] In addition, we note that the figures in the Table above for “Net unlikely to exit” only refer to those that responded “very unlikely” and “fairly unlikely” to Question 17 and do not include a re-distribution of those SPs that were unsure about their response (which we have included in the figures shown for the responses to the willingness to pay question). If we included those SPs that responded that they were unsure to Question 17 in the figures in the Table this would have further increased the difference between the responses to both questions.

those responding "fairly likely" and "very likely" is different at 0.5ppm and 1ppm, in particular, at:

- 0.5ppm increase: 8.2% of respondents were very likely to get rid of their number and 10.3% fairly likely; whereas
- 1ppm increase: 11.3% of respondents were very likely to get rid of their number and 7.3% fairly likely.

A27.94 This is shown in Figure A27.4 below, which reproduces Figure 11 of the 2011 SP survey.[130]

Figure A27.4: Likelihood of getting rid of 080 number if cost per minute increases



Source: Q.17 If your freephone number(s) were made completely free to all callers and the amount you currently pay per minute for those calls was increased, how likely would you be to get rid of your freephone number(s) at each price increase?]
Base: All 080 asked about this price (304)

A27.95 We agree with Vodafone that, as discussed in paragraph A27.85 above, excluding those respondents that said they were not willing to pay for zero rated mobile calls (in spite of being disadvantaged by mobile charges) would result in a higher mean willingness to pay (which we estimate to be 5.8ppm rather than 5.7ppm as Vodafone suggested).

A27.96 However, if we were to agree with Vodafone that these respondents should not be taken into account and assume a mobile origination charge of 5.8ppm, this would result in an increase in average outpayments of around 2.4ppm to 3.2ppm for a share of mobile originated calls to 080 of 45% and 60%, respectively.[131] As shown in Figure A27.4 above, the 2011 SP survey suggests that an increase in average outpayments exceeding 2ppm is likely to result in more than 36% of SPs exiting the 080 range. We consider that origination charges that result in a reduction in service availability of this magnitude would have significant negative effects on consumers.

A27.97 In addition, in our analysis we not only take account of the level of SPs withdrawing their 080 line, but also of how the percentage of SPs exiting the 080 range may increase at higher origination charges. In this regard, 36% would represent a further

[130] See Figure 11 of the 2011 SP survey, available at http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Non-geographic-numbers.pdf
[131] This assumes an initial average outpayment of 0.5ppm and a fixed origination payment of 0.5ppm.

17% of SPs exiting 080 compared to the 19%[132] figure for origination charge increases of 0.5ppm or 1ppm. Similarly, contrary to Vodafone's suggestion, we believe that increases in average outpayments of 1.5ppm (which would result in 28% of SPs exiting 080, according to the 2011 SP survey, as shown above- a further 9% of SPs compared to 19% at lower increases in average outpayments) would also result in significant detriment for consumers in terms of service availability. For this reason, consistent with the framework we have set out in Section 12, we have limited our Impact Assessment Range for origination charges, and in particular the Base case scenario range for mobile origination charges, to origination payments that are unlikely to exceed increases of 1ppm in origination payments (given our assumptions on the extent of fixed to mobile substitution that is likely to result from our free to caller decision). This is because according to our 2011 SP survey increases in origination payments of 1ppm would limit the share of SPs withdrawing their 080 number to 19% of 080 SPs (as shown in Figure A27.4 above).

A27.98 In light of the above, we disagree with Vodafone that it would be appropriate to exclude a subset of SPs from the answers to the questions on willingness to exit and pay when assessing the Impact Assessment Range for origination charges. Furthermore, even if we excluded these respondents, we consider that our conclusion would not change given the significant increase in the share of SPs withdrawing their 080 number when hosting charges increase beyond 1ppm.

The expected accuracy of the survey results

A27.99 We note BT's concerns that migration may be higher than suggested by the 2011 SP survey. However, BT has not provided any additional evidence to substantiate this view. We are aware that some SPs migrated away from 0870 when we removed revenue sharing from this number range. However, the reasons why SPs may have decided to migrate on that occasion are different from the reasons that apply now and we do not consider that any clear conclusions can be drawn from that process.

A27.100 We recognise that our survey questions do not account for the potential impact that the fluctuation of origination charges, or the uncertainty over outpayments, may have on SPs' decision to withdraw their 080 number. However, it is difficult for us to assess how these factors may affect SPs' behaviour. On the one hand, this uncertainty could lead to a higher share of SPs withdrawing their number if SPs were particularly risk averse and preferred to migrate even before knowing the level of origination charges. On the other hand, it could also be argued that SPs could adopt a strategy to 'wait and see' and therefore that this uncertainty would not affect the extent of SPs withdrawing their number.

A27.101 BT also provided several practical examples that it considered showed that our proposals would have a more adverse effect on larger SPs. We requested the calculations underlying these examples on several occasions but BT did not provide them. In any event, we investigated this issue further and we do not consider that BT's examples show that our proposals will have a more adverse effect on larger SPs. Instead, BT's examples simply show that the size of SPs' outpayments are likely to increase in proportion to their volumes of minutes of calls. We do not believe that this means that the larger SPs are necessarily more likely to exit the

[132] Note that when the total of those SPs who said they were 'fairly likely' or 'very likely' to 'get rid of their Freephone number' at an increase of 1ppm is added together, the total is 19% because of rounding.

080 range. The decision of an individual SP to withdraw its number would depend on an assessment of the costs and benefits of this reaction, which are likely to depend on several factors, as discussed further in Annex 10, Part A. Whilst it may be the case that the increase in outpayments would be greater for larger SPs, it may also be the case that the benefits to remaining on the 080 range are greater for these SPs, or that the costs of migrating are higher for example.

A27.102 Contrary to Vodafone's suggestion, we do not have evidence that SPs responded to the 2011 SP survey with the intention of influencing our assessment of origination charges. Gaming the survey to their advantage would have required SPs to be well-informed about the way their answers might have affected our analysis in order to answer the survey questions strategically. In contrast, many SPs have not actively participated in this consultation process despite our efforts to engage with them.

A27.103 We agree with Vodafone's comment that origination charges may represent a relatively small share of the total operating costs of a 080 SP. However, the 2011 SP survey is the best evidence currently available on SPs' reaction to higher origination charges. Furthermore, we note that there is a broad spectrum of SPs active on 080 with potentially different cost structures, and therefore whilst Vodafone's illustrative example may be representative of some SPs, it may not accurately reflect the actual costs of operating an 080 number for other SPs.

A27.104 We recognise that our 2011 SP survey did not take into account the willingness to pay of those SPs that may decide to migrate into the 080 range after we make it free to caller. Ideally we would have liked to have evidence on the net proportion of SPs (i.e. new SPs joining 080 minus current 080 SPs exiting) that would exit at different sizes of increases in hosting charges. However, this information is intrinsically difficult to obtain and Vodafone has not provided any evidence that would help us in assessing this. Furthermore, even if Vodafone were correct that SPs new to the 080 range would have higher willingness to pay, we do not consider that it would alter our conclusion, given that it is not clear how this would affect overall service availability on the number range. The fact that SPs entering the range may have higher willingness to pay does not provide an indication of how this would affect the total number of SPs on the 080 range at different levels of origination charges (e.g. if the same number of new 080 SPs would enter at both the lower and higher level of charges).

Stakeholder comments on the level of the Impact Assessment Range for mobile origination charges

A27.105 Several respondents expressed their view on the appropriate level of mobile origination charges. All fixed CPs that provided comments on this issue considered that the origination charge should be below the level of the Impact Assessment Range that we proposed in the April 2012 consultation.

A27.106 BT considered that origination charges at the level of pure LRIC had some advantages, mainly:

- they would not imply any incremental loss to MNOs, and call blocking would be unlikely at this price;[133] and
- they would still exceed the true costs of call origination in any case for the traffic related aspects of the network. On this, it considered that the reason why wireless

[133] BT, April 2012 consultation response, p.45.

costs of origination appeared high relative to fixed costs was because of the treatment of the access line. However, it argued that this was a regulatory construct which had no direct commercial counterpart because lines were customarily bundled with calls so the tariff structures in the fixed networks were closer to those in the wireless sector although the underlying cost structure could differ somewhat.[134]

A27.107 BT considered that overall a LRIC differential charge was more appropriate than our Impact Assessment Range and that a payment at LRIC+ should be the absolute upper limit of what was reasonable for any CP.

A27.108 BT disagreed with the stakeholders who had argued that, according to Ramsey pricing principles, origination charges should be higher to reflect the higher willingness to pay of 080 callers. BT considered instead that Ramsey pricing may not always be the most efficient way to recover fixed and common costs (e.g. in two-way interconnection) and that Freephone was closer to termination than origination of a competitive bundle of services. BT emphasised the impact of high origination charges on SPs and considered that given the uncertainty around the extent of SP migration we should err on the side of caution.[135]

A27.109 In addition, BT disagreed with Ofcom that fixed and mobile CPs operated in different retail markets, as there was a sufficient degree of overlap. Therefore, BT said there were good arguments in favour of using a relatively low origination payment (e.g. LRIC differential) as opposed to anything higher (e.g. a LRIC+ standard).[136] Similarly, Magrathea believed that the mobile origination charge should comprise the MTR plus an uplift for CARS of no more than 0.4ppm, equivalent to fixed OCPs' contribution to their fixed and common costs. It noted that this origination charge should be subject to the MTR glidepath, meaning an initial charge of around 2.1ppm but only 1.1ppm by 2014/15.[137]

A27.110 BT considered that Freephone numbers were different from other number ranges as they are part of the "collective brand" of the industry with a unique industry-wide price that is “imposed” and understood by all callers. In its view, this meant that the treatment of payment for origination should also be considered on a different basis from the norm. In particular, BT noted that there was no need for marketing or customer services in relation to Freephone calls (in contrast to other NGCs, where a positive charge may lead to billing queries) and that the principle of efficient cost recovery should not generate revenue that allows MNOs to promote these other services that do not benefit SPs. BT also argued that pure LRIC exceeds the true costs of call origination, although it did not provide any evidence to support this claim.[138]

A27.111 In summary, although it considered that a LRIC differential origination charge was the most appropriate on economic grounds, it considered that a LRIC+ charge represented a fair compromise between the pure LRIC advocated by TalkTalk and the higher cost estimates proposed by Vodafone.[139]

[134] BT, April 2012 consultation response, p. 45.
[135] BT, April 2012 consultation response, p. 45.
[136] BT, April 2012 consultation response, p. 31 and Annex 5.
[137] Magrathea, April 2012 consultation response, p. 12.
[138] BT, April 2012 consultation response, Annex 5.
[139] BT, April 2012 consultation response, p. 48.

A27.112 The Federation of Communication Services (‘FCS’) considered that the main factor affecting CPs and SPs would be the interconnect rates, and that the marginal cost of the call should be much smaller than the current mobile operator charges for 080 calls. It highlighted that the main concern was that of certainty of the charging arrangements, particularly, if a challenge to the origination payments were to be in progress post implementation, meaning that the actual rate could change.[140]

A27.113 ITSPA argued that the level of the mobile origination payment should be the LRIC of call termination (i.e. 1.5ppm on a downward glidepath).[141]

A27.114 CWW considered that it was necessary to ensure that the price of origination was controlled in such a manner that it remained affordable for those SPs with a genuine desire to use Freephone numbers to be able to continue to do so.[142]

A27.115 Verizon considered that, if we decided that origination charges should make a contribution to common costs, which they disagreed with, our decision could increase the level of over-recovery.[143] It argued that any material increase above cost-based charges would lead to higher hosting charges, causing more SPs to migrate to number ranges where callers would have to pay a price higher than zero. In its view, this would act against the consumer interest which Ofcom sought to promote.[144]

A27.116 Verizon considered that the Impact Assessment Range should not be based on SPs’ willingness to pay and instead should be determined by a fair and reasonable origination rate. In its view, a payment in the 2.5ppm-3.0ppm range would exceed the mobile costs of origination very substantially, especially when compared to the current fixed cost of termination of 0.5ppm. In its view, this did not seem fair and reasonable.[145]

A27.117 Mobile CPs instead considered that our Impact Assessment Range was too low. Vodafone indicated that Ofcom had used the LRIC+ with no A&R measure as the floor of cost recovery[146] and argued that we should have considered why the cost should not be, as a minimum, LRIC+ 100% A&R costs.[147] Three argued that our Impact Assessment Range was based broadly on the LRIC+ with no A&R costs (lower end) and LRIC+ including 50% of A&R costs (upper end). It indicated that updating our cost estimates with their proposed changes would have a significant impact on our mobile origination range, with the LRIC+ becoming 2.8ppm. It argued that if we considered that a charge at the lower end of the initial range was reasonable because it recovered LRIC+, then this would suggest that origination payments should be set at 3.0ppm or above.[148] EE suggested that, taking into account several changes to the way Ofcom had calculated the costs (further discussed in Annex 26), an appropriate level of efficient cost recovery from 080 call origination should be at least 5ppm. It considered that a figure of 5.2ppm would be reasonable, comprising 1.73ppm for the call origination LRIC+, 3.12ppm for CARS costs and 0.3ppm to take account of the under-recovery of fixed and common costs from call termination. Given that Ofcom's estimated origination payment range was

[140] FCS, April 2012 consultation response, p.6.
[141] ITSPA, April 2012 consultation response, p.3.
[142] CWW, April 2012 consultation response, p.30.
[143] Verizon, April 2012 consultation response, p.4.
[144] Verizon, April 2012 consultation response, p.6.
[145] Verizon, April 2012 consultation response, p.6.
[146] Vodafone, April 2012 consultation response, p.37.
[147] Vodafone, April 2012 consultation response, p.38.
[148] Three, April 2012 consultation response, pp.30-31.

2.5ppm-3ppm, EE considered that this would not allow mobile OCPs to recover their efficient costs and therefore needed to be reconsidered.[149]

A27.118 Three considered that in order to minimise migration of SPs from Freephone ranges we should attempt to minimise SPs' total costs, including both the hosting charges paid to TCPs and origination payments to OCPs. In its view we had erroneously considered only the latter and instead we should have assessed the scope for changes to both. Hosting charges should also be cost reflective to ensure that they do not increase the total cost to SPs above their willingness to pay.[150]

A27.119 Vodafone commented that it was not appropriate to use survey data on SPs' willingness to pay to derive the range of the underlying cost-related payment that mobile operators should be allowed to receive. It questioned this approach on the grounds that it essentially used subjective expressions of willingness to pay from SPs to derive what should be an objective measure of cost.[151]

A27.120 Vodafone[152] and O2[153] made similar comments, arguing that restricting the share of common costs that could be recovered through 080 calls would either lead to costs not being recovered at all or other unspecified services having to pick up this shortfall. Both questioned why either of these outcomes was preferable. Vodafone considered that Ofcom had failed to explain why owners of a sales inquiry line or customer service line who chose to host their services behind 080 instead of behind a different number range should receive a subsidised service from mobile operators where any alternative choice of number range would not. [154]

A27.121 In addition, Vodafone commented that Ofcom had restricted mobile operators from recovering certain costs whilst allowing fixed operators to recover their equivalent costs merely because the costs of mobile operation were higher than fixed. It considered that this seemed to undermine the principle of cost equivalence.[155]

A27.122 In relation to the 116 range, Vodafone was concerned that Ofcom's assessment of incremental costs for 116 was too low. It went on to say that, even if Ofcom's assessment of incremental cost was accurate, there was no reason to treat SPs using 116 numbers differently from other worthy causes running 080 numbers. Vodafone submitted that, to do so, risked distorting SPs' choice of number and putting Ofcom in the position of deciding which SPs should be allowed to use the limited range of 116 numbers.[156]

Ofcom's response

A27.123 As highlighted above, there were several comments from stakeholders relating to the level of the Impact Assessment Range for mobile origination charges. These can be divided into two categories:

- fixed CPs' arguments that the Impact Assessment Range for mobile origination charges should be below the level of the Impact Assessment Range that we presented in the April 2012 consultation; and,

[149] EE, April 2012 consultation response, pp.49-50.
[150] Three, April 2012 consultation response, p.31.
[151] Vodafone, April 2012 consultation response, paragraph 1.10.
[152] Vodafone, April 2012 consultation response, paragraph 1.10.
[153] O2, April 2012 consultation response, p.25.
[154] Vodafone, April 2012 consultation response, paragraph 1.10.
[155] Vodafone, April 2012 consultation response, paragraph 1.10.
[156] Vodafone, April 2012 consultation response, p.34.

- mobile CPs' arguments that they should be above.

A27.124 We respond to each of these in turn below. Before doing so, we note at the outset that we are not setting the level of the origination charge in this document. This will be set by commercial negotiation (taking into account the requirements of the access condition on which we are consulting) or, where negotiations fail, the matter may be referred to us as a dispute for resolution. We have today published draft guidance as to how we would approach any such dispute and have taken stakeholder comments into account in formulating this guidance, to the extent they are relevant. We would nevertheless approach any potential dispute on its own facts and in light of the evidence presented to us by the parties.

A27.125 The purpose of considering the origination charge in detail in this document is to reach an assumption about the level of that charge for the purposes of our impact assessment.

Comments from fixed CPs

A27.126 We agree with BT that mobile origination charges at pure LRIC would offer some advantages, for example, it would reduce the risk of SPs engaging in behaviour such as shortening calls they receive from mobiles (or any alternative means of reducing the costs of mobile calls). However, this could distort the price signals to SPs if the origination charges for fixed calls were not at pure LRIC as well. Instead, we have considered it more appropriate that the LRIC differential (rather than the pure LRIC) should be the lower bound of our Impact Assessment Range for mobile calls to 080 numbers (as further discussed in Section 12).

A27.127 BT considers that a parallel may be drawn between mobile origination and termination, and that as in the case of termination (a two-way interconnection), Ramsey pricing may not be the most efficient way to recover fixed and common costs. We disagree that call origination can be characterised as a two-way interconnection service in the same way as termination. This is because CPs in the context of 080 calls do not generally purchase and sell origination from each other, as they do with termination. In any event, we do not consider that Ramsey pricing would be an appropriate rule to allocate fixed and common costs to the 080 origination service. This is because Ramsey pricing requires detailed information on the relative elasticities of demand of different services which we lack and is nonetheless difficult to apply in practice. In addition, we consider that there are other factors (e.g. the impact of higher common cost recovery from 080 mobile origination charges on service availability or the positive externality to callers from free 080 calls) that are also relevant in determining the appropriate Impact Assessment Range (as further discussed in Section 12).

A27.128 We agree with BT and Magrathea that there are reasons why a mobile origination charge at the LRIC differential may be preferable to a charge at LRIC+, as further discussed in Section 12.

A27.129 While we agree that one of the rationales for a free to caller approach is to support the "collective brand" of the 080 range through a industry-wide price that is easily understood by all callers, we are not clear what BT means by saying that "origination charges should be treated different from the norm". We agree with BT that it is not efficient for origination charges to include a contribution to marketing and consumer services, as far as SPs do not benefit from them (as discussed in more detail in Section 12). However, we disagree with BT that our estimates of pure LRIC are in any case over-estimates of the true cost of originating a call. Pure LRIC is a standard method of measuring the incremental cost of a service and BT has not provided any reasons as to why it should not be used in the case of 080 calls.

A27.130 We also note that the cost estimates used to inform our Impact Assessment Range were estimated on the basis of an 080 range that was free to caller- i.e. they did not include an allowance for billing costs. To the extent they include a contribution above the pure LRIC of originating a 080 call, we consider whether this is appropriate in relation to other factors affecting consumers in Principle 2 of our framework in Section 12.

A27.131 We agree with FCS' comment that the marginal cost of a call to 080 should be much smaller than the current mobile retail prices for calls to 080. We similarly agree that our Impact Assessment Range for mobile origination charges should include charges below current mobile retail prices for calls to 080. However, we do not consider that the Impact Assessment Range for mobile origination charges should only be the LRIC of termination (or origination), as suggested by FCS and ITSPA, for the reasons discussed in Section 12. As regards FCS' concerns about the uncertainty over origination payments, we have intended to limit this uncertainty as far as possible, for example, by means of the access condition and the guidance on how we would approach any future dispute about origination payments (see Section 14) on which we are consulting.

A27.132 CWW suggests that origination charges should remain affordable to allow SPs with a genuine desire to use Freephone to be able to continue to do so. We consider that our framework for generating the Impact Assessment Range for origination charges in Section 12 takes due account of the preferences of both SPs and consumers, including a consideration of the impact of different levels of the origination charge on service availability as discussed above, and to this extent is consistent with CWW's comment.

A27.133 We share Verizon's concerns that an origination charge significantly above costs could lead to a higher share of SPs withdrawing their 080 line. As a result, our starting point for determining the Impact Assessment Range is an assessment of the range of efficient costs relevant to recovery through origination charges by both fixed and mobile CPs (Principle 1). We then consider the impact of different levels of origination payments within this range on the share of SPs withdrawing their 080 line (as well as other factors affecting consumers and competition) under Principle 2. As a result, we consider that our Impact Assessment Range is both cost-based and set at a level that takes into account the impact of origination payments on consumers.

A27.134 In relation to Verizon's comment that the Impact Assessment Range should not be based on SPs' willingness to pay and instead should be determined by a fair and reasonable origination rate, we do not consider this an accurate reflection of our approach to determining the Impact Assessment Range. We have derived the Impact Assessment Range from the three Principles which our proposed guidance sets out we would apply to resolve any dispute over fair and reasonable origination charges These Principles include the requirement that the level of origination charge should benefit consumers (under Principle 2). As part of our assessment of this principle, we have therefore considered the possible impact of different levels of origination payments on service availability for consumers, which has in turn required a consideration of SPs' willingness to exit (rather than to pay). However, we note that we have also had regard to other potential consumer and competition impacts under Principle 2, as well as to efficient cost recovery (under Principle 1) and practicality (under Principle 3). In our revised approach to deriving the IAR, set out in Section 12, we apply the Principles by first establishing a range of possible payments under Principle 1 which are based solely on measures of cost. We then assess the impact on consumers of different levels of origination charge within this range under Principle 2 by taking into account the trade-off between service availability on the one hand (which requires an assessment of SP willingness to exit) and the TPE on the other (as well as other factors affecting competition and consumers).

A27.135 Further we note that our consideration of SPs' willingness to exit is only one piece of analysis used to assess one of the principles. There are two additional principles which are used to derive our Impact Assessment Range. The same three principles are also used in our draft guidance as to how we would approach any future dispute about whether origination charges were fair and reasonable (as required by the draft access condition). Therefore, both our Impact Assessment Range and our draft guidance are based on a consideration of all three principles that we consider would need to be satisfied for charges to be fair and reasonable, not just a consideration of SPs' willingness to pay, as suggested by Verizon.

Comments from mobile CPs

A27.136 Mobile CPs argued that the Impact Assessment Range that we used in the April 2012 consultation was too low. Vodafone argued that the floor of cost recovery should be LRIC+. Three commented that given that our Impact Assessment Range was based broadly on the LRIC+ with no A&R costs then we should continue to use that measure, but include the update to our cost modelling that they proposed (we discuss this in more detail in Annex 26). It argued that this would suggest that origination charges should be 3.0ppm or higher. In addition to the changes proposed by Three, EE considered that our Impact Assessment Range should include CARS costs and should be around 5.2ppm.

A27.137 On this, we note that our Impact Assessment Range for mobile origination charges in the April 2012 consultation (2.5-3.0ppm) was not based on the LRIC+ with no A&R (which we estimated at approximately 2.3ppm), as suggested by Three or EE.[157] It was instead based on other factors such as consumer benefits, avoiding material distortions of competition and practicality. The assessment of mobile OCPs' costs was only a cross-check on the Impact Assessment Range derived using these factors.

A27.138 Since the April 2012 consultation we now consider that it is appropriate to define two different ranges for mobile origination charges:

- Base case scenario range: a range of origination charges that we have derived by applying the framework described in our three principles to the evidence currently available to us; and

- Impact Assessment Range: a wider range (encompassing the Base case scenario range) that we use for reasons of robustness when assessing the cost and benefits of making 080/116 free to caller.

A27.139 We have updated our cost modelling to include the changes proposed by Three and EE (as further discussed in Annex 26). These changes are taken into account under Principle 1, which assesses the efficient costs of originating calls from fixed and

[157] See Annex 23 of the April 2012 consultation for a detailed explanation of how we reached our assumption regarding the Impact Assessment Range.

mobile CPs. In the April 2012 consultation, we did not reach a definitive conclusion on the treatment of A&R costs under this principle (we did however argue that it was questionable whether SPs should contribute to costs from which they derived no benefit – such as A&R costs - under Principle 2[158]). We now consider that the application of Principle 1 means that OCPs should not recover A&R costs from origination payments, as discussed in Section 12. In applying Principle 1, we therefore estimate mobile OCPs' efficient costs to be between 0.8ppm (pure LRIC) and 3.3ppm (LRIC+ with no A&R costs[159]).

A27.140 However, our analysis is not limited only to considering cost recovery, but also to considering other factors such as consumer benefit and potential impacts on competition. In applying Principle 2 of our framework to the evidence currently available to us we consider that our Base case scenario range of 1.3-3.0ppm for mobile origination payments should be limited to those scenarios that result in average SP outpayments between 1.0-1.5ppm, as further discussed in section 12. We note however that we place less weight on mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) because we would consider these payments fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of our base case range.

A27.141 As noted above, we have also generated a wider Impact Assessment Range for the purposes of assessing the costs and benefits of a free-to-caller approach. We have assumed a wider range in order to assist the robustness of our decision-making and to recognise the fact that some of our underlying assumptions are necessarily uncertain as they relate to future events. The upper bound of our Impact Assessment Range is 3.7ppm which again takes into account not only efficient cost recovery (Principle 1), but also, in particular, the provision of benefits to consumers (part of Principle 2), as well as including some margin to account for the uncertainties surrounding our assumptions.[160] This is discussed in more detail in Section 12.

A27.142 Our application of Principle 1 therefore takes into account cost modelling changes suggested by EE and Three, but an increase in our estimate of LRIC+ (with no A&R costs) does not necessarily result in an equivalent (ppm) increase in our Impact Assessment Range (or our Base case scenario range) because efficient cost recovery represents only one of the three cumulative principles that we have assessed in order to generate this range.

A27.143 In relation to Three's comment that we should minimise the impact on service availability on 080/116 by minimising both origination payments and hosting charges, we note that as discussed in the December 2010 consultation, the evidence available to us suggests that the hosting market currently appears to be operating well and Three has provided no evidence contrary to this conclusion.[161] For this reason, we have not considered it necessary to focus our analysis on hosting charges, as suggested by Three.

[158] See paragraph A23.91 of the April 2012 consultation, for example.
[159] Our estimate of LRIC+ with no A&R costs has increased from approximately 2.3ppm in the April 2012 consultation to 3.3ppm now due to the changes suggested by Three and EE, amongst other changes to our cost modelling, that we discuss in Annex 26).
[160] On the basis of previous changes to our modelling, we consider 0.4ppm provides sufficient headroom to account for these uncertainties.
[161] See paragraphs 5.12 to 5.17 of the December 2010 consultation.

A27.144 In relation to Vodafone's comment that it is not appropriate to use survey data on SPs to derive the Impact Assessment Range for origination charges, we note that the 2011 SP survey is an input into the application of our framework consisting of the three principles that we used in the 080 Dispute Determination, as further discussed above and in Section 12. The 2011 SP survey is the best evidence we have of the likely impact of different levels of origination charge on service availability, which is relevant to Principle 2 of that framework (i.e. origination charges should, taking account of our statutory duties, provide benefits to consumers and avoid a material distortion of competition). We note that our framework in the 080 Dispute Determination was later upheld by the CAT in its 08x Judgment.[162] We therefore continue to believe that the use of the 2011 SP survey remains valid.

A27.145 Vodafone considered that common costs that are no longer recovered from 080 calls will either no longer be recovered at all or will need to be recovered through other charges. It argued that we had failed to demonstrate why this outcome was preferable. We disagree that we did not take this factor into account in our analysis in the April 2012 consultation. In fact, in the April 2012 consultation we derived the Impact Assessment Range of 2.5-3.0ppm by weighing the negative effects on consumers of the reduction in service availability arising from higher origination payments against the moderate consumer benefits in terms of lower prices for other mobile services through the tariff package effect.[163] The tariff package effect captures the possible impact on other charges that could result from a reduction in common cost recovery from 080 calls (see Annex 28). Similar considerations have informed our assessment of origination charges in this document, as discussed in Section 12.

A27.146 Vodafone argued that the way we had assessed origination charges treated fixed CPs differently from mobile CPs, as it allowed the former to recover their equivalent costs only because they were lower than for mobile. We note that since the April 2012 consultation we now assume that the Impact Assessment Range for both fixed and mobile CPs should not include A&R costs. We discuss our approach in determining the Impact Assessment Range for fixed and mobile CPs in more detail in Section 12.

A27.147 As regards Vodafone's comment on the 116 range, we note that it has not provided any evidence to support its claim that the assessment of the incremental cost for 116 is too low. As regards Vodafone's comments on the framework for assessing origination charges for 116, we discuss the rationale behind our framework in more detail in Section 12.

Other stakeholder comments

A27.148 The Internet Telephony Services Providers' Association ('ITSPA') considered that the level of the mobile origination charge was unacceptable as it allowed mobile operators to recover their common costs of mobile termination through services such as call origination which are being offered by CPs in a monopoly position. It considered that our proposals were not technology neutral as the existing 080 payments for fixed origination and termination are relatively cost orientated. It argued that the fact that the SMP conditions on BT for call origination and

[162] See 08x CAT Judgment, paragraph 439.
[163] See paragraph A23.81 of the April 2012 consultation.

termination were relatively aligned implied that the costs of origination and termination were a proxy for each other. [164]

A27.149 [✂] considered that our analysis assumed a direct one to one relationship between a TCP and a SP and that the mobile origination charge made no allowance for how it would flow through a value chain and where the cost of administering this would sit.[165]

A27.150 ITSPA argued that market rates for MVNOs were significantly below our Impact Assessment Range for the mobile origination charge. [166] [✂].[167]

Ofcom's response

A27.151 In relation to ITSPA's comments, we have set out our framework for assessing origination charges in Section 12. There we explain that our Impact Assessment Range is within the range of mobile OCPs' efficient costs of origination. We therefore disagree that these origination charges are not cost orientated. We also disagree that mobile OCPs should necessarily not be allowed to recover any common costs from origination charges. We recognise that as a general rule it may be preferable to recover common costs from services that are relatively more competitive but note that ITSPA has not provided any evidence or argumentation in support of its statement that mobile call origination is offered in a monopoly position. We also note that an assessment of competition in mobile call origination is outside the scope of this review.

A27.152 In relation to [✂]'s comment, we note that our assessment of origination charges is based on the premise that any increase in origination charges would be passed on in full into SPs' hosting charges, as further discussed in Section 12. We consider this is a reasonable assumption to make because the market for hosting is working well for SPs and we would therefore expect to see pass-through of any industry-wide cost increase in the medium term. In relation to the comment regarding the costs of administration, we recognise that in the April 2012 consultation we did not attempt to quantify the administration costs associated with the changes introduced by the decision to make 080 free to caller. However, we have investigated this in more detail in this statement in Annex 10.

A27.153 Several stakeholders commented that our Impact Assessment Range of 2.5-3.0ppm in the April 2012 consultation exceeded the market rates for call origination paid by MVNOs. On this, we note that the market rates provided to us by these stakeholders are within the revised Impact Assessment Range of 1.0-3.7ppm that we have adopted in this document. In any case, we do not think that MVNOs' rates are necessarily a good proxy for the costs of originating mobile calls to 080 numbers. This is, amongst other reasons, because MVNO rates (which are unregulated) reflect a variety of commercial arrangements, each with different characteristics (e.g. some include revenue sharing arrangements for calls terminated on the MNO's network).

[164] ITSPA, April 2012 consultation response, p. 3.
[165] [✂]
[166] ITSPA, April 2012 consultation response, p. 3.
[167] [✂].

Principle 3: practicality

Summary of our position in the April 2012 consultation

A27.154 In the April 2012 consultation we considered three factors that may affect whether a mobile origination payment lying within our Impact Assessment Range would be reasonably practicable to implement, namely:

- differences between fixed and mobile origination payments;
- differences in origination payments between mobile OCPs; and
- differences in origination payments between SPs.

A27.155 We discussed each of these in turn.

Differences between fixed and mobile origination payments

A27.156 We noted that different payments for fixed and mobile OCPs were practicable as a TCP could identify the OCP type based on the telephone number of the calling party using Caller Line Identification ('CLI'). TCPs would require mobile OCPs to pass on a mobile CLI in order to receive an origination charge at the higher mobile rate.[168] If a transit provider was present in the call routing path, then the transit provider should pass the CLI further along the chain to receive the mobile origination payment from the terminating provider.[169]

Differences in origination payments between mobile OCPs

A27.157 We noted CWW's concerns that there could be additional complications for TCPs if each mobile OCPs were paid a different origination payment. However, we explained that our working hypothesis was that it would be appropriate for all mobile OCPs to be offered the same origination payment.[170]

Differences in origination payments between SPs

A27.158 We recognised that different types of SPs would react differently to mobile origination payments, however, we assumed that TCPs would not be required to make different origination payments based on the identity of the SP. This was likely to make the system simpler to administer for TCPs. We noted however that this did not preclude OCPs from voluntarily choosing to waive origination payments if they wished, as was the case for calls to SPs such as Childline and members of the THA.[171]

Stakeholder comments

A27.159 CWW commented on the impact of origination charges varying between originators. In particular, it argued that the solution for Freephone should be simple enough for network operators to justify the costs involved in developing the capability of operating this new system, notably covering the billing and billing verification

[168] Numbers allocated to mobile OCPs, under the National Telephone Numbering Plan, are identified using the unique '07x' prefix, where x is in the range 1-5 or 7-9.
[169] See paragraphs A23.146 to A23.147 of the April 2012 consultation.
[170] See paragraphs A23.148 to A23.149 of the April 2012 consultation.
[171] See paragraphs A23.150 to A23.154 of the April 2012 consultation.

systems required if origination charges were to vary in this way. BT supported our proposal for a single origination payment for all mobile CPs, however, it noted that they were not provided with CLI information by all OCPs and that this would have to be given in future to enable accurate billing. It argued that if there was to be a difference between fixed and mobile origination payments, there would be a strong incentive to arbitrage between the rates by choosing to route traffic through a mobile CP and therefore urged Ofcom to adopt measures that would prevent this.

Ofcom's response

A27.160 We respond to CWW's comment regarding billing costs in Annex 10 (Part A) and to BT's comments regarding the possibility of arbitrage between different fixed and mobile origination payments in Annex 30.

A27.161 More generally we note that since the April 2012 consultation, we have considered in more detail the billing cost implications of making the 080 range free-to-caller, which are related to the issues considered in relation to Principle 3 above. In particular, in Annex 10 (Part A), we consider the billing cost implications of:

- the need to upgrade billing systems to allow TCPs to automatically differentiate between fixed and mobile origination charges using the customer line identification ('CLI'); and
- the existence of more than two origination charges (i.e. a single fixed origination charge and a single mobile origination charge).

A27.162 In relation to the first point, we conclude that we would not expect any material additional billing costs associated with billing using the mobile CLI. We recognise that fixed OCPs may seek to misrepresent the origin of their call in order to obtain a higher mobile origination payment but consider that the TCP/transit operator will have a commercial interest in ensuring that the OCP provides sufficient information to verify that the call originated on a mobile network. We therefore maintain our view that having a different origination payment for fixed and mobile calls, as implied by our Impact Assessment Range, would be reasonably practical to implement.

A27.163 In relation to the differences in origination payments between OCPs that would be consistent with our Impact Assessment Range, we note that our position has evolved slightly since the April 2012 consultation. Whilst it is no longer the case that our working hypothesis is necessarily a single origination charge for each of fixed and mobile calls, we nonetheless consider that a number of factors set out in Annex 30 will together minimise the range of origination charges in the market. In the same Annex, we conclude that this would not represent a significant increase in complexity for most CPs, and therefore that we do not consider it likely that there will be significant additional billing costs. Overall, whilst we now recognise the possibility of additional billing costs arising from multiple origination charges, we nonetheless consider that the origination payments implied by our Impact Assessment Range would be reasonably practical to implement.

Part C - Annex 28

Estimating the 080 tariff package effect

Introduction

A28.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of our provisional estimation of the tariff package effect of making the 080 range free-to-caller. It also sets out our comments and our updated analysis in response to the issues raised. Our assessment is used as an input in our analysis of the policy options for the 080 range in Section 13.

Summary of our position in the April 2012 consultation

A28.2 In the April 2012 consultation we said that both options for the 080 range (i.e. free-to-caller and Maximum Mobile Price, 'MMP') were likely to affect call volumes and 080 revenues. Insofar as OCPs' incremental profits on 080 calls fell, it was likely that the price of other telecoms services could rise (the 'tariff package effect' or 'TPE'). We then discussed how we had estimated the size of the tariff package effect in each of the two options considered for 080 numbers.[172]

Impact of making 080 free-to-caller

A28.3 We explained that, to estimate the impact of making 080 free-to-caller, we would account for the following scenarios:

- impact on mobile OCPs and SPs assuming no change in overall 080 call volumes and no SP migration to other number ranges;
- impact on mobile OCPs if overall 080 call volumes increase slightly but without accounting for any other factors such as migration by SPs;
- impact on fixed OCPs assuming a slight increase in the overall volume of calls to 080 but without accounting for other factors such as migration by SPs; and
- impact on mobile OCPs assuming no change in overall 080 call volumes other than those resulting from changes in SPs' usage of 080 numbers.

