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Dear Elizabeth,

Response to Ofcom Consultation on Simplifying Non-Geographic Numbers – Detailed Proposals on the Unbundled Tariff and Freephone

Magrathea welcomes the opportunity to respond to this further round of consultation on non-geographic numbers. We note that Ofcom has done a significant amount of work to identify ways in which the market for non-geographic call services can be improved for the benefit of service providers and, especially, consumers. We agree with some of Ofcom's proposals, but we still have reservations in certain major respects.

- We remain opposed to the notion of unbundled tariffs and we do not believe this is will provide the best outcome for consumers. NGCS still makes up such a small proportion of customers' overall calls, that competition alone will not be sufficient to ensure that access charges (or indeed service charges) bring prices down in line with consumer expectations. Consumers will tend to be more concerned with "headline" tariffs and all-inclusive packages for calls and texts.

- We believe that 0800 should be free to callers from fixed and mobile lines. TCPs should be charged a fair price for originating freephone calls based on LRIC. Due to the social importance of freephone services, mobile OCPs should not be allowed to recover from TCPs the full share of allocated common costs such as those with respect to customer acquisition and retention.

- If an Access Charge is imposed, it should be capped at a cost orientated rate. If no such cap is imposed, and mobile OCPs are allowed to recover a profit element within the AC, then since the AC is effectively a call origination service provided to the calling customer, the OCP must be obliged to take the call all the way to the tandem layer and be responsible for transiting the call to the TCP. We believe that it would be inequitable for the OCP to profit from the access element of the call and yet require the TCP to pay for transit. Requiring OCPs to be responsible for transit charges would encourage a more resilient network in the UK and lower costs overall as transit charges would be reduced.

Part A – NGCS market assessment and summary of approach

Section 4 – Summary of concerns

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

We agree with Ofcom's assessment of the current situation to some extent. We recognise the market failures Ofcom has identified (namely lack of consumer price awareness, coupled with the vertical and horizontal externalities) but re-iterate the concern we raised in our March 2011 response about excessively high pricing at the retail level. We believe that Ofcom has tended to emphasise the level of consumers' *awareness* of price, whilst not focussing enough on the harm caused by the actual level of retail prices particularly those levied by mobile OCPs.

We think that this emphasis on consumer price awareness has encouraged Ofcom to conclude that the unbundled tariff, which disaggregates the pricing information and therefore gives the consumer more information, is the optimum solution. If high retail prices, rather than lack of awareness, were regarded as the principal consumer harm (as is our view) then we think that the maximum price option would have been viewed as better option.

Part B - the Revenue-sharing ranges

Section 9 – Remedies to address the market failures

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

We still believe that the best way to protect consumers from the harm of excessive retail charging is to impose maximum retail pricing. Whilst we accept that this amounts to fairly intrusive regulation, we believe that the particular structure of NGC services does not lend itself to effective competitive pressures.

Whilst access charges could be transparent at the point of sale of a mobile or fixed line service contract, such charges are not likely to be the consumer's primary reason for selecting a particular call package. The access charge for NGC services is likely to be significantly outweighed by other factors, such as the inclusive minutes, number of texts, etc.

We therefore believe it is important that the AC element of NGC services be included in inclusive minute bundles (or the inclusive landline minutes if that is how the package is constructed).

Where there is no "bundle", such as in the case of mobile PAYG services, then the AC should be capped at the level of the cost-based mobile termination rate plus a reasonable uplift for customer acquisition, retention and service costs.

We also remain sceptical about the effectiveness of SC price publication requirements. Ofcom's preference for the unbundled tariff is predicated on the assumption that SCs will tell callers the amount of the SC, including whether it is a per minute or per call charge and any other variations in call charging structure (see paragraph 9.223). We predict that there will be large-scale non-compliance if price publication requirements are extended to the 0845 and 0844/3 ranges. We therefore dispute Ofcom's conclusions about consumer price awareness based on the analysis in Section 9. We discuss this further in our response to Question 12.7 below.

Section 10 - Design of the unbundled tariff

The Access Charge

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

We do agree with Ofcom on this point. In terms of consumer price awareness, varying ACs between tariff packages will, if anything, provide additional consumer choice and will not detract from the consumer's ability to recall the AC once they have selected a tariff package.

