Representing the Communication Services Industry

FCS
Federation of Communication Services

Simplifying non geographic numbers
Ofcom consultation

FCS response - 31 March 2011

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Section 1: Executive Summary

The FCS welcomes the in depth analysis of the complex issues set out in the Ofcom NGCS review.

Ofcom has carried out research and identified a central problem of enhanced call charges, particularly in the national mobile sector, that have eroded the trust and confidence of consumers when making non-geographic calls. In this detailed response the FCS seeks to offer a way forward to ensure that consumers trust the NGCS sector, and to provide a sound basis for development of the market as a whole.

Ofcom has offered two options as solutions; the Preferred Option of separate Access and Service charges in an unbundled tariff, and an Alternative Option of Maximum Prices. Overall, while we support Ofcom's Preferred Option as the best strategy, we do consider that this will be complex to implement and needs to be developed to ensure fair competition throughout the distribution chain.

Ofcom has identified immediate problems that need addressing now. We suggest that Ofcom implements a temporary measure of price caps, that curtail the clear consumer harm caused by national MNOs, whilst working with all parts of the industry, not only a focus group of major operators, to develop the longer term solution.

If Ofcom has taken one year to get to this stage in its deliberations it cannot expect industry to implement changes at an accelerated pace. Ofcom owes it to the consumer and the industry to come up with a measured and effective implementation plan.

Section 2: Overview

The Federation of Communication Services, FCS, is the UK trade association for the communication services industry. It represents 315 companies delivering connectivity products and services by means of wires, fibre and wireless. A directory of FCS members may be found on the website- www.fcs.org.uk.

We appreciate the extensive study that Ofcom has undertaken to analyse and propose solutions for the non-geographic call services market in this country. Leading members of the FCS NUMBERING GROUP, Andy Martin of IV Response and Kieron James of Zimo Communications Ltd, on behalf of members, have developed our response. The Group includes both terminating (TCP) and originating (OCP) communications providers who support the end user consumer and business sectors of the economy.

Ofcom has produced a weighty consultation document which details significant market failure, valuing consumer detriment in the region of £500 million per year. It has identified complex market conditions and suggested options for remedying the situation, which have far-reaching implications not only for citizen-consumers, but also for the majority of the UK telecommunications industry. This analysis is timely since our members report that this area has become increasingly less transparent and confusing

We welcome Ofcom's consumer-focused approach not least because Ofcom has also recognised that the detrimental cost has been borne by consumers for several years and, without intervention, this cost is set to increase. We agree with Ofcom's intention to improve trust in calling non-geographic numbers thereby building market confidence and business opportunity.

We note that Ofcom's preferred route of unbundling the Service Charges and Access

Charges (made by the TCPs and OCPs respectively), is highly dependent, amongst other considerations, upon competition amongst OCPs and TCPs and on simple, transparent pricing of these charges.

We would like to state our concerns regarding the outcome of Ofcom's 2006 consumer-focused intervention (namely "NTS: A Way Forward"). After five years of u-turns, disputes, complete confusion amongst SPs and callers, together with a failure to reduce the retail prices charged by national MNOs (called MNOs in this document) for calls to 0870 numbers, it is nothing short of disastrous that Ofcom has acknowledged that the best option now would be to close the number range.

While setting out principles is an important first step we are concerned that Ofcom has neither stated nor prioritised a strategic implementation plan for its suggested proposals. The fundamental issues are the protection of consumers and the restoration of trust and confidence in NGCS that have been severely damaged as a result of the retail pricing policies of OCPs, principally in the national mobile sector. In this regard, we agree with the two major considerations identified by Ofcom as its rationale for the review, namely:

- Consumer welfare is at the heart of our analysis
- Our main concerns stem from the way the retail level operates

It is clear both from Ofcom's and PhonepayPlus' research that the principal issues faced by the NGS callers are the high level of charges levied by national MNOs, consumer mistrust, bill shock and a lack of price clarity.

Whilst originating only 11% of total NGC volumes, MNOs retain 49% of OCP revenues (or put another way, 13.3ppm vs 1.7ppm for fixed OCPs). Ofcom has also identified that SPs are adversely affected by the way in which the retail market operates as a result of recurring disputes. We believe it is essential to understand the reason for such disputes, though Ofcom has highlighted a consistent theme of inflated retail pricing by MNOs. One of the most concerning consequences of NGC market failure is the exclusion of vulnerable citizens from the increasing number of socially important services accessed through NGCs from mobile phones - including burdensome avoidance strategies or worse, a loss of access to services.