A28.4 We estimated that making 080 free-to-caller was likely to significantly increase costs (between 73% to 115%) for those SPs remaining on the number range. For mobile OCPs, we found that the impact on their incremental profits was likely to be positive, implying that prices for other mobile services could fall. For fixed OCPs, the impact on their incremental profits was likely to be negative (between £14m - £20m) due to fixed to mobile substitution.[173]

[172] See paragraphs A26.1 to A26.4 of the April 2012 consultation for a description of our general approach to estimating the size of the 080 tariff package effect.
[173] See paragraphs A26.5 to A26.6 of the April 2012 consultation for a description of the general impact of making 080 free-to-caller.

Impact on mobile OCPs and SPs assuming no change in overall 080 call volumes

A28.5 In the April 2012 consultation we estimated the impact of making 080 free-to-caller on both mobile OCPs' incremental profits (the tariff package effect) and SPs' payments to TCPs (in absolute amounts and as a percentage), relative to the status quo. Our results are shown in Table A28.1 below.

Table A28.1: Free-to-caller 080 assuming unchanged overall call volumes – impact on mobile OCPs and SPs (compared to status quo)

Mobile origination payment		40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
2.5ppm	Change in mobile OCPs' 080 incremental profits	+£5m	+£24m
	Change in SP costs	+£87m (+73%)	+£109m (+91%)
3.0ppm	Change in mobile OCPs' 080 incremental profits	+£27m	+£52m
	Change in SP costs	+£110m (92%)	+£137m (115%)

A28.6 Under the assumptions used in the April 2012 consultation[174] we calculated that the tariff package effect for mobile OCPs was likely to be positive due to the increased origination payments from SPs as well as the likely increase in the proportion of calls from mobiles. Conversely, we estimated that the costs for SPs of operating a 080 number were likely to rise significantly.[175]

Impact on mobile OCPs assuming a slight increase in overall call volumes

A28.7 In the April 2012 consultation we also estimated the impact on mobile OCPs' incremental profits relative to the status quo but assuming that total 080 call volumes increased slightly. We modelled two scenarios: an increase in total 080 call volumes of 1% and 5%. Our results are presented in Table A28.2 below.

[174] We assumed total 080 call volumes of 11,188m of which 5% originated from mobiles. Mobile retention was £78m (excluding VAT) and SPs paid TCPs £120m in relation to 080 calls (based on the 2010 Flow of Funds study). In addition, we assumed that mobile OCPs' incremental costs of originating 080 calls were 0.75ppm and that the total 080 call volumes remain unchanged. We assumed that making 080 free-to-caller would increase the proportion of calls originated from mobiles to either 40% or 50%.

[175] See paragraphs A26.7 to A26.10 of the April 2012 consultation for a description of the impact on mobile OCPs and SPs assuming no change in overall 080 call volumes.

Table A28.2: Free-to-caller 080 assuming increased overall call volumes – impact on mobile OCPs (compared to status quo)

Mobile origination payment	Increase in total 080 call volumes	40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
2.5ppm	1%	+£5m	+£25m
	5%	+£9m	+£29m
3.0ppm	1%	+£28m	+£54m
	5%	+£32m	+£59m

A28.8 We concluded that small increases in overall 080 demand were only likely to have a moderate impact on the scale of the tariff package effect for mobile OCPs.[176]

Impact on fixed OCPs

A28.9 We explained that making 080 free-to-caller was likely to lead to significant fixed to mobile substitution and this would in turn reduce fixed OCPs' incremental profits on 080 calls (a negative tariff package effect). We set out the size of this effect compared to the status quo in Table A28.3 below.

Table A28.3: Free-to-caller 080– impact on fixed OCPs (compared to status quo)

Change in overall 080 call volumes	40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
0%	-£16m	-£20m
1%	-£16m	-£20m
5%	-£14m	-£19m

A28.10 Under the assumptions used[177] we estimated that the impact of fixed to mobile substitution was likely to outweigh any increase in overall 080 call volumes.[178]

Impact on mobile OCPs taking changes in SPs' usage of 080 into account

A28.11 In the April 2012 consultation we said that, assuming our Impact Assessment Range for mobile origination payments (i.e. 2.5-3.0ppm), it was likely that the costs

[176] See paragraphs A26.11 to A26.13 of the April 2012 consultation for a description of the impact on mobile OCPs assuming a slight increase in overall call volumes.
[177] We used the same base case as in Table A28.2 above. In addition we assumed (i) that fixed OCPs earned an average incremental profit of 0.4ppm on 080 calls; (ii) an increase of calls originated from mobiles to either 40% or 50%; and (iii) that call volumes remain unchanged or increased by either 1% or 5%.
[178] See paragraphs A26.14 to A26.16 of the April 2012 consultation for a description of the impact on fixed OCPs.

to SPs of operating a 080 number would increase significantly. We explained that the impact on mobile OCPs' incremental profits would depend on the reaction of SPs to making 080 free-to-caller and that it was difficult to predict SPs' behaviour.

A28.12 We nonetheless carried out some calculations to try to understand the likely impact on mobile OCPs' incremental profits of different SPs' reactions to making 080 free-to-caller in terms of migration, blocking calls from mobile or withdrawing their service. The results are set out in Table A28.4 below.

Table A28.4: Free-to-caller 080 taking SPs' reactions into account – impact on mobile OCPs (compared to the status quo)[179]

Mobile 080 origination payment	Assumptions about calls to migrated SPs	40% of 080 calls originated from mobiles	50% of 080 calls originated from mobiles
2.5ppm	2ppm profits, 30% from mobiles	-£2m	+£14m
	8ppm profits, 20% from mobiles	+£11m	+£27m
	8ppm profits, 30% from mobiles	+£22m	+£38m
3.0ppm	2ppm profits, 30% from mobiles	+£16m	+£36m
	8ppm profits, 20% from mobiles	+£29m	+£50m
	8ppm profits, 30% from mobiles	+£40m	+£61m

A28.13 Under the assumptions used, we concluded that:

- there was a negative effect on mobile OCPs' incremental profits when SPs either blocked 080 calls or discontinued their service;
- it was difficult to be definitive about the impact on mobile OCPs of SPs' migration to other number ranges; and
- the tariff package effect for mobile OCPs was generally likely to be small or even positive, even once the change in SPs' behaviour was taken into account.[180]

[179] We used the same assumptions we used in the base case described in Table A28.1 above. Additionally we assumed that (i) mobile OCPs' incremental costs of originating 080 calls were 0.75ppm; (ii) SPs accounting for 19% of 080 call volumes would change their behaviour and, of these, 63% would migrate elsewhere, 21% would block calls from mobiles and 16% would withdraw their service altogether. Regarding SPs that would migrate elsewhere we used three scenarios: (i) 30% of migrated call volumes were originated by mobile OCPs and mobile OCPs earned an incremental profit of 2ppm on calls to migrated numbers; (ii) 20% of migrated calls were originated by mobile OCPs and mobile OCPs earned an incremental profit of 8ppm on calls to migrated numbers; (iii) 30% of migrated call volumes were originated by mobile OCPs and mobile OCPs earned an incremental profit of 8ppm on calls to migrated numbers. We also assumed that making 080 free-to-caller increased the proportion of 080 calls originated from mobiles to either 40% or 50%.

[180] See paragraphs A26.17 to A26.23 of the April 2012 Consultation for a description of the impact on mobile OCPs taking changes in SPs' usage of 080 into account.

Impact of making 080 a Maximum Mobile Price range

A28.14 In the April 2012 consultation we also estimated the likely tariff package effect of our policy option of making 080 a Maximum Mobile Price ('MMP') number range.

Impact on mobile OCPs

A28.15 We estimated the impact on mobile OCPs of making 080 a MMP range as shown in Table A28.5 below.

Table A28.5: Maximum Mobile Price 080 – impact on mobile OCPs (compared to the status quo)

Maximum price of mobile calls (incl. VAT)	Percentage of 080 calls originated from mobiles			
	5%	10%	20%	30%
4.2ppm	-£55m	-£37m	-£1m	+£35m
5ppm	-£52m	-£30m	+£14m	+£58m
AC of 10ppm	-£31m	+£11m	+£96m	Omitted
AC of 16.1ppm	-£3m	+£68m	Omitted	Omitted

A28.16 Under the assumptions used[181] we estimated that the tariff package effect was likely to be small or even positive for mobile OCPs but was sensitive to the proportion of calls that would be originated from mobiles.[182]

Impact on fixed OCPs

A28.17 We explained that making 080 a MMP range was likely to increase the share of calls originated from mobiles and that this was likely to reduce fixed OCPs' incremental profits. We modelled this impact in the same way as we did under the free-to-caller scenario in Table A28.5 above. However, in this case we considered four scenarios where the proportion of mobile calls was lower than under free-to-caller: 5%, 10%, 20% and 30%. The results are shown in Table A28.6 below.

[181] We used the same assumptions on total call volumes, share of calls originated from mobiles, mobile retention and OCPs' incremental costs as in Table A28.1. Additionally, we assumed that (i) mobile OCPs' AC would be 10ppm and 16.1ppm (including VAT at 20%); (ii) the mobile origination payment would be 0.5ppm when the maximum call price was 4.2ppm or 5.0ppm but zero when the maximum call price was equal to the AC. We also assumed four scenarios for the proportion of 080 calls originated from mobiles: 5%, 10%, 20% and 30%, although we omitted the highest fixed to mobile substitution scenarios for higher ACs, as these were less plausible.

[182] See paragraphs A26.25 to A26.27 of the April 2012 consultation for a description of the impact on mobile OCPs of making 080 a MMP range.

Table A28.6: Maximum Mobile Price 080 – impact on fixed OCPs (compared to status quo)

Proportion of 080 calls from mobiles	5%	10%	20%	30%
Impact on fixed OCPs' 080 incremental profits	£0m	-£2m	-£7m	-£11m

A28.18 We concluded that the impact on fixed OCPs' incremental profits of making 080 a MMP range was likely to be smaller than making it a free-to-caller range. Therefore, the increase in the price of other fixed telecoms services (via the tariff package effect) was also likely to be smaller.

Stakeholders' comments

A28.19 We only received comments on our approach to estimating the tariff package effect from EE.[183] It considered that it was critical to our assessment of the TPE to distinguish between the proportion of the revenues that represented:

- an appropriate allocation to recover the costs of originating 080 calls; and,
- the incremental profits retained by OCPs in respect of the origination of these calls.

A28.20 EE considered that our estimation of the TPE should take into account that OCPs need to recover both incremental and common costs from the prices they set. It noted that the logic of setting pure LRIC mobile termination rates was that OCPs should be able to recover their fixed and common costs from call origination. Therefore, it argued that it was incorrect to assume that all revenues earned above pure LRIC costs were "incremental profits", and that this error vitiated Ofcom's entire TPE analysis.

A28.21 EE reiterated that it considered the costs of origination to be at least 5ppm, accordingly, under Ofcom's proposal that this cost was in the range of 2.5-3.0ppm, mobile OCPs would not be able to make any incremental profit on 080 calls (regardless of the volumes of calls). Instead, it considered that mobile OCPs would lose at least 2-2.5ppm on every single 080 call they originate.

A28.22 EE considered that the TPE for mobile OCPs would be distinctively negative irrespective of the volume of additional mobile originated calls generated as a result of making the 080 range free-to-caller, because mobile OCPs were currently charging on average retail prices of 14.1ppm (exc. VAT), compared to Ofcom's proposed origination charge of 2.5-3.0ppm.

A28.23 In relation to the TPE for fixed originated 080 calls, EE found it surprising that we said, on the one hand, that at 0.5ppm fixed origination payments were cost reflective and, on the other hand, that this amount could represent an element of "incremental profit" that could or should be used to cross-subsidise fixed OCPs' costs of providing other products and services. It considered that fixed origination charges at this level would not result in any "incremental profit" and therefore the

[183] EE, April 2012 consultation response, pp.49-50.

TPE for fixed OCPs would be completely neutral, regardless of the extent of any fixed to mobile substitution or overall change in the volume of 080 calls generated as a result of Ofcom's proposals.

Ofcom's response

A28.24 We note that our analysis in the April 2012 consultation related to the assessment of the tariff package effect in the cases where we decided to make 080 free-to-caller ('Option A') and maximum mobile price ('Option B').[184] We did not attempt to estimate the likely tariff package effect if we made 080 free-to-caller and 0500 the maximum mobile price range ('Option C').[185] The future treatment of the 0500 number range, and our proposal to withdraw the number range, is currently under consultation.[186] For this reason, we believe it is still appropriate to exclude 0500 from our assessment of the tariff package effect.

A28.25 As noted above, we only received comments on our TPE analysis from EE and we begin by responding to these below. We then describe the changes we have made to our analysis since the April 2012 consultation (in particular in relation to the assumed volume of 080 calls) and present our updated analysis.

Response to EE's comments

A28.26 We disagree with EE that incremental profits should be defined on the basis it suggests, and consider that EE's concerns may have resulted from our use of the phrase "incremental profits", which was not intended to indicate the overall profit earned by OCPs, but simply the margin over incremental costs. It is integral to our analysis that this margin on 080 calls would contribute to the recovery of the OCPs' fixed and common costs (as this is the source of the TPE). EE's suggested approach implies that we should have, first, defined an appropriate allocation of fixed and common costs for calls to 080 numbers and, second, assessed the impact of our proposals on the incremental profits retained by OCPs over and above this allocation. We do not consider that this approach is correct because an analysis of the TPE does not require a view to be taken on the level of fixed and common costs that it is appropriate to recover from 080 calls and because inclusion of such fixed and common costs would lead to an erroneous analysis of the effect on OCPs of a large change in the volumes of calls.

A28.27 The TPE is caused by a reduction (or increase) in the total contribution made by 080 calls to fixed and common costs. Any revenue that exceeds the incremental cost (or strictly speaking the marginal cost) of originating a 080 call will contribute towards covering these costs. Our analysis of the TPE estimates the likely change in the contribution to common costs resulting from our decision to make 080 free-to-caller or a MMP range.

A28.28 In order to assess this change, we used our estimate of the incremental cost of originating a 080 call of 0.75ppm - an estimate which no stakeholder has challenged in itself (although they have challenged the use of the incremental cost measure). If we had used a higher cost estimate of 5ppm (including the allowance for fixed and common costs suggested by EE) this would have understated the contribution that each 080 call makes to fixed and common costs by an amount

[184] See paragraphs A26.1 to A26.4 of the April 2012 consultation.
[185] See paragraph A21.11 of the April 2012 consultation for a detailed description of each of the options considered.
[186] http://stakeholders.ofcom.org.uk/consultations/0500-number-range/

equal to the difference between the incremental cost and the assumed cost of 5ppm.[187] For this reason, we consider that EE's suggested approach would not be appropriate. If we had also assumed that mobile OCPs incurred a cost of 5ppm to originate the large additional volume of 080 calls (arising from the substitution of 080 calls from fixed to mobile), we would have grossly overstated the additional cost and correspondingly understated the additional contribution to fixed and common costs.

A28.29 Similarly, in the case of fixed origination, we disagree with EE's argument that the fact that the 0.5ppm fixed origination charge is cost reflective means that a change in fixed call volumes will not impact the contribution of 080 calls to fixed OCPs' overheads. This is because the 0.5ppm charge is greater than our estimates of the incremental cost of originating a fixed 080 call of approximately 0.1ppm (as further discussed in Annex 26), and therefore includes a contribution of 0.4ppm towards fixed and common costs. Reducing the volume of calls originated from fixed OCPs will obviously impact upon the total contribution of 080 calls to fixed OCPs' fixed and common costs by an amount equal to 0.4ppm (the contribution to fixed and common costs made by each call) multiplied by the reduction in call volumes. This was the impact on incremental profit that our analysis aimed to identify.

A28.30 This analysis in no way suggests that 0.5ppm is an inappropriate fixed origination charge or that it is not cost reflective. This level of the charge reflects fully allocated costs. However, for the different purpose of the TPE analysis the relevant measure to assess changes in cost is the incremental cost.

Updated TPE analysis

A28.31 Since the April 2012 consultation there have been several changes affecting the inputs we used in the estimation of the TPE. Namely, we now assume that:

- the share of mobile originated calls to 080 numbers will be between 45% to 60% (rather than the 40% to 50%) as discussed in Annex 27;
- mobile OCPs' incremental costs of originating 080 calls are 0.85ppm (compared to 0.75ppm in the April 2012 consultation), as discussed in Annex 26;
- origination charges are most likely to fall within our Base case scenario range. As discussed in Section 12, our Base case scenario range for mobile origination payments is 1.3-3.0ppm, however, within this we place less weight on mobile origination payments at the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm). For this reason, below we estimate the TPE associated with our base case scenario at mobile origination payments of 1.5ppm and 2.5ppm. We indicate the results that are relevant to our Base case scenario range by showing them in red in the tables below. We note that, as set out in Section 12, the upper end of this range (i.e. 2.5ppm) does not lie within the Base case scenario range

[187] By way of illustration, we consider a situation in which the incremental cost of originating a call is 1ppm, the retail price 5ppm and the initial volume of calls is equal to 1 million minutes. For every call originated, the OCP would cover the incremental cost of origination and have 4ppm remaining to put towards fixed and common costs. Over the initial base of calls, this would result in a £40k contribution to total overheads. If, instead, our estimate of origination costs assumed an allowance towards fixed and common costs of, say, 2ppm in addition to the 1ppm of incremental cost, we would estimate a significantly lower contribution to fixed and common costs of £20k. This would not be appropriate as it would imply that calls at a retail price of 5ppm only make a contribution to fixed and common costs of 2ppm, instead of 4ppm.

when the share of calls originated from mobile is 60% (for this reason the TPE estimated under these assumptions is not coloured in red below).[188] For the purposes of robustness we also consider the impact on the TPE of scenarios lying outside of our base case but within our wider Impact Assessment Range ('IAR') of between 1.0-3.7ppm. See Section 12 for a discussion of how we derive and apply our Base case scenario range and IAR;

- fixed OCPs' incremental costs are 0.04ppm in 2014/15 prices (our base case in the current Narrowband Market Review consultation), as further discussed in Annex 26;[189] and

- the IAR for fixed origination payments is between 0.3-0.6ppm, as further discussed in Section 27(as noted in that section, the evidence does not support having separate base case and IAR ranges for fixed origination payments).

A28.32 In addition, we now consider that our regulatory intervention will not apply to calls made by business customers (i.e. the free-to-caller obligation would apply only to calls made by consumers to 080 numbers – see Section 6). However, as further discussed in Section 12, our working assumption is that, as an indirect effect of our decision, all type of calls are likely to be made free-to-caller by OCPs. For this reason we have accounted for all volumes of calls to 080 numbers when estimating the TPE (i.e. we have not adjusted the volumes to subtract the share of calls that are likely to be originated from business callers). We note that this is a conservative assumption as it is likely to overestimate the level of the TPE resulting directly from our proposal.

A28.33 Furthermore, our assessment of the TPE in the April 2012 consultation was based on the volume of calls to 080 numbers in 2009, using the 2010 Flow of Funds study. However, as explained in Section 15 we expect the changes to come into effect in late-2014 at the earliest. We have therefore adjusted 080 call volumes to reflect the likely volume of 080 calls at the expected time of implementation in late-2014. For this we have used an annual decline of 10% over a period of 5 years (from 2009 to late-2014). This is consistent with our assumption in Annex 11 and Annex 10 in Part A.

A28.34 Below we repeat the analysis presented in the April 2012 consultation using the updated assumptions described above. The results presented below can be compared to our estimates of the TPE in the April 2012 consultation summarised in paragraphs A28.2 to A28.18 above.

Impact of making 080 free-to-caller

A28.35 Below we set out the following calculations that are relevant to the effects of making 080 free-to-caller:

- the impact on mobile OCPs and SPs assuming no change in overall 080 call volumes. These calculations assume there is no change in SPs' usage of 080, e.g. no migration to other number ranges;

[188] For example, when the fixed origination payment is 0.6ppm and the share of calls originated from mobile is 60% the average SP outpayment is 1.74ppm (i.e. 0.6ppm x 40% + 2.5ppm x 60% = 1.74ppm), which exceeds the range of average SP outpayments that we consider fair and reasonable (i.e. 1.0-1.5ppm), as further discussed in Section 12.

[189] See Figure 9.6 of the Narrowband Market Review consultation, available at http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/summary/NMR_Consultation.pdf.

- the impact on mobile OCPs if overall 080 call volumes increase slightly. This explores the impact of increased volumes of calls to 080 SPs, for example due to greater consumer price awareness, but does not model factors such as migration to other number ranges;

- the impact on fixed OCPs. This calculation allows for a slight increase in the overall volume of calls to 080 SPs but does not model factors such as migration; and

- the impact on mobile OCPs taking changes in SPs' usage of 080 numbers into account.

A28.36 In summary, given our revised assumptions (described above), under our main modelling scenario (which assumes no increase in overall 080 call volumes and no change in SPs' usage of 080 e.g. no migration to other number ranges) making 080 free-to-caller is likely to increase ongoing costs for those SPs that remain on the number range by £20m to £64m, an increase of between 28%-91%, respectively, when we assume origination payments within the Base case scenario range. When we use the wider IAR range, SPs' costs increase by an amount between £5m (7%) to £127m (179%). As discussed in Section 13, we think that mobile origination payments are most likely to fall within our Base case scenario range (rather than the wider IAR) and we have therefore placed most weight on costs and benefits associated with a mobile origination payment within this range.

A28.37 This compares to an increase between £87m to £137m (or 73% to 115%) in the April 2012 consultation. In other words, we expect that the increase in SPs' costs is likely to be lower than we estimated in the April 2012 consultation both in absolute and relative terms when we assume that mobile origination payments are within the Base case scenario range. The lower costs are driven by the lower range of origination payments that we assume for both fixed and mobile calls (with the bottom end of the range being lower in each case than we assumed in the April 2012 consultation), as well as the fact that we now use the (lower) volumes that we expect in late-2014 to estimate the different impacts (whereas in the April 2012 consultation we assumed the (higher) volumes in 2009).[190]

A28.38 For mobile OCPs, the impact on their incremental profits from 080 calls (and hence the tariff package effect) is positive or negative depending on the assumptions used. We estimate the impact on incremental profits to be between -£24m to +£21m when we use the Base case scenario range, and -£39m to +£70m when we use the wider IAR range. The negative TPE occurs when we assume origination payments within the lower values of the Base case scenario range and lower levels of fixed to mobile substitution (and similarly with the wider IAR range). In the April 2012 consultation, we estimated the impact to be between +£5m to +£52m. The difference is again explained by the lower origination payments assumed in our Base case scenario range, as well as our assumption regarding call volumes (described above). Our final estimates imply that there is uncertainty over whether prices for other mobile telecoms services will fall (when the TPE is positive) or increase.

[190] As can be seen, the percentage increases in costs are proportionally higher than in the April 2012 consultation if one takes into account that the absolute increases in costs are lower. The higher proportional increase is explained by our use of the (lower) volume of calls in late-2014. The lower volume of calls implies that SPs have lower costs before the expected date of implementation in late-2014 and therefore the absolute increase in costs occurs over a lower initial cost base.

A28.39 In contrast, the impact on fixed OCPs' profits from 080 calls appears likely to be negative due to extensive fixed to mobile substitution. The size of the negative effect modelled for fixed OCPs is between -£11m and -£25m, which compares to -£14m to -£20m in the April 2012 consultation. The wider TPE range in our latest estimates is mainly driven by our assumption regarding the fixed IAR (i.e. 0.3-0.6ppm compared to a fixed value of 0.5ppm in the April 2012 consultation).

Impact on mobile OCPs and SPs assuming no change in overall 080 call volumes

A28.40 Below we present the impact on mobile OCPs' incremental profits from 080 calls (and hence the magnitude of the tariff package effect) and the impact on SPs' payments to TCPs (in absolute amounts and as a percentage). These impacts are relative to the status quo.

Table A28.7: Free-to-caller 080 assuming unchanged overall call volumes – impact on mobile OCPs and SPs (compared to status quo)

Mobile origination payment		45% of 080 calls originated from mobiles	60% of 080 calls originated from mobiles
1.0ppm	Change in mobile OCPs' 080 incremental profits	-£39m	-£37m
	Change in SP costs	+£5m (+7%)	+£20m (+28%)
1.5ppm	Change in mobile OCPs' 080 incremental profits	-£24m	-£17m
	Change in SP costs	+£20m (+28%)	+£39m (+56%)
2.5ppm	Change in mobile OCPs' 080 incremental profits	+£6m	+£22m[191]
	Change in SP costs	+£49m (+70%)	+£79m (+112%)[191]
3.7ppm	Change in mobile OCPs' 080 incremental profits	+£42m	+£70m
	Change in SP costs	+£85m (+120%)	+£127m (+179%)

A28.41 This Table was calculated as follows:

- we adjust 080 call volumes in 2009 (11,188m minutes) to account for a 10% annual decline from 2009 to 2014 (i.e. 5 years) and we assume that by late-2014 the share of 080 calls originated from mobile will be the same as in 2009 (i.e.

[191] For the avoidance of doubt, we note that this estimate is outside the Base case scenario range as it assumes a fixed origination payment equal to 0.6ppm, which combined with a mobile origination payment of 2.5ppm and a share of calls originated from mobile equal to 60% results in an average SP outpayment exceeding 1.5ppm. We do not consider this scenario to lie within our Base case scenario range for the reasons discussed in Section 12. However, we do consider it for reasons of robustness as part of our wider IAR.

5%). This results in 312m minutes of calls from mobile and 6,294m from fixed CPs (a total of 6,606m minutes) by late-2014 (before implementation of the free-to-caller regime);

- in practice, improved consumer price awareness and confidence may place upward pressure on 080 call volumes while some 080 SPs may change how they use non-geographic numbers (e.g. migrating to another range or closing their 080 service) which will place downward pressure on 080 call volumes. However for simplicity the above Table does not model these effects and we have instead assumed that total 080 call volumes remain unchanged if it is made free-to-caller. We relax this assumption below;

- we have assumed that mobile OCPs' incremental costs of originating 080 calls are 0.85ppm.[192] We estimate that mobile retention in 2009 was 14.6ppm.[193] We use this retention to estimate the likely revenues by late-2014[194] (using the volumes estimated as explained above). We subtract from this the incremental costs to obtain mobile incremental profits of £43m by late-2014.

- we have assumed that making 080 free-to-caller increases the proportion of calls originated from mobiles to either 45% or 60%. We apply this to the volumes that we expect by late-2014 to estimate the likely volumes originated from mobile CPs in each scenario after free-to-caller is implemented. We estimate the incremental profits after implementation by multiplying these volumes by the assumed mobile origination payment and subtracting the incremental costs;

- for the purposes of estimating the impact on SPs' costs we have assumed the lower bound of the fixed IAR (i.e. 0.3ppm) when assuming 45% of 080 calls originated from mobiles and the upper bound (i.e. 0.6ppm) when assuming 60% of calls are originated from mobiles. This allows us to estimate the minimum and maximum increase in SPs' ongoing costs for the different values of mobile and fixed origination payments that we have assumed and the different share of calls originated from mobile shown in the Table; and

- we estimate that net payments from SPs to TCPs are likely to be around £70m by late-2014[195] (with fixed and mobile origination payments representing £36m of these net payments).[196] To obtain the increase in SPs' costs we estimate the

[192] Table A26.5 in Annex 26 gives a range of 0.8-0.9ppm for the pure LRIC of mobile call origination. For simplicity, we have selected the midpoint of this range.

[193] This is the result of dividing the retail revenues and net origination payments from TCPs (£78m excluding VAT) by the 529m minutes of calls originated from mobile (both figures from the 2010 Flow of Funds study).

[194] It could be argued that the average retention on business and residential customers is likely to underestimate the retention on residential callers. However, we do not have data on the retention on residential customers. We consider nonetheless that any underestimation of the TPE resulting from this is likely to be at least partially addressed by the fact that we account for all volumes of calls to 080 (rather than only residential calls, as explained above).

[195] SPs paid an average 1.1ppm to TCPs in 2009 (the result of dividing the £120m net payments in 2009 (from the 2010 Flow of Funds study) by the total 11.2bn minutes of calls to 080). We multiply this by the 6,606m minutes of calls that we expect by mid-2014 to obtain the net payments expected by late-2014 (i.e. £71m).

[196] Origination payments are calculated using the same method as net payments. We estimate the average origination payment to be 0.54ppm in 2009 using the 2010 Flow of Funds. We multiply this by the volumes we expect in late 2014 (i.e. 6,606m minutes) to obtain origination payments of £36m by this date.

difference between these net payments and the net payments after free-to-caller is implemented. We calculate this using the assumptions described above.

A28.42 Compared to our results in the April 2012 consultation, where we estimated that the TPE for mobile OCPs was likely to be positive, we now estimate that, both in the case of the wider IAR and the Base case range, the direction of this effect is likely to depend on the assumptions chosen (as shown in Table A28.7 above). We estimate the mobile TPE to be between -£24m and +£21m[197] using the Base case scenario range and between -£39m and +£70m in the case of the wider IAR range. This compares to £5m to £52m in the April 2012 consultation. The negative values in our current calculations are due to the fact that we now incorporate lower values within our IAR compared to the IAR we assumed in the April 2012 consultation. We also estimate lower TPEs now compared to the April 2012 consultation. This is because we assume lower volumes of calls to 080 now, as discussed above.

A28.43 We also estimate lower increases in the costs to SPs (between £20m and £64m[198] using the Base case scenario range, £5m to £127m using the wider IAR) than in the April 2012 consultation (£87m to £137m) for the reasons discussed in paragraphs A28.36 to A28.37 above.

Impact on mobile OCPs assuming a slight increase in overall call volumes

A28.44 Improved consumer confidence in 080 numbers and lower mobile call prices will tend to increase call volumes for those SPs that remain on 080. This, in turn, will tend to boost mobile OCPs' incremental profits. To indicate the likely magnitude of these effects, Table A28.8 shows the impact on mobile OCPs' incremental profits (relative to the status quo) repeating the calculations set out in Table A28.7 above but assuming that overall 080 call volumes increase slightly.[199]

A28.45 We discuss the impact of making 080 free-to-caller on total 080 call volumes in Section 13. We argue that the evidence does not provide a clear indication of the extent to which demand may rise and, accordingly, we have conservatively assumed for the purposes of our TPE calculation that overall 080 call volumes would rise by 1% and 5%. We make these assumptions in Table A28.8 below. It should be stressed that these figures are used for modelling purposes only, in order to explore the materiality of this factor.

[197] We estimate the upper bound of the range by assuming that average SP outpayments are 1.5ppm (i.e. the maximum level we consider would be fair and reasonable under our Base case scenario range, as further discussed in Section 12). Consistent with this assumption, the maximum mobile origination payment of 2.97ppm occurs when fixed origination payments are 0.3ppm (the lower bound of our assumption regarding fixed origination payments) and the share of calls originated from mobile is 45% (the lower bound of our assumed range). We therefore estimate the upper bound of the TPE associated with our Base case scenario range using these assumptions together (i.e. 3.0ppm mobile origination payments – the 2.97ppm rounded up to 3.0ppm – a fixed origination payment equal to 0.3ppm and 45% of calls originated from mobile). We note that this calculation is not shown in the Table above for reasons of presentational ease.

[198] For the reasons discussed in the previous footnote, this estimate is calculated assuming a mobile origination payment equal to 3.0ppm, 45% of calls originated from mobile and a fixed origination payment equal to 0.3ppm.

[199] Unlike Table A28.7 we have not shown the impact on SPs' costs in Table A28.8 below. This is because simply focusing on the change in SPs' costs risks being misleading. 080 SPs presumably benefit from being called. Accordingly, higher overall call volumes will tend to increase SPs' costs (since they have to fund origination payments on more calls) but will also tend to provide additional benefits to SPs.

Table A28.8: Free-to-caller 080 assuming increased overall call volumes – impact on mobile OCPs (compared to status quo)

Mobile origination payment	Increase in total 080 call volumes	45% of 080 calls originated from mobiles	60% of 080 calls originated from mobiles
1.0ppm	1%	-£39m	-£37m
	5%	-£38m	-£37m
1.5ppm	1%	-£24m	-£17m
	5%	-£23m	-£16m
2.5ppm	1%	+£6m	+£23m[200]
	5%	+£8m	+£26m[200]
3.7ppm	1%	+£42m	+£71m
	5%	+£46m	+£75m

A28.46 In line with our findings in the April 2012 consultation, increases of 1% to 5% in demand have a relatively small impact on mobile CPs' incremental profits, with the impact only being material when we assume origination payments towards the upper bound of our IAR (as shown in Table A28.8). In other words, small increases in overall 080 demand are only likely to have a moderate impact on the scale of the tariff package effect for mobile OCPs. As a result of the lack of materiality of this effect, and in the interests of being conservative, we do not include these estimates of the TPE in our assessment of 080 policy options.

Impact on fixed OCPs

A28.47 In 2009, 95% of calls to 080 numbers were originated on fixed networks. Making 080 free-to-caller is likely, over time, to lead to a large increase in the proportion of 080 calls from mobile networks and a significant fall in fixed 080 call volumes. The origination payment received by fixed OCPs is likely to exceed their incremental costs of originating 080 calls and thus lower fixed 080 call volumes will reduce fixed OCPs' incremental profits on 080 calls. This, in turn, is likely to result in higher prices for other fixed telecoms services (the tariff package effect). Table A28.9 sets out an indication of the size of this effect compared to the status quo.

[200] As discussed above, this scenario lies outside of our Base case scenario range. The maximum TPE within our Base case scenario range, calculated assuming 3.0ppm mobile origination payment, 0.3ppm fixed origination payment and 45% of calls originated from mobile (for the reasons discussed above), gives the following TPE for each of the scenarios above: £21m for the 1% demand increase scenario and £24m for the 5% demand increase scenario.

Table A28.9: Free-to-caller 080– impact on fixed OCPs (compared to status quo)

Fixed origination payment	Change in overall 080 call volumes	45% of 080 calls originated from mobiles	60% of 080 calls originated from mobiles
0.3ppm	0%	-£22m	-£25m
	5%	-£22m	-£24m
0.6ppm	0%	-£11m	-£17m
	5%	-£10m	-£16m

A28.48 The Table was calculated as follows:

- we use the same assumptions as in Table A28.7 above;
- we have modelled two scenarios, (i) at the lower bound of the fixed IAR (i.e. 0.3ppm) and (ii) at the upper bound of the fixed IAR (i.e. 0.6ppm);
- as discussed above, we have assumed an incremental cost for fixed origination of 0.04ppm (compared to the April 2012 consultation, where we assumed an incremental cost of 0.1ppm and an average incremental profit of 0.4ppm on 080 calls);
- we have assumed that making 080 free-to-caller increases the proportion of calls originated from mobiles to either 45% or 60%; and
- making 080 free-to-caller is assumed to either leave total 080 call volumes unchanged or to increase them by 5%.[201]

A28.49 The Table shows that the large amount of fixed to mobile substitution is likely to outweigh any increase in overall 080 call volumes. As a result, fixed 080 call volumes are likely to significantly decline. This, in turn, is likely to result in a negative tariff package effect for fixed OCPs (i.e. higher prices for other fixed telecoms services) between -£10m and -£25m. This compares to the -£14m to -£20m we estimated in the April 2012 consultation. The lower impact is mainly due to the wider range of fixed origination payments assumed and the lower volumes we assume now compared to the April 2012 consultation (as discussed above).

Impact on mobile OCPs taking changes in SPs' usage of 080 into account

A28.50 Below we first discuss our updated estimates comparing them to the status quo (i.e. the situation where SPs' average origination charge outpayments are equal to

[201] In the April 2012 consultation we also included an increase of 1% in total volumes, however, this did not have a material effect on our estimates and therefore we have decided to drop this assumption from our calculations.

0.5ppm[202]). We then compare our updated estimates with those in the April 2012 consultation.

A28.51 Given that our revised IARs for both mobile and fixed origination payments are likely to result in larger average origination charge outpayments for SPs than the status quo (i.e. 0.5ppm, before fixed CPs introduced tiered termination charges), making 080 free-to-caller is likely to significantly increase the costs of operating an 080 number for SPs.

A28.52 Several of the changes in our assumptions since the April 2012 consultation are likely to impact the likely SP average outpayment and, consequently, the extent to which SPs withdraw their 080 number. In particular, we now consider mobile origination payments are most likely to lie within our mobile Base case scenario range (i.e. between 1.5-2.5ppm). For the purposes of robustness, however, we allow for the possibility they could lie outside of this range and within our wider IAR of 1.0-3.7ppm. We also now consider it appropriate to adopt a fixed IAR of 0.3-0.6ppm, for the reasons discussed in Section 12. Finally, we have revised our assumptions regarding the likely share of calls originated from mobiles (i.e. 45% to 60%), as discussed in Section 12.