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

Yes, we agree. If Ofcom's goal of consumer price awareness is to be achieved, it is vital to keep the AC element as simple as possible and reduce the number of possible variants and permutations.

Regarding inclusion of the AC in inclusive call packages, we believe that this should be a *requirement* rather than an option. As stated in our answer to question 9.1 above, we do not believe that consumers will select a fixed or mobile telephone service based on the cost of calling non-geographic numbers if there are more significant factors to consider. In relation to mobile packages in particular, it tends to be the headline inclusive minutes packages that are the main focus of consumers' attention. So unless the AC is included in those call packages, there is still potential for consumer harm caused by insufficient competitive pressure. (Ofcom acknowledges this point in paragraph 10.163.) We believe that there should be a link between the call bundles and the ancillary calling services.

We do not believe that the inclusion of the AC in call bundles would undermine consumer understanding of the AC, especially in light of Ofcom's proposal not to require service providers to provide separate itemisation of the AC and SC for each call. The cost of the AC will, according to Ofcom's proposals, be stated clearly on the invoice and we believe this will provide consumers with as much, if not more, understanding of the cost of AC as they have of the cost of geographic calls.

Where the AC is not included in the call bundle, it should be capped to the level of the cost-based mobile termination rate plus a reasonableuplift for customer acquisition, retention and service costs.

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

No, we think that there should be a cap on the AC. We maintain that all of the evidence to date of the pricing behaviour of mobile OCPs indicates that competitive pressure would not be sufficient for them to reduce the level of the AC to a level which would prevent consumer harm. We think that the cap for the mobile access charge should be set at either:

a) a level approximating to the mobile termination rate plus a reasonable uplift for customer acquisition, retention and service costs (see Q16.2 below); or
b) the geographic termination rate

whichever is lower.

For the avoidance of doubt, we believe that the AC for all NGCS should be capped at the same level as the access charge for freephone numbers.

The level at which the AC should be capped should be influenced by whether the OCP or the TCP is responsible for the costs of transit. If the TCP is required to pay the transit charge, and the OCP is deemed to hand over the call at the DLE level, then we would expect the OCP's network costs, and therefore its access charge, to be minimal. Given that BT's charge for originating traffic to the DLE is well under half a penny, any OCP charging more than a penny should be able to cover the transit cost as well.

Ofcom suggests that if the AC cap is set too low, the tariff package effect will mean an increase in the price of other services. As we have said in our previous response, we think that rebalancing of tariffs to reflect actual costs is helpful, rather than unhelpful. We networks should be encouraged not to make excessive margins on a small number of calls in order to cross-subsidise other services. In theory, the average customer would not pay more overall. We note that in Section 16 when discussing the Freephone options, Ofcom expresses the view that the tariff package effect is “not necessarily undesirable” and that “at least some rebalancing of prices is likely to be beneficial”. We would agree with this.

The Service Charge

Q10.4: Do you agree with our proposed approach for the structure of the SC?
In particular that:
(i) bespoke SCs should be prohibited;
(ii) that no further restrictions on the SC structure should be required (e.g. allowing ppm and ppc SCs, no restriction of ToD charging subject to ability of billing systems to pass through the charges)

If not, please explain why and provide evidence if possible.

Bespoke termination rates (a.k.a. “ladder charging”) have some merit in discouraging over pricing at the retail level on the part of OCPs. Given that we do not believe that the unbundled tariff regime will encourage mobile OCPs to reduce their access charges in line with fixed access charges, we believe there remains some merit in allowing bespoke SCs, from the point of view of the wholesale relationship between the OCP and the TCP.

However, we appreciate that if what was a wholesale termination rate is now going to become a retail SC, it would be detrimental to the simplicity of the regime if SPs were allowed to set different SCs for different OCPs. So on balance we agree that bespoke SCs should be prohibited.

We agree with Ofcom that no further restrictions on the SC structure should be imposed. We maintain that time of day variations and PPM/ PPC permutations are important for SPs and we will participate in industry discussions about setting the price points.