Subject to the provision of the revised EU Framework into UK legislation Ofcom has the following power –

Paragraph 1 of Part C of the Annex to the Authorisation Directive has been amended to clarify that national regulatory authorities have the power to adopt tariff principles or to set retail tariff caps in relation to certain numbers or number ranges. This is intended to create greater transparency for consumers calling (e.g.) non-geographic numbers and to help prevent consumers receiving bills with unexpectedly high call charges ('bill shock'). We propose to amend the Communications Act 2003 to clarify that Ofcom has this power.

With this power we urge Ofcom to act swiftly and deal with the most pressing issue of consumer harm that occurs today, namely the excessive charging by national MNOs.

Our response to the consultation identifies two categories of relationship between OCPs and consumers:

- Category 1 - The relationship between a National Mobile OCP and the consumer
- Category 2 - The relationship between a Fixed OCP and the consumer

We call for a more focused approach of intervention from mobile-originated calls where consumer detriment is greatest. We also seek a solution to stem persistent harm in the short to medium term until Ofcom's preferred option of unbundling into Service Charge and Access Charge has been fully researched and a strategic implementation plan agreed.

We note that Ofcom is not (at least presently) proposing to regulate the Access Charge but our members have severe reservations as to whether a competitive environment will result following implementation of the unbundled price structure. We fear that, in effect, under this approach, regulation will be removed and Access Charges will be driven upwards (including those set by large fixed OCPs). The precedent for this trend is evidenced in the call set up fees charged by fixed operators that have risen considerably over recent times.

Furthermore, OCPs have historically charged very high prices for NGCs and whilst Ofcom has concluded that the likely average would be around 14ppm for MNOs, we fear that this could be set much higher. We recall the actions of one MNO in doubling the price of calls to 0870 numbers immediately following the most recent 0870 regulatory changes.

In considering any of the options we strongly recommend that Ofcom set out a detailed strategic plan for implementation. Most importantly, if the unbundled option is further considered then this plan should identify solutions that overcome our grave concerns that Access Charges will not be set competitively by major OCPs, to the detriment of the consumer. Furthermore, the plan should also take into account the timescales required for CP contract changes, the need for retail billing solutions, the very important need for granular SC retail billing by all major OCPs, an agreed structure of how the SCs are derived and finally the necessary amendments to the NTNP. It is only with this strategic plan that our members can fully consider the proposal.

We would also like to emphasise that there is vulnerability for resellers who have retail obligations that can only be facilitated by the actions of their wholesalers. In the event of tariff unbundling, we would caution Ofcom to ensure that consistent obligations are applied separately to retail and wholesale CPs. In order to provide information about the proposed access charge to retail customers, retail-only OCPs must be provided with relevant wholesale access charges on a basis consistent with the required retail charges. Wholesalers (who themselves often have retail customers) should not be allowed, as a result of the implementation of tariff unbundling, to disadvantage retail-only OCPs in any of the wholesale terms and conditions around use of non-geographic numbers. In our view, this may require obligations on how wholesale access charges are to be set.

Section 3: FCS member survey- March 2011

In order to develop this response the FCS conducted a survey among its members active in the non-geo calls market; two thirds of the respondents were TCPs and one-third OCPs.

Over 50% of the respondents supported Ofcom’s preferred route, although this was recognised to be a complex solution and not easily understood in the short term by their customers or the public at large.

Ofcom’s proposal to ensure that 0800 calls are free to the caller could result in the end user business customer, such as a plumber, paying more to receive each call. Although the consumer benefits are clear, the acceptance of this change of use of the 0800 number is highly dependent on the charge per minute. The majority of respondents to the FCS survey believed their end user business customers would accept a charge to receive 0800 calls and would accept a small difference between calls from fixed and mobile phones.

Ofcom proposes to withdraw the 0870 range and reluctantly our survey respondents agreed that the range is damaged beyond repair but noted that there are existing users whose interests must be taken into account. Any major change must be handled by Ofcom carefully taking into consideration ALL of the stakeholders in the NGCS community.

Similarly over 50% agreed that 0845 should be delinked from geographic rates and aligned with 0844. However there was almost no support for regulation of the 0844/5 number ranges by Phonepay Plus. The example of the decimation of the 0871 market by association with a regulator of "premium rate services" must not be permitted in this case.