A28.53 The share of SPs that are likely to withdraw their number depends on the average SP outpayment resulting from the combination of the fixed and mobile origination payment and the extent of fixed to mobile substitution assumed. The assumptions consistent with our base case scenario result in average SP outpayments between 1.0-1.5ppm, which are associated with 19% of SPs withdrawing their number from 080 (according to the evidence from the 2011 SP survey). For assumptions outside of our base case but within our wider IAR, average SP outpayments may be as high as 2.46ppm (e.g. when the mobile and fixed origination payments are 3.7ppm and 0.6ppm, respectively, and the share of calls originated from mobile is 60%), which could result in around 36% of SPs withdrawing their number. We distinguish the TPE estimates associated with our base case coloured in red in Table A28.10 below, from those associated with the wider IAR in purple.

A28.54 Insofar as SPs change how they operate their 080 numbers, the impact on mobile OCPs' incremental profits depends on precisely what SPs currently active on 080 or other number ranges do. There are several possible reactions from SPs that may affect OCPs' incremental profits. These depend on whether SPs are (i) currently active on 080, or (ii) inactive or active on another range. These reactions are as follows:

- currently active on 080:
  - migrate to another number range;
  - use alternative measures to mitigate the costs of calls from mobile; or
  - get rid of the line completely; and
- currently inactive or on another range:

[202] As we discussed in paragraph 14.46 of the April 2012 consultation, origination charges are in a state of flux as a result of the 08x CAT Judgment and therefore we considered it more appropriate to rely on the previous prices for much of our assessment. We still consider this to be the case, as further discussed in Section 3 in Part A.

- o open new service on 080.[203]

A28.55 As further discussed in Annex 27, we have no information on the behaviour of SPs that are currently inactive on the 080 range. For this reason we have not attempted to estimate the impact on OCPs' incremental profits of additional migration to the 080 range that could result from making the range free-to-caller. In the case of SPs currently active on the 080 number range, all the reactions described above (except migration) are likely to depress mobile OCPs' incremental profits relative to the status quo. As a result, other mobile prices are more likely to rise. However where SPs migrate to another number range, the effect depends on whether calls to that new number range are more or less (incrementally) profitable than calls to 080 under the status quo.

A28.56 It is difficult to robustly estimate the magnitude of these effects, particularly given the uncertainty about the impact of migration on mobile OCPs' incremental profits. To illustrate:

- Suppose that an SP migrates away from 080 to 03. The retail price of 03 calls is the same as for geographic calls. For post-pay mobile subscribers, 03 calls are likely to be part of a bundle of inclusive minutes and it could thus be argued that the incremental revenue associated with these calls is low or zero. But if post-pay mobile subscribers make more calls to 03 then this may increase the likelihood that they exceed their monthly allowance of inclusive ('free') minutes (or that they choose to purchase a larger monthly allowance). As a result, 03 calls may make it more likely that subscribers pay an incremental charge for making other calls. Pre-pay mobile subscribers are charged for 03 calls. In 2009, mobile OCPs' average revenue from chargeable (out of bundle) 03 calls was 11.5ppm (excluding VAT). Their average revenue across all 03 calls was far lower (under 1ppm) since only 8% of these mobile calls were charged for.[204] We expect that prices of calls to 03 numbers are likely to be closer to this average price than to the out of bundle price if free-to-caller is implemented on the 080 range (as assumed below).

- In contrast, suppose that an SP migrates away from 080 to an (unbundled) 084 number with a low SC. For such calls the mobile OCP would earn its access charge. In 2009, mobile OCPs' average retention was 13.4ppm (excluding VAT) on the number ranges that we are proposing to unbundle.[205] However the level of the AC may be lower than implied by this figure. The unbundled tariff is likely to increase price awareness and competitive pressures which is likely to place downward pressure on OCPs' margins on non-geographic calls.

- It is also necessary to make an assumption about the proportion of calls to former 080 SPs that migrate elsewhere that are originated from mobiles. Unlike 080, where fixed and mobile calls have the same price (free), on other number ranges the price of mobile calls is likely to be different from the price of fixed calls. This will affect the proportion of mobile calls to those other ranges.

[203] There is a possibility that SPs currently active in the 080 range or inactive on this range would increase the number of 080 numbers they hold as a result of our decision to make the range free-to-caller. However, for the reasons discussed in Annex 27 we do not consider that this is likely to be material.

[204] Data underlying 2010 Flow of Funds study. Page 38 of this study stated that "…our revenue figures do not include any notional element of bundle revenues where a call is covered in bundle."

[205] Specifically the 08 ranges (other than 080), 09 and 118. Calculated using data underlying 2010 Flow of Funds study.

A28.57 Notwithstanding these concerns we have carried out some further calculations to try to shed some light on these factors. The results are set out in Table A28.10.

Table A28.10: Free-to-caller 080 taking SPs' reactions into account – impact on mobile SPs (compared to the status quo)

Mobile 080 origination payment	Assumptions about calls to migrated SPs	45% of 080 calls originated from mobiles	60% of 080 calls originated from mobiles
1.0ppm	2ppm profits, 30% from mobiles	-£32m	-£31m
	8ppm profits, 20% from mobiles	-£19m	-£18m
	8ppm profits, 30% from mobiles	-£9m	-£8m
1.5ppm	2ppm profits, 30% from mobiles	-£20m	-£15m
	8ppm profits, 20% from mobiles	-£7m	-£2m
	8ppm profits, 30% from mobiles	+£3m	+£8m
2.5ppm	2ppm profits, 30% from mobiles	+£4m	+£15m[206]
	8ppm profits, 20% from mobiles	+£17m	+£34m[206]
	8ppm profits, 30% from mobiles	+£27m	+£48m[206]
3.7ppm	2ppm profits, 30% from mobiles	+£29m	+£43m
	8ppm profits, 20% from mobiles	+£47m	+£67m
	8ppm profits, 30% from mobiles	+£62m	+£86m

A28.58 This Table was calculated as follows:

- we use the same assumptions as in Table A28.7 above;
- we have assumed that mobile OCPs' incremental costs of originating 080 calls are 0.85ppm;
- if 080 is made free-to-caller then SPs accounting for 19% of 080 call volumes are assumed to change their behaviour for mobile origination payments of 1ppm, 1.5ppm and 2.5ppm (at 45% of calls originated from mobile); 28% in the case of 2.5ppm (at 60% of calls originated from mobile) and 3.7ppm (at 45% of calls originated from mobile); and 36% in the case of origination payments at 3.7ppm (at 60% of calls originated from mobile). We assume that all SPs who said they

[206] As discussed above, this scenario lies outside of our Base case scenario range. The maximum TPE within our Base case scenario range, calculated assuming 3.0ppm mobile origination payment, 0.3ppm fixed origination payment and 45% of calls originated from mobile (for the reasons discussed above), gives the following TPE for each of the scenarios above: £16m, £29m and £39m, respectively.

would get rid of their 080 number are likely to migrate to another number range.[207]

- for those SPs that migrate elsewhere, we have used three different scenarios to explore the impact on mobile OCPs:

    - o 30% of migrated call volumes are originated by mobile OCPs and mobile OCPs earn an incremental profit of 2ppm on calls to migrated numbers. This could reflect the situation where most migrating SPs move to the 03 number range;

    - o 20% of migrated call volumes are originated by mobile OCPs and mobile OCPs earn an incremental profit of 8ppm on calls to migrated numbers. This could reflect the situation where most migrating SPs move to the 084 number range;

    - o 30% of migrated call volumes are originated by mobile OCPs and mobile OCPs earn an incremental profit of 8ppm on calls to migrated numbers. This could reflect the situation where most migrating SPs move to the 084 number range and a fairly high proportion of these calls are made from mobiles; and

- we have assumed that making 080 free-to-caller increases the proportion of 080 calls originated from mobiles to either 45% or 60%.

A28.59 We recognise that these calculations are built upon a number of assumptions, particularly about migrated calls. However a number of messages emerge from the above Table:

- mobile calls to other number ranges may, on a ppm basis, be less profitable than mobile 080 calls currently are. However the proportion of mobile calls on 080 is likely to be higher due to the fixed to mobile substitution. Conversely, calls to SPs that migrate elsewhere may be more profitable on a ppm basis than mobile calls to a free-to-caller range but the proportion of mobile calls to those numbers may be lower than to a free-to-caller range. This makes it difficult to be definitive about the impact on mobile OCPs of migration; and

- nonetheless these calculations suggest that, even once the change in SPs' behaviour is taken into account, the impact on mobile OCPs is likely to be relatively small and, under certain circumstances, could be positive. This is the same broad conclusion that arose from the simpler analysis set out above where we assumed that overall 080 call volumes did not change.

[207] We recognise that this is not entirely consistent with the evidence from our 2011 SP survey and that it is likely to underestimate the TPE. Q18 of the 2011 SP survey asked for the reaction of SPs that were "very" or "fairly likely" to get rid of their 080 number. 60% of respondents said they were likely to migrate elsewhere, 20% block calls and 15% withdraw their service altogether. We now acknowledge that our proposed access condition will effectively prevent TCPs from blocking mobile calls on behalf of their SP customers (as further discussed in Section 14) and we consider that a larger proportion of SPs may resort to alternative measures to mitigate the cost of calls from mobile (as discussed in more detail in Section 12. However, we have been unable to determine to what extent SPs will react to higher origination payments using each of these alternatives. For this reason we have assumed that the 19% of SPs who responded that they were "very" or "fairly likely" to get rid of their 080 line will all migrate to another number range. This is likely to underestimate the level of the TPE, given that other reactions (such as getting rid of the line completely or the use of alternative measures to mitigate the costs of calls from mobile) would certainly reduce mobile CPs' profits, whereas migration may or may not depending on the number range to which SPs migrate.

A28.60 In terms of the differences from our estimates presented in the April 2012 consultation, these are mainly due to the lower volumes assumed and the change in our assumption about the share of SPs that migrate elsewhere, as discussed above.

Impact of making 080 a Maximum Mobile Price range

A28.61 In the case of setting a MMP for 080, we have not reproduced the assessment of this option that we conducted in Annex 24 of the April 2012 consultation. The main reason for this is that the only input to that assessment that has changed since our consultation is the cost modelling that we have updated in Annex 26. We have nonetheless estimated the tariff package effect associated with making 080 a Maximum Mobile Price ('MMP') number range (i.e. setting a maximum price of zero for fixed 080 calls but a non-zero maximum retail price for mobile calls) for both mobile and fixed OCPs using our updated cost modelling.[208]

A28.62 In the April 2012 consultation we explained there were three possible retail prices under the MMP approach, namely:

- **4.2ppm:** the LRIC+ with 100% A&R costs and including VAT;[209]
- **5.0ppm:** the LRIC+ with 100% A&R costs, including VAT, an allowance for common costs no longer recovered from termination and slightly rounded up (which we argued would facilitate consumer price memorability);[210] and
- **AC:** a retail price equal to the access charge (i.e. subjecting the retail price to the tariff principles we specified for the unbundled tariff, without us specifying the level of the maximum price). [211]

A28.63 Since the April 2012 consultation, we have updated our estimates of the costs of originating a mobile call to 080, as further discussed in Annex 26. Our updated estimate of the LRIC+ with 100% A&R costs and including VAT is 6.6ppm (or 5.5ppm excluding VAT).[212] This includes an allowance for the common costs that are no longer recovered from termination. In light of this, our updated assessment of the tariff package effect for setting a MMP only uses the following maximum prices:

- **6.6ppm:** the LRIC+ with 100% A&R costs, including VAT, an allowance for common costs no longer recovered from termination; and
- **AC:** as in the April 2012 consultation.[213]

[208] Under this option, mobile origination payments are assumed to either be the same as fixed origination payment or to be zero (if the maximum price of mobile calls is equal to the AC). Since SPs' expenditure on origination payments is thus unlikely to materially change, we have not attempted to estimate this effect. This also implies that 080 SPs are unlikely to migrate elsewhere, so we have not modelled the effects of migration either.
[209] See paragraph A24.46 and A24.66 to A24.71 of the April 2012 consultation.
[210] See paragraph A24.70 of the April 2012 consultation.
[211] See paragraphs A21.11 to A21.14 of the April 2012 consultation.
[212] We recognise that in practice if we were to impose a maximum mobile price we could decide to impose a round number to aid consumer understanding, however, the impact of this on the TPE is unlikely to be material.
[213] See paragraphs A21.11 to A21.14 of the April 2012 consultation.

Impact on mobile OCPs

A28.64 In Table A28.11 we present our estimates of the impact on mobile OCPs of setting a MMP for 080 using the assumptions described above. The cells show the impact on mobile OCPs' incremental profits from 080 calls (and hence the magnitude of the tariff package effect) relative to the status quo. We note that the changes compared to the impacts estimated in the April 2012 consultation relate to:

- the use of the likely volumes in late-2014 (rather than the volumes in 2009 using the Flow of Funds study in the April 2012 consultation, as discussed above); and,

- the use of a maximum mobile price of 6.6ppm rather than 4.2ppm (for the reasons discussed above).

Table A28.11: Maximum Mobile Price for 080 – impact on mobile OCPs (compared to the status quo)

Maximum price of mobile calls (incl. VAT)	Percentage of 080 calls originated from mobiles			
	5%	10%	20%	30%
6.6ppm	-£26m	-£9m	+£25m	+£59m
AC of 10ppm	-£17m	+£10m	+£62m	Omitted
AC of 16.1ppm	+£0m	+£43m	Omitted	Omitted

A28.65 This Table was calculated as follows:

- the volumes and initial incremental profits are the same we use in Table A28.7 above;

- we have assumed that mobile OCPs' incremental costs are 0.85ppm;

- we do not know what average AC mobile OCPs will set. For illustrative purposes we have used 10ppm and 16.1ppm (including VAT at 20%). The latter figure is based on mobile OCPs' retention in 2009 and is thus likely to be an upper bound;[214]

- we have assumed a mobile origination payment of 0.5ppm for when the maximum call price is 6.6ppm. When the maximum call price is equal to the AC we have instead assumed a mobile origination payment of zero (as we discussed in Annex 24 of the April 2012 consultation);

- for simplicity we have assumed that there is no impact on total 080 call volumes under the MMP approach. Further:

[214] This figure was calculated by taking mobile OCPs' retention on 084, 087, 09 and 118 calls and adding VAT at 20%. If we instead take OCPs' retention on all 08, 09 and 118 calls (i.e. including 080) then this rises to 16.4ppm (including VAT), which would have a small positive impact on the figures in the final row of Table A28.11. Retention figures calculated using data from the 2010 Flow of Funds study.

- we have looked at four scenarios for the proportion of 080 calls originated from mobiles: 5% (same as at present), 10%, 20% and 30%. Note that these are lower than the proportion of mobile calls to a free-to-caller number range that we have modelled above (namely 45% to 60%). This is because mobile calls to an MMP number range are likely to be more expensive than fixed calls (which are free), so less fixed to mobile substitution is likely to occur; and

- where the maximum mobile price is relatively high the increase in the proportion of mobile calls is likely to be smaller. We have thus deliberately omitted the cases where the maximum price is equal to the AC but a high level of fixed to mobile substitution occurs. These cases are less plausible (they all involved an increase in mobile 080 incremental profits of over £100m).

A28.66 We estimate that the TPE for mobile CPs under an MMP approach would be between -£26m and +£62m, compared to -£55m and £96m in the April 2012 consultation. The difference is driven by the higher maximum price of 6.6ppm (which reduces the negative impact of the MMP approach on incremental profits) and the lower volumes assumed which both reduce the negative and positive TPE on mobile CPs' incremental profits. These calculations suggest that the tariff package effect may be small or even positive for mobile OCPs but is sensitive to the proportion of calls that are originated from mobiles.[215] Even with a low maximum mobile price, if the proportion of mobile calls rises to 20% or more then this offsets the effects of lower call prices (the overall impact on mobile OCPs' incremental profits from 080 calls is almost zero or positive). If mobile call volumes do not significantly increase then there may be a reasonably sized negative tariff package effect.

Impact on fixed OCPs

A28.67 If 080 becomes a MMP range then, as discussed above, the proportion of calls originated from mobiles may rise. Since the fixed origination payment is greater than the incremental cost of fixed 080 calls, the fall in fixed call volumes will tend to reduce fixed OCPs' incremental profits on 080 calls. This is similar to the effect that occurs if 080 is made free-to-caller and we have thus modelled it in the same way as Table A28.9 above. The difference is that in the scenarios we have considered, the proportion of mobile calls is lower: 5% (same as at present), 10%, 20% and 30%.[216] These correspond to the scenarios we looked at when analysing the impact on mobile OCPs above. We have also considered two scenarios: (i) a fixed origination payment at the lower end of our IAR (i.e. 0.3ppm) and (ii) at the higher end of our IAR (i.e. 0.6ppm).

[215] The suggestion that a maximum price may actually be profitable for mobile OCPs begs the question of why they do not cut call prices now. However, current mobile OCPs face a coordination problem. If a single mobile OCP cuts its 080 call price then this may have little or no effect on the volume of calls received by that OCP (this is consistent with the evidence we presented in Annex 8 of the April 2012 consultation). In contrast, if all mobile OCPs cut their prices to the same level then this allows SPs to confidently and accurately inform callers (e.g. in adverts) that "mobile calls cost no more than Xppm". As a result, callers are more likely to be aware of the price change and are more likely to react to it.

[216] We have also not considered the impact of an increase in overall 080 call volumes. However, as with the case where 080 is free-to-caller, the effect of a small increase in overall call volumes is likely to be comparatively small.

Table A28.12: Maximum Mobile Price 080 – impact on fixed OCPs (compared to status quo)

Fixed origination payment	Proportion of 080 calls from mobiles	5%	10%	20%	30%
0.3ppm	Impact on fixed OCPs' 080 incremental profits	-£15m	-£16m	-£18m	-£20m
0.6ppm	Impact on fixed OCPs' 080 incremental profits	+£3m	+£2m	-£2m	-£6m

A28.68 This Table suggests that the impact on fixed OCPs' incremental profits of setting a MMP for 080 (between -£20m and £3m) are likely to be smaller than making it into a free-to-caller range, given that there is likely to be less fixed to mobile substitution. The direction of the TPE depends on the level of origination payments assumed and the share of 080 calls originated from mobile. The differences from our estimates in the April 2012 consultation (between -£11m and £0m) are mainly driven by the different origination payments and lower volumes assumed.

Summary of the assessment of the tariff package effect

A28.69 In this section we have updated our assessment of the tariff package effect that is likely to result from making the 080 range free-to-caller, as well as the impact of setting a MMP.

A28.70 In the case of free-to-caller, the impact on mobile CPs could be positive or negative depending on the assumptions used, mainly the level of origination payments. For SPs, a free-to-caller approach is likely to increase their costs significantly, although the magnitude of the increase depends on the underlying assumptions. In the case of fixed CPs, we estimate that the free-to-caller approach will have a negative impact.

A28.71 For the MMP approach, we estimate that the impact on both fixed and mobile CPs could be positive or negative depending on the assumptions used.

A28.72 The differences between the April 2012 consultation and our updated assessment are due to the different assumptions used, as explained above in each case, most importantly due to the fact that we have used the likely volumes of call minutes to 080 numbers by late-2014 (rather than in 2009). As we expect the volumes in 2014 to be lower than in 2009, this assumption has tended to reduce the overall impact of both options (free-to-caller and MMP).

Part C - Annex 29

Assessment of the 080 and 116 options

Introduction

A29.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation on our assessment of the options for the 080 and 116 ranges.[217] It also sets out our comments in response to the issues raised by stakeholders. As set out in Section 13, we are minded to make the 080 and 116 ranges free-to-caller from both fixed and mobile phones; this preference takes account of the stakeholder comments set out in this Annex.

A29.2 We have divided the comments, and our responses, into the following areas:

- i) alternative options for 080, including:
  - o wholesale-only intervention; and
  - o expanding the DWP approach.
- ii) setting a maximum mobile price ('MMP') for 080;
- iii) making 080 'free-to-caller', where, as well as general comments (including on the proportionality of the approach) we also respond to stakeholder comments on each of our assessment criteria:
  - o consumer price awareness;
  - o efficient prices;
  - o service quality, variety and innovation;
  - o access to socially important services; and
  - o regulatory burden.
- iv) approach to 0500; and
- v) approach to 116.

Alternative options for 080

Summary of position in April 2012 consultation

A29.3 In response to the December 2010 consultation a number of stakeholders suggested alternative options for addressing the market failures and consumer harm in relation to the 080 range. We considered these alternative options in the April 2012 consultation but rejected them on the basis that they did not sufficiently

[217] We also discuss some stakeholder comments in relation to 0500, although we have separately consulted on the 0500 range since our April 2012 consultation and we are not taking a decision on the 0500 range as part of this document.

address the consumer harm and/or were not practical to implement.[218] Some of the alternative options we discussed included:

- **a price awareness campaign**: we said we had significant doubts about the ability of any advertising campaign to address the underlying market failures, in particular the negative externalities and lack of consumer price awareness, because the varied pattern of mobile 080 pricing would remain, making the communications message very complex;

- **extending the voluntary agreements between OCPs and SPs for zero-rating of 080 calls (e.g. the DWP agreement):** we considered that this would not fully address our concerns about price awareness because it would remain the case that callers would be unable to infer from the number prefix (080 or 0500) whether or not a particular call would be free or not. In addition we noted it was unclear how such a scheme would work in practice and that it could create billing complications; and

- **wholesale only intervention:** we assessed the wholesale only approach in Annex 17 of the April 2012 consultation but rejected it on the basis that there was no evidence that resolving issues at the wholesale level would address the concerns which were evident at the retail level, in particular poor consumer price awareness.

Stakeholder comments

A29.4 In response to the April 2012 consultation some stakeholders, in particular EE and Virgin Media, reiterated their support for these, or other, alternative approaches.

A29.5 EE remained of the view that Ofcom should first consider acting only at the wholesale level, before considering what retail remedies (if any) were necessary and proportionate.[219] It said that when presented with an origination charge that generated, for example, broadly the same level of revenue that a mobile OCP could generate from charging for 080 calls (as it said would be the case if the origination charge was set at the same level as the AC for 084/087 numbers[220]), it was difficult to see why a mobile OCP would not be prepared to reach a commercial agreement to zero rate such calls. Virgin Media also continued to believe that Ofcom should approach regulatory intervention first by addressing the problems at the wholesale layer, specifically through a review of the NTS Call Termination market which it believed would lead to a finding that all TCPs had SMP.[221]

A29.6 Virgin Media reiterated its view (which it also made in its response to the December 2010 consultation) that significant benefits could be achieved, and many of the issues addressed, by expanding the approach taken by the Department of Work and Pensions (‘DWP’) for 080 services, whereby SPs that had a particular need/desire for their service to be free-to-caller commercially agreed mobile

[218] April 2012 consultation, Part C, Section 16, pp. 27-33.
[219] EE, April 2012 consultation response, pp.45 & 57.
[220] See Annex 27 where we provide further details on EE’s arguments on the level of the origination charge
[221] Virgin Media, April 2012 consultation response, p.1. It also noted that it had elaborated further on the need for this review in its response to Ofcom’s Call for Inputs on the Fixed Narrowband Market Review. Virgin Media’s arguments were made about the non-geographic calls market as a whole (rather than just 080). We respond to Virgin Media’s regarding this approach for the other non-geographic number ranges in Annex 19.

origination payments with mobile OCPs, in return for the mobile OCPs not levying a charge at the retail level.[222] EE similarly remained of the view that a viable alternative option to meet SP preferences for a free-to-caller number was the designation of a third party or commercial aggregator to facilitate commercial negotiations between OCPs and SPs for the zero-rating of 080 calls (using the DWP agreement as a precedent/template).[223]

Ofcom's response

Wholesale only intervention

A29.7 EE and Virgin Media's arguments in favour of a wholesale only approach are largely the same as those made in response to the December 2010 consultation and we set out our position on those arguments in detail in Annex 17 of the April 2012 consultation (albeit this response was related to all NGCs, not just 080) as well as in paragraph 16.44 in Section 16 of the April 2012 consultation.

A29.8 As we set out there, the market failures we have identified (i.e. poor price awareness; the horizontal and vertical externalities)[224] are the result of certain features of the retail market rather than wholesale problems or even overall competition in the retail market. We explain below why we do not consider that these failures would be adequately addressed if we were to refrain from regulating at the retail level and instead conduct an SMP review of the market.

A29.9 We set out our concerns about market failures which are specific to 080 in Section 4 in Part A. In particular, we present and discuss evidence of the existence of a vertical externality on the 080 range.[225] Wholesale SMP regulation would not incentivise OCPs to take the preferences of SPs into account when they set retail prices (essentially it would not allow SPs to set retail 080 calls to zero). The existence of a horizontal externality on 080 currently weakens competitive pressure on 080 prices. OCPs have an incentive to raise retail prices above zero because, given the lack of confidence in 080 prices, some of the consequences of the higher prices are faced by other OCPs, not just themselves. Specifically, the increased retail charges of mobile operators appear to impact on consumer understanding of the retail price of calling this range from fixed lines. Wholesale SMP regulation would not address this concern, either.

A29.10 This view is also informed by our understanding of today's market. In effect, the relatively static nature of the wholesale market for non-geographic termination rates, prior to the more recent introduction by BT of tiered charges, might approximate a situation which could emerge under wholesale SMP regulation alone, yet the market failures we have identified were emerging under that regime.

A29.11 EE and Virgin Media have not provided any evidence or additional reasoning that suggests we should revise our assessment of the efficacy of using wholesale SMP regulation to address our retail concerns. Therefore, we still consider that, even if

[222] Virgin Media, April 2012 consultation response, Q16.1 pp.7-8.
[223] EE, April 2012 consultation response, p.9. EE also suggested a number of other alternative approaches which it considered would meet SPs preferences, including the use of shortcodes or other market-led mechanisms. These are discussed under the service quality, variety and innovation criterion heading below.
[224] An explanation of these market failures is set out in Section 4, Part A.
[225] We set out the evidence of SP demand for a free-to-caller range and the difficulties there have been for SPs who want free 080 calls in negotiating such an outcome.

the wholesale concerns we identified (i.e. imbalances in negotiating power – see Section 14) were removed, it would not address the significant concerns we have about the operation of the retail level.

A29.12 EE specifically argues that if wholesale origination charges were set at the level of the AC that applies to the unbundled tariff, this would allow OCPs to recover their costs, and so OCPs would be likely to voluntarily zero-rate 080 calls – meaning that there would be no need for retail regulation. However, as we set out in the April 2012 consultation, we still consider that, absent retail regulation and even if wholesale origination charges were set at an appropriate level, this would not necessarily result in OCPs voluntarily zero-rating 080 calls. There is a wide range of differing stakeholder views on what constitutes a fair and reasonable mobile origination charge for calls to 080 numbers (stakeholder views on this issue are set out in detail in Annex 27). For the purposes of our impact assessment we have assumed a range which is lower than the level which EE favours (we are using a range of 1ppm to 3.7ppm). As already discussed above, without regulation at the retail level there would be no guarantee that the price charged to callers would be set at zero, and SPs would have little control over the price of calls to their service. Whilst some mobile OCPs might choose to zero-rate their 080 calls (in the same way that the MVNO Giff Gaff currently chooses to) other mobile OCPs would not necessarily adopt the same approach. Instead, OCPs would still be free to charge whatever retail price they could commercially sustain - a price which previous market performance suggests is considerably higher than zero for mobile OCPs.

A29.13 For these reasons, we consider that a reliance on wholesale SMP regulation alone (without intervention at the retail level) would not adequately address these problems of lack of price awareness at the retail level and the externalities that we have identified.

Expanding the DWP approach

A29.14 We considered Virgin Media's suggestion of expanding the DWP approach in the April 2012 consultation but (as noted in paragraph A29.3 above) rejected it on the basis that it would not fully address the consumer price awareness concerns we had identified because there could not be a consistent message about the pricing of 080 calls (i.e. some would be free, others would not). In addition we also noted some practical concerns about determining a set of criteria for deciding which type of services would be included in such a scheme.[226] Virgin Media did not present arguments or evidence to challenge our reasoning, which we therefore still consider to be valid. We consider that EE's suggestion of designating an aggregator to facilitate negotiations between OCPs and SPs for zero-rating of 080 calls would suffer from the same issues. In particular there would still be consumer uncertainty at the point of call about whether or not a 080 call was in fact free to call from a mobile, i.e. a caller would not be able to infer from the number prefix whether or not a particular call would be free. We therefore continue to consider that such an approach would not be appropriate for protecting consumers from the harm we have identified.

[226] April 2012 consultation, Part C, Section 16, pp.29–30.

Setting a maximum mobile price for 080 calls

Summary of position in the April 2012 consultation

A29.15 In the April 2012 consultation, we considered the option of setting a maximum mobile price (MMP) for calls to 080 numbers (Option 2). We said that there were differences between mobile and fixed OCPs' efficient costs of originating and retailing 080 calls (our assessment of these costs was set out in Annex 22 of that document). We considered that to be a potentially legitimate reason for setting different retail price maximums for mobile and fixed calls to 080, respectively.

A29.16 Annex 24 of the April 2012 consultation set out a detailed assessment of how we established what a reasonable maximum price might be for mobile calls (we assumed that fixed calls to 080 would be charged at zero). On the basis of that assessment, we proposed two separate approaches:

a) a fixed ceiling set at either 4.2ppm (including VAT) or 5ppm (including VAT) (Option 2(a)); or

b) a variable ceiling set at the same level as the Access Charge ('AC') that applies to calls to the unbundled tariff number ranges (Option 2(b)).[227]

A29.17 We considered that both these options - Options 2(a) and 2(b) - had the potential to improve consumer price awareness relative to the status quo. This is because SPs would be able to specify either a maximum price (4.2 or 5ppm), or that an AC applied, in their advertising and that pricing message could also be communicated through the PCA. We noted, however, that the pricing message would be more complex than making 080 free-to-caller, particularly under Option 2(b) which might make it difficult for consumers to learn and remember the pricing message associated with the 080 number range.

A29.18 With respect to efficient prices, we noted that these options had the advantage of sending a price signal to consumers to encourage them to take account of the difference in fixed and mobile origination costs when choosing how to make a 080 call. We also considered it would reduce the horizontal and vertical externality effects to some extent. However, we considered that the horizontal externality resulting from different fixed and mobile prices would remain. We also highlighted that, in terms of the vertical externality, Option 2(b) would only enable SPs to advertise that an AC applied to the call, not the maximum price. We considered that these options would have the potential to lead to a rebalancing of both fixed and mobile prices, but highlighted that the level of the Tariff Package Effect ('TPE') was uncertain because we had less evidence about how the proportion of fixed and mobile calls might change under this option.[228]

A29.19 We said that we expected these options to offer an improvement in service quality, variety and innovation, relative to the status quo, because SPs would be able to advertise a clearer price for 080 calls. We also highlighted that they would create fewer costs for SPs compared to Option 1 (making the 080 range free-to-caller), but we noted that SPs had diverse preferences and that, for those that wanted to offer a

[227] April 2012 consultation, Annex 22 and Annex 24, and Part C, Section 16, p.71.
[228] April 2012 consultation, Part C, Section 16, pp.72-76.

free-to-caller service, Option 2 would not meet their preferences, which could indirectly affect their ability to innovate and offer new services on the 080 range.[229]

Stakeholder comments on MMP

A29.20 The THA (while being in favour of the free-to-caller option) said that several of their members said that a maximum mobile price could achieve the aim of free calls from mobiles without causing increased costs to helplines.[230]

A29.21 EE said that if retail reform of calls to Freephone numbers was required (which it was not convinced was the case), then it considered that the reform least likely to harm consumers was to:

i) designate 080 and 116 with a maximum mobile price set equal to the AC for 084/087 calls (alongside potentially mandating the fixed price at zero in the Numbering Plan and issuing guidance on the origination charge for optionally zero-rated 080 calls); and

ii) designate the 0500 range as free-to-caller and issue guidance on a fair and reasonable origination charge (which it considered for mobile should be a range between the AC for 084/087 calls and not less than 5ppm at the lower level).

A29.22 EE considered that its alternative approach would provide the following benefits over the status quo:

- transparency and simplification of pricing would be achieved on both the 080 and 0500 ranges, whilst still retaining the important ability for mobile OCPs to adapt their retail pricing to meet consumer preferences;
- a simple solution to the vertical externality with the introduction of an entirely free to caller range (0500). It considered that providing SPs with an option or even incentive to migrate was less interventionist than forcing them to migrate. It considered that this would allow more opportunities for new and innovative Freephone services to be created and noted that this option contained the lowest risk of reducing the diversity of existing Freephone services;
- it would prevent retail charges from becoming ‘too high’, which would enhance access to Freephone services (including socially important services) to all customers. It also argued it had the lowest risk of a negative tariff package effect and the lowest risk of forcing Freephone SPs to migrate to ranges which were more expensive for callers than the current Freephone ranges; and
- it would entail the lowest risk of distorting market driven pricing signals by allowing the origination charge for zero-rated 080 calls to be set up to the level of the AC.[231]

A29.23 EE said an MMP equivalent to the 084/087 AC would be far less complex and costly to implement, particularly because there would be no requirement to agree

[229] April 2012 consultation, Part C, Section 16, pp.76-77.
[230] THA, April 2012 consultation response, p.19.
[231] EE, April 2012 consultation response, pp.44-45.

on a new origination charge nor any need for existing 080 SPs to migrate anywhere if they did not wish to do so.[232]

A29.24 EE disagreed with the practical objections which Ofcom had previously raised to the approach of linking the mobile origination charge to the level of a mobile OCPs' AC for 084/087 calls.[233] It said that:

- an AC varying between OCPs was no different to current ladder style termination, and said we could "simplify the process" by issuing guidelines that required "OCPs to calculate an average overall AC across all their tariff packages and update this figure annually based on the previous years tariffs and traffic volumes";
- OCPs already zero rated certain 080 numbers on an SP by SP basis and therefore it did not see any particular complexity associated with potentially expanding this to a broader number of SP ranges; and
- Ofcom could still propose different arrangements for mobile and fixed originated calls (given the differing origination costs and marketing costs).[234]

Ofcom response

A29.25 The THA said that some of its members would prefer MMP because it would allow calls to be free-to-caller without creating increased costs for helplines. However, the MMP option would mean that consumers calling from a mobile would still be charged for 080 calls. The costs for SPs would be lower; however, they would not be able to offer their customers a contact number which was universally free-to-caller. We have set out in more detail in Section 13 the evidence and reasoning which we consider supports the free-to-caller approach over setting a MMP.

A29.26 We note EE essentially supports Option 2(b), albeit it argues that the 0500 range should be designated as free-to-caller alongside this approach, as well as the issuance of guidance for 080 numbers that are voluntarily zero-rated.

A29.27 First, to address EE's arguments in favour of the MMP option as a whole. We agree with EE that implementing MMP Option 2(b), would provide some benefits over the status quo. However, we consider that the free-to-caller approach will address the consumer detriment we have identified more effectively and that the net benefits (i.e. the benefits even when the additional costs of making 080 free-to-caller are taken into account) are greater than the net benefits of setting a MMP (particularly where free-to-caller origination payments are within our base case scenario). We set out our reasoning and evidence to support this view in more detail in Section 13 and below. To respond to EE's arguments about the benefits of the MMP approach in turn:

- a maximum mobile price linked to an AC would be a more complex pricing message, which would make it difficult for consumers to learn and remember the message associated with the 080 range. In addition, the concern about the horizontal externality effect, in terms of consumers' expectations about the price of mobile 080 calls affecting their expectation of the price of fixed 080 calls, would

[232] EE, April 2012 consultation response, p.59.
[233] These objections were set out in paragraph 16.38 of the April 2012 consultation (Part C, Section 16, p.31).
[234] EE, April 2012 consultation response, p.57.

not be addressed. Furthermore, unlike the other unbundled tariff number ranges (e.g. 084 and 087), under EE's proposed option the AC would only apply on calls from a mobile (fixed line calls would be completely free), and this different treatment of fixed and mobile calls is likely to cause further confusion. We therefore consider that making 080 free-to-caller will better protect consumers from the harm experienced currently as a result of lack of confidence in 080 pricing and the negative externality effects;

- EE favours a MMP approach on 080 and a free-to-caller approach on 0500. We respond to EE's arguments about the role of the 0500 number range in paragraphs A29.167 to A29.171 below. We recognise that an MMP approach on the 080 range involves fewer costs for SPs. However, it also means higher mobile prices for 080 calls. SPs have diverse preferences but as we discuss in more detail in our assessment of the MMP option, our 2011 SP survey indicates that a greater proportion of 080 SPs would prefer 080 to be free-to-caller for the overall increase in cost we consider likely.[235] For those SPs, the option of migrating to the 0500 range may not be attractive and therefore their ability to innovate and offer new services on the 080 range would be negatively impacted. Furthermore, the increase in demand that we expect from making 080 free-to-caller is less likely to materialise under MMP (because the pricing message would be more complex, and because calls from mobiles would still be charged for) therefore there is less likely to be a positive impact on services as a result of any increase in demand;

- whilst MMP might prevent retail charges from becoming 'too high' and carries a lower risk of a negative TPE than a free-to-caller approach, the charges for calls from mobiles would remain higher than from fixed lines, which would particularly impact mobile-only consumers accessing socially important services. In addition, our analysis of the TPE of the free-to-caller approach (see paragraphs 13.44 to 13.47 in Section 13 and Annex 28) indicates that it is likely to be relatively small (particularly compared to overall mobile OCP profits) even under our most pessimistic scenarios, and is positive in some scenarios; and

- we do not consider that a MMP offers the lowest risk of distorting pricing signals. We recognise in Section 13 that making 080 free-to-caller will not result in the most efficient prices because callers will not take into account the additional resource costs of a mobile 080 call when choosing whether to make a call from a fixed line or a mobile. However, we consider the resulting inefficiency is likely to be small given the difference in resource cost is itself relatively small - 0.7-0.8ppm. We recognise in Section 13 that setting a MMP could avoid this inefficiency as it would send price signals to consumers that encourage them to take into account the difference in the cost of fixed and mobile calls. However, we also note that under an MMP equal to the AC the difference between the price of a fixed 080 call and the MMP would still be significantly in excess of the additional incremental cost of making a 080 call from a mobile compared to calling from a fixed line. This could lead to too few calls still being made from a mobile (albeit to a lesser extent than the status quo), and so does not necessarily reduce inefficiency relative to making the 080 range free-to-caller. Moreover, we set out in Section 13 (paragraphs 13.105 to 13.153) why we consider the MMP option would be less effective at addressing the vertical and horizontal externalities than making the 080 range free-to-caller. Because we consider these negative externalities would remain under a MMP, we consider prices

[235] 2011 SP Survey, Q20. See Table 13.7 in Section 13 where the results of the survey are set out and paragraphs 13.123 to 13.125.

under MMP are likely to be less efficient than making the 080 range free-to-caller.