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

In order to maintain the identity of the non-geographic number ranges, we do think that Ofcom should impose maximum SC caps. We also agree that they should be set exclusive of VAT in the Numbering Plan. Although changes in VAT could lead to “non round numbers” at the retail price level, we believe that TCPs should be allowed the flexibility to decide how to reflect VAT changes in their SC rates.

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

We do agree with this approach. It is regrettable that the unbundled tariff regime may lead to price inflation for consumers (especially when the access charge is added), but a revenue neutral approach is the best way to avoid large scale migration away from these number ranges by SPs.

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

We accept that, if unbundled tariffs are to be introduced, then the number of SCs cannot be infinite. We would expect the optimal number to be at the upper end of Ofcom’s estimate. We would argue in favour of PPC price points, as well as PPM. There may also be a need for businesses to have "round number" price points when expressed exclusive of VAT.

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

Yes we do agree, because we believe it is important for CPs to have the chance to make representations regarding any particular price points should be retained. We would suggest the following price points:

Potential price points up to the 7p (inc VAT) 084X cap:
0ppm, 1ppm, 2ppm, 3ppm, 4ppm, 5ppm, 5ppc, 6ppm, 7ppm

Potential price points above the 7p SC cap:
8ppm, 9ppm, 10ppm, 10ppc, 11ppm, 12ppm, 13ppm.

Price points for business callers expressed EX VAT:
PPM: 5, 10, 15, 25, £1, £1.50.

Potential price points for 09 ranges:
PPM: 20, 25, 30, 40, 50, 60, 70, 75, 80, 90, 100, 125, 135, 150
PPC: 25, 35, 50, 75, 100, 125, 135, 150

We look forward to participating in the industry discussions regarding the potential price points.

Assumed Handover Point ('AHP')

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

We do not agree with Ofcom that the TCP should pay for transit. In our view, Ofcom's analysis of the AHP and transit arrangements is somewhat backward looking and does not reflect the way in which the relationship between and interconnection of CP networks is developing. Ofcom's analysis assumes that there is one large network, BT, and a multitude of new entrants who should be encouraged to build out to BT's local exchanges. However, this ignores the fact that there are now many large OCPs and the cost of conveying calls around CPs' national networks has reduced dramatically and is now very low (except for BT's regulated conveyance/ transit rates). Incentivising CPs to build out to BT's DLEs is no longer legitimate, not only because of the much lower transport costs, but also because BT is largely closing its DLEs and replacing them with a much smaller number of "metronodes" (which are, in reality, tandem nodes). It is not realistic to expect the huge number of TCPs to interconnect at 5,000 DLE sites. We therefore believe that the OCP should be responsible for the cost of carrying the call as far as the tandem layer. As discussed below, we do believe that the OCP should be responsible for paying the transit charges. However, even if the TCP were to pay the transit charges, the OCP should still be responsible for transporting the call to as far as the tandem switch.

Q10.10: Do you agree that for calls that route via a transit network, the TCP should pay for transit? If not, please explain why you disagree. In particular please explain your views on how incentives can be included within an "OCP pays" approach to ensure the TCP seeks to interconnect directly (where this is efficient) and not to reduce its points of interconnection at the expense of the OCP and efficient end to end call routing.
Q10.11: Do you agree with our proposed approach for calls between two non-BT CPs, both for the case when a transit network is used and for when direct interconnection is implemented? If not, please explain why you disagree.

Ofcom says in paragraph A18.37:

"Where the TCP pays for transit it is in its own interests to minimise the costs of this transit. To the extent it can reduce or remove these costs by extending its network, this is likely to increase the efficiency of call routing. Given this, a "TCP pays" approach to transit would appear preferable as it is more likely to encourage efficient investment and routing decisions."

We do not think that this reflects the true current economics of network operators. Other than BT, most network operators offer nationwide network resources for fixed prices and have removed the distance element as bandwidth has become less expensive (see confidential annex). Therefore "tromboning" a call between nodes at different ends of the country does not entail significant costs unless BT is used as a transit provider.