Non-geographic number porting was cited by respondents as a continuing concern, particularly as "*some providers do everything they can to block ports*"

Section 4: Answers to questions

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Q2.1 Do you consider that the scope for this review, set out above, is appropriate? If not how would you suggest that it should be modified and why?

We welcome a consumer-focused approach to the review of NGCS with a view to creating a competitive environment for the use of NGCS. We note that Ofcom has concluded that there exists a detrimental cost to consumers of somewhere in the region of £500 million per year. We also note that Ofcom has recognised that this detrimental cost has been occurring for some time and without intervention is likely to increase.

We believe the current scope of the review should include an in depth analysis of previous regulatory intervention. We note that the preferred route proposed by Ofcom, of an unbundled situation, is highly dependent, amongst other considerations, on competition amongst OCPs and TCPs, and on simple and transparent pricing of the Access Charge from OCPs to best serve the interests of consumers.

We note from experience that the preferred "consumer focused" outcome of the previous 0870 intervention, to reduce 0870 retail prices to those of geographic rates, did not achieve its objective. The reasons for this failure should be clearly identified as part of the scope of this review and should be used as a benchmark for consideration of preferred policy objectives.

With regard to 0870, our particular concern is not only the time taken to reach such an unsatisfactory outcome, but the number of disputes, u-turns and confusion caused amongst consumers and SPs over the last five years. The destruction of a number range, introduced by Oftel to stimulate innovation and competition, as a result of the mobile sector's retail pricing and subsequent regulatory uncertainty should be avoided at all costs if we are to avoid a repetition of this outcome for the entire NGC market. Swift action needs to be taken, specifically targeting those responsible for well-documented and clearly demonstrated consumer detriment.

We also note that further intervention was implemented, through amendments to General Condition 14.2, to increase price transparency. This intervention required two investigations to gain a degree of compliance; however we believe this has not achieved its objective due to consumers' lack of understanding of call costs - a view that is supported by Ofcom. An analysis of this failure of compliance should be also used as a benchmark when considering other options.

Q2.2 Does the summary of the history of NGC services and the rationale for this review capture all the essential concerns which this review should be seeking to address? If not, please set out those issues which you consider are not being considered and why these should be included in the review at this stage.

We agree that Ofcom has presented a summary that is reflective of the history of NGCS. However we are concerned that Ofcom, in recognising that severe consumer harm exists has not prioritised a strategic plan for implementation of either of the proposals. We also note that Ofcom is not proposing immediate regulatory change and considers that further research is required to understand the consumer's perceptions of the proposals. The fundamental issue that has not been addressed is to prioritise the protection of consumers and this review should capture this and consider temporary measures if a full implementation of the preferred option is not feasible in a short timeframe.

Q2.3 Do you consider our proposed approach and framework for analysis is fit for the purpose of this review?

We agree that Ofcom has identified a suitable approach to the framework for this review however, as noted in the replies to questions 2.1 and 2.2; we are concerned that Ofcom has jumped to early conclusions that do not best serve the immediate and longer-term issues of the consumer. We believe that research and a robust strategic plan should have formed part of the framework from the beginning of this consultation exercise.

Q4.1 Do you consider that the analysis set out in this Section and in more detail in Annex 2 represents fairly the consumers' concerns? In particular: does it provide a reasonable assessment of the type and extent of the detriment consumers currently experience? And does it identify all the relevant factors?

We are encouraged that Ofcom has concluded, "*Consumer welfare is at the heart of our analysis"* and have taken a view that the consumer is both the consumer making the call and the service provider. We agree that Ofcom has identified the relevant factors.

Q4.2 In this section and in Annex 2 we set out our views of the main factors that contribute to the current outcomes, specifically the interaction of poor price transparency for consumers combined with poor incentives leading to vertical and horizontal externalities. Do you accept that this analysis is a valid assessment of the incentives of the market participants? Do you consider that the implications for consumers we draw are sound and represent a useful basis for assessing appropriate regulatory responses? If not, how would you categorise the relationships and motivation underpinning consumers and OCPs' behaviour?

The FCS agrees with the two major considerations identified by Ofcom as the rationale for this review.