A29.28 EE suggests that, if a MMP approach were adopted, calls to some 080 numbers might continue to be voluntarily zero-rated by mobile OCPs and that we could issue guidance on the origination charge that should apply to these calls. We consider that the existence of some 080 calls which are charged for from mobiles and others which were not could lead to continued consumer confusion about the nature of the 080 range. For example the CAB noted in its response that the existing DWP and THA schemes may have created confusion since consumers do not necessarily know that these 080 numbers are free from mobiles and are still deterred from calling them as a result.[236] As we noted in the April 2012 consultation, and we reiterate in our assessment in Section 13, having a clear and consistent pricing message for the 080 range is essential to protect consumers from confusion and lack of confidence in 080 prices that exists currently. A system which maintains differing OCP approaches to pricing structures on the 080 range will mean that confusion will endure.

A29.29 For the reasons outlined in the paragraphs above, and set out in Section 13, we consider that the MMP approach would not sufficiently address our concerns or protect consumers from the harm we have identified (even if some calls to 080 are voluntarily zero-rated by mobile OCPs).

A29.30 With respect to guidance on origination charges, we are proposing that all calls to 080 and 116 numbers made by consumers should be subject to a fair and reasonable origination charge. We are consulting on draft guidance as to how we would interpret the requirement for fair and reasonable charges in any future dispute (see Section 14). These regulatory obligations would apply to calls to 080 numbers which are currently zero-rated on a voluntary basis by mobile OCPs.

Making 080 free-to-caller

Summary of position in April 2012 consultation

A29.31 Before we set out our assessment of the free-to-caller option (‘Option 1’) in the April 2012 consultation we first discussed the design of this option and we set out a number of assumptions we had made as part of our assessment. In particular we discussed in detail the assumption we should make about the level of mobile origination charges that would apply if the 080 range were made free-to-caller (in Annexes 21 to 25 of the April 2012 consultation) and we assumed a range of 2.5ppm to 3ppm (which we referred to as the impact assessment range or ‘IAR’). Stakeholder comments on this aspect of our assessment are set out, and responded to, in Annex 27 of this document.

A29.32 We considered that, for the 080 range, making it free-to-caller best addressed the consumer detriment we had identified.[237] In particular we considered that the free-to-caller approach would offer significant benefits in terms of consumer price awareness because of the simplicity and consistency of the price message. We noted this would offer particular benefits to mobile-only consumers accessing socially important services on the 080 range, as well as addressing the vertical externality by providing SPs with a genuinely free-to-caller number range. We

[236] CAB, April 2012 consultation response, p.6.
[237] April 2012 consultation, Table 16.16, Part C, p.79, set out a summary of our assessment of both options against each of our assessment criteria.

therefore said Option 1 was our preferred approach. However, we recognised that this option would result in significant additional costs for SPs, and was likely to result in a certain level of SP migration away from the 080 range. Nevertheless, we considered that these negative effects were outweighed by the benefits of making 080 free-to-caller.[238]

A29.33 We noted that our preferred option implied a change to our policy preference in relation to 080 calls, which was previously that these calls should be free, or as close to free as possible. Our provisional conclusion in the April 2012 consultation was that these calls should always be free. We also noted that making the 080 range free-to-caller was in line with the original principle intended for the range, as highlighted by Oftel in 1996[239] and noted in the CAT 08x Judgment.[240]

Stakeholder comments – overall assessment and proportionality

A29.34 The vast majority of respondents supported our preferred option of making 080 free-to-caller noting that it would be beneficial for consumers. These respondents included the majority of fixed CPs that responded[241], Three[242], Vodafone[243], several consumer groups[244], SPs (or their representative groups),[245] and several individual respondents. For example, Consumer Focus said that making 080 free-to-caller would have clear economic benefits for consumers, especially mobile-only consumers.[246]

A29.35 Some of these stakeholders indicated, however, that their support was dependent on the way in which the free-to-caller approach was implemented (in particular the level of the mobile origination charge and the wholesale regulation of those charges). For example, Three noted that its support was based on the assumption that efficient cost recovery for OCPs was guaranteed, and it was concerned that the proposed access condition would not achieve this.[247] In addition, some stakeholders (including THA and Consumer Focus) noted concern about the continuing affordability of 080 numbers for SPs and the risk of a negative impact on service availability, in particular for those SPs providing socially important services.

A29.36 EE and Virgin Media were the only respondents that were opposed to making the 080 range free-to-caller in principle. They continued to argue (as set out in the preceding paragraphs) that alternative, less interventionist options, were more appropriate.

[238] April 2012 consultation, Part C, Section 16, paragraph 16.258.
[239] In a determination in March 1996, Oftel stated that “in principle, [it] believes that 0800 should be paid for entirely and should be completely free to the caller.” However, it also noted that its determination did not “prevent ONOs (originating network operators) from imposing a charge for 0800 calls on their customers.” Oftel, *Interim Charges for BT’s Initial Standard Services for Year Ending 31 March 1996: Determination and Explanatory Document*, January 1996.
[240] CAT 08x Judgment [2011] CAT 24, at [63] - [64]
[241] Including BT, CWW, FCS, [✂], Magrathea, Sky, Scottish and Southern Energy (‘SSE’), TalkTalk, UKCTA and Verizon,
[242] Three, April 2012 consultation response, p.21.
[243] Vodafone, April 2012 consultation response, p.3.
[244] Including the Citizens Advice Bureau (‘CAB’), Consumer Focus, the Communications Consumer Panel and the Fair Telecoms Campaign.
[245] Including Action4, the Direct Marketing Association, the DWP, National Grid, Northern Gas Networks and the Helplines Association (‘THA’).
[246] Consumer Focus, April 2012 consultation response, p.3.
[247] Three, April 2012 consultation response, pp. 21 & 38-42.

A29.37 EE disagreed that any change to the current regulation of 080 numbers was necessary, and submitted that the status quo appropriately balanced the needs of all stakeholders who provided and/or used non-geographic numbers.[248] EE said the evidence gathered by Ofcom quite clearly suggested that a free-to-caller approach would entail the highest costs for industry and consumers, with virtually no hard evidence to suggest that there would be any countervailing benefits for consumers generated by the proposals.[249] EE did not believe that a mere 'policy preference' of Ofcom for these ranges to be free-to-caller (or as close to free as possible) even a longstanding one, was any kind of substitute for a rigorous cost benefit analysis of the need for and proportionality of this preference. It said little weight should be given to the CAT's comments on that policy preference in the CAT 08x Judgment, given its view that:

> "we consider questions of policy preference to be, par excellence, the sort of question where there is no single 'right answer' and we agree with the Tribunal's statement in T-Mobile that the Tribunal should be slow to overturn such decisions".[250]

A29.38 EE said it therefore remained of the view that making 080 free-to-caller met none of the legal requirements and also failed to heed the warning in the CAT 08X Judgment regarding the caution to be exercised by Ofcom when regulating the pricing of CPs in the absence of any relevant SMP findings.[251]

A29.39 Similarly Virgin Media continued to argue (as it did in response to the December 2010 consultation) that Ofcom had not fully taken into account the negative consequences of making 080 free-to-caller. In its view those negative consequences were of sufficient magnitude to render it inappropriate to pursue the free-to-caller approach.

Ofcom response

A29.40 There is clear support from the majority of stakeholders for making the 080 range free-to-caller, albeit a number of concerns have been raised about the approach to implementation. We set out our updated analysis of the mobile origination charge (which takes account of these comments) in Annexes 26 and 27 as well as in Section 12. In addition, in Annex 30 and Section 14 we set out our updated approach to the access condition under the free-to-caller approach. Finally, we have responded to stakeholders' specific comments about the impact of the free-to-caller approach on service availability under the 'service quality, variety and innovation' assessment criterion below.

A29.41 EE and Virgin Media both argue against the free-to-caller option, in particular raising concerns about proportionality. Their challenges can be broken down into the following four issues, in particular, whether:

- our objective is legitimate – i.e. whether the level of consumer harm justifies our intervention in the market;

[248] EE, April 2012 consultation response , pp.44-47
[249] EE, April 2012 consultation response, p.45.
[250] EE, April 2012 consultation response, p.46. The quote is from the 08X CAT Judgement, paragraph 230.
[251] EE, April 2012 consultation response, p.4. EE highlighted paragraph 442 of the 08X CAT Judgment, http://www.catribunal.org.uk/238-7221/Judgment.html, where the CAT stated "We are mindful that price control is an intrusive form of control which, elsewhere in the 2003 Act, can only be introduced by SMP Condition".

- the intervention will achieve our objective – i.e. whether free-to-caller will address the consumer harm we have identified;
- whether there are less intrusive means of meeting that objective; and
- whether the action is a reasonable one to take in light of the impact it would have – i.e. that the implementation costs of the free-to-caller option are justified by the benefits.

A29.42 In relation to the first issue, EE in particular has challenged our assessment of the retail market failures and consumer harm that arises on the 080 range.[252] We have responded to its comments in detail in Annex 8. Our assessment remains that there is sufficient evidence of market failures and resultant harm to consumers (as set out in that Annex and in Section 4) so as to warrant taking regulatory action.

A29.43 Second, EE questioned whether the free-to-caller option will in fact benefit consumers and SPs. Although we recognise that there are some uncertainties (for example, the level of additional demand that will be created), we are satisfied that there is sufficient evidence to indicate that the free-to-caller approach is likely to address the consumer harm we have identified. In particular, it will lead to improved consumer confidence in 080 pricing and free mobile calls to 080 numbers for all consumers, as well as addressing the vertical and horizontal externality effects by meeting the demand from a significant proportion of SPs who would like a free-to-caller range and enabling them to advertise a single pricing point of "free" across both fixed and mobile calls. Section 13 sets out our assessment of the free-to-caller approach, including evidence of the benefits and costs, and our reasoning for preferring this option over the alternatives.

A29.44 EE and Virgin Media also argued that other, potentially less interventionist, options would also meet our objectives. We have set out in paragraphs A27.7 to A27.14 above why we consider these alternative options would not meet our objectives because they would not sufficiently address the consumer harm we have identified.[253]

A29.45 EE in particular argue that setting a MMP would offer benefits over the free-to-caller option for the 080 range (when combined with designating the 0500 range as free-to-caller). We considered the MMP option for the 080 range in detail in the April 2012 consultation and we have responded to EE's specific comments under that option heading above (paragraphs A29.15 to A29.30). We consider that making 080 free-to-caller will better address the market failures and associated negative effects than setting a MMP for the reasons set out there, and in Section 13.

A29.46 EE and Virgin Media also question whether the costs/negative impacts of implementing the free-to-caller option are justifiable. In particular Virgin Media refers to 'negative consequences' of the option, although apart from comments on the efficiency of fixed to mobile substitution (which we respond to under the efficient prices heading below) it did not provide any further details or comments on our assessment of the potential negative impacts which we set out in the April 2012 consultation, nor does it provide any evidence of those 'negative consequences'.

[252] Some other stakeholders who did not object in principle to a free-to-caller approach on 080 nevertheless commented on our analysis of consumer harm and retail market failures. We respond to these in Annex 8.
[253] We respond to EE's arguments about the use of mobile voice shortcodes as an option for meeting SP preferences in Part A, Annex 8.

EE makes a number of more detailed comments on the costs and benefits of the free-to-caller approach and we have responded to these in more detail under the relevant sub-headings below. In addition, we have set out, and updated, our estimated costs of making 080 free-to-caller in Annex 10, taking into account some of EE's comments on these costs. We now estimate a one-off cost of between £8.8m to £57.5m (if origination payments are within our wider IAR) in making the 080 range free-to-caller.[254] We also set out our assessment of the benefits of the free-to-caller approach in Section 13, as well as a discussion of the quantification of those benefits in Annex 11 of Part A. Based on the assessments in those Sections and Annexes we conclude that the benefits of the free-to-caller option are likely to outweigh the costs of implementation.

A29.47 We recognise the particular risk of a negative impact on 080 service availability under the free-to-caller option. However as discussed in more detail under the 'service quality, variety and innovation' criterion below, for an increase in origination payments within our base case scenario, the evidence suggests that more SPs would prefer the 080 range to be free-to-caller range as opposed to MMP. In addition, under our base case scenario for origination payments, the 2011 SP survey evidence suggests that 68% would be likely to retain their 080 service.[255] We set out our updated IAR for origination payments in Section 12.

A29.48 Finally, EE refers to comments in the 08X CAT Judgment about the regulation of retail pricing in the absence of SMP findings. We have addressed this comment in Annex 13 in Part A. EE also argues that policy preference alone is not sufficient to justify a decision to implement a free-to-caller approach. Although we set out our policy preference for a free-to-caller 080 range in Section 13, our analysis of the free-to-caller option for 080 is clearly not based on policy preference alone. In the April 2012 consultation, we carried out a detailed analysis of the option against each of our assessment criteria in Section 16 of that consultation. We have adopted the same approach in this document, including a more detailed quantification of the various costs that we consider would result from making the 080 range free-to-caller (see Annex 10).

A29.49 In conclusion, the analysis above (and set out in more detail in the relevant Sections and Annexes to which we have referred) leads us to the view that making 080 free-to-caller is the most appropriate and proportionate approach for this number range, taking into account the consumer detriment we have identified and the costs and benefits of each potential option.

A29.50 We now set out in more detail the stakeholder comments received on different aspects of our assessment of the free-to-caller option, including:

- consumer price awareness;

[254] If origination payments are within our base case scenario we estimate the range of these costs to be lower, between £8.8m and £33.0m – see paragraph 13.25 in Section 13, and Section 12 (in particular paragraph 12.165) for why we consider that origination payments within our base case scenario are more likely.

[255] 2011 SP Survey, Q17. 68% of SPs said they would be likely to (or very likely to) keep their Freephone number(s) if their costs rose by 1ppm. We consider this 1ppm increase likely for the reasons set out in Section 12. We note that there are some scenarios where mobile origination payments are towards the upper end of our wider IAR and fixed to mobile substitution is also high where the survey results suggest that the proportion of SPs who would withdraw their 080 number could be materially higher than 19%. However, for reasons explained in Section 12, we consider these scenarios unlikely. Note that there was a typographical error in paragraph 16.169 of the April 2012 consultation where we quoted this figure as 60% rather than 68%.

- efficient prices;
- service quality, variety and innovation;
- access to socially important services; and
- regulatory burden

Consumer price awareness

Summary of position in the April 2012 consultation

A29.51 We considered that the free-to-caller option would offer the most direct solution to the issues of consumer price awareness in relation to the 080 number range. We said ‘free’ was the simplest price point for consumers to remember and SPs would be able to easily communicate that price to their customers. We considered that Option 1 would therefore offer the greatest benefits in terms of consumer price awareness and therefore gave particular weight to that benefit in assessing the free-to-caller option.[256]

A29.52 We set out our provisional view on how improved consumer price awareness resulting from making 080 free-to-caller would have an impact on demand for services on 080 numbers. We considered that, in the medium term, it was reasonable to assume that the proportion of mobile originated calls to 080 numbers would increase to at least 40% if the 080 range were made free-to-caller. We also said that overall demand for 080 calls might increase for two reasons:

i) because of improved price awareness (including less overestimation of call prices and greater certainty about call prices); and

ii) from lower actual mobile call prices.

A29.53 We noted that the likely impact on overall demand was more difficult to establish than the level of fixed to mobile substitution, but highlighted several sources of evidence which indicated that there was a degree of suppressed demand.[257] Accordingly, our provisional view was that the free-to-caller option was likely to stimulate additional call volumes.

Stakeholder responses

A29.54 Several stakeholders that supported the free-to-caller option agreed that it would benefit consumer price awareness. For example, SSE noted that making 080 free-to-caller would allow a clearer pricing message to be given to customers.[258]

A29.55 EE, however, disagreed with our assessment. It questioned whether price awareness of 080 numbers was in fact poor, particularly in comparison to other number ranges. It noted that despite this, Ofcom was proposing the most extreme of any of the measures available to it to improve price misperception, mandating a zero retail price.[259] Whilst it said it was accepted that making 080 free-to-caller

[256] April 2012 consultation, Part C, Section 16, pp.44-49
[257] For example consumer survey evidence and a CAB survey of their clients’ use of 080 helplines. See paragraphs 16.89 to 16.93 in Part C, Section 16 of the April 2012 consultation.
[258] SSE, April 2012 consultation response, p.10
[259] EE, April 2012 consultation response, p.4

should over time, with an appropriate awareness campaign, result in accurate customer perceptions of a zero price point, it argued that we had previously acknowledged that both an advertising campaign and MMP options would be less interventionist means of achieving similar results with respect to accurate perceptions of 080 prices.[260]

A29.56 EE also considered that we had failed to demonstrate that improved price awareness would result in a corresponding overall increase in demand for calls. It commented that we appeared to accept (in our TPE analysis) that our proposals would not necessarily result in any overall increase in demand for calls to 080.[261] It also argued that little weight should be placed on the feedback of resellers who said that "demand from SPs has decreased substantially for Freephone numbers as a result of charges from mobile", given that these Freephone mobile charges have existed since 1996. It said that preference should be given to actual data, and noted in this respect that the most we had been able to state was "we note that it is very difficult to discern the true scale of suppressed demand. However, the evidence suggests that Option 1 is likely at least to stimulate a relatively small but significant number of additional calls".[262]

Ofcom response

A29.57 As we set out in the April 2012 consultation,[263] we consider that making 080 free-to-caller will provide the greatest benefits in terms of consumer price awareness and consumer confidence, and therefore we still give particular weight to these benefits in assessing the free-to-caller option.

A29.58 We do not agree with EE's arguments about the evidence of a lack of consumer price awareness and respond to its comments in Annex 8. We do not consider that other approaches would achieve similar improvements in price awareness as making the 080 range free-to-caller. We have not previously stated that an advertising campaign or an MMP approach could match these improvements, as EE suggests. EE has highlighted selected quotes from our assessment of a price awareness campaign and MMP (for example we noted that a price awareness campaign might mitigate the horizontal externality). However, in considering the issue of how these remedies would address consumer price awareness as a whole we clearly indicated that they would not be as effective as making the 080 range free-to-caller and therefore would not fully address our concerns arising from a lack of consumer price awareness. In respect of a price awareness campaign, we noted that the varied pattern of mobile call prices would remain along with the associated transparency concerns and, consequently, there would be little benefit in a campaign to communicate prices because the message would still be complicated.[264] When discussing the MMP option, we noted that the pattern of prices it offered might fit with some existing consumer expectations of 080 call prices and that it might have the potential to improve consumer price awareness relative to the status quo. However, we noted that the pricing message was always going to be more complex than a single 'free' price point (because it involved

[260] EE, April 2012 consultation response, p.12. EE highlighted paragraphs 16.22 and A25.16 in Part C of the April 2012 consultation in support of its view.
[261] EE, April 2012 consultation response, p.4.
[262] EE, April 2012 consultation response, p.46. The quoted sentence was paragraph 16.93 in Part C, Section 16 of the April 2012 consultation.
[263] April 2012 consultation, Part C, Section 16, paragraphs 16.95 to 16.111.
[264] See the third bullet point of paragraph 16.22 in Part C, Section 16 of the April 2012 consultation.

different fixed and mobile prices) and therefore was more likely to cause consumer confusion.[265]

A29.59 EE also challenges the overall assumption that increased price awareness will necessarily lead to increased demand and suggests that we had assumed our proposals would not lead to an increase in demand. We disagree with EE's comments and we have set out our response in detail in Annex 8. As we note there, whilst in our analysis of the TPE we assumed that 080 call volumes would remain the same, this was done for the purposes of simplicity (as we noted in paragraph 16.135) and elsewhere we clearly indicated that we expected our proposals would lead to a net increase in demand. We nevertheless recognised that it was difficult to predict the impact on overall demand with complete certainty and this remains the case. We have set out evidence of how demand for 080 calls is currently suppressed by a lack of consumer confidence in 080 prices in Section 4. Whilst recognise that a material proportion of SPs are likely to migrate away from 080 if it is made free-to-caller, we set out in Section 13 the reasons why we consider the overall impact of making 080 free-to-caller on service availability is likely to be positive. In light of this evidence, we remain of the view that whilst it is difficult to predict the exact impact of making 080 free-to-caller on overall demand, it is likely that greater consumer confidence in call prices, as well as lower actual call prices from mobiles, will create a net increase in demand.

A29.60 In terms of EE's criticisms of the evidence we used to support our view of the likely increase in demand, we accept and have recognised previously in the April 2012 consultation (see Section 16, paragraphs 16.88 to 16.93), that some of this evidence has limitations.[266] However, we still consider that we have set out data and evidence which, taken together, suggests that an increase in demand is likely. In addition to the reseller evidence which EE refers to (which we discuss further in the paragraph below) we set out additional evidence in the April 2012 consultation in relation to the scope for an increase in demand:

- around half of 080 SPs in our 2011 SP survey said that the mobile charges for 080 were harming their business;[267]
- evidence from the 2009[268] and 2011[269] consumer surveys suggests that poor price awareness has led to uncertainty and confusion about call prices;

[265] See paragraphs 16.228 and 16.231 in Part C, Section 16 of the April 2012 consultation.

[266] Some of the evidence relates to NGCs more widely, or has other statistical limitations, but we still consider, that the base of evidence, taken as whole, is instructive in supporting our views.

[267] 2011 SP survey (Q14), 47% of SPs said that the mobile charges for their 080 numbers were a disadvantage to their business in terms of the total number of calls they received.

[268] 2009 Consumer survey, Q43: "How much do you think it costs to call the following types of telephone numbers from your fixed line phone at home during the daytime on a weekday?" 11% of respondents thought fixed 080 calls were charged for and a further 27% said they did not know the price; and 2009 Consumer survey, Q44: "How much do you think it costs to call the following types of telephone numbers from your mobile phone at home during the daytime on a weekday?" 42% thought these were charged for and 46% said they didn't know the price.

[269] 2011 Consumer survey. QGL01X/Y: "Which of the following statements best describes what you know about the cost of calling a number starting with 080 from your landline/mobile?" Base: all adults aged 16+ who use the landline phone for personal use to make calls. 23% of respondents did not know how much 080 calls cost from fixed lines but thought they were expensive. The corresponding figure in the case of mobiles was 42%.

- data from The Samaritans' recently launched (free-to-caller) 116 number suggested that some callers may be sensitive to call prices even for services such as emotional support;[270]

- evidence from the 2011 Consumer survey suggests that even where there may be few alternatives to making a non-geographic call (for example a call to bank or utility supplier), there may nonetheless be scope for a small increase in demand. 33% of respondents said that where they had made a call to an 08 number where they did not know the call cost, they deliberately kept the length of the call as short as possible; [271]

- a majority of respondents to a 2010 survey by the CAB of its members had been deterred from calling government or other helplines due to high costs of mobile calls.[272]

A29.61 We disagree with EE's view that, because some mobile charges have existed for 080 calls since 1996, we should place less weight on feedback from resellers. In fact, charging by mobile companies was introduced gradually and inconsistently (Orange, for example, only started to charge for Freephone calls in 2005).[273] The impact of charges on consumer and SP consciousness and demand for 080 calls took some time to develop following this change.[274] Accordingly, we consider that there is good reason for SPs/resellers to be able to assess, on the basis of their experience, the likelihood of suppressed demand.

Efficient prices

Summary of position in the April 2012 consultation

A29.62 We considered that the free-to-caller option would address the vertical and horizontal externalities, because it would meet the demand from the significant proportion of those SPs who wanted a zero-rated number range and it would create a single pricing message for the 080 range that would apply across OCPs (both fixed and mobile). By addressing the vertical and horizontal externalities, we

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[270] There was evidence of an increase in overall call volumes to the 116 numbers (not just callers using the 116 number instead of The Samaritans' 0845 number). However, we said we remain cautious that other factors may be affecting data on the number of calls (for example general volatility). See paragraph 16.92 of the April 2012 consultation for further explanation.

[271] 2011 Consumer Survey, question GL05; 2011 Consumer Survey, question GL07 and 2011 Consumer Survey, question GL08. This evidence also relates to callers of other NGC number ranges (other than 080).

[272] 61% said they had been deterred from calling a government helpline and 64% said they had been deterred from calling another helpline. However, we noted in the April 2012 consultation that the survey is not representative of consumers as a whole (because it was drawn from the CAB's clients). It also may relate to callers of other NGC number ranges (other than 080). See paragraph 16.91 and Table 16.3 in Part C, Section 16 of the April 2012 consultation.

[273] http://forums.digitalspy.co.uk/showthread.php?t=310663

[274] For example in 2006 consumer research indicated that 61% of consumers recognised that 080 calls were 'free' (see Figure 7 on p.13 of the NTS Residential consumer research, http://stakeholders.ofcom.org.uk/binaries/consultations/nts_forward/annexes/ntsrsc.pdf). In our 2010 consumer survey, 44% of fixed line callers and 63% of mobile callers said they were 'not confident' of the price of 080 calls (Q35/36). These surveys are not directly comparable because they ask slightly different questions, however, they provide some indication of the changing consumer perceptions of 080 calls.

considered the free-to-caller option was likely to improve the efficiency of prices relative to the status quo.[275]

A29.63 We also considered the impact of the TPE in detail as part of our assessment under this criterion. We presented estimates of the likely size of the TPE, noting that the impact on mobile OCPs' profits was more likely to be positive (taking into account the likely substitution from fixed to mobile originated calls), whereas the impact on fixed OCPs appeared more likely to be negative. However, we considered that the evidence on the TPE did not assist us in assessing the efficiency of prices under this option.[276]

A29.64 We noted that one potential drawback of the free-to-caller option was that consumers would not receive a price signal reflecting the additional costs associated with using a mobile phone to make a call. However, we noted that the current gap between fixed and mobile retail prices was much larger than those additional costs. In terms of these price signals, we said it was not clear to us whether the free-to-caller option represented an improvement on the status quo. [277]

Stakeholder responses

A29.65 Both EE and Virgin Media commented on our analysis of the efficiency of mobile to fixed substitution under the free-to-caller approach (i.e. price signals to callers reflecting the additional costs associated with mobile originated calls).[278]

A29.66 Virgin Media believed that there was a potential but serious inefficiency associated with encouraging callers to use a mobile device which was inherently more costly than making the same call from a fixed line service. It noted that at present, where consumers have a choice, the price of calling from a mobile would appropriately drive them to choose the least costly method. It said making calls completely free-to-caller meant there would be no incentive for subscribers to utilise the most efficient form of communication, which might be a fixed-line service if they were in the home. It concluded that an approximate measure of that inefficiency was the difference in cost between call origination on the respective fixed (0.5ppm) versus mobile (2.5 to 3ppm) networks (based on our cost estimates, as set out in the April 2012 consultation). It noted that the additional cost would need to be recovered by TCPs either through the TPE, affecting their retail charges, or an increase in charges to their hosted SPs. [279] It estimated the cost of that inefficiency to the economy to be approximately between £78m to £98m per annum.[280]

A29.67 Similarly, EE noted that Ofcom had recognised that the free-to-caller option would result in callers receiving price signals on 080 that did not reflect the additional costs of using a mobile phone for call origination, and accordingly that it was "unclear" whether free-to-caller would provide any benefits over the status quo.[281] In footnote 63 of its response it noted that Ofcom had used the difference between

[275] Paragraphs 16.113 to 16.117 in Section 16, Part C of the April 2012 consultation.
[276] Paragraphs 16.119 to 16.143 in Section 16, Part C of the April 2012 consultation.
[277] Paragraphs 16.144 to 16.149, Section 16, Part C of the April 2012 consultation.
[278] EE and Vodafone also raised several challenges to our analysis of the horizontal and vertical externality effects which underlie our assessment of efficient prices. We have responded to these arguments in Annex 8.
[279] Virgin Media, April 2012 consultation response, Q16.1, p.8.
[280] Virgin calculated this by using the 11.2bn minutes of 080 calls (from the 2010 Flow of Funds study) and Ofcom's assumption that 35% of market share would migrate from fixed to mobile (in paragraph 16.137 of the April 2012 consultation).
[281] EE, April 2012 consultation response, p.46.

the mean expected price of a landline originated call and mobile originated call to suggest that too low a proportion of 080 calls were originated from mobiles. However, EE noted that the ratio of fixed incremental costs to mobile incremental costs and the ratio of fixed price estimates to mobile price estimates were broadly similar, 1:7-8 for costs and 1:5 for retail price estimations, which it considered indicated that the contrary (that too many 080 calls were originated from a mobile) might also be true.[282]

A29.68 EE also argued that mandating that 080 calls are set to zero would definitely result in forced changes to mobile OCPs' tariff structures, through the operation of the TPE, that did not reflect the preferences of some, if not the majority, of consumers.[283] EE said that weight should be given to the results of question 39 of the 2010 Consumer survey[284], because responses to this survey question (such as "how can my bills be the same if I don't call 080 very often – it doesn't make sense") reflected not confusion but quite rational consumer analysis. It said it would be impossible for Ofcom to guarantee that a consumer's bill would never rise as a result of decreased 080 charges in return for higher charges for other calls, as this would depend entirely on the mix of calls made by the customer each month. It noted that where a customer made no or very few 080 calls, he or she was right to fear that increased call charges for other types of calls would be of overall detriment to him/her as soon as more non-080 calls were made than at the time when the prices were set.[285]

A29.69 EE also made a number of comments about the TPE and Ofcom's analysis of this effect in the April 2012 consultation. We have set out and responded to these comments in Annex 28.

Ofcom response

A29.70 We disagree with Virgin's comments that the current price of calling 080 numbers from a mobile will "appropriately" drive consumers to choose the least costly method. The choices made by consumers are efficient when the prices of the services they purchase reflect their marginal cost (i.e. allocative efficiency), which can be proxied by the incremental cost of the service. We consider the current situation is inefficient because the prices for calling 080 numbers from mobiles exceed our estimates of any reasonable measure of cost, and because the difference in the price of calling 080 numbers from mobiles and from fixed lines far exceeds the additional incremental costs of originating a mobile call.[286] As a result

[282] EE, April 2012 consultation response, p.46, footnote 63.
[283] EE, April 2012 consultation response, p.15.
[284] In the 2010 Consumer survey, Q39 was intended to investigate the re-balancing of prices and whether consumers may have preferences over the structure of mobile prices, even if the total amount a consumer pays stays the same (e.g. under a monthly bill). Several stakeholders, including EE, argued in their responses to the December 2010 consultation that the responses to this survey question provided evidence that there was little enthusiasm from mobile consumers for price rebalancing. We responded to these arguments in detail in the April 2012 consultation (see paragraphs 16125 to 16.131). In summary we considered that the phrasing of the question made it difficult for respondents to think about the pros and cons involved and therefore it did not appear to provide reliable evidence of consumers' attitudes to the price structure effect.
[285] EE, April 2012 consultation response, pp.46-47.
[286] We estimated the average price of a mobile 080 call to be 14.5ppm in 2009, according to data in the 2010 Flow of Funds study. This is significantly higher than any of our reasonable estimates of underlying cost presented in Annex 26, which range from 0.8-0.9ppm – 5.5ppm. It also implies a differential in the price of fixed and mobile 080 calls significantly in excess of the difference in incremental resource cost, which we estimate to be between 0.7 and 0.8ppm.

of this, it is likely that too low a proportion of calls are being made from mobiles at present.

A29.71 We agree that setting the price of calling 080 numbers from a mobile and a fixed line equal to zero means that the price will not reflect the higher incremental costs of originating a 080 call from a mobile (compared to the costs of fixed call origination). As a result, callers could potentially to use their mobile phone too frequently to make 080 calls.

A29.72 Both the status quo and free-to-caller are likely to lead to an inefficient mix of 080 calls from fixed and mobile. As in our April 2012 consultation, we assess the level of this inefficiency under a free-to-caller approach by first estimating the extra resource cost we expect to be incurred under this option as a result of fixed-to-mobile substitution.[287] To do this, we multiply the difference in the cost of originating an 080 call from a mobile compared with a fixed line by the volume of calls we expect to switch from fixed to mobile as a result of making 080 free-to-caller. We have updated our estimate of the extra resource cost of fixed to mobile substitution based on our revised assumptions (see Section 12). This indicates that the potential resource cost could be between £21m and £32m, however, there are a number of reasons, which we explain below, why we expect the actual level of inefficiency to be significantly lower.[288]

A29.73 This additional resource cost is not in itself a measure of inefficiency because it does not take into account the fact that the mix of calls under the status quo is likely to be inefficient. As we noted in the April 2012 consultation, some of the anticipated fixed to mobile substitution will be correcting the current levels of under-consumption of mobile 080 calls.[289] This substitution will represent an improvement in efficiency but will appear as an additional resource cost in our measure. We expect the current level of under-consumption to be relatively high given the difference between the average retail price of a 080 mobile call and its incremental cost - in 2009 the average retail price for a 080 mobile call was 14.1ppm (excluding VAT).[290] We also noted in the April 2012 consultation that measuring the additional resource cost of fixed to mobile substitution takes no account of the fact that consumers may value a mobile call more highly than they do a fixed line call (for example, because of the additional convenience offered by mobile).[291] If this is the case, looking at the difference in resource costs alone will overstate the level of inefficiency.

A29.74 Nonetheless we consider the additional resource cost associated with fixed to mobile substitution to be a useful guide to a possible upper bound on the level of inefficiency under a free-to-caller approach. We have used the incremental costs

[287] See in particular paragraph 16.146 to 16.147 in Section 16, Part C of the April 2012 consultation where we carried out this calculation.
[288] This calculation was made as follows: in Annex 28 we calculate the number of mobile 080 minutes in late 2014 (the expected date of implementation) to between 2973m (if 45% of calls are originated from mobiles) and 3964m (if 60% of calls are originated from mobiles). We multiplied 2973m by 0.7ppm (the lower end of our estimate of the additional resource cost of mobile 080 calls), which equals approximately £21m and then 3964m multiplied by 0.8ppm equals approximately £32m.
[289] See paragraphs 16.145 to 16.147 in Section 16, Part C of the April 2012 consultation.
[290] 2010 Flow of Funds study, p.44. See footnote 18 in Section 11 for an explanation as to why we have quoted a slightly different figure (14.1ppm rather than 14.5ppm) from the Flow of Funds study. We are continuing to rely on the 2010 Flow of Funds study for estimates of 080 retail call prices because we consider that current retail prices do not reflect those that would be set under normal market conditions. See Section 3 where we set out our reasoning on this in more detail.
[291] See paragraph 16.147 in Section 16, Part C of the April 2012 consultation.

of fixed and mobile origination in our assessment, because allocative efficiency is achieved when all customers who value the added convenience of a mobile call by more than its additional resource costs use their mobile rather than a fixed line. We consider the most appropriate measure is the difference in the pure LRIC of fixed and mobile origination (as per the method described in paragraph 16.146 of the April 2012 consultation) because this more closely approximates the difference in resource costs of originating an 080 call from a mobile rather than a fixed line than a measure that includes an allowance for fixed and common costs. Virgin Media has incorrectly calculated the efficiency using the existing LRIC+ figure of 0.5ppm for fixed and our IAR (from the April 2012 consultation) of 2.5 to 3ppm. We do not consider this to be a robust approach to calculating the inefficiency as neither figure represents the incremental cost of origination.

A29.75 We also note EE's comments about the ratio of fixed incremental costs to fixed price estimates, however, we consider that comparing the ratio of costs with the ratio of (expected) prices is not a suitable means of assessing the efficiency of prices. The ratio of prices for two services could be very similar to the ratio of their costs at the same time as the price difference being unreflective of the cost difference - for example, using the ratios EE provides, an expected fixed call price of 20ppm and an expected mobile call price of £1.60ppm would be consistent with the ratio of costs, yet would result in far greater inefficiency than the status quo because the difference in price levels would be even further removed from the difference in incremental cost.