If Ofcom wishes to encourage efficient call routing, it should do so by encouraging interconnection between CPs, not by encouraging them to use BT as a transit provider. If the OCP were required to pay the transit charge, it would have the incentive to interconnect directly with as many TCPs as possible so as to avoid the transit charge. This would encourage more resilient meshed networks. Such an incentive would not work equally on TCPs since there are more TCPs than OCPs and an OCP is more likely to be able to secure an agreement to interconnect from a TCP because of the obligations which flow from the TCP's SMP in call termination.

On a practical note, it would be hugely costly and inconvenient to reverse the current situation as it applies to 0870, 0871 and 0844 – i.e. where the originator currently pays. Whilst we have some sympathy for the desire to standardise the approach across all non-geographic number ranges, we believe, in view of the large call volumes associated with the 0870, 0871 and 0844 number ranges, that the principle of "OCP pays" should remain for these ranges and be applied to all. There has been a huge increase in the use of the 0844 range in particular over recent months and it would be a considerable upheaval to reverse the status quo for that range. CP networks have been constructed on the basis of "OCP pays" for these ranges and would have to be restructured if the situation were reversed. We do not believe that the benefit of imposing such a change would outweigh the cost to industry.

If the TCP is required to pay the transit charge, and the OCP is deemed to hand over the call at the DLE level, then we would expect the OCP's access charge to be minimal. Given that the BT's charge for originating traffic to the DLE is well under half a penny, any OCP charging more than a penny should be able to cover the transit cost as well.

Section 11 – the 0845 and 0870 ranges

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

As stated above, our starting position is that unbundled tariffs will not deliver the best outcome for consumers. However, if they are to apply at all, we feel very strongly that 0870 in particular should be excluded. We think it is regrettable that Ofcom largely considered 0845 and 0870 together as we do not believe they have the same characteristics or should necessarily be treated in the same way.

The unbundled tariff will inevitably lead to an increase in the cost of 0845 and 0870 calls. Ofcom proposes to cap the SC for 0870 at 13ppm inc VAT. The caller will have to pay an AC on top of that unless the OCP chooses to include it in the calling package. This is a significant reversal of policy for 0870 numbers. Magrathea supported Ofcom's decision in 2010 to require OCPs to bring 0870 rates in line with geographic rates and include them in inclusive call packages unless prices are published. This decision was largely successful in resolving long standing dissatisfaction from consumers about the 0870 number ranges. 0870 has now regained some of that lost consumer confidence and it would be wrong and disruptive to reverse that decision now. This range always has been and still is associated with geographic rates, which is why there was so much consumer dissatisfaction when the cost of calling 0870 increased in comparison with geographic rates.

In terms of the marketing communications to customers, we believe that customer confusion with respect to the 087 brand could be avoided if Ofcom simply renumber all 0870 numbers with the equivalent 0370 number. Ofcom should not rely on range holders having to apply for their equivalent

0370, but should instead impose a renumbering scheme, as they have done in London and Reading, for example. This has several benefits:

- If SPs are required to apply for and "migrate" to a new number range, they may lose potential callers who were not aware of the change of number. If, however, the range is renumbered across the board, callers of the old number would be greeted with a recorded announcement asking them to redial using the prefix 0370 instead of 0870 (or 03 instead of 08).

- If the PCA were imposed for a period for, say, two years, then SPs would not need to change their stationery immediately or potentially at all.

- Consumers are still able to reach those SPs at the cost of a geographic call.

- The 03 "brand" is boosted by an increase in customer usage and awareness.

We would propose that the 0870 range would be quarantined for a period of time after the end of the PCAs after which it could be made available for new allocations if required for expansion of the 087 ranges.

We do not believe that such a strategy with respect to 0870 would have a particularly significant tariff package effect on mobile OCPs. We believe that if an exception can be made for 0800, it should be made for 0870 as well.

Section 12 – Implementation

Customer bills

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

We do not feel that it would be desirable to disaggregate the AC and the SC on customer bills. As we said in our previous response, this would introduce unwanted complexity and would do nothing to improve the image of NGCS. We do, however, feel it is important that OCPs should display the AC on the customer's bill in order to maintain consumer awareness of the unbundled tariff structure.

Wholesale issues

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

We are strongly opposed to the idea of a new commercial database of service charges (and we are not convinced that there is "majority consensus" in favour of one). We do not believe that Ofcom has made a case for why a new database would be an improvement on the information currently held in Ofcom's numbering plan registry. We believe that Ofcom currently holds *all* of the requisite information in respect of these numbers, i.e. the name of the range holder and the charge band (or SC) associated with each block.

Ofcom has provided very little detail on how new price changes would be notified and implemented using the database and whether OCPs would have a maximum period of time in which to implement new prices or new number ranges on their system. At the moment, some CPs take considerably longer than others to do this databuild work (see Q12.3 below). We do believe, as Ofcom suggests in paragraph 12.69, that there is considerable merit in a process whereby tariffs are notified subject to a specific implementation period and we think that it may well make sense for tariff changes to come into force on specific dates, such as once per month or once per quarter.

We would certainly not be in favour of a commercially-owned database, as this would inevitably add considerably and unnecessarily to the cost of doing business for communications providers. Any new database would have to be either an extension of the existing Ofcom one (funded through the administrative charges which CPs pay), or be run by BT as part of the services it provides in relation to conveyance charges, due to its unique position in the industry.

We think that Ofcom would have to demonstrate more than it has done to date how the benefits of such a new system would outweigh the costs to the industry. Ofcom suggests that commercial provision of a database might be cheaper "since there may be more scope for costs to be offset by other commercial service provision using the database". We would welcome further details of what Ofcom might have in mind.

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

We believe that the current process for number range building and tariff change notification is unsatisfactory. As mentioned above, delays and/or inaction on the part of OCPs can lead to a lot of additional resource on the part of TCPs as they are required to contact CPs to chase-up databuild that has not been done. Needless to say, consumers suffer as they cannot make calls from some CPs to certain number ranges.

As mentioned above, we think, that there is considerable merit in a process whereby tariffs are notified subject to a specific implementation period and we think that it may well make sense for tariff changes to come into force on specific dates, such as once per month or once per quarter.

We note the new "Number Range Building Code of Conduct" that has been circulated recently and hope that this will encourage better communication between the parties with respect to implementing these changes. In the event that this code of conduct is not adhered to by a material number of CPs, then Ofcom should impose new regulatory obligations with regard to number range building and tariff changes.

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

We repeat our answer to Q12.3 above in that Ofcom should consider regulatory intervention in the event that CPs fail to adhere to the new Code of Conduct.

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

We agree with the steps proposed by Ofcom in paragraphs 12.90 – 12.92. We think that the way in which CPs communicate with their own customers and prospective customers (particularly as regards the unbundled tariff structure) will be crucial and we urge Ofcom actively to monitor such communications. Prominent advertising of access charges will be essential to securing consumer understanding (see Q12.6 below.)

We believe that Ofcom's guide to UK telephone numbers (as set out in Section 6) should be accompanied by an explanation of what an "access charge" is.

We look forward to further consultation with Ofcom on exactly how the unbundled tariff structure should be explained to callers.

Price publication requirements

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

General Condition 10 requires publication of tariffs in hard copy for anyone who requests it or on the CP's website. This would only be effective if it were "one click" away from the CP's main home page. It will not be effective if it is buried deep within multiple tariff packages.

General Condition 12, which requires itemised billing, may prove unhelpful since Ofcom is proposing that call charges do not need to be disaggregated into the AC and SC elements. Ofcom is proposing that the AC should appear as a separate note on the bill. Perhaps this should be specified as a modification to GC12.

GC 14 will also require some modification to acknowledge any new unbundled tariff structure.

We do think that the access charge and service charge should be referred to in General Conditions 23 and 24 and we do think that the access charge should be regarded as a "key charge".

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

We agree that publication of the SC by SPs so that it is available to the majority of consumers at the point of call is crucial to the success of the unbundled tariff. However, one of the reasons that we do not believe that the unbundled tariff option will succeed in addressing the consumer harm is that we think that price publication of the SC will not prove practicable or enforceable in many instances on the 084 ranges. There is still widespread non-compliance with the price publication requirements on 0871. (See confidential annex for examples of 0871 numbers published without pricing information.) We do not believe that the price publication requirement will, in itself, exert sufficient competitive pressure to keep the SC element of the call low.