A29.76 We recognise that when mobile 080 calls are made free-to-caller, some customers may choose to use their mobile even though the added convenience is worth less to them than its additional cost of provision. This would be inefficient substitution. However, we consider that the efficiency impact of setting both fixed and mobile retail prices to zero will be limited by the fact that the difference in resource cost of originating fixed and mobile 080 calls is relatively small - approximately 0.7 to 0.8ppm according to our estimates (see Annex 26).[292] This is in contrast to the gap between fixed and mobile prices, which is significantly larger than the difference in resource costs – the average retail charge for mobile calls in 2009 was 14.1ppm (compared to zero for fixed line calls).[293]

A29.77 Overall, our position is that, in terms of the price signals, the current gap between fixed and mobile prices for calls to 080 numbers is much larger than the additional costs of using a mobile phone. Making 080 calls free-to-caller is therefore likely to result in a more efficient outcome than the status quo (although it will not necessarily result in the most efficient outcome). In addition, we consider the significantly lower proportion of mobile 080 calls at present, compared to all calls generally, as well as other NGCs[294], is further evidence that too few calls are currently originated from a mobile.

A29.78 EE commented on the reliability of the 2010 Consumer survey Q39 and argued that consumer responses to this question, which indicated a belief by some consumers that they would see an increase in overall call charges, represented rational

[292] We calculate the LRIC cost of fixed origination to be between 0-0.1ppm and mobile origination to be between 0.8 to 0.9ppm, therefore the difference is 0.7 to 0.8ppm.
[293] 2010 Flow of Funds study, p.44. See footnote 18 in Section 11 for an explanation as to why the 14.1ppm figure is slightly different from that quoted in the 2010 Flow of Funds study.
[294] 2010 Flow of Funds study, p.6. See Figure 1.5 in particular. In 2009, 5% of all 080 calls originated from a mobile, compared to 46% for all calls and 11% for NGCs generally.

consumer analysis.[295] However, if this is all that the consumer responses to Q39 were capturing (i.e. whether consumers' expected their bills to go up or not) it is consistent with our analysis of the question (set out in paragraphs 16.129 to 16.132 of the April 2012 consultation) that consumers were not actually answering a question about price structure but instead had the overall price effect in mind (i.e. a change in the total amount consumer pays each month. [296] In addition, as noted in Annex 8 we find it surprising that EE is suggesting we place more weight on this survey response given its comments elsewhere suggesting that we should place less weight on survey evidence generally.

A29.79 As to whether caller's bills will go up or down as a result of making 080 free-to-caller and EE's arguments about the operation of the TPE. There may well be a mixture of experiences resulting from making the 080 range free-to-caller – this will depend on the extent to which different callers are high or low users of 080. Overall, however, we would expect that callers would be better off compared to the status quo. This is because:

- the 080 call price would clearly be lower than the status quo, changing to zero from 14.1ppm on average from a mobile;[297] and
- even if the price of other mobile services was higher (i.e. even if the TPE was negative for consumers – see the following paragraphs where we discuss the TPE in more detail), the net effect should still be to reduce the average price on the caller's side (i.e. across 080 and other mobile prices), because compared to the status quo, mobile OCPs will receive larger payments from SPs (net of increased costs, given that the origination charge will at least exceed the pure LRIC).

A29.80 As noted in the April 2012 consultation, we consider that the existence of a TPE for mobile calls is not necessarily undesirable, given that the current balance of prices is likely to be inefficient. However, we have updated our assessment of the TPE in Annex 28. This shows that for most of the scenarios considered within our IAR, the estimated impact of the TPE is relatively small and indeed could potentially be positive (if the mobile origination payment is at the upper end of our IAR and a greater proportion of 080 calls are originated from mobile). If mobile origination payments are within our base case range, we estimate that the TPE is most likely to be between +£6m and -£24m. We consider, however, that our estimates in all scenarios are likely to overstate any adverse mobile TPE because the calculations assume there is no overall increase in demand resulting from making 080 free-to-caller and because we consider that the TPE is unlikely to be complete (i.e. 100%).[298] As set out in Section 13, we consider that some increase in demand is likely as a result of improved consumer confidence in prices. As such, we consider

[295] This question was worded as follows "If all calls to 0800 numbers were free from mobiles, there would be a cost to the operator. If your total bill stayed the same, would you like to have 0800 numbers free from your mobiles, even if your other calls (or line rental) became more expensive?". This question was intended to ask about the price structure effect (i.e. where their total bill remained the same).
[296] We defined the 'price structure effect' and 'overall price effect' in paragraph 16.128 of the April 2012 consultation.
[297] This was the average in 2009 based on the 2010 Flow of Funds Study. Section 3, paragraphs 3.44 to 3.45 sets out why we are continuing to rely on the 2010 Flow of Funds study.
[298] As discussed in Annex 28 this means that if (for example) mobile OCPs receive an extra £1m (say) from higher origination payments then the retail price of other telecoms services is likely to fall by less than £1m.

it likely that the actual mobile TPE would be more favourable (i.e. less negative or more positive) than our estimates suggest (see paragraph 13.44 in Section 13).

A29.81 There is more likely to be a negative TPE for fixed calls, however (because of the fixed to mobile substitution we expect to occur as a result of making the range free-to-caller). Again we conclude that the impact is likely to be relatively small, particularly when the potential scale of the TPE (up to £25m – see Annex 28) is compared to the total size of the UK fixed telecoms market.

A29.82 We recognise that it is difficult to precisely ascertain the importance which consumers attach to rebalancing the relative prices of 080 mobile calls and other mobile calls. Whilst we do not have direct evidence that consumers would prefer the balance of prices under free-to-caller, we do have evidence which suggests this option would result in a more efficient structure of prices than is currently observed, which we have set out in more detail in Section 13 (see paragraph 13.51). In any case we consider that making 080 free-to-caller will better reflect consumer preferences than is presently the case, by bringing mobile prices closer to their efficient level. We have set out in Section 4 (and in more detail in Annex 8 of the April 2012 consultation) evidence of a lack of consumer confidence in 080 prices which, as a result, leads to weaker constraints on the price of mobile 080 calls than on other, more visible, elements of consumers' retail packages. This means that current mobile 080 prices are likely to be inefficient in the sense that they do not reflect consumer preferences. We also consider the current mobile 080 prices are likely to be inefficient as they do not reflect the willingness of many SPs to subsidise 080 consumption.

Service quality, variety and innovation

<u>Summary of position in the April 2012 consultation</u>

A29.83 We considered that the free-to-caller option could potentially have both positive and negative effects in respect of the impact on service quality, variety and innovation. We noted that some SPs would migrate away from the 080 range to other number ranges and that this would reduce service availability on 080 (but that these services would be likely to remain available on other non-geographic numbers). We also noted that a small number of SPs might choose to block mobile calls to 080 numbers, which could reduce service availability for mobile callers. Finally, we also highlighted the risk that some SPs might discontinue their service entirely.

A29.84 However, in terms of positive effects we considered that improving price awareness and consumer confidence in the range, and the consistent 'free' price point for both consumers and SPs would encourage demand and therefore service availability, variety and innovation on the range.

A29.85 On balance, our provisional conclusion was that by removing mobile call charges we could offer an opportunity for reinvigoration of the 080 range. We recognised that SPs would have to absorb the additional costs, but noted that the evidence suggested that this outcome better reflected SPs' preferences.[299]

[299] April 2012 consultation, Part C, Section 16, pp.57-58, paragraphs 16.151 to 16.192.

Stakeholder comments and Ofcom response

A29.86 Stakeholders commented on a number of different aspects of our analysis under this criterion. We have grouped their comments and our response into the following categories:

- SP preferences for making 080 free-to-caller;
- the impact on service availability; and
- the impact on suppressed demand and innovation.

A29.87 Some stakeholders also made comments on SP call blocking and its impact on service availability. We discuss this issue, and respond to these comments in Annex 30.

SP preferences

Stakeholder comments

A29.88 EE commented on our analysis (as set out in Annex 25 of the April 2012 consultation) of whether 080 should be free-to-caller and 0500 be a MMP range (or the other way round).[300] In doing so it commented on our analysis of SP preferences for making the 080 range free-to-caller.

A29.89 EE disagreed that the analysis set out in Annex 25 suggested that a majority of SPs were likely to prefer 080 to be free-to-caller.[301] In summary, EE said that:

- responses to Q20 of the 2011 SP survey[302] were not reconcilable with other evidence from Q14 and Q16;[303]
- the 'majority' of SPs being in favour of the free-to-caller option in response to Q20 was only the case where the increased cost was 0.5ppm. With an increase of 1ppm (which was equivalent to the level of Ofcom's IAR) the majority preference for free-to-caller reversed with only 47% of SPs preferring the free-to-caller option over the MMP option; and
- a number of SPs had indicated responses that were indifferent (or said 'don't know'). EE said it expected few SPs to be 'indifferent' about an increase in costs

300 EE, April 2012 consultation response, pp.54-55.
301 We consider EE's comments on making 0500 a MMP range in the '0500' sub-section below.
302 Q20 asked SPs about their preferred option for the 080 range (either free-to-caller or MMP) taking into account different levels of origination charges. EE noted that the responses to Q20 illustrated that a finely balanced majority of 51% of 080 SPs would prefer free-to-caller versus 49% for MMP under an origination payment increase of 0.5ppm; and less than a majority preferred free-to-caller (47% would prefer free-to-caller) under an increase of 1ppm.
303 Q14 asked SPs how they felt about the mobile charges for their 080 calls and Q16 asked all those SPs who responded to Q14 that the mobile charges were 'a major disadvantage' how much they would be willing to pay to make 080 free-to-caller. EE noted that only 36% of respondents to Q16 said they would be willing to pay more to have 080 made a free-to-caller range, which equated 17% of all SPs who responded.

in the range of 0.5ppm to 1.5ppm, assuming 50:50 fixed to mobile substitution (but EE did present any evidence to reinforce this assertion).[304]

A29.90 EE said it remained of the view that Ofcom should only impose costs on 080 SPs where there was a clear desire by at least the majority of such SPs for that change. It considered that did not hold true because between 83%[305] and 53%[306] of 080 SPs (depending on the 2011 SP survey questions considered) had expressed no clear preference for free-to-caller.

A29.91 EE reiterated elsewhere in its response that our evidence from Q16 of the 2011 SP survey suggested that only a distinct minority (17% of all surveyed 080 SPs) had said they were willing to pay for making 080 free-to-caller in return for paying higher origination charges. It therefore argued that there were a number of other alternative means of addressing SP preferences for a free-to-caller number range that were less costly, and more proportionate, than requiring 080 to be free-to-caller. It suggested the following:

- allowing the market to continue to evolve to meet SP needs, for example with inclusive 080 minutes in bundles (which it noted T-Mobile currently offered on many of its call packages) or a policy of not charging for these calls (such as the MVNO Giff Gaff);
- use of zero rated mobile shortcodes. In this respect EE noted that it had only very recently launched the use of zero-rated mobile shortcodes and it expected that the recent change would have a noticeable impact on their popularity across the industry;
- the designation of a third party or commercial aggregator to facilitate commercial negotiations between OCPs and SPs for the zero-rating of 080 calls (using the DWP agreement as a precedent/template); and/or
- designating the 0500 range as free-to-caller.[307]

A29.92 EE also argued that many SPs would migrate or exit the market if the 080 range were made free-to-caller, as they did not wish to pay higher origination charges in return for free-to-caller access to their mobile numbers. EE argued that this was likely to cause services to diverge from both SP and consumer preferences.[308]

Ofcom response

A29.93 We disagree with EE that our analysis suggests that a majority of SPs are not likely to prefer 080 to be free-to-caller.

[304] EE was referring to paragraph A15.19 and A15.20 of the April 2012 consultation where we said that if an SP is largely ‘indifferent’ about whether it is located on a free-to-caller number range we should prefer, as a matter of policy, for the SP to be on the free-to-caller range, because consumers will benefit from free mobile call prices. ‘Indifferent’ SPs referred to 16% of SPs who responded to Q20 by saying they are indifferent to whether 080 is made MMP or free-to-caller.
[305] This refers to Q16 from the 2011 SP survey, which indicated that 17% of all SPs surveyed were willing to increase the amount they paid to receive calls in exchange for making those calls free from mobiles.
[306] This refers to Q20 of the 2011 SP survey, where 47% of SPs surveyed said they would prefer the free-to-caller option under an increase of 1ppm to their costs.
[307] EE, April 2012 consultation response, p.9.
[308] EE, April 2012 consultation response, p.5.

A29.94 With respect to EE's point that the evidence from Q20 (used in Annex 25 of the April 2012 consultation) is not reconcilable with that of Q14 and Q16, it is worth noting that these are different questions designed to understand different issues, and so we would expect the answers given by SPs to differ. On the one hand, the evidence from Q20[309] was used to understand 080 SPs' relative preferences between the free-to-caller and MMP options for 080. On the other hand, Q16[310] specifically asks those SPs who consider that charging for mobile calls is a disadvantage to their business (i.e. a sub-set of those who responded to Q14[311]), what they would be willing to pay to make 080 free-to-caller. Evidence from Q14 and Q16, therefore, tells us nothing about relative SP preferences between the MMP and free-to–caller options for 080, which is one of the issues we were assessing in Annex 25 of the April 2012 consultation.

A29.95 EE also said that while the 2011 SP survey found that 16% of SPs would be indifferent to either a free-to-caller option or MMP option, in practice "few SPs" were likely to be indifferent to increases in origination charges (from 0.5ppm to 1.5ppm). As we set out in paragraph A25.20 of the April 2012 consultation, even for those SPs that did express a preference between the options, we would expect at least some of them to remain on 080 if the other option was chosen (due to the costs associated with migration). The fact that their origination costs are increasing does not automatically mean we should assume that these SPs will migrate as EE appear to suggest. We consider it is reasonable to assume that some of them will remain on the range given they have not indicated an active likelihood of moving away from the range, and EE has not provided any new evidence or substantive reasoning to challenge this assumption.

A29.96 SPs' preferences for a free-to-caller range over a MMP range depend on the cost associated with making 080 free-to-caller, which in turn depends on the fixed and mobile origination payments and degree of fixed-mobile substitution assumed. We have updated our IAR in Section 12 and we are now using a base case scenario range of 1.5ppm to 2.5ppm and a wider IAR range of 1ppm to 3.7ppm for mobile origination payments. For fixed origination payments, we now assume a range of 0.3–0.6ppm. We have also updated our assumptions about the likely increase in 080 calls originated from mobiles and we now assume mobile calls will account for between 45% and 60% of all 080 calls if the range is made free-to-caller. Responses to the 2011 SP survey indicate that if the increase in SPs' average outpayment is 1ppm, then a relative majority of 47% of SPs are more likely to prefer free-to-caller compared to 33% for MMP. This increase in SPs' average outpayment is consistent with the scenarios we consider likely for the reasons set out in Section 12. If the increase in SP outpayment were lower than this at 0.5ppm (for example because mobile origination payments were towards the lower end of our base case scenario range or fixed-mobile substitution were relatively low), then this would suggest that an absolute majority (51%) of SPs are likely to prefer free-to-caller over MMP. We recognise there are some scenarios, even within our base case

[309] Q20 asked 080 SPs whether they preferred 080 to be a Maximum Mobile Price number range with a maximum mobile price of 7ppm or to be free to caller but with higher charges for the SP. Base – all 080 respondents (304).

[310] Q16 –'By how much would you be willing to increase the pence-per minute amount that you pay to receive calls'?

[311] Q14 – 'As mentioned, mobile phone companies typically charge the caller between 7 and 40 pence per minute to call 080 Freephone numbers. Callers can avoid this by calling from a landline. How do you feel about the impact of these mobile charges on the total number of calls that you receive? Base – all 080 respondents. 47% of this base said they would be disadvantaged (either a 'major' or 'slight' disadvantage). Q16 Base – asked to all 080 SPs who stated "disadvantage" at Q14 (145). 35% of this 145 base said that they would not be willing to pay any increase in response to Q16.

scenario range, where the overall increase in SP outpayment could be higher than 1ppm and fewer SPs may prefer free-to-caller over MMP. However, we consider these scenarios very unlikely for the reasons set out in Section 12 (in particular paragraph 12.165).

A29.97 EE also said that between 83%[312] (from Q16) and 53%[313] (from Q20) of 080 SPs have expressed no clear preference for Ofcom's proposed changes. To address these points in turn:

- On the Q20 data, 47% of SPs said the free-to-caller option would be better for their organisation (with an increase in their outpayments of 1ppm, which is within our base case scenario range) and 33% said the free-to-caller option would be worse than the MMP option. However, 16% said it would make no difference. Therefore a greater proportion of SPs indicated a preference for the free-to-caller option. We acknowledged in the April 2012 consultation[314] (and continue to do so in our assessment in Section 13) that SPs have diverse preferences, however, there is a significant proportion who would prefer a free-to-caller number but are not currently able to obtain one. We recognise that where the increase in SP outpayments rises to 1.5ppm (which could occur under some scenarios), fewer SPs prefer free-to-caller over MMP. However, for the reasons outlined in Section 12 (paragraph 12.165 in particular) we place less weight on these scenarios;

- With respect to the Q16 evidence, this question was asked to the 47% of SPs who said that the current charges from mobiles for 080 calls were a disadvantage to their business.[315] 36% of that sub-set of SPs (or 17% of all SPs in the sample) indicated an active willingness to pay more for a free-to-caller number. We note that a further 29% of that sub-set (or 14% of all SPs) responded "don't know" when asked how much they would be willing to pay. As discussed in Annex 27, see paragraphs A27.86 to A27.90) we consider that the results of this question have to be considered alongside the results of question Q17, where a much higher majority (68%) indicated that they would keep their 080 number even if their costs increased by 1ppm.[316] This suggests that these SPs are willing to accept an increase in their origination payments and would remain on the 080 range, even if they did not state an active willingness to pay in response to Q16.

A29.98 In any case, more generally, we have set out other evidence on SP preferences which suggests that a majority are in favour of making the 080 range free-to-caller. For example, in other responses to the 2011 SP survey:

- 89% of SPs said that the fact that callers from fixed lines do not have to pay for calls to their 080 number was important, or very important, to their organisation, and 72% said that mobile callers not paying for calls was important or very important;

[312] This is based on the assumption that, given that only 17% of SPs who said they would be willing to pay more to make 080 free-to-caller in response to Q16 of the 2011 SP survey (i.e. 36% of the subset who said mobile charges were a disadvantage in response to Q14), the remaining 83% are not willing to pay anything.
[313] This is based on 47% of SPs being in favour of the free-to-caller option with an origination charge of 1ppm in response to Q20 of the 2011 SP survey.
[314] For example see paragraph 16.258 in Section 16, Part C of the April 2012 consultation.
[315] Q14 of the 2011 SP survey.
[316] As noted in paragraph A29.96 above, 1ppm increase in average SP out-payment is consistent with mobile origination payments within our base case scenario range.

- 87% said the message or brand associated with having a 080 number was important or very important.[317]

A29.99 EE mentioned other alternative means which it considered would address the preferences of SPs who would prefer free-to-caller. We have set out our response to these alternative options in Annex 8 (see paragraphs A8.91 to A8.92), except for EE's proposal that we designate the 0500 range as free-to-caller, which we address below (see paragraphs A29.166 to A29.191). Our view is that these options would not be sufficient to address all the concerns we have identified in relation to 080, and in particular would be less effective than making 080 free-to-caller.

A29.100 EE also commented that the likely migration and exit of some SPs away from the 080 range would lead to services diverging from consumer and SP preferences. We recognise that some SPs may migrate or exit the market if the 080 range is made free-to-caller. Our evidence from the 2011 SP survey indicates that this may be a material proportion - 19% (see Section 13 - paragraphs 13.62), for the increase in average origination costs that we consider likely (this is explained in Section 12). Those SPs who do not wish to remain on a free-to-caller range will have the option of migrating to other non-geographic number ranges which suit their preferences better (e.g. 03). By contrast, a universally free-to-caller number range is not currently available to the significant number of SPs who would like such a range. We therefore consider, on the available evidence, that the negative impact described by EE is likely to be smaller than the benefits and that the net impact on the vertical externality will be positive.

Impact of free-to-caller on service availability

Stakeholder comments

A29.101 A number of stakeholders, including those that were in favour of the free-to-caller option, indicated concerns about how the increased costs to SPs would impact service availability and emphasised that such costs should be controlled. SSE, for example, noted that increases in charges to SPs should not be unreasonably high.[318] CWW said that the price of mobile origination must remain affordable for those SPs who wanted to continue to use Freephone numbers.[319]

A29.102 Some stakeholders also commented on the likely migration of SPs away from the 080 range as a result of our proposals. FCS indicated concerns that small businesses might react to an increased mobile origination charge for 080 calls by moving to the 03 range, which would result in an increased cost and burden for CPs.[320] BT considered that migration levels could be very high due to the unpredictability of call origination costs, because introducing a higher origination charge would increase the level of uncertainty for SPs (due to forecasting where traffic originates from) and because of the increase in overall costs for SPs. BT considered that Ofcom's proposals would have a greater adverse effect on larger SPs.[321]

[317] 2011 SP Survey, Q11 "How important is it to your organisation that 080 numbers have the following features … the message or brand associated with having a 080 number".
[318] SSE, April 2012 consultation response, p.10.
[319] CWW, April 2012 consultation response, p.30.
[320] FCS, April 2012 consultation response, p.6.
[321] BT, April 2012 consultation response, p.32.

A29.103 EE argued that we had collected evidence which suggested that, if we were to set the price of all 080 calls to zero, this would actually lead to a significant reduction in 080 service diversity. It said that a small increase in 080 mobile origination costs will cause a significant proportion of SPs to leave the 080 range. It noted that, assuming there was a one-to-one ratio of 080 services to the number of SPs (40,000), and 19% of SPs were likely/very likely to get rid of their 080 number[322], it equated to a worst-case scenario of a loss of 7,200 current 080 services. It said that it failed to see how it could be considered in the best interests of consumers to potentially cause up to 19% of current 080 SPs to cease operating their 080 numbers. It did not believe it was open for Ofcom to pass judgement on the value of these services to consumers, their popularity or the suitability of any alternative without evidence to support the approach (which it believed Ofcom had not provided).[323]

A29.104 EE stated that our preferred option did not include another free-to-caller number range to which SPs could migrate. As a result, it said that SP migration would, in all scenarios, result in consumers who were previously able to access the service for no cost in at least some situations (i.e. from a fixed line) being unable to do so in any situation. It did not consider that the fact that some of those alternative number ranges would be 'in-bundle', would make any significant difference, because that was not universally the case and many consumers only had a limited number of minutes 'in-bundle' in any case.[324]

Ofcom response

A29.105 We recognise stakeholders' concerns that there could be a loss of existing 080 services as a result of making the range free-to-caller.

A29.106 We have updated our IAR for mobile origination charges in Section 12 and responded to stakeholder comments on this issue in Annex 27 (including BT's point about the potential impact of the unpredictability of origination payments on migration levels). In particular we have now set out a wider IAR range (of 1ppm to 3.7ppm) and a base case scenario (of 1.3ppm to 3ppm. For the reasons set out in Section 12 we place more weight on the base case scenario range.

A29.107 Applying these revisions to the results of the 2011 SP survey, we still consider it likely that 19% of SPs currently active on 080 could withdraw their service under the scenarios we consider likely. We recognise there are some scenarios (particularly where origination payments are towards the upper end of our wider IAR) where the proportion of SPs doing this could be higher - potentially more than 28% - but consider these scenarios very unlikely for the reasons set out in Section 12 (see paragraphs 12.165 in particular). We recognise, therefore, that a material proportion of SPs could withdraw from the 080 range.

A29.108 In the 2011 SP survey, when those SPs who said they were 'very likely' to get rid of their 080 number (at any increase in their hosting costs) were asked what exactly they would do, 60% said they would switch the line or migrate to another number,

[322] It assumed an origination charge of 2.5ppm to 3ppm under 50% fixed to mobile substitution. 2011 SP survey, Q17.
[323] EE, April 2012 consultation response, p.53.
[324] EE, April 2012 consultation response, p.53.

20% said they would block calls from mobiles and 15% said they would get rid of the line completely.[325] Taking each of the potential SP reactions in turn:

- **Call blocking:** we consider our proposed wholesale access condition would effectively prevent SPs from blocking calls, as it would require an SP's host TCP to purchase wholesale call origination from any OCP upon reasonable request (see Annex 30 and Section 14 where we discuss the operation of the access condition in more detail). However, we recognise that other SP reactions serving a similar function might still be feasible, such as treating calls from mobile differently (e.g. routing them to an automated message or using other means to keep the duration of the call as short as possible).[326] To the extent these measures are used instead of migration, they will reduce the negative impact on service availability that would otherwise occur. To the extent they are used by SPs who are not at risk of migrating, however, they will increase the negative effect. See Section 12 where we discuss these mitigation strategies in more detail. We note in Section 13 (see paragraph 13.69) that we would expect mobile origination charges towards the lower end of our base case scenario to reduce the extent of any such reactions;

- **Service migration**: the impact on migration could be slightly less than we stated in the April 2012 consultation if mobile origination charges are at the lower end of our base case range and if fixed-mobile substitution is towards the lower end of the range we consider likely.[327] This difference may be small however as the 2011 SP survey shows that there is no significant difference in migration between a 0.5ppm and a 1ppm increase in origination payments.[328] In addition, we also recognise in Section 13 the potential for a higher proportion of SPs to migrate their service under certain scenarios (if, for example origination payments are towards the upper end of our wider IAR), although we consider that these scenarios are unlikely and therefore we have placed less weight on them. The impact on consumers of this type of migration depends on the number range SPs opt to move to, which we discuss further below.

- **Get rid of line completely**: a very small percentage (4%) of SPs said they would get rid of their line completely. If mobile origination payments were at the lower end of our base case range, this may lessen the extent of this effect (relative to the effect we set out in the April 2012 consultation), although the overall impact is likely to be small as very few SPs suggested they would react in such a way (and the size of the original sample means that these results can only be treated as indicative in any case).

[325] A further 5% responded "don't know". 2011 SP survey, Q18. Note that the unweighted base for this question only had a small sample size (65) so the results can only be seen as indicative. As a proportion of all SPs who responded to the survey, these percentages equate to 11% getting rid of their line completely, 4% blocking calls, 2% getting rid of the line completely and 1% who didn't know.
[326] See Section 12 where we discuss these SP reactions, and their impact on service availability, in more detail.
[327] We recognise that if SPs are unable to block calls from mobile, some of those SPs who would like to block mobile calls may choose to migrate from 080. However, whether this means SPs are more likely to migrate overall than suggested by the 2011 SP survey is not clear, because we do not know whether or not SPs were considering call blocking when answering the question about their willingness to exit (Call blocking was only raised with respondents to the survey after they had answered the question on willingness to exit). However, in our estimates of migration costs in Annex 10 (see paragraph A10.149 in particular) we have assumed that all of those SPs who said they would block mobile 080 calls as a response to increased hosting charges will migrate to another number range.
[328] 2011 SP survey, Q17, p.11.

A29.109 Some stakeholders were also concerned about the impact on consumers where SPs move to '*chargeable ranges'*. We recognise that migration to a number range which is not free-to-caller will result in increased call prices for fixed line callers. Where certain services do migrate we accept that some consumers may be worse off. For example, some SPs might migrate their services to the 03 number range, and so consumers who do not have a bundled package (with inclusive calls) could be worse off when calling from fixed lines (whereas previously they called the service for free from a fixed line on 080).

A29.110 FCS was also concerned about the cost of migration faced by small businesses. We set out our updated costs of migration in Section 13 (and in more detail in Annex 10). The 2011 SP survey did not indicate the willingness to exit of different sized companies, and so it is difficult to be precise about how many of those SPs who may migrate would actually be small businesses. However, we recognise that some SPs who migrate may be of this type, and so migration costs may have a (proportionately) larger impact on them (than, for example, relative to larger businesses who may be able to absorb the increase in costs more easily). We recognise this but also note that the longer implementation period (of 18 months rather than 12 – see Section 15 for further discussion of the implementation period) may help mitigate some of these costs for small businesses who decide to migrate.

A29.111 Therefore, as set out in our assessment in Section 13 (see paragraphs 13.66 to 13.74) we accept that there is likely to be a potential negative impact of either migration or loss of existing services as a result of making the 080 range free-to-caller. However, we consider that this potential negative effect needs to be balanced against the positive effects for service availability on 080. In particular we consider that making the 080 range free-to-caller will lead to a substantial increase in consumer confidence (as already discussed above), making it more attractive to SPs and thereby boosting service availability and allowing the introduction of innovative business models. We consider that benefits to callers from this stimulus to service availability and innovation on the 080 range are likely to be significant and therefore are likely to outweigh the negative effects of a loss of some existing services. We therefore disagree with EE's comment that making 080 free-to-caller will lead to a reduction in service diversity.

Impact on suppressed demand and innovation

Stakeholder comments

A29.112 EE said that as Ofcom was "not predicting any material increase" in 080 demand (just fixed to mobile substitution), it seemed very likely that the increased costs of origination faced by SPs under Ofcom's proposals would result in them having less disposable cash to invest in the innovation of their services. EE also commented that we provided no evidence that a small degree of increased accuracy of consumer pricing perceptions was likely to sufficiently "re-invigorate" the 080 range to allow increased investment and innovation from new 080 SPs.[329]

[329] EE, April 2012 consultation response, p.16. EE also disagreed that our proposals would lead to an increase in service innovation. EE said that, according to our own assumptions, NGCs were "strongly price inelastic" (in reference to the fact that we assumed a central value of -0.3 for the 'own price elasticity' of NGCs for the purposes of our Impact Assessment for the unbundled tariff). EE commented that, as a result, we should heed the warnings given in the CAT 08x Judgment, and place very little weight on benefits from improvements in service provision on non-geographic number

Ofcom response

A29.113 We note EE's suggestion that making 080 free-to-caller will not lead to a material increase in demand which, when combined with increased mobile origination payments, may damage innovation on the 080 range. We have already set out the evidence we rely on in the ''consumer price awareness' sub-section above. This evidence suggests that while it is difficult to ascertain the scale of overall new demand from making 080 free-to-caller, we could expect there to be an increase in overall demand from consumers.

A29.114 While we recognise that some SPs who remain on the 080 range may react to higher mobile origination charges by reducing quality and/or innovation, we consider that making 080 free-to-caller will improve price awareness and consumer confidence, and allow a consistent 'free' price point for both callers and SPs, which is likely to encourage innovation on the range.[330] For example, increasing consumer confidence in calling 080 numbers may improve the reputation of the range, which may in turn make it more attractive for SPs to introduce new services. Further, certain services may be dependent on callers not being charged, and so free calls on 080 may broaden the opportunity for SPs to adopt innovative business models. Therefore, while difficult to predict with precision, we consider an improvement in SP service diversity and innovation is likely as a result of the problems which we have identified being addressed and the resulting increase in demand.

A29.115 We set out our evidence on suppressed demand and loss of SP innovation in Part A, Section 4.

Access to socially important services

Summary of position in the April 2012 consultation

A29.116 We recognised that making 080 free-to-caller had the potential to create some negative impacts if socially important services migrated away from the 080 range as a result of increased mobile origination charges. Nevertheless, we considered that the evidence suggested that the majority of socially important services would continue to be provided on the 080 range. We considered there would therefore be significant benefits from making those services free-to-caller as it would ensure that mobile only households were not prevented from accessing those services. Overall, we considered that these benefits would be likely to outweigh the negative impacts from migration.[331]

Stakeholder comment and Ofcom response

A29.117 Stakeholders commented on a number of aspects of our analysis. We have grouped their comments and our response into the following categories:

- improvements in access to socially important services for consumers – suppressed demand;

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ranges (EE, April 2012 consultation response, p.16). We do not agree with EE's comment and respond to this in detail in Annex 8.

[330] Annex 11 of the April 2012 consultation discussed the impact of the current NGC system on innovation.

[331] April 2012 consultation, Part C, Section 16, pp.66-68.

- impact of higher mobile origination payments on access to socially important services;
- impact on vulnerable consumers; and
- alternatives to securing access to socially important services.

<u>Improvements in access to socially important services for consumers – suppressed demand</u>

Stakeholder comments

A29.118 EE said that we had over-stated the potential for improvements in access to socially important services. It submitted that we had not found any valid statistical evidence to demonstrate that a material increase in the number or duration of calls to 080 numbers would result from our proposals. EE therefore argued that customers, including vulnerable customers, were already getting the access to socially important services on 080 numbers that they needed and that our proposals would only result in the provision of an alternative means of access, which was more costly for OCPs and SPs to provide. [332]

Ofcom response

A29.119 We have addressed EE's comments about the likely increase in demand more generally as a result of making 080 free-to-caller in our assessment above (in particular under the 'consumer price awareness' heading). In terms of the likely increase in demand for socially important services, we consider that consumers may currently be deterred from making calls to socially important services on 080 because of a lack of consumer confidence in prices and the negative impacts of the horizontal and vertical externalities (see Section 4). In addition, actual prices for mobile 080 calls may be higher than their efficient level (as a result of the market failures we have identified) and, as a result, consumers may not be able to afford to make calls to socially important services on 080 from their mobile.

A29.120 We set out evidence in the April 2012 consultation[333] illustrating the negative impact that the current regime can have with respect to access to socially important services (in addition to the evidence already discussed above in relation to the impact on demand more generally). While we recognise this evidence does not specifically relate to 080, it is still a useful proxy. It is reasonable to assume that many respondents in the evidence base are 080 users, who are adversely affected by the harmful outcomes of the market failures as described above. We consider the following evidence is relevant:

- evidence from the 2010 CAB survey, which indicates that high actual or perceived prices of calls are having a negative impact on demand from respondents who had been deterred from calling socially important helplines;334
- examples of individuals provided by the CAB who struggled to obtain state benefits as a result of the cost of making calls to non-geographic numbers. This

[332] EE, April 2012 consultation response, p.19.
[333] April 2012 consultation, Part A, Annex 8, paragraph A8.399.
[334] 67% of mobile only respondents (versus 61% of all respondents) have been deterred from calling government helplines due to high cost of mobile calls. Though we recognise that this data has limitations as the survey is not representative of consumers as a whole.

was compounded by the potential length of calls, including time whilst on hold, and difficulties in being put through to the correct official;

- in a 2008 survey of CAB clients, 93% said they “frequently” make simple client phone calls to government from their bureau, due in whole or in part to the cost to clients of calling government departments from a mobile phone;

- the 2010 CAB Survey asked respondents whether they had ever requested the CAB or another organisation to call a helpline because they could not afford to do so themselves. 20% of mobile-only respondents and 15% of respondents overall replied yes; and

- evidence regarding The Samaritans’ introduction of their 116 number (a free-to-caller number), where overall volumes to The Samaritans’ service increased (i.e. callers had not simply replaced a call to The Samaritans’ 0845 number with a call to the 116 number), which suggests that some callers are sensitive to prices even for socially important services such as emotional support.335

A29.121 Therefore, taken together, we consider we have set out sufficient evidence to suggest that it is unlikely that consumers (including vulnerable consumers) are currently getting sufficient access to socially useful services, and that an increase in demand for these services on 080 is likely as a result of making the range free-to-caller.

<u>Impact of higher mobile origination payments on SPs and OCPs providing socially important services</u>

Stakeholder comments

A29.122 EE said that we had under-estimated the potential harm that would result from increasing costs for mobile OCPs and SPs. It argued that:[336]

- there was a risk that funds for investment by mobile OCPs in socially important services would be reduced and/or the price of socially important services would increase, because of the impact of the TPE; and

- around 83% of SPs who do not want to pay higher origination charges could be put out of business or have to migrate to an alternative number range that would not be free from landlines or mobiles.

A29.123 Consumer Focus were concerned about the potential impact on SPs who provide essential services, in particular if they choose to move their services online or block calls as result of our proposals. It said that we should undertake a full impact assessment of these proposals, in particular on providers of essential services currently using the 080 number ranges.[337]

A29.124 THA said that whilst they were in favour of making 080 free-to-caller, they considered we had inadequately assessed the impact on non-profit and charitable helplines which provide socially useful services. THA estimated that the helpline

[335] See paragraph 16.91 of the April 2012 consultation (Part C, Section 16) where we discuss this evidence in more detail. As noted there, this data has limitations given that other factors may be affecting the data on the number of calls.
[336] EE, April 2012 consultation response, p.19.
[337] Consumer Focus, April 2012 consultation response, p.3

sector would need an additional £6m per year to cover the increased call costs which would result from making 080 free-to-caller. It noted that while some of its members said they could cope with the increase in costs, a majority said they might consider migration or reduce the quality of their service as a result. THA urged us to cover these costs or act to minimise the impact on helplines. It specifically asked Ofcom to consider how to lever the existing allocation of 080880 numbers (a sub-range allocated by Ofcom specifically for use by helplines which meet certain criteria[338]). THA noted its Special Freephone Tariff Scheme ('SFT') was dependent on the goodwill of participating mobile OCPs and it intended to continue to work with those providers, and fixed line providers, to look at ways to reduce the costs for non-profit helplines that want to provide free-to-caller numbers. [339]

A29.125 CAB believed that the arrangements between THA, DWP and OCPs to zero-rate calls from mobile to some 080 numbers showed OCPs' willingness to absorb some of the additional cost of making 080 numbers free from mobiles. It considered that there was no reason why OCPs should not continue to do this for socially important service providers.[340]

Ofcom response

A29.126 In response to the concern noted by Consumer Focus about call blocking we note above (see paragraph A29.108) that we expect our proposed access condition (set out in Section 14) will prevent this type of call blocking.