Price publication makes sense for 09 numbers which are, by definition, providing a service with the call which is paid for by the telephone number. Those who use 0871 to provide information services could also reasonably expect to be covered by PPP regulation and by price publication requirements. But ordinary businesses who simply use 0871 as a contact number are often ignorant of their regulatory obligations in this respect.

Even where the "service provider" or "owner" of the 0844/3 number complies with price publication requirements, it is still difficult to ensure compliance (even from a practical point of view) when the number is published third party material, such as directories, listings or credit card statements. Users of 0844/3 numbers will find it hard to see themselves as "service providers".

We are therefore concerned that the ASA would not have sufficient resources to monitor compliance. However, we believe that inclusion of the 084 and 0870 number ranges in the PPP regime would impose an unnecessary regulatory burden on the industry. The level of expense and bureaucracy that goes with PPP regulation is disproportionate to the challenge faced.

In our view, the best way to ensure fair prices for consumers is to set maximum retail prices and enforce those.

Other implementation issues

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

For internationally originated calls, we do not think the unbundled tariff could or should apply at all, since both the AC and the SC would be affected by roaming, transit and other charges levied by overseas operators. Not only would the AC have to be higher, but SCs do not map directly on to international termination rates.

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

We do not agree that payphones should be allowed to set a minimum fee for non-geographic calls. However, it is reasonable that an AC could be set from payphones at the level of the current Payphone Access Charge for 0800 numbers.

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

As we have stated already, we are opposed to the unbundling regime altogether, as we believe it is unhelpful for both residential and business customers. Before we can answer this question, we would need to discuss this further with Ofcom and industry.

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

Yes.

Section 13 - Impact assessment

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

In relation to our assessment of our own expected billing system costs, yes, we agree with Ofcom's estimates.

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

If moving to the unbundled tariff regime has no negative financial impact on SPs using 0870 numbers, then we do not believe there will be a significant amount of migration away from these numbers. It is more likely to be the consumers who lose out due to the price inflation associated with Ofcom's unbundled tariff proposals. This consumer detriment is why we are strongly opposed to the application of unbundled tariffs to the 0870 range in particular.

If a link to geographic rates were to be imposed on the 0845 range, or if a migration to 0345 were imposed, we think there would be a significant amount of migrations by SPs to 0844/3 ranges.

We do not believe that the level of migration within unbundled ranges is likely to be significant.

Part C - Freephone and 116

Section 16 – Assessment of options

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

Ofcom considered two main options, namely:

- **Option 1:** Free to caller
- **Option 2:** setting a maximum retail price for mobile calls that is above zero, i.e. a "Maximum Mobile Price Range".

We agree, and have maintained throughout the consultation process, that 0800 should be made free to caller from both fixed and mobile networks.

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

In Ofcom's Mobile Termination Review Statement published in March 2011, Ofcom set a glide path for mobile termination rates as follows (in pence per minute):

2010/11	2011/12	2012/13	2013/14	2014/15
4.180	2.664	1.698	1.083	0.690

These rates were calculated using pure LRIC methodology, on the grounds that it would be more likely to promote efficiency, sustainable competition in the retail market and would confer the greatest possible benefit on consumers. This meant that (unlike the LRIC+ method) no common costs (such as administration and overhead costs) were allocated.

In the 2010 consultation, Ofcom proposed that the mobile origination charge could be either

• equal to the current fixed origination payment (around 0.5ppm);

• the LRIC of originating mobile 080 calls (approximately 0.7ppm); or

• the mobile LRIC (as above but additionally including a contribution to mobile OCPs' network common costs) –approximately 1.8-2.0ppm).

We believe that Ofcom was correct to state in the 080 Dispute Determination that the efficient cost of originating 080 calls should not exceed 5ppm. We also agree with Ofcom's conclusion in paragraph A23.33 that mobile OCPs should be allowed to recover at least 0.69ppm, and should not be limited to recovering the fixed termination rate only (0.5ppm) as this would be insufficient to recover their incremental network costs.