A29.127 We note THA's point that we should consider how to lever the existing allocation of 080880 numbers for use by confidential helplines. We understand THA to be suggesting that its approach to this sub-range could become a regulatory requirement, i.e. SPs on the 080 sub-range would not have to pay any increased mobile origination payments which result from making the 080 range free-to-caller. This would therefore involve the criteria already used by THA for establishing whether SPs are eligible for a 080 number within this sub-range to become part of that regulatory process as well. We discuss in paragraphs A29.14 above (and in paragraphs 16.30 to 16.33 of the April 2012 consultation) our reasons for rejecting a DWP-type approach. Some of our reasons for rejecting that approach also apply to the THA's suggested approach (in particular the fact that Ofcom would need to confirm and oversee the criteria used to determine which services could be included on the range and the practicality of such an approach).

A29.128 There is also the issue that a number of existing socially important services are not on this 080880 sub-range and therefore to receive equal treatment either these services would need to migrate (which would generate costs in itself) or they would need to be identified separately by TCPs to receive the same origination payment as those on the 080880 sub-range. As we noted in paragraphs A23.153 to A23.154 of the April 2012 consultation, it is unlikely to be appropriate to require TCPs to make different origination payments based on the identity of the SP because of the additional costs involved in administering it, in particular the complications that would arise from the likelihood that different types of SPs are intermingled on some blocks of 10,000 numbers. As we noted in the April 2012 consultation, however, this does not preclude OCPs from voluntarily choosing to waive origination

[338] THA noted that currently its members had access to its Special Freephone Tariff ('SFT') which provides free calls from six participating mobile networks. Helplines pay up to 2.1ppm to receive calls from landlines and mobiles. THA, April 2012 consultation response, pp.19-20.
[339] THA, April 2012 consultation response, pp.19-20.
[340] CAB, April 2012 consultation response, p. 6.

payments if they wish, as is currently the case for calls to SPs such as Childline and members of the THA.

A29.129 EE said that there was a risk that free-to-caller would undermine its ability to fund other socially important products (but did not explain what these are). We have set out our analysis of the impact of making the 080 range free-to-caller on mobile OCPs' incremental profits in Annex 28. This demonstrates that mobile OCPs' incremental profits from 080 could be reduced by making 080 free-to-caller, however, the reduction is relatively small, and under some scenarios could be positive. Given that the reduction in 080 profits is likely to be relatively small (and we have assumed no increase in demand under that assessment, which as set out in our analysis above (and in Section 13), we consider that an increase in demand is likely), we consider that the risk of it impacting on the ability to fund socially important services is also likely to be low. We noted in the April 2012 consultation that mobile OCPs had previously indicated that they supported the THA's scheme as part of their commitment to corporate social responsibility.[341] Making 080 free-to-caller will not prevent mobile OCPs from continuing that approach, should they choose to do so - a choice which we would welcome.

A29.130 SPs, consumer groups, and EE[342] were also concerned that our proposals could have significant negative consequences for SPs who offer socially important services (e.g. in terms of service availability, reduced quality), and some (e.g. THA and Consumer Focus) were concerned that we had inadequately assessed the impact on providers of such services. We note that the THA specifically estimated that helplines would need an additional £6m a year. We asked THA for further details of this cost calculation and one of the assumptions they used was that helplines would have to pay 5ppm more to receive calls.[343] However, the wider IAR we have used in our assessment for mobile originated 080 calls is a range of 1ppm to 3.7ppm, and for calls originated from a fixed line we have used a range of 0.3 to 0.6ppm.[344] Therefore under none of our scenarios would we expect helplines to pay 5ppm **extra** per minute for all calls. We therefore consider that this calculation from the THA significantly overestimates the likely costs to their helplines.

A29.131 We have set out estimates of the likely costs to all SPs resulting from the increased origination charges of making 080 free-to-caller (between £20m and £64m across all SPs on the 080 range under our base case scenario) in Section 13, and we recognise that there is likely to be some negative impact on the ability of some services, particularly charities and not-for-profit services to continue to provide services on the 080 range as a result of this increase in costs. It is difficult, however, to predict with any certainty how this will impact those SPs providing socially important services. We consider, nonetheless, that there is evidence that the majority of these services are likely to remain on the 080 range. We discuss this further below.

[341] See 080 Dispute Determination, paragraph 5.1.
[342] We disagree with EE that the evidence from 2011 SP survey it quotes on willingness to pay indicates that 83% of SPs may migrate (from the 2011 SP survey Q 16). Firstly, this data attempts to ascertain willingness to pay. However, we consider this is not a useful a proxy for migration (as it does not indicate willingness to exit). In any case, the data was asked to a sub-set of the whole sample, and so is not reflective of all SPs who were surveyed.
[343] Email from the THA to Ofcom dated 15 February 2013.
[344] These ranges represent an increase of 0.5 – 3.3ppm (for mobile) and a 0.1ppm increase or a 0.2ppm decrease (for fixed) when compared to the average origination charge that prevailed prior to the introduction of tiered termination rates.

A29.132 The 2011 SP survey suggests that SPs providing 'socially significant' services were more likely to consider it 'very important' that their 080 numbers were made free-to-caller.[345] However, SPs providing socially important services include a wide range of different SPs and whilst some (for example utility services and Government departments) may have a greater ability to pay a higher mobile origination charge[346] other types of SP (like charities and not for profit services) may find it more difficult to absorb increases in mobile origination payments.

A29.133 While it is difficult to predict with any certainty to what extent these SPs (charities and not for profit services) will be able to absorb an increase in the mobile origination payment, we would note that our existing evidence suggests that, of all 'socially important' numbers on the 080 range, the proportion that are charities and/or not for profit is likely to be low. We set out data on the proportion of socially important SPs on the 080 range in the April 2012 consultation.[347] That evidence indicates that around 10% of 'socially important services on the 080 range are charities and/or not for profit, and that the remaining 90% are mostly Government departments and utility providers (e.g. gas, electricity and telephony providers). As we noted in the April 2012 consultation, there are limits to how useful this data is, particularly as it only shows larger SPs, and we understand that there is likely to be a long tail of other charities and not-for-profit SPs, not accounted for within this data set.[348] However, it is plausible to suggest on this basis that the majority of socially significant services are more likely to be able to afford increases in mobile origination payments (given that they are likely to be government services and utilities).

A29.134 Our overall assessment of the impact of making the 080 range free-to-caller on access to socially important services is set out in Section 13, but in summary, whilst we recognise that there is likely to be some negative impact on providers of socially important services on the 080 range (because of the increased costs created by making 080 free-to-caller), we consider that this is likely to only impact a small proportion of those services. As already discussed, making 080 free-to-caller is likely to create significant benefits in improving access to socially important services on the 080 range (in particular, ensuring that mobile-only households are not deterred from accessing socially important services on the range) and meeting the preferences of those socially important SPs who want to offer a genuinely free-to-caller number. We therefore consider that these benefits are likely to outweigh any potential negative impact on some socially important services.

[345] 55% of 'Socially significant' SPs said 'free calls from mobiles' were very important compared to 32% of other SPs. 2011 SP survey, p.6. Q11. Note that the 'socially significant' definition used in the 2011 SP survey is slightly different to the 'socially important services' definition we have used in this document (and which is defined in Section 3). The definition of 'socially significant' is set out in Annex 1 of the 2011 SP survey.

[346] For example the DWP has already indicated its willingness to pay a higher mobile origination charge through its negotiation with the mobile OCPs for the zero-rating of its 080 helpline numbers.

[347] See Tables 5.1 and 5.2, Part A, Section 5 of the April 2012 consultation, pp.82-83.

[348] Table 5.2 in the April 2012 consultation used data gathered from OCPs on the forty most popular 080 numbers dialled by their customers. We counted how many of those numbers relate to socially important services. In particular, the figures in Table 5.2 should not be treated as accurate estimates of the proportion of call minutes to socially important numbers. We have only collected data on the largest SPs and we have not weighted the data to take account of the ranking of the SP in the data we were provided. Similarly we have not weighted the data to reflect the relevant importance of the OCP/TCP that provided the data (e.g. more weight on BT's data since it is a large OCP and TCP).

Impact on consumers (including vulnerable consumers)

Stakeholder comments

A29.135 The CAB considered that, on balance, our proposals would provide net benefits to consumers. Whilst it expressed some concern that SPs' migration could affect the provision of some essential services for consumers, it hoped that some SPs would migrate to the 03 range, as "*it is free for many landline customers and free for most mobile customers*". It said that migrating from 080 to 03 would see some landline consumers pay more, but that calls to a 03 number from a pre-pay mobile would be significantly cheaper than calling a 080 number, and for the vast majority of post-pay mobile consumers it would be free.[349]

A29.136 National Grid[350] and Northern Gas Networks[351] supported our proposals noting that they may address the problems faced by mobile pre-pay users who are currently deterred from ringing its services because they have low credit. Consumer Focus also noted that the proposals would be of particular benefit to mobile-only consumers.[352]

A29.137 EE, however, said that our proposals would have a disproportionate negative effect on fixed line vulnerable consumers (i.e. those with a disability and/or aged over 55), and argued that we had not taken this into account in our analysis.[353]

Ofcom response

A29.138 Most respondents agreed that, on balance, making the 080 range free-to-caller would have a positive impact on vulnerable consumers, with the exception of EE. We consider, in line with our position in the April 2012 consultation[354], that there are likely to be significant benefits from free-to-caller in ensuring that mobile-only households are no longer deterred from accessing these services. In particular these vulnerable consumers will no longer be charged for calling socially important 080 services from a mobile and the improvements in consumer price awareness (in particular greater confidence and certainty about prices as a result of the simplicity of the 'free' price point) is likely to ensure that these consumers are not deterred from using their mobile to access socially important services on the 080 range.

A29.139 We address EE's specific point about fixed line consumers in the disability and/or over 55 age groups in Annex 12).

Alternatives to securing access to socially important services

Stakeholder comments

A29.140 EE argued that we had overstated the potential improvements in access to socially important services that would result from making 080 free-to-caller. It said that we must accept that most socially important services operating on 080 numbers were already zero rated from both landlines and mobiles, whether as part of THA's scheme or the DWP. In addition it argued that there were many other means of

[349] CAB, April 2012 consultation response p.6.
[350] National Grid, April 2012 consultation response,p.2.
[351] Northern Gas Networks, April 2012 consultation response, p.1.
[352] Consumer Focus, April 2012 consultation response, p.3.
[353] EE, April 2012 consultation response, p.5.
[354] April 2012 consultation, Part C, Section 16, paragraph 16.198.

accessing socially important services, e.g. call-back services, geographic numbers, mobile shortcodes, online chat services and email (noting that most mobile handsets now have internet capabilities). It said that access to socially important services was already a reality.[355]

Ofcom response

A29.141 As set out in Annex 20 of the April 2012 consultation, there are clear examples of certain socially useful services not being able to secure zero-rated calls from mobile phones (e.g. National Grid Smell Gas 0800 number and THA Public Sector Special Freephone Tariff (PSSFT) scheme). In addition, evidence from discussions with SPs indicates that other SPs either are not aware that commercial negotiation is an option or, if they are aware, are daunted by the transaction costs involved in negotiating with several OCPs. We therefore disagree with EE that most socially important services are already zero-rated.

A29.142 EE also suggested a number of alternatives for securing access to socially important services, many of which we have already considered, either in the April 2012 consultation document or in Annex 8:

- call-back services - as set out in paragraph A8.412 of the April 2012 consultation, we do not consider this to be an efficient solution to the harm we have identified and this view is shared by SPs such as the DWP (who previously tried such an approach);

- geographic numbers - these numbers are often not considered substitutable with NGCs because they do not provide SPs with a national presence. In addition, for callers, a geographic number is not necessarily always made within a bundle of inclusive minutes and therefore it is not the same as a genuinely free-to-caller number, particularly for mobile-only customers on pre-pay packages;

- mobile short codes – we have set out in Annex 8 why we consider that mobile shortcodes would not address the concerns we have identified to the same extent as making the range free-to-caller; and

- online chat services and email - while it is true that most mobile handsets have internet capabilities, it is fair to expect that a significant number of vulnerable consumers either do not have these handsets or, if they do, they are subject to substantial data charges that deter them from accessing the internet. For instance, data charges for pre-pay consumers or those on low-tier post-pay packages can be significant and consumers may be reluctant to spend over their monthly allowance.[356] Furthermore, internet services do not always act as an effective substitute - they are vulnerable to poor data coverage and do not allow consumers to access an instant and interactive response (for example when they need to discuss important or emotive matters such as health or finance, and the less personal service typically offered over the internet may not be a good substitute for these situations). See Annex 11 where we also discuss this issue.

A29.143 None of these suggestions offered by EE therefore offers a viable alternative to a universally free-to-caller number range which an SP offering socially important

[355] EE, April 2012 consultation response, p.19.
[356] It is notable that the example which EE provided involved a £30-£40 monthly contract which is unlikely to be considered affordable by most low-income customers. See footnote 48 on page 19 of EE's April 2012 consultation response.

services can use if it wants to ensure that its customers do not pay for accessing that service from either a mobile or a fixed line.

Regulatory burden

Summary of position in April 2012 consultation

A29.144 We said that making the 080 range free-to-caller would impose potentially significant costs on SPs, either in terms of paying the increased mobile origination charge (in the April 2012 consultation, we estimated this to potentially be an increase of over £100m) or the migration costs of moving to a different number range (we estimated the one-off migration costs to SPs as between £2.6m to £11.4m). We also noted a further risk that actual mobile origination charges may not fall within our assumed IAR. However, we considered that our proposed approach to wholesale regulation (discussed further in Section 14) would reduce or mitigate that risk. We considered that direct compliance costs for OCPs were unlikely, and noted there might be potential cost savings as a result of removing PCAs for free 080 calls.[357]

A29.145 We did not conduct a fully quantified assessment of the impact of making the 080 range free-to-caller in the April 2012 consultation. We explained that:

- the types of costs involved in implementing the changes to 080 were different from those involved in implementing the unbundled tariff, for example, there were no significant billing and system costs related to our 080 proposals (unlike for the unbundled tariff). The increased mobile origination cost for SPs represented a rebalancing of payments, i.e. it changed who paid for the cost of originating 080 calls from mobiles, rather than creating an additional cost. Therefore, we considered the primary additional costs created by our 080 proposal were the migration costs; and

- the way we had quantified the benefits for our unbundled tariff proposal could not be easily replicated for our 080 proposal. In particular, for 080 calls, SPs largely benefit from calls they receive. We had not been able to model this effect on 080 calls because we did not have the necessary data. Whilst we said this benefit did not have a significant effect for the 084/087 ranges, we considered it was a central aspect of our proposal for the 080 range and, without being able to quantify that effect, it was difficult to provide an appropriate quantification of the overall benefits of our proposals.

A29.146 Nevertheless, we conducted a qualitative assessment of the benefits. We discussed the benefits in detail, setting out the impact on different stakeholder groups, as well as providing estimates of the costs. We considered this was sufficient to enable stakeholders to assess the likely impact of our proposals.[358]

Stakeholder comments

Comments on costs and the impact assessment

A29.147 Stakeholders made a number of comments about the costs involved in making the 080 range free-to-caller, in particular:

[357] April 2012 consultation response, pp.68-70.
[358] April 2012 consultation, Part C, Section 16, p.83, paragraphs 16.259 to 16.260.

- billing costs[359] (EE, Verizon, CWW, Vodafone, Magrathea, [✂]);
- communication costs (EE, [✂], Verizon, CWW, Vodafone, Magrathea, [✂], THA);
- migration costs (EE, [✂]); and
- misdialling costs (EE, CWW).

A29.148 In addition, EE said it was clear that the imposition of an access condition on TCPs would leave open the critical question of what the fair and reasonable terms required by that condition were. It said the delays and costs to industry and consumers associated with Ofcom deliberations, dispute and/or some degree of regulatory failure were virtually inevitable. It agreed with our observations in the April 2012 consultation in relation to the maximum prices option for the revenue sharing ranges (which we considered as a potential alternative to the unbundled tariff). EE considered that we had inappropriately downplayed these observations about the complexity and regulatory burden associated with setting a maximum retail price in the context of our 080 proposals.[360]

A29.149 EE said it found it "extremely telling" that we had declined to conduct a quantitative costs and benefits assessment of its proposals. It said it found our reasons for doing so 'unconvincing', and our failure to do so was evidence that our proposals did not meet the mandatory statutory requirements of being necessary and proportionate for the protection of consumers. Specifically it disagreed that the costs of making 080 free-to-caller were different from those applicable to the unbundled tariff. It highlighted the communications costs and the costs of mobile OCPs updating their billing systems as examples. In addition it disagreed that SP benefit was a valid reason for not modelling the benefits to consumers that we claimed would result from greater price awareness (as we had done for the unbundled tariff).[361]

Payphones

A29.150 EE also considered that we should not underestimate the impact of our proposals on payphones. It said that any proposals which may result in fewer payphones being viable should be carefully considered.[362]

A29.151 BT was also concerned about the negative impact on payphones. It noted it was already seeing a decline in usage of payphones of around [✂] a year. It said making 080 free to caller would have a significant impact on the decline of its payphone estate and would immediately make around another [✂] payphones unprofitable. It asked Ofcom to consider reviewing the USO guidelines to enable it to remove very unprofitable and unused payphones more easily. It noted the current guidelines were written before mobile phones were widely used and it

[359] Vodafone, Verizon, CWW, Vodafone, Magrathea, [✂]), suggested that some billing costs could result from varying mobile origination payments across industry as a result of making 080 free-to-caller - we set out our response to the issue of varying mobile origination payments in Annex 30.
[360] EE, April 2012 consultation response, p.6.
[361] EE, April 2012 consultation response, p.45.
[362] EE, April 2012 consultation response, p.18.

believed that the current USO would become even more outdated once the change was introduced.[363]

Ofcom response

Updated costs and impact assessment

A29.152 We have set out and responded to stakeholder comments on each of the different cost categories in detail in Annex 10. We have made a number of adjustments to our cost estimates as a result of stakeholder comments. This includes the quantification of a number of costs which were not included in our April 2012 consultation (as noted by EE) such as the communications costs, billing costs and misdialling costs. Our assessment indicates that the one-off cost of implementing free-to-caller on the 080 range is £8.8m to £57.5m across industry (we do not anticipate any material ongoing costs). As explained in more detail in Annex 10, the main reason for the substantial increase in our cost estimate since the April 2012 consultation is that we have included costs for SP migration associated with our wider IAR, which results in SP migration of between 8% and 36%. However, as discussed in Section 13, we place more weight on origination payments within our base case scenario. Therefore we expect migration is more likely to be the 19% already discussed above and that the potential for costs to be at the top end of our range is significantly less likely.

A29.153 We remain of the view that applying the same framework used in relation to the unbundled tariff to quantify the benefits of making 080 free-to-caller is inappropriate. We have responded to EE's comments in more detail in Annex 11.

A29.154 With respect to EE's comment about the high risk of regulatory failure associated with setting maximum retail prices, we remain of the view that there is a material difference in the regulatory costs and risks associated with setting maximum retail prices for all non-geographic number ranges compared to setting a maximum retail price of zero for the 080 range. The complexities which we highlighted in relation to the maximum prices option for the revenue sharing ranges were in large part associated with the difficulties of setting a 'correct' retail price for each number range. Such concerns are not applicable to the 080 range because the retail price is simply 'zero', and this price is clearly justified by the demand from both consumers and SPs for this price point. We recognise, nevertheless, that there are complexities and risks associated with the wholesale arrangements. We discuss our proposed approach to addressing some of these complexities in Section 14.

Payphones

A29.155 Both BT and EE were concerned that our proposals would have a negative impact on payphones, as consumers would no longer use payphones to access 080 numbers if they were made free-to-caller from mobile phones. As we set out in the April 2012 consultation, we do not consider it is in the consumer interest to be encouraged to use a payphone where they already have a mobile phone. This is because of the inherent costs to consumers of seeking out a payphone, and because those choosing to use a payphone are likely to be those consumers without a fixed line that we have identified as being vulnerable.[364] Payphone use is already in decline, irrespective of any potential effect of making 080 free-to-caller. This is an issue which needs to be considered with reference to the future of

[363] BT, April 2012 consultation response, pp.23-24.
[364] April 2012 consultation, Part C, Section 16, p.69.

payphones in general, rather than as a factor relevant to a decision to make 080 free-to-caller.

A29.156 With respect to BT's request that we review the USO Direction and Guidance[365], we have no plans to review the guidance at the current time and we do not consider that making the 080 range free-to-caller necessarily has any impact on the requirements in the guidelines. As indicated above, this is an issue which needs to be considered separately.

Approach to the 0500 Freephone range

Summary of position in April 2012 consultation

A29.157 In the April 2012 consultation we only briefly considered the 0500 range and did not invite any comments specifically in relation to it.[366]

A29.158 We said that the two basic options for reforming 0500 were the same as those for 080 – i.e. making the range free-to-caller or imposing a maximum mobile price. Taking account of SPs' preferences, callers' understanding of call prices and Ofcom's policy regarding the extent of a free-to-caller range, we proposed that if there were to be an MMP range, 0500 (rather than 080) would be the appropriate number range for this.[367] We also observed that if 0500 were to be a free-to-caller range, this would make it identical to the 080 range (given that this was our preferred option for that range). We said that this raised the question of whether it would, instead, be appropriate to consider withdrawing the 0500 range to lessen consumer confusion.

A29.159 In light of limited information on 0500, we said that we would consult separately on options for 0500 in order to ensure that SPs and stakeholders could engage fully with the issues.[368]

The 0500 consultation

A29.160 We issued a further consultation in October 2012 on our proposed approach for 0500 ('the 0500 consultation').[369] We assessed a number of options as part of that consultation, including:

- making it free-to-caller (which some stakeholders indicated support for in their responses to our April 2012 consultation[370]);
- setting a maximum mobile price; or
- withdrawing the range.

A29.161 Our preferred option was to withdraw the 0500 range. We considered that, on balance, this offered the greatest net benefit to consumers - reducing consumer

[365] This is available in the Annex at this link: http://stakeholders.ofcom.org.uk/binaries/consultations/uso/statement/statement.pdf
[366] April 2012 consultation, Part C, Section 16, pp.83-85, paragraphs 16.265 to 16.277.
[367] April 2012 consultation, Part C, Annex 25.
[368] April 2012 consultation, Part C, Section 16, p.85, paragraph 16.273.
[369] http://stakeholders.ofcom.org.uk/consultations/0500-number-range/
[370] In particular BT and CWW indicated that they favoured making the range free-to-caller alongside 080.

confusion, securing the best use of telephone numbers, and enhancing the clarity and simplicity of a free-to-caller 080 range for the benefit of consumers and businesses.[371]

A29.162 The 0500 consultation closed on 8 January 2013 and we received 16 responses.[372]

A29.163 In the light of the responses we have received to the 0500 consultation, we are continuing to reflect on the policy proposal to withdraw 0500 numbers (including options to moderate the impact of any withdrawal) and the powers available to us to give effect to such a proposal. It is likely that we will publish a further consultation on this issue later in the year.

Stakeholder responses relevant to our assessment of 0500

A29.164 In response to the April 2012 consultation EE argued that the 0500 range should be designated as free-to-caller instead of the 080 range.[373] In particular (as set out in paragraphs A29.21 to A29.22 above) it considered that 0500 could be designated as free-to-caller alongside setting a maximum mobile price for the 080 range. EE noted that we had not assessed this as an option and it considered that this was a significant failing in our analysis.[374]

A29.165 EE considered that the evidence and analysis in the April 2012 consultation pointed towards the 0500 range being the free-to-caller range and 080 being MMP, rather than the other way round. In particular:

- it argued that the evidence from the 2011 SP survey did not support our view that SPs preferences tended towards 080 being free-to-caller (rather than MMP);
- it welcomed our “sensible conclusion” that callers’ current beliefs about 080 call prices provided a tentative indication that it might be simpler to establish the proposition that 080 was the MMP range and 0500 was free-to-caller, rather than the converse approach. It said that, given the consumer protection, transparency and awareness motivations behind our proposals, it disagreed with our suggestion that limited weight should be given to that conclusion; and
- it said that making the 0500 range free-to-caller would appear to meet our consumer protection objectives without forcing changes on SPs.[375]

A29.166 EE reiterated these arguments in its response to the 0500 consultation.[376] It argued that our 0500 consultation was materially flawed as a result of framing the options for the 0500 range on the assumption that we would proceed with our proposal to make the 080 and 116 ranges free-to-caller. It considered that our cost benefit analysis ought to consider the options for the 080, 116 and 0500 ranges in the

[371] We said in the 0500 Consultation that we were assuming that the 080 range would be made free-to-caller. However, if we ultimately decided to take a different approach to the 080 range, then we would also revisit our options for the 0500 range.
[372] All the non-confidential responses are available at: http://stakeholders.ofcom.org.uk/consultations/0500-number-range/?showResponses=true
[373] EE, April 2012 consultation response, pp.44-45.
[374] EE, April 2012 consultation response, p.47. In Annexes 21-25 of the April 2012 consultation we assessed three options, A: free-to-caller for both 080 and 0500, B: a maximum mobile price for both 080 and 0500 and C: free-to-caller for 080 and a maximum mobile price for 0500. EE argued that there should have been an option D: free-to-caller for 0500 and a maximum mobile price for 080.
[375] EE, April 2012 consultation response, pp.54-55.
[376] EE, 0500 consultation response (dated 13 January 2013), p.4.

round, without any of the policy positions regarding any of the ranges having been pre-determined, so as to arrive at a total solution which overall best maximised consumer welfare.

Ofcom's response

A29.167 We have responded to EE's arguments about the evidence surrounding SP preferences in paragraphs A29.93 to A29.100 above (under our assessment of the free-to-caller option, in particular the service quality, variety and innovation sub-heading). We note there that the 2011 SP survey indicates that more SPs on the 080 range would prefer the free-to-caller approach than the MMP approach on that range if the increase in their average outpayments is 1ppm (47% compared to 33%). We consider an increase in average outpayment of this magnitude likely for the reasons set out in Section 12.[377] In addition, as we noted in the April 2012 consultation, this might overstate SPs' preference for EE's preferred approach because in the 2011 SP survey we asked about an MMP of 7ppm, rather than a price linked to an AC (which is the approach advocated by EE for MMP, and which might be higher than 7ppm).[378]

A29.168 In terms of caller's beliefs about call prices, in the April 2012 consultation, we did note (as highlighted by EE) that the evidence indicated that some callers currently recognised that mobile 080 calls were more expensive than fixed 080 calls, and that this would be consistent with setting a MMP for 080 calls.[379] However, we also noted that if 080 was designated as a MMP range, callers' beliefs about the level of mobile 080 call prices would have to change. We considered that it would be relatively simple for callers to learn that 080 calls were free from a mobile if the range were made free-to-caller (given that this would be consistent with the charging approach for fixed calls). We therefore disagree with EE's suggestion that we should put more weight on this point, particularly given that EE has not provided any further evidence or engaged with the full extent of our analysis on this point.

A29.169 Furthermore, as we set out in the 0500 consultation, there is evidence that callers have extremely limited awareness of 0500 call prices.[380] Therefore EE's 'Option D' of making 0500 free-to-caller and 080 a MMP range is more likely to require a much larger improvement in consumers' understanding of the 0500 range, both in terms of mobile and fixed call prices, whereas 080 already has the advantage of some recognition by consumers (it is the most well-recognised of the non-geographic number ranges, albeit that awareness and confidence in prices is, in absolute terms, poor).[381]

[377] 2011 SPs survey, Q20. The remaining SPs were either indifferent (16%) or didn't know (5%). We recognise that there are some scenarios, particularly where mobile origination payments are towards the upper end of our wider IAR and fixed to mobile substitution is also high, where the increase in SP average outpayments may be greater than 1ppm. However, we do not consider these scenarios likely for the reasons set out in Section 12.
[378] April 2012 consultation, Part C, Annex 25, paragraph A25.8.
[379] See paragraph A25.18 of the April 2012 consultation, Part C Annex 45.
[380] Our 2012 Consumer survey indicated that only 4% of consumers were aware of, and understood, that 0500 numbers were Freephone. See paragraph 3.14 of the 0500 consultation.
[381] For example see Figure 4.1 in the December 2010 consultation where 88% of consumers indicated their recognition of the 080 range, which was higher than any other non-geographic number range. More recently, consumer research carried out ahead of the 0500 Consultation found that 77% of consumers indicated an awareness of the 080 range, which was the highest of all the number ranges asked about. See Q9 of the 2012 Consumer research, available here:

A29.170 We therefore disagree with EE's suggestion that our analysis was incomplete because we did not assess an option of making 0500 the free-to-caller range (alongside MMP for the 080 range). For the reasons set out above (and in the April 2012 consultation382, in particular the evidence of SP preferences which indicates that more SPs would operate free-to-caller numbers if 080 is made free-to-caller, as opposed to 0500) we consider that the approach suggested by EE would not meet our consumer protection objectives, and would not be consistent with our policy preference. We have set out the reasons why we consider the MMP option would not meet our objectives above and in Section 13. We will continue to assess the appropriate options for the 0500 range in conjunction with making 080 free-to-caller, and taking into account stakeholder comments made in response to our 0500 consultation.

A29.171 We also disagree with EE that we have not assessed the options for 080, 116 and 0500 in the round. As noted in the paragraph above, we set out our reasons for not assessing an option of the 0500 range as free-to-caller and 080 with a MMP in the April 2012 consultation. Furthermore, in Section 16 of the April 2012 consultation (paragraphs 16.274 to 16.277) we considered the impact of the option of setting a MMP for 0500 on our 080 assessment but our view was that it would tend to reinforce any preference for making 080 free-to-caller. We therefore consider we have given sufficient consideration to the impact of different options for 080 and 0500.

Approach to the 116 range

Summary of position in April 2012 consultation

A29.172 We considered that maintaining the status quo (where 116 numbers could either be designated as 'Freephone' or 'free-to-caller') was not an appropriate option for the 116 range. We recognised that there was low usage of this range and that all the active allocations of 116 numbers had so far been designated as 'free-to-caller' (which meant that there was limited evidence of existing consumer detriment in relation to this range).[383] Nevertheless, we said that we expected call volumes on the range to increase in future when more services were available and that without a clear pricing framework the same issues around consumer confusion which existed on the 080 range were likely to arise on the 116 range. We therefore provisionally concluded that, taking into account the changes we were proposing for the 080 range (as well as other NGCs) it would be counterintuitive and cause confusion if we were to leave 116 numbers with two different charging arrangements in place, particularly given that these numbers were clearly designated for services of social value.[384]

A29.173 We considered options of either making all 116 numbers (current and future) free-to-caller, or alternatively (in line with our 'Option 2' for the 080 range) setting a maximum mobile price for any 116 numbers which are designated as 'Freephone'. We assessed the options against our assessment criteria and provisionally

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http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/omnibus-survey2012.pdf. We set out the evidence of consumer confusion of 080 call prices in Section 4 in Part A. Also see paragraphs 15.5 and 15.17 in Part C, Section 15 of the April 2012 consultation.

[382] See in particular paragraph A25.23 in the Part C, Annex 25 of the April 2012 consultation.

[383] We noted that the 'Helpline for victims of crime' on the 116006 number which had been designated as 'Freephone' had not yet been allocated.

[384] See paragraphs A27.23 to A27.28 in Part C, Annex 27 of the April 2012 consultation.

concluded that making 116 numbers free-to-caller would offer the greatest benefits.[385]

A29.174 We acknowledged that there was a risk of reduced service availability under this option. However, we considered that adopting a single free-to-caller approach would offer clear benefits to consumers in terms of promoting a clear and simple pricing message. We said that avoiding different regulatory regimes within the 116 number range was consistent with our approach to the 080 range and our overarching strategy of simplifying the non-geographic numbering system.

A29.175 We also said that the assumptions we had used to derive our IAR for the 080 range might not apply for a free-to-caller 116 range, given that services on this range were clear examples of services of 'social value' which had been through a thorough vetting process before allocation to an SP. We said we would therefore expect the origination payment for mobile calls to be closer to the incremental cost of originating those calls, which we estimated (in Annex 22 of the April 2012 consultation) to be between 0.7ppm to 0.8ppm.[386]

Stakeholder comments

A29.176 Several stakeholders who supported our proposed approach for the 080 range also agreed that 116 numbers should be free-to-caller. For example, BT agreed that it would make sense to treat 116 numbers in the same way as 080.[387] Three also said it did not see any reason why the 116 range should be treated differently from the 080 ranges.[388] CWW also agreed and said that the current differentiation between 116 services offered little to consumers other than pricing confusion. When the social value of the majority of services operating on 116 range is taken into consideration, CWW considered that it was difficult to argue that pricing differentiation was warranted.[389]

A29.177 EE, however, said it remained of the view that allowing some 116 numbers to be designated as Freephone, rather than requiring all 116 numbers to be designated as free-to-caller, would best meet the needs of current and future 116 SPs. It considered that we had not provided evidence that the status quo was confusing to consumers and believed that the current arrangements would be quite consistent with a context in which 080 remained designated as a Freephone range and 0500 designated as a free-to-caller range.[390]

A29.178 EE went on to say that the risk of reduced service availability under our preferred free-to-caller option was difficult to reconcile with our statement that this option would most likely facilitate access to services for vulnerable consumers.[391] It noted that, although there were only a handful of current 116 SPs, we had presented evidence that at least one 116 SP seemed likely to exit the range if faced with

[385] Our assessment was set out in paragraphs A27.32 to A27.47 in Part C, Annex 17 of the April 2012 consultation.
[386] Part C of the April 2012 consultation, paragraph 16.280 in Section 16 and paragraph A27.30 in Annex 27.
[387] BT, April 2012 consultation response, p.33.
[388] Three, April 2012 consultation response, p.32.
[389] CWW, April 2012 consultation response, p.31
[390] EE, April 2012 consultation response, p.56.
[391] EE, April 2012 consultation response, p.56.

higher origination costs. EE said that it seemed reasonable to assume that future 116 SP might be similarly deterred from launching new services.[392]

A29.179 EE argued that, to the extent that we were worried about high pricing of 116 calls designated as Freephone, it believed that concern could be addressed by setting a maximum price of zero for fixed line calls and a maximum mobile price equal to the AC for 084/087 calls. EE said that this would adequately meet our consumer protection objectives without the risk of reduced service availability.[393]

A29.180 EE and Vodafone were also concerned about our proposed approach to the mobile origination charge if the 116 range were made free-to-caller:

- EE did not believe it would be appropriate for OCPs to be legally required to under-recover their costs of origination. It submitted that any guidelines that we issued regarding fair and reasonable origination charges on this range must allow OCPs to recover their full costs of origination (in this respect it noted that some services on 116 could have a ‘commercial element’).[394] EE also noted that, in any event, these guidelines would not prevent OCPs from voluntarily agreeing to waive or reduce mobile origination charges for 116 services if they chose to do so; [395] and

- Vodafone said that it would support our proposal, if this consisted of treating 116 numbers in the same way as 080 (subject to its comments on the 080 option). However, Vodafone said it was not clear that this is what we were proposing because of the reference to a much lower out-payment notionally based on our view of the incremental cost of mobile origination. It said this was not appropriate and it could not support it. Vodafone considered that the assessment of incremental cost was too low and, even if it was accurate, there was no reason to treat SPs using 116 numbers differently from other worthy causes running 080 numbers. Vodafone submitted that to do so risked distorting SPs’ choice of number and put us in the position of deciding which SPs should be allowed to use the limited range of 116 numbers.[396]

Ofcom response

A29.181 In Section 12 we set out our revised assumption about the level of mobile origination charges that would apply on a free-to-caller 116 range. We set out our response to Vodafone’s and EE’s comments on mobile origination charges for the 116 range in Annex 27.

A29.182 In responding to EE’s comments about the appropriateness of the free-to-caller option for the 116 range it is important to first clarify the purpose and background of the range. We set this out in more detail in Section 11. In summary, 116 numbers are reserved by the EC for certain ‘services of social value’ across Europe. Once the EC has reserved a specific 116 number for a particular type of service, Ofcom then designates that number in the Numbering Plan as either ‘Freephone’ or ‘free-

[392] EE, April 2012 consultation response, p.16.
[393] EE, April 2012 consultation response, p.56.
[394] EE highlighted previous references in the 116 Statement where Ofcom highlighted the potential ‘commercial element’ of these services. Ofcom, 116 Statement, paragraph 1.15
[395] EE, April 2012 consultation, p.55.
[396] Vodafone, April 2012 consultation, p.34

to-caller'.[397] There are currently five 116 numbers reserved by the EC[398] and of these five, we have designated four as 'free-to-caller' and one, the helpline for victims of crime (on 116006), has been designated as Freephone.[399] However, the victims of crime number (as well as the 116117 number for non-emergency health services) have not yet been allocated to a SP and therefore are not yet operational in the UK.

A29.183 We remain of the view that making all 116 numbers free-to-caller is the more appropriate approach to protect consumers from potential confusion arising from having two different pricing structures on the number range. We have set out our overall assessment of this option against each of our assessment criteria in more detail in Section 13. We respond to EE's specific challenges below but where relevant have referred to our assessment in Section 13.

A29.184 First, we have rejected EE's proposed combination of making 080 a MMP range and making 0500 free-to-caller earlier in this Annex. In the context of that approach having two different charging structures for 116 (i.e. Freephone or free-to-caller) would not be consistent in the way EE suggests, and we consider it would be likely to cause confusion to consumers. We recognise that 116 is a relatively nascent number range and one with relatively low call volumes at present, which means that there is little current evidence of consumer misunderstanding or confusion. However, as we set out in the April 2012 and December 2010 consultations, it is reasonable to assume that, as the range becomes more widely used, the same issues around consumer confusion which currently occur on the 080 range are likely to become present on the 116 range if some calls are free and others incur charges from a mobile. Currently consumers struggle to appreciate the differences between similar looking numbers (for example between 0844 and 0845 numbers). This indicates that consumers are likely to find it difficult to recognise different sub-categories of number within the 116 range (i.e. 116006 vs. 116123) and remember whether or not they are charged from a mobile. These difficulties are likely to be compounded by the infrequency with which most consumers are likely to call 116 numbers (in view of the type of service they provide).[400]

A29.185 EE commented about the risk of reduced service availability and whether that could be reconciled with our view that the free-to-caller approach will most likely facilitate access to services for vulnerable consumers. We recognise that the potential benefits of facilitating access to vulnerable consumers have to be weighed against any potential negative impact on service availability more generally (and we made this point in the April 2012 consultation).[401] However, we consider the benefits to consumer price awareness generally, as well as the consequential improvements in vulnerable consumers' access to the socially important services provided on the 116 range, are likely to outweigh the potential risk of the negative impact on service

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[397] In deciding which designation to adopt we consider the following factors: the level of social value or need met by the service, the likely situation of the caller when he/she needs to call the service, and the market environment in which the service operates.

[398] These are, 116006 (helpline for victims 116000 (Hotline for missing children), 116111 (Child helpline), 116123 (emotional support helpline) and 116117 (non-emergency medical on-call service).

[399] The main reason for this decision was concern over the funding feasibility of a free-to-caller arrangement. See 116 July 2010 Statement, p.17: http://stakeholders.ofcom.org.uk/binaries/consultations/harmonised_eu_numbers/statement/harmonised-eu-numbers.pdf.

[400] In a survey by the EC on the use of 116 numbers, 76% of respondents said they had never been in need of calling one of the types of service currently allocated to the 116 range. http://ec.europa.eu/public_opinion/archives/ebs/ebs_367_en.pdf, p.65.

[401] See paragraph A27.43, Annex 27, Part C, April 2012 consultation.

availability. Below, we discuss the risk to service availability first, and then we discuss the benefits to vulnerable consumers.

A29.186 We acknowledged in the April 2012 consultation that the free-to-caller approach had risks attached. In particular, the risk of potentially fewer services being provided on 116 numbers because of the increased costs to SPs of funding a service with a free-to-caller number compared to a Freephone number. However we set out in Section 13 (paragraphs 13.175 to 13.177) our view that a lower mobile origination charge (which is reflected in our revised IAR for 116 numbers, see Section 12) will help mitigate, if not completely remove, this risk. We also note that any impact of making 116 free-to-caller is reduced by the fact that there are no active 116 numbers currently designated as Freephone.

A29.187 With respect to the potential for the free-to-caller approach to facilitate access to services for vulnerable consumers:

- 116 numbers are clear examples of socially important services (given they are reserved by the EC for services of 'social value') and vulnerable callers might be those who are most in need of accessing these services;
- since actual mobile call prices will be free-to-caller and expected call prices are also likely to be zero, access to these services is likely to be easier for vulnerable consumers. We previously noted concerns that the charges from a mobile could deter callers in most need of the a 116 service;[402] and
- evidence from The Samaritans provided some indications that the introduction of its 116123 number had increased total call volumes, suggesting that the cost of calling could previously have been a deterrent to some of The Samaritans' callers (albeit we noted in the April 2012 consultation that we were cautious about the evidence given that other factors might have affected the volumes).[403]

A29.188 In terms of EE's comment that some 116 numbers can have a 'commercial element', we acknowledge that there is some potential for 116 services to have a commercial element. However, the scope for such services is limited by the EC 116 Decision which prohibits certain activities, including marketing and selling during the call and payment for the use of the service. A commercial element does not change the fact that the services are defined as being of 'social value'. In the same way, the definition which we have used for 'socially important services' includes utilities, which obviously are commercial but they also serve a specific, essential consumer need.[404] We therefore do not consider this point to be relevant to our assessment of the appropriate origination payment, or the free-to-caller option.

A29.189 Finally, EE also argues that a maximum mobile price for Freephone 116 numbers would address any concern about 'high' mobile prices for these numbers. We noted in the December 2010 consultation (and summarised in the April 2012 consultation) that we would be concerned if a pattern of high prices for some calls

[402] July 2010 116 Statement, p.16.
[403] April 2012 consultation, Part C, Annex 27, paragraph A27.38. See also paragraph 16.91 in Section 16 where we discussed this evidence.
[404] The EC 116 Decision defines 'Harmonised service of social value' as "a service meeting a common description to be accessed by individuals via a freephone number, which is potentially of value to visitors from other countries and which answers a specific social need, in particular which contributes to the well-being or safety of citizens, or particular groups of citizens, or helps citizens in difficulty".

to 116 numbers were to emerge. However, this was just one of the concerns which we outlined, others included poor consumer price awareness. We therefore disagree that an MMP approach would address our consumer protection objectives because different charging structures would remain for different 116 numbers and, therefore, the potential for consumer confusion about the price for calling 116 numbers would also be likely to remain. As noted above, without a clearer pricing framework for these numbers the same issues around consumer confusion and, in particular, the concerns about access by vulnerable consumers, could become present on the 116 range.

A29.190 Therefore, on balance, we consider that making all 116 numbers free-to-caller is likely to address the market failures we have identified more effectively compared to maintaining the status quo or setting a MMP, in particular the potential for those failures to manifest in future with greater usage of the range.

Part C - Annex 30

Wholesale arrangements

Introduction

A30.1 This Annex sets out a summary of issues raised in responses to our April 2012 consultation in respect of our wholesale regulatory approach for 080 and 116 services under the free to caller regime, in particular the proposed access condition.

A30.2 It also sets out our comments in response to the issues raised by stakeholders. Our view on the appropriate wholesale regulatory approach, which takes account of stakeholder comments, is set out in Section 14, together with areas of further consultation.

A30.3 We have divided the responses on wholesale regulation into the following areas:

- what approach should Ofcom take to wholesale regulation?;
- imposition of the access condition on CPs;
- origination payments under the access condition;
- notification of initial revision to charges under the access condition; and
- other issues related to the access condition.

What approach should Ofcom take to wholesale regulation?

Summary of position in the April 2012 consultation

A30.4 We considered three options:

30.4.1 **no *ex ante* regulation** (i.e. reliance on our dispute resolution powers):

- o We recognised that, having exercised our dispute resolution powers in the context of the 080 Dispute Determination, we already have an established framework for considering whether charges are fair and reasonable. However, we considered that dispute resolution, at least initially, may not be sufficient to adequately address the concerns we had identified over the level of origination payments, if we were to make 080 free-to-caller. We considered that there would be a substantial risk of an extended period of uncertainty over access and wholesale mobile origination payments. Due to the link between migration costs and implementation time, SPs will wish to make decisions over migration as early as possible, but an extended period of uncertainty would either lead to decisions on migration being inappropriately delayed, or made on the basis of potentially imperfect information. We considered that a reliance on dispute resolution alone would not adequately address this issue.[405]

30.4.2 ***ex ante* access regulation**:

[405] April 2012 consultation, Part C, Section 17, pp.94-96.

- o We considered that an obligation to require the purchase of wholesale origination on fair and reasonable terms would be proportionate as it would allow some degree of flexibility for stakeholders, but would restrict the scope for unreasonable terms to be imposed on CPs with a relatively poor negotiating position. In light of the specific concerns regarding certainty for all stakeholders (including SPs), we considered that we would need to provide guidance as to what would be considered fair and reasonable in the circumstances. Dispute resolution would still be an option should parties not be able to agree a fair and reasonable level of charge. However, in the presence of guidance, we said that we would expect stakeholders to be in a better position to be able to agree charges and, in the event of a dispute, the dispute would potentially have a clearer focus

- o We considered that it would be appropriate to require TCPs to notify SPs of the initial revision (if any) to their wholesale origination charges within two months of the imposition of the zero maximum retail price obligation. Notifying the change in origination payments would allow SPs to consider how they may be affected. This notification requirement would have the effect of giving TCPs two months to consider the level of revised wholesale origination payments, and should provide early notice to industry including SPs. The implementation period, before the zero maximum price came into effect, would then provide a sufficient period in which OCPs could consider the proposed level of payments and SPs could make an initial assessment as to whether they should migrate or not. Once a level of payment had been agreed between OCPs and TCPs, SPs would then be able to finalise any decision.[406]

30.4.3 **SMP regulation - wholesale market review:**

- o In Annex 10 of the April 2012 consultation we noted that we had assessed, at a high level, the relative negotiating positions of stakeholders. We considered that there was a wide variation in the positions of OCPs and TCPs, and this would make any formal analysis under market review procedures inherently complex and time-consuming. In light of the availability of a suitable remedy in the proposed access condition, and the fact that the consumer detriment identified is current and ongoing, we did not consider it would be proportionate or appropriate to conduct a market review to address this identified issue.[407]

Stakeholder comments and Ofcom's response

A30.5 All respondents broadly agreed that wholesale regulation was needed, but there was some disagreement over how regulation should be imposed. We set out the comments below (and our response to those comments) under the following headings:

- SMP regulation;
- no ex-ante regulation; and
- alternative approaches to wholesale regulation.

[406] April 2012 consultation, Part C, Section 17, pp.96-98.
[407] April 2012 consultation, Part C, Section 17, p.98.

SMP regulation - wholesale market review

Stakeholder comments

A30.6 Three believed that, despite the retail focus of our review, we should commit to carrying out a wholesale market review. It argued that we have recognised that there are wholesale concerns (e.g. imbalance in negotiating power between OCPs and TCPs) but have not attempted to review these in a targeted manner.[408] In particular, it argued there were certain problems that must be considered. More specifically, it noted that the CAT has recognised that TCPs are effective monopolists when they terminate non-geographic calls, and we should review the market power of TCPs to resolve problems at the wholesale level. It was also concerned that the imbalances in BT's Standard Interconnect Agreement (SIA) need to be considered in the context of this review. In particular, Three was concerned that, if we were to impose an access condition, BT would be able to reject any origination payments which Three proposes (under the terms of the SIA). Finally, it pointed to the frequency of disputes between CPs in relation to the fair and reasonableness of wholesale termination rates as evidence of a problem which needs to be addressed.[409]

A30.7 Ultimately, Three's concern was that by not carrying out a market review (and relying on the proposed access condition instead) it would not be provided with sufficient certainty of recovering its efficient costs (if 080 retail prices are set to zero). It said that, even if we proceeded with out proposed intervention at the retail level, we should nevertheless commit to carrying out an SMP review at the wholesale level in the medium term to address concerns (i.e. imbalances in negotiating power) at that level.[410]

A30.8 Other stakeholders (Virgin Media and EE) argued for wholesale only intervention to remedy the concerns at the retail level. We set out our response to these concerns in Annex 29.

Ofcom response

A30.9 As we set out in the April 2012 consultation, if we were to proceed with a free-to-caller approach at the retail level, we do not consider that a market review would be an appropriate and proportionate means of regulating the concerns we have about the operation of the wholesale level. This is because we consider that there is likely to be a wide variation in the positions of OCPs and TCPs, as a result of considerable differences in their relative market shares and business models. We do not consider that one side (i.e. either OCPs or TCPs) would consistently be in a strong position in negotiations, but rather the relative strength of bargaining power in any particular negotiation would depend upon the identity of the particular OCP and TCP involved (this is discussed further in Annex 9). As such, we may not be able to impose SMP regulation on a consistent basis across the market. In addition, the wide variance in the position of OCPs and TCPs would make any formal analysis under market review procedures inherently complex and time-consuming. Our power under the Act to impose an access condition is legally and conceptually distinct from SMP regulation and enables us (where we have satisfied the relevant legal tests) to impose obligations on operators irrespective of their market power. We recognise that the thrust of Three's concern is that the proposed access

[408] Three, April 2012 consultation response, p.43
[409] Three, April 2012 consultation response, p.35, p.41 and p.42.
[410] Three, April 2012 consultation response, pp. 6 and 39.

condition would not sufficiently address imbalances in negotiating power and would not provide sufficient certainty of efficient cost recovery. We discuss these concerns below in the sub-section below ‘origination payments under the access condition’ and ‘No ex-ante regulation (versus access condition)’ as well as the equivalent sections in Section 14. Nevertheless, we have not ruled out conducting a wholesale market review in the future. We recently explained, in the NMR consultation, that we would consider whether any further review of the market for call termination to non-geographic numbers is necessary in the future (after our proposals as part of this review have been implemented). However, we stated that it would currently be inappropriate to conduct a market review of non-geographic call termination because of the very significant changes to this market likely to result from our proposals for NGCs within the period of the review.[411]

A30.10 With respect to Three’s point regarding imbalances in BTs SIA, we have previously said that the asymmetric contractual positions in the SIA are not specific to non-geographic calls and so we did not consider them further as part of this review.[412] On 14 February 2012, we opened a dispute between BT and EE in which we are considering whether the operation and/or effect of paragraphs 12 and 13 of BT’s SIA is such that they constitute fair and reasonable terms or conditions.[413] We respond to Three’s related point (that, if an access condition is imposed, the terms of the SIA would enable BT to reject any origination payments which Three proposes) in the sub-section below ‘notification of initial revision to charges under the access condition’.

No ex-ante wholesale regulation (versus access condition)

Stakeholder comments

A30.11 Only Three specifically commented on the option of us imposing no-ex ante regulation, saying that it would not provide a sufficient level of certainty. It agreed with us that the existing guidance as to how we may approach a dispute on origination charges would not provide sufficient certainty if retail prices were set to zero. It also said that relying on the dispute resolution regime to address the issue of recovery of efficient costs of origination would cause significant uncertainty in the short term (at least), particularly for MNOs.[414]

A30.12 However, Three was concerned that the access condition would not provide any additional certainty, compared to a reliance on dispute resolution alone. Specifically, Three commented on the efficacy of the second part of the proposed access condition, which requires TCPs to purchase wholesale origination on fair and reasonable terms and conditions (including charges). Three said that, absent detailed guidance on the precise rate that is considered fair and reasonable or a method of calculation of that rate, the access condition will not be substantively different from the status quo (i.e. no ex-ante wholesale regulation).[415]

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[411] NMR Consultation, see paragraphs 5.280 to 5.297 (available at: http://stakeholders.ofcom.org.uk/consultations/nmr-13/).

[412] April 2012 consultation, Part A, Annex 10, p.140; and December 2010 Consultation, paragraph A3.233.

[413] O2 and Three were subsequently joined as parties to this dispute. http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01083/

[414] Three, April 2012 consultation response, pp.39-40.

[415] Three, April 2012 consultation response, p.39.

A30.13 Three noted that our dispute resolution procedures already require that charges must be fair and reasonable and that we already have an analytical framework from the 080 Dispute Determination with respect to wholesale origination charges, which says that OCPs must be able to recover their efficient costs of origination. Consequently, Three said there was a risk that the requirement, under the access condition, for TCPs to purchase wholesale origination on fair and reasonable terms and conditions (including charges) would do nothing more to address concerns about certainty of origination payments than existing dispute resolution.

Ofcom response

A30.14 We agree with Three that a reliance on dispute resolution alone would not provide sufficient certainty. As we recognised in the April 2012 consultation, there is some guidance available (i.e. 080 Dispute Determination) for industry to draw on in considering how we might approach any future dispute about wholesale origination charges. However, if the 080 range is made free-to-caller, we consider that dispute resolution alone (at least initially) may not be sufficient to address adequately the concerns we have identified over the risk of unreasonable charges. In addition, dispute resolution is not likely to adequately address the issue of minimising the period of any uncertainty about charges.[416] Therefore, we still consider that a reliance on commercial negotiation and dispute resolution alone would be inappropriate, and that ex-ante regulation is warranted.

A30.15 However, we do not accept Three's submission that the proposed access condition will not provide any additional certainty. We consider that the proposed access condition will provide some substantive benefit compared to reliance on commercial negotiation and dispute resolution alone (i.e. no ex-ante regulation). Specifically, we consider that the access condition will:

- Provide stronger support for TCPs and OCPs to reach commercial agreement, than reliance on commercial negotiation and dispute resolution alone. Our proposed access condition clarifies which of the two parties should make the initial proposal for any revision to the currently applicable origination charge (the TCP).[417] The access condition also clarifies the obligation to negotiate a fair and reasonable rate. This is complemented by our guidance on how we would approach any dispute about fair and reasonable origination charges, which we are proposing will set out a more detailed and specific version of the framework used in the 080 Dispute Determination. Together these factors will also help address discrepancies in the negotiating position of TCPs and OCPs.[418]

- Facilitate (in the context of a regime undergoing radical change) a timely process for TCPs and OCPs to reach commercial agreement. We are consulting on a requirement for TCPs to give notice of any initial revision to wholesale origination charges to OCPs with whom they interconnect within one month of the access condition being set (see paragraph A30.63 to A30.66 below). We believe that this

[416] April 2012 consultation, Part C, Section 17, p.95.

[417] Some stakeholders have queried which CP should be considered to be providing the service in question, as an origination charge could also be characterised as a negative termination payment (see, for example, Three's response to the April 2012 consultation, Annex). We consider that, without clarity, it may also be unclear which CP is expected to propose a revision to current charges.

[418] On the one hand, smaller OCPs can approach negotiations with certainty that larger TCPs must purchase origination from them at a price which is not excessively low. Similarly, smaller TCPs can approach negotiations with certainty that larger OCPs with whom they interconnect with must sell origination to them at a price which is not excessively high.

will prompt negotiations about origination charges to commence at an early stage during the 18 month implementation period. If we were to rely solely on commercial negotiation and dispute resolution, then TCPs and OCPs might defer this negotiation until the latter part of this 18 month period.[419] An early start to negotiations will also help to ensure that, if a TCP and OCP are unable to reach agreement, the matter can be referred to us for dispute resolution at an early point.

- Facilitate early notice to be given to SPs about the level of origination charges. As noted in paragraph A30.63 to A30.66 below, we are no longer proposing that TCPs should be obliged to notify SPs of their initial proposed revision to charges, as we accept that these charges would still be subject to agreement with OCPs and this will therefore not provide much certainty to SPs. However, we believe that the factors outlined above will result in origination payments being agreed (or set by us in a dispute determination) in a more timely manner than might occur in the absence of the access condition. In turn, this will enable TCPs to provide their SP customers with certainty about the level of their origination charges at an earlier point in the implementation process than might otherwise occur. Given the potential impact of origination charges on SPs, early certainty will support them in undertaking their assessment of continued use of the range (on the basis of an understanding of costs) in sufficient time to make any necessary adjustments – thus ensuring services are sustained without undue disruption.

- Prevent call blocking by TCPs/SPs which might otherwise occur, absent the access condition. The access condition would require an SP’s host TCP to purchase wholesale call origination from any OCP upon reasonable request, and would thereby prevent SPs/TCPs from blocking calls from mobiles as a means of avoiding an increased mobile origination charge. Some stakeholder responses to the April 2012 consultation suggest that TCPs may be contemplating the use of call blocking for this purpose (see paragraph A30.84 to A30.85 below). In practice, TCPs and OCPs may ultimately reach agreement on the level of the origination charge without regulatory intervention at the wholesale level, such that TCPs/SPs have no incentive to block calls. Nevertheless, we consider that the access condition will ensure that all OCPs can obtain connectivity to 080 and 116 numbers in a timely manner.[420]

A30.16 Accordingly, we consider that the access condition will deliver a more stable wholesale environment, in a more timely fashion, than would occur if we relied on commercial negotiation and dispute resolution alone.

[419] TCPs and OCPs would be subject only to their contractual obligations to provide advance notice of any proposed revision to charges. Whilst the exact notice period may differ from one interconnect agreement to another, in our experience it is unlikely to be greater than 2 months. It is therefore possible that, in the absence of the access condition, negotiations on origination charges may not commence until 16 months (or more) into the 18 month implementation period.

[420] We are aware that TCPs/SPs may employ alternative approaches to managing their origination costs, which are not addressed by the access condition (e.g. reducing the time of calls from mobile customers or employing recorded announcements that redirect callers to non-080 numbers etc.). These other types of behaviour are discussed in more detail in Section 12.

Alternative approaches to wholesale regulation

Stakeholder comment

A30.17 Vodafone[421] and Three[422] said that the Common Regulatory Framework does not permit a retail price control to be imposed on OCPs without a finding of SMP, and that the power in the Authorisation Directive to regulate tariff principles and maximum prices only permits us to impose regulation on the number range holder (i.e. the TCP). They both suggested that we should used this power to attach a 'rights of use' requirement to the 080 and 116 number ranges to require TCPs to pay OCPs' efficient costs of origination. Vodafone set out a detailed alternative to our proposed access condition to support this approach. [423]

A30.18 [✂] - also said that, while we may not be able to reach a determination of SMP in call origination to Freephone numbers and so may not be able to set a price control, we could still set a cap on Freephone wholesale origination services. Though it did not suggest how we could do this.[424]

A30.19 Magrathea did not disagree with the proposed access condition, but considered that a price cap would provide more commercial certainty, but did not suggest what powers we should use to implement this.[425]

A30.20 Verizon was concerned that origination charges set by an MNO should be the same for all TCPs. It argued that the principles of equivalence and non-discrimination should dictate the way origination payments are set, noting that this is a requirement of section 47 of the Act. It said that we should adopt these principles, as we did in the 2011 MCT Statement.[426]

Ofcom response

A30.21 We disagree with the propositions from Vodafone and Three that we have misinterpreted our powers derived from the Authorisation Directive. We set out our response to this, and to their alternative regulatory proposals, in Section 6 and Annex 13 of Part A.

A30.22 We note that Magrathea [✂] said that we could set a price cap but did not explain the powers we could use to set the charge. In the absence of sufficient clarity as to what is being proposed, we do not consider it appropriate to further consider this point specifically. In any case we note that Magrathea's [✂] overriding concern is that imbalances in negotiating power may not be sufficiently addressed by the access condition. We set out our response to this below (see paragraphs A30.50 to A30.54).

A30.23 Verizon argued that we should recognise that the principles of equivalence and non-discrimination should dictate the way origination payments are set, because this is a requirement of section 47 of the Act. We disagree with Verizon. In order to be satisfied that the proposed access condition complies with the legal tests set out in section 47(2) of the Act, we must be satisfied that the access condition itself does

[421] Vodafone, April 2012 consultation response, Annex 3 of its response.
[422] Three, April 2012 consultation response, p.4.
[423] Vodafone, April 2012 consultation response, p.76.
[424] [✂]
[425] Magrathea, April 2012 consultation response, p.12.
[426] Verizon, April 2012 consultation response, p.3.

not unduly discriminate against particular persons or against a particular description of persons (and is also objectively justifiable, proportionate and transparent). This does not mean that we must impose a regulatory requirement on CPs to set prices on an equivalent and non-discriminatory basis. However, we recognise Verizon's overriding concern is that origination payments will not be the same for all TCPs. We set out our response to this below (see paragraphs A30.50 to A30.54).

Imposition of the access condition on CPs

Summary of position in the April 2012 consultation

A30.24 We proposed that the access condition would oblige TCPs to purchase wholesale origination services from OCPs on reasonable request.

A30.25 We identified issues related to the wholesale origination charges that would occur if the 080 and 116 ranges were made free to caller. Namely, the differences in negotiating power between different OCPs and TCPs, and a lack of certainty over the level of origination charges that may inhibit SPs' decision making in relation to whether to continue on a free to caller number range.

A30.26 We said that although the issues relate to both OCPs and TCPs, the service provided is wholesale origination, and this is reflected in current commercial arrangements where a payment is made by a TCP to an OCP. Therefore, we considered that it may be appropriate to require all TCPs to purchase wholesale origination services for free to caller number ranges on fair and reasonable terms and conditions (including charges).

A30.27 We considered that, although the obligation would formally lie with the TCP, it would, in effect, bind the OCP given the need to purchase on fair and reasonable terms including charges. We noted the commercial incentive for OCPs to interconnect, and considered that an additional explicit obligation on OCPs was not required, and would not be proportionate. We also noted the proposed obligation was consistent with the approach taken when imposing the existing access condition on BT to ensure end to end connectivity.[427]

Stakeholder comments

A30.28 Stakeholders expressed different views as to whether the access obligation should be imposed only on TCPs (as we proposed), or only on OCPs, or on both OCPs and TCPs.

A30.29 O2 said it did not object to our method of implementation.[428] Assuming that we decided to impose an access condition (rather than SMP regulation), EE broadly agreed with our proposal. It also agreed that the access condition does not need to be extended to OCPs and that it binds the OCPs, saying that imposition of the condition on the TCP would be the most proportionate approach.[429]

A30.30 Three agreed that it was unnecessary to extend the access condition to OCPs, agreeing that OCPs already have a commercial incentive to offer access to their customers, and said we had not presented evidence of market failure in this regard

[427] April 2012 consultation, Part C, Section 17, pp.96-97, paragraphs 17.60 -17.63.
[428] O2, April 2012 consultation, p.26.
[429] EE, April 2012 consultation, pp.57-58.

which would require such regulatory intervention. It agreed that the obligation was binding on OCPs as well as TCPs.[430]

A30.31 BT considered that the access condition should be extended to OCPs as well as TCPs to ensure number ranges are built in a reasonable time and charges are fair. It also argued that the condition should be extended to all number ranges.[431]

A30.32 SSE also wanted the access condition to be extended to OCPs, as well as TCPs, to ensure that both the TCP and OCP could have enforcement action taken against them where there is a failure to reach agreement on the level of the mobile origination charge.[432]

A30.33 Verizon had number of concerns which it argued were related to imposing the access condition on TCPs (instead of OCPs). It said that:

- an access condition placed on TCPs would place smaller TCPs in a weak position in negotiating and purchasing wholesale call origination services from OCPs. It said that the effect of this would be to give larger OCPs the power to determine hosting charges and price certain smaller TCPs out of the hosting market;

- without regulation on the mobile OCPs (or very prescriptive guidance on fair and reasonable charges), mobile OCPs and other TCPs would have a strong incentive to prolong negotiations to achieve the best possible outcomes and create potential competitive distortions; and

- an access condition placed on TCPs would add a disproportionate level of regulatory burden on TCPs.[433]

A30.34 CWW was also concerned about placing an access condition on the TCP, and said that the obligation should be placed on OCPs instead.[434]

Ofcom response

A30.35 We disagree that a requirement which applies only to TCPs (without either extending to OCPs or being imposed only on OCPs) would be inappropriate.

A30.36 We consider that an obligation on TCPs to purchase on fair and reasonable terms will, in effect, bind both OCPs and TCPs. Where there is a breakdown in commercial negotiations then either party will be able to refer a dispute to us for resolution. We do not consider that placing the access condition on TCPs will cause competitive distortions in light of imbalances in negotiating power between certain TCPs and OCPs (we set out below in paragraphs A30.50 to A30.54 our further reasoning on this issue).

A30.37 With respect to BT's comment, we accept that extending the obligation to OCPs could ensure that number ranges are built in a reasonable time. However, we do not consider that there is sufficient evidence of the need for such an obligation, particularly in the light of recent industry-led best practice agreements. We set out

[430] Three, April 2012 consultation, p.44.
[431] BT, April 2012 consultation response, p. 33.
[432] SSE, April 2012 consultation response, p.10.
[433] Verizon, April 2012 consultation response, pp.2-3.
[434] CWW, April 2012 consultation response, p.33.

our position on number range building more generally, and respond to BT's arguments about the need for a similar condition across other non-geographic number ranges in Annex 25 in Part B of this document.

A30.38 We accept the concern expressed by Verizon that OCPs and TCPs may have a strong incentive to prolong potential negotiations to achieve the best possible outcomes for themselves. Indeed, this is one of our concerns about wholesale arrangements in the absence of the access condition (see Section 14). We have set out our proposal for TCPs to notify OCPs of their proposed revisions to origination charges within one month of the access condition being set (see paragraph A30.69 below). This will ensure that negotiations about origination charges commence at a very early stage in the 18 month implementation timeframe. Either party may refer a dispute to Ofcom where there has been a failure of commercial negotiations. We consider that these factors are likely to help minimise CPs' ability to unnecessarily delay or prolong negotiations.

A30.39 Verizon was also concerned that the imposition of the access condition on TCPs would be disproportionate, as it would place a large cost on small TCPs.

A30.40 As we set out in the April 2012 consultation[435], an obligation on TCPs (rather than on OCPs), better reflects the reality of commercial and contractual arrangements, as a payment is made by a TCP to an OCP for the origination of calls to 080 and 116 numbers. Further, as we set out in the April 2012 consultation, we also consider that OCPs, like TCPs, generally have a commercial incentive to interconnect. None of the respondents has provided any evidence to the contrary. Our view is that extending the obligation to OCPs is unnecessary.[436] We would also further note that TCPs will only have to initially renegotiate charges with OCPs with whom they interconnect. The majority of TCPs only interconnect directly with a small number of OCPs, relying otherwise on a transit operator (who is also a TCP). This means in practice there will be a small number of negotiations covered by this obligation for the majority of TCPs (see the 'origination payments under the access condition' sub-section below).

A30.41 While there will be costs to TCPs in implementation, we do not consider that an alternative option of extending or solely applying the obligation to OCPs would be a more appropriate or less onerous means of achieving our objectives. While TCPs (and other CPs/SPs) will need to incur transaction costs (e.g. re-negotiating contracts with customers, commercial agreement of origination payments) when implementing these proposals, these costs would not be any lower if we instead required OCPs to sell call origination to TCPs on fair and reasonable terms. We have set out our estimates for these costs in Part A, Annex 10.

Origination payments under the access condition

Stakeholder comments

A30.42 Some stakeholders[437] were particularly concerned that the access condition would not address imbalances in negotiating power which exist at the wholesale level between OCPs and TCPs. They considered that this would lead to complexity in

[435] See paragraphs 17.62 in Part C, Section 17 of the April 2012 consultation.
[436] Ofcom, April 2012 consultation, Part C, Section 17, p.97, paragraph 17.63.
[437] We address Verizon's comments about the imbalances in negotiating power and competitive distortions with respect to imposition of the access condition on TCPs above in the sub-section – 'imposition of wholesale access condition on TCPs'.

reaching commercial agreement, leading to perverse consequences and regulatory burden (e.g. failure to recover costs, competitive distortions, variation of wholesale origination payments between CPs, negotiation and billing costs).

A30.43 Three was concerned that OCPs would have to negotiate wholesale origination payments with TCPs who have stronger negotiating power than OCPs. It was concerned that a single origination charge for all mobile OCPs would not be realised through commercial negotiation. It said that it was highly unlikely it would recover its efficient costs, unless our fair and reasonable guidance were explicit as to the precise level (or the means of calculation) of the wholesale origination charge. Three said that fair and reasonable guidance would need to be in place by the time 'free-to-caller' is implemented (i.e. retail prices are set at zero), as otherwise it would be subject to a period of unreasonable uncertainty as to its ability to recover its wholesale origination costs.[438]

A30.44 Vodafone said that the access condition would oblige OCPs to supply wholesale origination services to TCPs through commercial agreement, but that this does not reflect reality. Vodafone submitted instead that, as a result of its inferior negotiating power relative to TCPs, it is not in a position to offer a 'wholesale origination service' (and that instead it must 'secure interconnection terms'). It explained that recent disputes between MNOs about termination charges imposed by BT illustrated the limited bargaining power that OCPs have versus TCPs. Accordingly, it argued that the access condition would not allow OCPs to secure commercial agreement and recover their efficient costs, because CPs will have divergent views of what the wholesale origination charge should be.[439]

A30.45 [✂] said that "larger organisations will have greater bargaining power with MNOs which may cause competitive distortions".[440]

A30.46 CWW said that guidance on fair and reasonable charges must prevent a minority of OCPs (fixed or mobile) trying to justify higher charges than the rest of industry, as a result of their own inefficiency. It said that this would be inefficient, would not be in the interests of consumers and would distort competition.[441] Verizon was also concerned that our access condition would not result in a single mobile origination charge across industry.[442]

A30.47 Magrathea did not object to the proposed access condition, but said that it was not convinced that commercial certainty would be achieved unless we set a single mobile origination charge.[443]

A30.48 [✂] argued that the access condition would enable each TCP to have different prices from other TCPs, which would add considerable complexity in billing systems when dealing with a combination of transit providers and direct interconnects between OCPs and TCPs. It said this could lead to TCPs charging SPs the maximum possible wholesale origination charge they might incur.[444]

[438] Three, April 2012 consultation response, pp.36 -42.
[439] Vodafone, April 2012 consultation response,pp.73-74.
[440] [✂]
[441] CWW, April 2012 consultation response, p.33.
[442] Verizon, April 2012 consultation response, p.3.
[443] Magrathea, April 2012 consultation response, p.33.
[444] [✂]

A30.49 Some respondents (Vodafone,[445] [✂],[446] Verizon,[447] CWW[448]) were concerned the access condition would impose transaction and billing costs on CPs because of the complex commercial negotiations and varying mobile origination charges they considered would arise. Vodafone,[449] Three,[450] EE[451] and Verizon[452] also considered that disputes in relation to the level of the origination charge would give rise to regulatory burden and uncertainty. Vodafone said that these costs of implementation were likely to outweigh the net benefits of making the 080 and 116 ranges free-to-caller.[453]

Ofcom response

A30.50 We have recognised already that there are differences in negotiating power between different OCPs and TCPs. We set out our responses to stakeholder comments, more generally, on this in Part A, Annex 9. In Section 14, we also discuss the issues that may arise as a result of imbalances in negotiating power, if 080 and 116 calls prices are set to zero and we do not intervene at the wholesale level.

A30.51 Many of the comments from stakeholders relate to concerns that the access condition will give rise to more than one origination payment for each of fixed and mobile originated calls, and that this will lead to competitive distortions and to over/under-recovery of efficiently incurred costs. We anticipate that a number of factors relating to the characteristics of the market and our access condition proposals will together create a process for commercial agreement, support convergence towards a small number of charges (if not a single charge) for each of fixed and mobile originated calls, and as a consequence will also minimise the risk of competitive distortions and support recovery of efficient costs. These factors are:

- Support for TCPs and OCPs to reach commercial agreement: the proposed access condition will clarify which of the two parties should make the initial proposal for any revision to the currently applicable origination charge (the TCP). The access condition also clarifies the obligation to negotiate a fair and reasonable rate.

- Guidance on how we would resolve any dispute about fair and reasonable charges: we are consulting today on this guidance, which is based on the principles we have used to assess previous disputes regarding termination rates in non-geographic number ranges. These principles include the need to allow the opportunity for recovery of efficient costs and the need for consumers to benefit from the level of charges, including the avoidance of any material distortion to competition. We expect this guidance to be used as the basis for negotiations and therefore to mitigate the risk of potential issues relating to efficient cost recovery and distortions to competition raised by stakeholders. In response to Three's comment, we recognise the importance of this guidance being in place by the time the 080 and 116 ranges become free-to-caller. We intend to issue a

[445] Vodafone, April 2012 consultation response, p.23.
[446] [✂]
[447] Verizon, April 2012 consultation response, pp.2-4.
[448] CWW, April 2012 consultation response, p.30.
[449] Vodafone, April 2012 consultation response,p.74
[450] Three, April 2012 consultation, p.5.
[451] EE, April 2012 consultation response, p.6.
[452] Verizon, April 2012 consultation response, p.7.
[453] Vodafone, April 2012 consultation response, p.23

final version of this guidance at the same time as we issue our final statement on the access condition.

- Existing transit arrangements: at present, TCPs who do not interconnect directly with certain OCPs for non-geographic traffic, but receive this traffic via transit providers (principally BT) frequently accept the revenue for this traffic at the level agreed between the transit providers and the OCP. We consider it is likely that this situation will continue for many TCPs. We also note that these transit providers are typically also large TCPs. We anticipate that the ability of small TCPs to use the rates negotiated by their transit provider will significantly reduce the risk of distortions to competition between TCPs as a result of relative differences in their bargaining power vis-à-vis OCPs. Similarly we consider that smaller OCPs may be able to benefit from the rates negotiated by larger OCPs by choosing to transit traffic via transit providers who are also large OCPs (such as BT). This will have the effect of reducing the risk of distortions to competition between OCPs as a result of differences in their bargaining power relative to TCPs.

- Menu costs: both OCPs and TCPs are also likely to incur costs associated with monitoring and maintaining many different origination charges (so-called 'menu costs'[454]). This means that incentives to seek to differentiate their origination charges, in order to maximise their revenues, are likely to be constrained by these costs.