We believe that mobile OCPs can legitimately argue that the costs of customer acquisition, retention and service ("CARS") should be added to the MTR as an uplift when calculating the cost of origination. (The costs used to calculate the MTR already included an allowance for net handset costs.) We note that in assessing the level of mobile OCPs' network and administration call origination costs, Ofcom have used an amended version of the 2011 Statement Cost Model.

Ofcom are not proposing to regulate the level of origination payments but, in order to carry out an impact assessment regarding its proposals, Ofcom have assumed that mobile origination payments will be 2.5ppm – 3ppm. We believe that this range is too high for the following reasons.

We note that BT Retail's NTS uplift at the time of the 080 Determination was 0.1848ppm and is currently 0.1753ppm. The underlying charge control cost model from the Retail Uplift Statement 0.22ppm at 2011/12 prices. The amount which BT charges for originating NTS calls (including the NTS retail uplift) is approximately 0.5ppm on average (which includes a share of common costs), so OFcom assumes that its network costs (i.e. the non-retail costs) are approximately 0.28ppm.

In estimating the CARS costs, Ofcom have used data submitted to the CC by mobile OCPs in 2009.

We note that the vast majority of OCPs' non-network costs are customer acquisition and retention costs (1.57ppm out of 2.38ppm, as compared with BT's A&R costs of 0.06ppm). This is down to handset subsidies, advertising, retail outlets, as well as incentives and discounts. Given the policy objectives behind the concept of the freephone number (such as providing access to socially importance services) we do not think it is appropriate for TCPs and service providers to have to bear the cost of the extravagant advertising, sponsorship and retailing campaigns of the mobile OCPs.

We also agree with Ofcom in paragraphs A23.94 and A23.96 that it is not appropriate for TCPs/ SPs to bear costs from which they derive no benefit (eg if A&R costs are spent on customers moving between mobile networks and not actually growing the market, which has become fairly saturated).

According to paragraph A23.89, fixed OCPs receive a contribution of approximately 0.4ppm to their fixed and common costs. From a consumer policy point of view, we think the allowable uplift for CARS for the mobile access charge should be no more than 0.4ppm.

We indicated in our 2011 response that we would regard up to 2ppm as acceptable. However, we would clarify this as follows. We believe that the mobile access charge should comprise the Mobile Termination Rate, plus an uplift for CARS of around no more than 0.4 ppm (based on the discussion above). According to the 2012/13 MTR (as per the glide path) this would mean a mobile access charge of around 2.1 ppm, but by 2014/15 it would be around 1.1 ppm.

We do not think that the benefits to consumers of the tariff package effect should be taken into consideration at all. The fact that an increase in mobile origination payments could theoretically lead to mobile OCPs using the additional profit to subsidise the price of other services is not relevant to the formulation of a cost-based charge and should not be allowed to influence policy making. We disagree with this principle of analysis that Ofcom formed in the 080 Dispute Determination, even though it was supported by the CAT. We think that Ofcom should take into account benefits to consumers of freephone calls, not the benefit to consumers overall. If cost-based origination payments lead to increases in the price of other services, then we believe that this is an appropriate and desirable adjustment.

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

Yes, we agree.

Section 17 - Implementation

Q17.1: Do you agree with our provisional view that it is appropriate for an access condition to be imposed on all TCPs hosting designated Free to caller numbers requiring them to:
(i) purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP;
(ii) to do so on fair and reasonable terms and conditions (including charges); and
(iii) notify their SP customers of any initial revision to the charges for wholesale origination services within two months of Ofcom imposing the requirement for zero maximum prices.
If not do you consider any ex ante intervention is required? Please give your reasons for or against such intervention and your preferred approach.
Q17.2: Do you agree that the access condition does not need to be extended to OCPs, but is effectively binding on both parties? If not please give your reasons.

Ofcom are not proposing directly to regulate the level of origination payments, merely to impose an access condition on TCPs as described above. As a TCP, we do not object to the implementation of such a condition. However, we believe that it will be ineffective in terms of reducing regulatory uncertainty unless a) the access condition is extended to OCPs and b) a regulated cap on the level of the mobile access charge is imposed.

July 3rd, 2012