- Desire from both OCPs and TCPs for a single charge: the stakeholder responses outlined above suggest that both OCPs and TCPs would like to see a single origination payment emerge for each of fixed and mobile calls. We consider the fact there is a desire on both sides of the negotiating table for a single charge is a reasonable basis (in addition to the factors outlined above) for judging that convergence is more likely.

A30.52 Accordingly, we expect the above effects to minimise the range of origination charges in the market. As a consequence we consider the expected outcome does not represent a significant increase in complexity for most CPs,[455] and we therefore do not consider it likely that there will be significant additional billing costs associated with a decision to make the 080 and 116 ranges free-to-caller. We have nonetheless considered the fact that there may not be convergence in origination charges (or that convergence may occur over a period of time) in our impact assessment (see Part A Annex 10, where we recognise any costs associated with multiple origination charges are difficult to quantify but nonetheless conclude that, if they arise, they are unlikely to be material.

A30.53 We recognise that there will be negotiations – the costs of which may ultimately be borne by consumers - and that there is a risk of dispute where CPs are unable to reach commercial agreement on a fair and reasonable charge. We consider

[454] In economics, menu costs are the costs to a firm associated with changing and handling its prices. These involve not only the billing costs incurred in changing the prices (e.g. updating computer systems) but also other costs such as hiring consultants to develop optimal pricing strategies or the costs to a firm of acquiring information on the prices of other firms to update its own pricing strategy. This type of costs explain why firms may not always change their prices in responses to shocks in demand or supply (or may be slow in doing so), or why they may apply uniform pricing to markets with different demand conditions.

[455] TCPs provide a range of non-geographic services for their customers and they currently handle a variety of number ranges with different price points.

negotiation costs and dispute costs in the same Annex. We also disagree with Vodafone's comment that these costs of implementation are likely to outweigh the net benefits of making the 080 and 116 ranges free-to-caller. We set out our analysis of costs and benefits of this approach in Section 13.

A30.54 For the reasons set out above, we consider that the consequences put forward by stakeholders (specifically, failure to recover efficient costs and competitive distortions arising from multiple varying mobile origination charges) are unlikely to occur when the characteristics of the market and our proposed approach to regulation are taken together.

Notification of initial revision to charges under the access condition

Summary of position in the April 2012 consultation

A30.55 We said that if the 080 and 116 ranges were made free-to-caller, it would be appropriate to require TCPs to notify SPs of the initial revision (if any) of their wholesale origination payment within two months of the imposition of the zero maximum price retail obligation.[456]

A30.56 We considered that it would be appropriate to require TCPs to notify SPs of these proposals, as they have the contractual relationship with their SP customers. Notifying the change in origination payments would allow SPs to consider how they may be affected. This notification requirement would have the effect of giving TCPs two months to consider the level of revised wholesale origination payments, and should provide early notice to industry including SPs. The implementation period, before the zero maximum price came into effect, would then provide a sufficient period in which OCPs could consider the proposed level of payments and SPs could make an initial assessment as to whether they should migrate away from the free-to-caller range, or not. Once a level of payment had been agreed between OCPs and TCPs, SPs would then be able to finalise any decision.[457]

Stakeholder comments

A30.57 EE argued that SPs will not attain much certainty with respect to migration planning as origination charges would still be subject to agreement between OCPs and TCPs, and so might vary again. It suggested that instead we should formally require TCPs to notify OCPs of their proposed revisions to origination charges within two months (but said that notice could also be given to SPs for their information).[458]

A30.58 Three said that the Ofcom April 2012 consultation wording *"within 2 months of Ofcom imposing the requirement of zero retail prices"* was ambiguous and was concerned that this meant that OCPs should revise their retail charges, but not be guaranteed certainty that they would recover their origination costs from the TCP. Three was also concerned about how this proposal would work in relation to the BT SIA. It said that if mobile origination charges were to be classified as 'Operator services' (as opposed to 'BT services') in the BT SIA, it would be compelled to give BT 56 days' notice of any proposed changes to its origination charges, and then BT

[456] April 2012 consultation, Part C, Section 17, Paragraph 17.67.
[457] April 2012 consultation, Part C, Section 17, Paragraph 17.68.
[458] EE, April 2012 consultation response, p.55.

would give notice to SPs of these changes. It asked for clarity as to how our proposals to "give two months" would work within the SIA contractual obligations.[459]

A30.59 DWP agreed that a period of two months for TCPs to notify SPs would allow SPs to make timely and informed choices.[460] SSE also agreed with our proposal saying that "*Two months from Ofcom's final statement on the matter appears a reasonable timeframe for TCPs to be required to notify their SP customers of the relevant change in charges*".[461]

A30.60 UKCTA considered the notification period unnecessary saying that variations in charges between a TCP and SP are subject to their contractual supply terms and maintenance of the relationship with the SP is paramount to a TCP.[462]

Ofcom response

A30.61 Some stakeholders (EE, UKCTA) were concerned that a requirement for TCPs to notify SPs would provide little certainty to SPs, or be unnecessary given the TCP to SP customer relationship.

A30.62 As we set out in the April 2012 consultation, the purpose of the notification requirement was to allow SPs and the rest of industry early sight of how they may be affected.[463] However, having considered stakeholder comments, we agree that it is likely to be impracticable for TCPs to provide initial notice to SPs at a time when they may not yet have concluded negotiations with OCPs about their origination charges, and that it would therefore not provide much certainty to SPs. We also agree that a requirement on TCPs to notify SPs may be unnecessary, as TCPs are likely to have a commercial incentive to notify SPs of any potential changes to origination payments in good time to allow them to make an initial assessment.

A30.63 We agree with EE that an obligation for TCPs to notify OCPs (instead of SPs) of their proposed revisions to origination charges would be more appropriate. This would also mean that OCPs can consider proposed revisions to their origination charges, and negotiations between OCPs and TCPs can commence, at an early stage. In practice it is also likely that SPs will be notified of proposed changes to origination payments in good time.

A30.64 We have since spoken to a majority of fixed TCPs who responded to the April 2012 consultation.[464] In particular, some TCPs we spoke to suggested that the TCP to SP initial notification would be impractical. Most also said they may notify SPs of how they may be affected during the implementation period, in the absence of regulation. One TCP, Magrathea, said "*that it would probably send a generalised communication to its SP customers firstly at the point of Ofcom's statement publication, and possibly a further one after the final fair and reasonable guidance has been published, giving SPs an indication that, for example, origination payments are likely to increase and perhaps an estimate of the amount of that increase, but that it would see no merit in giving SPs notice of the initial notice to OCPs as it may not prove accurate*". Another TCP, BT, said that it would only be

[459] Three, April 2012 consultation response, p.43.
[460] DWP, April 2012 consultation response, p.1.
[461] SSE, April 2012 consultation response,p.10.
[462] UKTA, April 2012 consultation response, p.9.
[463] Ofcom, April 2012 consultation, Part C, Section 17, p.98, paragraph 17.68.
[464] Responses from [✂], Verizon (29 October 2012), Magrathea (7 November 2012) and BT (08 November 2012 and 17 January 2013) to our informal request of 24 October 2012.

able to "*formally notify SPs their individual rates once we know our input costs/payments (i.e. what their payments and/or charges will be between CPs)* […which] *have to be accurate*"; and said that it would use a combination of regular account reviews and a general awareness campaign to inform SPs of how they may be affected during the implementation period.

A30.65 These further exchanges with TCPs confirmed our view that we should revise our original proposal with respect to notification requirements.

A30.66 We are therefore re-consulting on a proposal, as part of the access condition, for TCPs to notify OCPs with whom they interconnect of any initial proposed revision to their charges for wholesale origination services. We discuss this proposal in more detail in Section 14 and Part A, Section 6.

A30.67 Stakeholders also commented (SSE, DWP) that two months was a reasonable time period for the notification of initial revisions to wholesale origination charges to SPs. However, we now consider that more advance notice for industry of any initial revision to origination charges could be helpful.

A30.68 In considering this further, it is worth noting that an important issue which stakeholders have raised is the potential for prolonged uncertainty about the level of wholesale origination charges. We consider that minimising the period of any uncertainty is important to help industry make informed choices. Requiring TCPs to provide their proposed revision to wholesale origination charges at an early stage supports this aim by providing industry with an initial view of how they may be affected. It will also ensure that negotiations between TCPs and OCPs commence as quickly as possible.

A30.69 We are therefore consulting on whether one month (instead of two months) would be a more appropriate period of notification of any initial revision to wholesale origination charges. The one month period would commence from the date on which the access condition is set.[465] We also discuss this proposal in Section 14 and Annex 13.

A30.70 As noted above, we have since spoken to a majority of fixed TCPs who responded to the April 2012 consultation. We asked these TCPs for their views about the length of the notification period.

A30.71 We received varying responses, though these were complicated by the fact that some TCPs clearly had in mind the minimum time they would need to notify SPs, rather than OCPs. Some respondents considered that one month would not allow time to administer processes involved in notification. BT focussed on the processes that are required to actually implement a revised charge (e.g. updates to billing systems, etc.), which would not be (immediately) relevant to the notice that we are proposing should be given. However, Magrathea suggested that a one month period may be insufficient to obtain corporate approval of the proposed charge, which we recognise would be a potentially relevant consideration.

A30.72 We would therefore welcome further comments from stakeholders on whether a one month period would provide them with sufficient time to administer and calculate their proposed revision to origination charges and to notify this proposal to

[465] As set out above, we intend to publish our final guidance on how we would approach any future dispute about fair and reasonable origination charges at the same time as we issue our final statement on the access condition.

OCPs with whom they interconnect. While we recognise that our revised proposal provides TCPs with less time to administer and calculate their proposed revision to charges than the proposal we set out in the April 2012 consultation, we consider a one month notification period may be feasible. In particular, we consider that stakeholders can begin to start considering and calculating what a potential wholesale origination charge might look like from the date of publication of this document, in advance of the access condition being set and the one month notification period commencing.

A30.73 Three was concerned that the April 2012 consultation wording "*within 2 months of Ofcom imposing the requirement of zero retail prices"*, could lead to a situation where it introduced a zero maximum price, but had no certainty of cost recovery. The notification period will commence from the date on which the access condition is set. However, OCPs would not be required to zero-rate retail prices until many months later. Therefore, our revised proposal will avoid the potential commercial uncertainty that Three has highlighted.

A30.74 Three also asked us to clarify how our proposals to "*give two months* [notification]", would work within the BT SIA contractual agreements. However, Three's comment was predicated on the assumption (based on our April 2012 consultation) that it would propose a revision to its charges for wholesale origination, which BT would then be required to pass on to its SP customers. We consider that Three's concern falls away in light of our revised proposals. As noted above, we propose to require TCPs to give notice to OCPs of any proposed revision to wholesale origination charges within one month of the access condition being set. This regulatory obligation will take precedence over any less stringent notice period that has been commercially agreed between the parties (i.e. a requirement to give notice of revisions to charges within one or two months prior to the date on which the revision is intended to take effect). However, we consider that the process by which OCPs respond to the notice from TCPs should be subject to the parties' normal contractual terms.

Other issues related to the access condition

TCP and SP contract 'lock in'

Stakeholder comments

A30.75 Verizon commented that many TCPs would be tied into contracts with SPs and would not necessarily be able to re-negotiate these. It said that this would add administrative burden. It commented that the need for TCPs to review contracts with SPs, combined with the increases in the level of origination payments, would cause SPs to migrate from the 080 range.[466]

A30.76 CWW similarly commented that TCPs would be tied into contracts with SPs and unable to pass through changes in origination charges, which may mean it cannot recover its efficient costs of hosting. It said that, to prevent this, TCPs would have to either re-negotiate or terminate every such 080 contract in advance of our implementation period (i.e. 080 becoming free-to-caller).[467]

[466] Verizon, April 2012 consultation response, p.5
[467] CWW, April 2012 consultation response, p.32

Ofcom response

A30.77 We recognise that TCPs may have longer term contracts with SP customers. However, we would generally expect industry contracts to have clauses which allow parties the flexibility to change contract terms and conditions where they are subject to significant regulatory changes such as the ones we propose for 080 and 116. Therefore, we would expect that it will be possible for the vast majority of contracts between SPs and TCPs to be either amended or terminated. Indeed, CWW acknowledges that it would "*either need to cancel or re-negotiate contracts*" and so it would not be completely 'locked in'.

A30.78 We also consider that an 18 month implementation period is appropriate before prices of calls to 080 and 116 numbers are set to zero. This will therefore provide industry with time to adjust and to amend contracts. Our understanding is that the average TCP-SP contract duration is around one year (however clearly some may be longer than this).[468]

A30.79 We would expect that, during this 18 month period, a proportion of contracts would be due for expiry or renewal (irrespective of any changes which result from our proposals). We would also hope that TCPs would have already considered the likelihood of revising contract terms since the December 2010 consultation so the pool of contracts to which this issue applies should be reduced.

A30.80 In summary, we consider that the scale of impact on TCPs' cost recovery from any contract 'lock–in' will be manageable. We set out our view of the costs of re-negotiating contracts between SPs and TCPs in Annex 10 (Part A).

Call blocking

Stakeholder comments

A30.81 [✂] - said that the April 2012 consultation was silent on whether TCPs or SPs have the option to block calls originating from mobile networks in light of an increased mobile origination charge. It said that while the current legal framework (with respect to GC20) is ambiguous, call blocking to SPs would be a "*reasonable and legitimate tool*" for TCPs.[469]

A30.82 [✂] also said it would have the ability to offer call blocking and said that it may have to offer this call blocking as a service to its SP customers.][470]

A30.83 BT, while not explicitly referring to 'call blocking', said that an access condition was necessary and was the "only way of making sure that a customer can phone from either a fixed line or mobile and be assured of getting through."[471]

Ofcom response

A30.84 We note the comments with respect to call blocking. We previously discussed the obligation on CPs under GC20 in the context of call blocking, but considered that it

[468] See paragraph 3.69, Ofcom, "*Determination to resolve disputes concerning BTs tiered termination disputes in NCCNs 1101, 1107 and 1046*", 4 April 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/provisional-conclusions/statement/040413.pdf
[469] [✂]
[470] Verizon, April 2012 consultation response, p.7
[471] BT, April 2012 consultation response, P.33.

would not address the issue over the terms upon which interconnection occurs, including the level of origination payments.[472]

A30.85 As a matter of policy, we do not agree that call blocking – that is, the deliberate refusal to honour the desire of a customer to reach a particular dialled number – is a "reasonable and legitimate" step for an operator to take to resolve issues relating to wholesale pricing.[473] We consider that the access condition would effectively preclude call blocking by SPs, as it would require an SP's host TCP to purchase wholesale call origination for a call to a 080 or 116 number from any OCP upon reasonable request. In Section 14, we set out evidence of problems that the access condition may help to prevent (e.g. call blocking by TCPs on behalf on SPs).

Transit arrangements

Stakeholder comments

A30.86 A CP [✂] explained that it uses BT as a transit operator for all its traffic originated on mobile OCPs' networks, and was concerned about the cost that it would incur in having to notify BT (as a transit provider) of changes in the level of origination charges. It was also concerned that it would incur costs of having to notify other potential transit operators, with whom it does not have a contract, of its agreed mobile origination payments, in order to ensure correct billing. It said that the cost and complexity of these effects would be exacerbated where mobile origination charges vary. It was concerned we had not taken certain costs of our proposal into account related to transit arrangements.[474]

Ofcom response

A30.87 The draft access condition on which we are consulting would require a TCP to provide a notice (within one month of the condition being set) to any OCP with whom it has an existing agreement to directly purchase call origination services for 080 and 116 numbers.[475] This is a one-off obligation by which the TCP proposes the revised (fair and reasonable) origination charges that it will apply from the date on which those ranges are made free-to-caller.

A30.88 The draft access condition does not, however, include an obligation for a TCP to notify its proposed charges to a transit provider of 080 or 116 traffic. We do not consider it would be practical to include such an obligation, and consider it could potentially be counter-productive in addressing our concerns.

A30.89 Firstly, transit providers are themselves also likely to act as large TCPs in relation to 080 and 116 traffic. We consider it is likely to be impractical for a transit provider (acting in that capacity) to negotiate with TCPs at the same time as it is negotiating (in its capacity as TCP) with OCPs. We also consider that TCPs would be in a weaker bargaining position if they were forced to negotiate with their transit provider at the same time as their transit provider (in its role as TCP) was itself negotiating

[472] Ofcom, April 2012 consultation, p.94, paragraph 17.40.
[473] We are aware that TCPs/SPs may employ alternative approaches to managing their origination costs, which are not addressed by the access condition (e.g. reducing the time of calls from mobile customers or employing recorded announcements that redirect callers to non-080 numbers etc.). These other types of behaviour are discussed in more detail in Section 12
[474] [✂]
[475] By 'existing agreement', we mean one that is in effect as at the date the access condition is set.

with OCPs. We anticipate that by not imposing a requirement on TCPs to notify transit providers, TCPs will wait until their transit provider has agreed an origination payment with OCPs before commencing negotiations with respect to any revised transit arrangements for 080 and 116 calls. TCPs can then use the origination payment agreed between OCPs and the transit provider as the basis for their own negotiations with their transit provider.

A30.90 In the unlikely event that their current transit provider refuses to negotiate on these terms, the TCP would be free to approach another transit provider on a similar basis. Whilst all transit providers have an interest to increase the cost of their rival TCPs by increasing origination charges, they also individually have an incentive to win transit business from other transit providers by agreeing to a fair and reasonable charge. We also note that, in the event of a genuine breakdown in commercial negotiations, a dispute may be referred to us. These factors together are likely to ensure that transit providers bill TCPs using their transit services an origination charge that is either the same or very similar to the charge that the transit provider itself pays to OCPs.

A30.91 We state in Annex 10 that we have not quantified the costs of TCPs communicating with OCPs, as it is inherently complex to do so, but we consider that several factors would reduce the cost of this activity.

Wholesale billing with respect to CLI and arbitrage

Summary of position in the April 2012 consultation

A30.92 We discussed wholesale billing with respect to the CLI.[476] We said that that a TCP could identify the OCP-type based on the telephone number of the calling party using the CLI. However, we also noted concerns from industry that the network CLI (which identifies the originating network of the call[477]) may not be present for all calls, and recognised views from industry that it would be in the interest of mobile OCPs to ensure that the network CLI was presented in order to make sure that they received the appropriate origination charge. We said that mobile OCPs who expect a higher origination payment will have to pass the CLI that identifies the call as being mobile-originated.

Stakeholder comments

A30.93 BT was concerned that not all OCPs currently pass on the network CLI and that, without this information, it could not bill properly. It said we should mandate that OCPs pass on the network CLI.[478]

A30.94 BT was also concerned that, because mobile origination payments and fixed origination payments would be different, there would be potential for arbitrage as fixed operators would have the incentive and the ability to transit some or all of their 080 traffic via mobile networks to take advantage of higher mobile origination payments.[479]

[476] Ofcom, April 2012 consultation, Part C, Section 17, pp.100-101.
[477] In the UK there are two potential CLI data fields, the network CLI which confirms the origin of the call and the presentation CLI which is the CLI which will be presented to the call receiving party and may, if the caller requires it, be different from the telephone making the call.
[478] BT, April 2012 consultation response, p.31.
[479] BT, April 2012 consultation response, p.31.

Ofcom response

A30.95 We appreciate BT's concern with respect to the need to establish the origins of a call, given the expected differentiation of origination payments between those calls made on a fixed line and those originated on a mobile.

A30.96 At this stage, regulatory intervention does not seem to be required to address this issue. Ultimately, this is a bilateral commercial issue in that the TCP or transit provider receiving a call needs to be satisfied about the origin of the call in order to pay an appropriate fee. We note that existing commercial arrangements, for example, tiered termination rates, require the identification of the origin of calls and these have been put in place without any CLI obligation.

A30.97 The need for appropriate verification (whether by the presentation of a network CLI or an alternative arrangement in the event that there are technical or economic reasons why a network CLI cannot be provided) should be an element of any contractual interconnect arrangements if the TCP/transit provider is concerned that there is a risk of misrepresentation as to the origin of the call. As with our consideration of the origination charge, we expect that smaller TCPs will be able to benefit from negotiations in this area undertaken by larger TCPs/transit providers.

A30.98 We consider, therefore, that it is not appropriate at this stage to impose an obligation on all OCPs to ensure that a network CLI is provided for all calls.

Part C - Annex 31

Implementation of 080 and 116 changes

Introduction

A31.1 This Annex sets out a summary of the issues raised by stakeholders in response to our April 2012 consultation in relation to the implementation of a maximum retail price of zero for the 080 and 116 number ranges. It also sets out our comments in response to the issues raised.

A31.2 We have responded separately to comments on the implementation of wholesale regulation (which we included in our discussion of implementation issues in the April 2012 consultation) in Annex 30. In this Annex we therefore focus on the other implementation issues, including:

- timescale for implementation;
- communication issues; and
- other implementation issues raised by stakeholders.

A31.3 Section 15 sets out the approach we would take to implementation, if we proceed to make the 080 and 116 ranges free-to-caller and, where appropriate, we cross-refer to this Section in our responses below.

Implementation timescale

Position in the April 2012 consultation

A31.4 We first listed the steps that we considered would be involved in the implementation of our proposals for the 080/116 ranges.[480] These steps included TCPs negotiating with mobile OCPs on origination payments, TCPs notifying their hosted SPs of changes to origination charges, SPs deciding whether to migrate their services to alternative number ranges, SPs updating their customer-facing price guidance appropriately and/or planning for migration, OCPs updating their price information and billing systems for customers and Ofcom/consumer groups updating pricing information and actively communicating the message that 080 and 116 calls were now free of charge.

A31.5 Taking into account the different steps that would be required, we set out two options for the implementation timescale:

- 12 months, i.e. ahead of the wider proposed changes for the other non-geographic ranges; or
- 18 months, i.e. in line with other proposed changes.

A31.6 Our initial view was that a 12 month implementation period was likely to be sufficient to complete the various steps we had listed. We also noted that under the 12 month option the identified consumer detriment would be addressed sooner and

[480] April 2012 consultation, Part C, Section 17, pp.102-103.

that making the 080 and 116 ranges free-to-caller was a more straightforward message to communicate than the other changes we were making, and therefore there were arguments in favour of implementing this change independently within 12 months.

A31.7 However, we also considered that there were benefits in communicating all the changes in non-geographic numbering to consumers at the same time (i.e. 18 months). We said that a longer implementation period would reduce implementation costs, particularly SPs' migration costs and would also remove any risk of staggered changes creating consumer confusion. We invited respondents to comment on both options.[481]

Stakeholder comments

A31.8 Several stakeholders (including BT, National Grid, Northern Gas Networks and SSE) expressed a preference for quicker implementation.[482] Both National Grid and Northern Gas Networks said they wanted emergency services lines to be truly free at the point of use to all callers as soon as possible. Northern Gas Networks also said the same for its enquiry line. SSE said it favoured earlier implementation provided SPs had sufficient time to complete "consequential changes". BT said it was keen that changes were implemented as soon as practical. It said that one of the options that Ofcom should explore to ensure that implementation timescales were minimised was decoupling the 080 proposals from the unbundled tariff proposals. It said there could be some benefit in separating them out, e.g. if one was delayed the other would not.[483]

A31.9 However, several other stakeholders disagreed that the changes could be implemented within 12 months. CWW expressed doubt that a 12-month implementation timescale was feasible.[484] While it acknowledged that the changes to these ranges were easier to communicate than those for the revenue-sharing ranges, it said that commercial agreements between OCPs and TCPs would take time to conclude. It warned that, without clear guidance from Ofcom, it would be unrealistic to expect anything other than "protracted commercial wrangling" over origination payments – and these could develop into disputes submitted to Ofcom. Thus, it concluded that an 18-month period would be required.

A31.10 UKCTA also noted that agreements between mobile OCPs and TCPs could take some time, thus it favoured the same 18-month implementation period for the 080/116 ranges as for other ranges.[485] It said that implementation of changes for all of the ranges would be easier to manage together and costs would be minimised.

A31.11 Virgin, while being opposed to Ofcom's proposals in relation to the 080 and 116 ranges, said it favoured an 18-month implementation period. It said that this would give Ofcom time to conduct public information campaigns as well as allow more time for any appeal in relation to the proposals and any dispute on the level of origination payments to be concluded before the proposals took effect.[486]

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481 April 2012 consultation, Part C, Section 17, pp. 104-105.
482 National Grid, April 2012 Consultation response, p.2; Northern Gas Networks, April 2012 Consultation response, p.2; SSE, April 2012 Consultation response, Q17.3, p.11.
483 BT, April 2012 consultation response, p.25.
484 CWW, April 2012 consultation response, Q17.3, p.33-34.
485 UKCTA, April 2012 consultation response, p.9.
486 Virgin, April 2012 consultation response, Q12.11, p.8.

A31.12 Verizon expressed scepticism that mobile OCPs and TCPs would reach agreement on mobile origination payments speedily and concluded that an 18-month implementation period may be “optimistic”.[487]

A31.13 EE said it was disappointed that Ofcom’s proposed approach to implementation of its proposals for the 080 and 116 ranges was still in a very ‘green’ form, considering the large impact that these proposals would have on all stakeholders.[488] It said that all Ofcom appeared to have done was list the initial tasks that would need to be completed and some of these task involved multi party discussions and activities that needed to happen in succession, not in parallel. It said some actions, for example wholesale agreements including TCP and OCP discussions around origination payments, were likely to take a significant period in themselves. It therefore completely disagreed that 12 months would be sufficient, proportionate or realistic. It was particularly concerned at the lack of detail in the process for agreeing origination charges and that Ofcom had not indicated when it would publish its guidance on fair and reasonable origination charges.

A31.14 EE said that from a commercial impact perspective, a ‘big bang’ rather than a staged approach would be preferable, and would ultimately be less disruptive for consumers. It noted this was important to minimise the tariff package effect. EE also considered that the simple message of ‘all calls to 080 are free’ might be lost if not provided within the context of the unbundled tariff call charges for other 08 numbers. In addition it noted that a single, rather than multiple communications also made better use of limited resources. For all of these reasons it therefore believed that a minimum 18 month implementation period would be required for making the 080 and 116 ranges free to caller.[489]

Ofcom’s response

A31.15 Having considered stakeholders’ responses, we consider that an 18 month timescale would be most appropriate (see also Section 15 where we set out our reasoning for this). This period will begin from the date of our final statement on the unbundled tariff and free-to-caller regimes. However, we consider that the 116006 number (which is the only 116 number currently allocated as Freephone and therefore the only number whose designation will need to change in the Numbering Plan) should be changed with immediate effect. We set out our reasoning for this in more detail in Section 15.

A31.16 We recognise that several SPs who responded (as well as BT) favoured a 12 month implementation period and we acknowledge that this would result in consumer benefits accruing more quickly. However, in light of the responses we have received from other CPs we consider that the levels of cost are likely to be higher with a shorter implementation period and there would be some risk that negotiations between OCPs and TCPs on origination charges would not have concluded in time for implementation.

A31.17 With respect to SPs, given the diversity of this group – with different thresholds in terms of affordability of increases in mobile origination payments - we consider that an 18 month implementation period will give SPs who cannot afford a higher mobile origination charge under a free-to-caller approach more time to prepare for the change, and even those that can will have more time to prepare for a change in the

[487] Verizon, April 2012 consultation response, p.4.
[488] EE, April 2012 consultation response, pp. 56-58.
[489] EE, April 2012 consultation response, p.59.

cost. Specifically, the 18 month period will reduce SPs' migration costs by giving them more time to prepare for any transition, reducing the risk of disruption caused to their operations, and giving more time to replace or amend advertising, promotional material and other documentation, which stakeholders have told us will assist in minimising cost.

A31.18 An 18 month implementation period will potentially provide a more effective communications message as well, by allowing the changes from the unbundled tariff and free-to-caller regimes to be communicated to consumers at the same time. We also acknowledge EE's point that it will reduce communication costs for OCPs by allowing them to communicate the messages about the changes at the same time, rather than having to carry out two separate communication campaigns.

A31.19 We note stakeholders' concerns that even an 18 month timetable has its challenges. In deciding on an 18 month implementation period, we have been mindful of the time that will be required for negotiations between OCPs, TCPs and SPs, as well as for the resolution of any disputes that may arise between OCPs and TCPs.

A31.20 While we note the scale of the changes that would follow from a decision to make the 080 and 116 ranges free-to-caller, we consider that this 18-month timetable is achievable. In support of this we are consulting on a revision to our proposed access condition. Having considered responses from stakeholders to our April 2012 consultation, we now propose that TCPs should notify OCPs of their proposed origination payment within one month from the date on which the access condition is set. This proposal is, therefore, likely to assist industry in adjusting to the changes by ensuring that negotiation between OCPs and TCPs in relation to the level of origination payments begins at an early stage in the 18 month implementation timeframe – see Section 15. We are also consulting today on how we would approach any future dispute about 'fair and reasonable' origination charges.[490] This guidance will help support stakeholders in agreeing charges (which allow efficient cost recovery), and provide focus in the event of a dispute. We therefore consider that these factors will also help ensure stakeholders are in position to implement the changes within 18 months.

Communication of changes to consumers

Position in the April 2012 consultation

A31.21 We noted in the April 2012 consultation that the changes we were proposing for the 080 and 116 ranges would form part of a wider communications campaign that Ofcom was planning.[491] We also noted that more specific communications activities (e.g. through consumer groups, Ofcom's website) would also help to spread the message among consumers that 080/116 calls were always free.

A31.22 We considered whether regulations requiring SPs to provide information to consumers at the point of call were needed for 080 and 116 calls to improve price awareness. After presenting potential reasons both for and against such a regulatory requirement, we concluded provisionally that such a requirement was unnecessary and likely to be disproportionate. We then invited respondents to comment on this issue and offer other suggestions as to how SPs could be encouraged to advertise that 080/116 calls were free-to-caller.

[490] http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/
[491] April 2012 consultation, Part C, Section 17, pp.104-105.

Stakeholder comments

A31.23 Respondents were divided over whether it was necessary to impose a requirement on SPs to publicise that 080/116 are free.

A31.24 Three said that Ofcom needed to impose such a requirement on SPs, saying this would increase transparency and help educate consumers about the pricing changes.[492] Citizens Advice ('CAB') agreed that it would be appropriate for Ofcom to do so, or else consumers may continue to avoid calling these numbers out of an erroneous fear of calling costs.[493] [✄] supported the view that the price should be advertised because it would build consumer confidence.[494] Vodafone also recommended that Ofcom require, or at least encourage, SPs to state clearly that 080 numbers are free to call from mobiles too.[495] In addition, BT said both SPs and mobile operators should make it clear that calls to these numbers are free. It said it was working with industry on a potential Code of Practice for price advertising for the 084 and 0870 ranges, and it suggested that SPs look to this as best practice for 080 calls as well.[496]

A31.25 However, the Advertising Standards Authority ('ASA') noted that it was unlikely, under its existing rules, to regard the omission of a statement that these calls are free to the caller as a misleading omission.[497] The CAP and BCAP Codes[498] require, it said, that advertisements must not omit material information, which is information that consumers need to make informed transactional decisions. CAP and BCAP are mindful, it added, of the maximum harmonisation requirements of the Consumer Protection from Unfair Trading Regulations 2008, which means they will not introduce a rule requiring disclosure that a service is "free" unless the omission of that information is likely to breach those Regulations. Thus, it concluded, CAP and BCAP were "highly unlikely" to impose a requirement that SPs publicise that 080 calls are free in their advertisements.

A31.26 Some respondents did not believe such a requirement was needed or appropriate. CWW argued that requiring SPs to publicise that 080 calls are free-to-caller was neither necessary nor proportionate. It said that the publicity campaign to spread awareness of NGC changes would itself "dramatically" improve consumer price awareness.[499] UKCTA reasoned that because many SPs would voluntarily promote 080 calls being fully free, once that became the case, the need for imposing such a requirement on SPs at the point of call was negated.[500] The DWP observed that incoming call volumes to its 0800 numbers had increased after it negotiated with mobile OCPs to zero-rate them. It argued that placing such a requirement on SPs was unnecessary and could cause confusion.[501] O2 said it would be prudent for Ofcom to wait and see whether any publicity was necessary. It said in its experience consumers were very adept at understanding that calls are zero-rated

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492 Three, April 2012 consultation response, Q17.3, p.44.
493 CAB, April 2012 consultation response, Q17.3, p.7.
494 [✄]
495 Vodafone, April 2012 consultation response, Q17.3, p.36.
496 BT, April 2012 consultation response, Q17.3, p.33.
497 http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geographic-no/responses/Advertising_Standards_Autho1.pdf
498 The UK Advertising Codes can be found here: http://www.cap.org.uk/Advertising-Codes.aspx.
499 CWW, April 2012 consultation response, Q17.4, p.34.
500 UKCTA, April 2012 consultation response, p.10.
501 DWP, April 2012 consultation response, (response by email on 04/07/2012).

and they respond quickly. In addition it noted there was likely to be a significant amount of media interest in any decision to zero rate 080 calls.[502]

A31.27 EE reasoned that a majority of SPs would have a “natural incentive” to make consumers aware that calls to their numbers were free from both landlines and mobiles, thus it was unlikely to be necessary or proportionate to impose an obligation on SP to advertise that these calls were free.[503] For the same reason it argued that any obligation in respect of a pre-call announcement (‘PCA’) advertising that calls are free (whether imposed on the SP or OCP) would be both unnecessary and disproportionate. EE added that it could be confusing for consumers, who are currently used to hearing PCAs only when a 080 call is chargeable, to hear the opposite message. Similarly, SSE viewed any such requirement from Ofcom as unnecessary.[504] It also said SPs would be incentivised to spread the message about calls being free, thus additional regulation was not justified. It suggested that intervention by Ofcom could be considered at a subsequent stage if evidence emerged that customers were still not sure of the cost of calling 080 numbers.

Ofcom’s response

A31.28 Having considered stakeholders’ responses, our view is that, if we proceed to make the 080 and 116 ranges free-to-caller, it would be unnecessary to impose a requirement on SPs to provide price information for these numbers in their advertising or promotional material.

A31.29 We have explained in Section 5 the importance of a communications campaign to raise awareness of the forthcoming changes to non-geographic calls. This campaign will make consumers aware of changes that are being made to implement the unbundled tariff and to make 080/116 calls free from mobiles as well as fixed lines. We agree that those SPs who use these numbers will have an incentive to make their callers, and potential callers, aware that calls to them are free regardless of whether those calls are made from fixed-line telephones or mobile phones. Mobile OCPs will also have a particular incentive to promote the change as this will ensure that 080 call volumes from mobiles increase as quickly as possible. This increase in call volumes will help ensure that mobile OCPs recover the revenue lost from reducing retail prices to zero, because they will now receive an origination payment for each 080 call made by their customers (and therefore it will be in their interest to encourage their customers to make more 080 calls).

A31.30 Given that it is in the best interests of all stakeholders (including those SPs who provide 080/116 services) to ensure that the communications campaign is successful, there is no case for imposing an obligation on SPs to inform callers at the point of call. We will, however, monitor the level of consumer understanding of the changes and would consider additional regulatory measures – or information provision – if we conclude that this is required.

[502] O2, April 2012 consultation response, p.26.
[503] EE, April 2012 consultation response, Q17.4, pp.59-60.
[504] SSE, April 2012 consultation response, Q17.4, p.11.

Other issues

Stakeholder comments

A31.31 [✂] pointed out the existence of the 00800 Universal International Freephone Service ('UIFS') which it said might need consideration by Ofcom.

A31.32 ITSPA said its members assumed that the requirement for 080 to be free-to-caller would also apply to 00800 UIFS. BT, however, noted that 00800 calls were originated outside of the UK and it therefore assumed they were outside the scope of the review.[505]

A31.33 THA said that we should mandate that the 116 range and 080880 sub-range (reserved for confidential helplines) should not appear on itemised bills. It said that accessibility and confidentiality were an important factor for many callers to helplines where the nature of the call was sensitive and especially where callers could be at risk. It said that the existing 080880 sub-range was non-itemised only on participating landline and mobile providers. It noted that with the recent proliferation of MVNOs and landline providers it had proved difficult to engage with new providers to ensure those numbers could be non-itemised. THA believed that Ofcom should make it a requirement on the 080880 and 116 number ranges so that a consistent approach was applied across telephony providers, ultimately leading to clarity and consistency for the consumer.[506]

Ofcom response

A31.34 We noted in the April 2012 consultation[507] that the changes we were proposing would not apply to the UIFS. These numbers are not part of the UK Numbering Plan. Accordingly, they are outside the scope of this review.

A31.35 In response to THA's comment, General Condition 12 ('GC12') requires each CP to ensure that calls which are free of charge to its customers, including calls to helplines, are not identified in the customer's itemised bill. Therefore, GC12 does not apply to 080 calls which are currently charged from mobiles, but does apply to calls that are free-to-caller. However, by making all 080 and 116 numbers free-to-caller, the existing requirement in GC12 will automatically apply to these number ranges and therefore CPs will be required to ensure that calls to these numbers do not appear in itemised bills.

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[505] BT, April 2012 consultation response, p.31.
[506] THA, April 2012 consultation, pp.3 & 21.
[507] See paragraph 17.130 in Section 17, Part C, of the April 2012 consultation.