* "Consumer welfare is at the heart of our analysis"
* "Our main concerns stem from the way the retail level operates"

Ofcom's analysis is a valid assessment of the incentives of market participants as a starting point for this review and we agree that lack of price awareness and "vertical" and "horizontal externalities" are indicative of the issues faced by the consumer.

However we do not think that Ofcom has soundly identified the implications for consumers to form a useful basis for assessing appropriate regulatory responses. It is clear from Ofcom's various and well documented research that the fundamental issue faced by the consumer when calling NTS numbers is the "free riding" and high level of charges levied by Mobile Network Operators (MNOs). This is the point of origin for consumer dissatisfaction and the subsequent breakdown of NGCS as a whole and this should form the basis for regulatory intervention.

This entirely unacceptable "free riding" situation has led to a complete breakdown of the relevance of the National Telephone Numbering Plan and has broken the integrity of fixed line operators and service providers who adhere or closely adhere to the designation in the NTNP by providing price transparency and effective competition to the benefit of consumers.

It is our view that the issue of vertical and horizontal externalities is solely caused through high charges levied by MNOs and has not been caused through the actions of fixed line operators. Ofcom has clearly demonstrated this point through research into consumers' perceived costs of calling 0800 numbers. Ofcom has noted that it is "striking" that only 46% of respondents to the survey were aware that 0800 calls were free from fixed line phones, particularly given that this is the most heavily used range and has the most clearly associated price point, namely that it is, or rather should be, free!

To further compound this issue we would like to highlight the results of the mystery shopping exercise completed by Consumer Focus where seven leading mobile suppliers were contacted to query the price of calling a voting line for a popular TV show. It is astounding that 57% of callers were given incorrect information and 15% were given no pricing information whatsoever.

For these reasons Ofcom has clear evidence to categorise the relationship and motivation underpinning consumer and OCP behaviour into 2 distinct areas and therefore consider regulatory intervention based upon these distinctions.

Category 1 – The relationship between a Mobile OCP and the Consumer
Category 2 – The relationship between a Fixed OCP and the Consumer

As stated in our answer to question 2.2, we believe that any regulatory intervention should be prioritised to capture and remedy consumer harm where it is at its greatest. Through taking a categorised approach it is clear that Ofcom has a priority with category 1 as demonstrated above.

Q4.3 We have identified five key areas of consumer detriment as a result of the poor transparency and poor incentives in the market: reduction in demand for NGC, relative prices not reflecting consumers' preferences; costly avoidance strategies; increased fraud risk and loss of service diversity; and the disproportionate impact these problems have for low income mobile only households when accessing essential services. Do you consider that this represents a comprehensive summary of the impact on consumers? If not, how should it be modified and why?

Our members concur with the five key areas of consumer detriment identified by Ofcom. However if Ofcom were to take a more categorised approach by identifying the issues faced by consumers relevant to the OCP used, then a more focussed view of consumer impact could be derived, thus allowing a more prioritised approach to regulatory intervention.

Based upon the evidence presented, below we have listed the five areas of Consumer Detriment identified by Ofcom and have given our view as to whether the consumer issue is caused by a Category 1 or Category 2 relationship.

Direct impact of poor consumer awareness	1
Level of non – geographic prices relative to other telephony services	1
Consumer exposure to fraud	1 & 2
Diminished service availability and innovation for consumers	1
Distribution concerns	1

From this analysis, even considering that Ofcom has stated that the levels of consumer detriment are based upon “high level estimates”, clearly the overall magnitude of the issues, particularly the Distributional Concerns (exclusion of ‘vulnerable’ citizens from socially important services), are weighted heavily towards Category 1 calls (mobile calls). For this reason we believe that Ofcom should modify the summary by measuring the concerns against originating call types. A more focussed approach to intervention from mobile-originated calls could then be considered.

Q4.4 Do you consider that our assessment of the state of the market in the absence of ex ante regulation is a reasonable extrapolation of the evidence? If not, why?

We support Ofcom’s view that the regulatory regime cannot continue in its current form. However, at this stage we do not agree that the conditions as set out in the NTNP and the restrictions on BT’s call prices should be removed.

The evidence provided by Ofcom demonstrates severe consumer detriment caused by the high level of retail charges to NGCS levied by MNOs. In contrast there is little, if any, evidence to suggest that consumer detriment, through the 5 areas identified by Ofcom, occurs when these calls are made from BT or other large fixed OCPs.

By removing the conditions it is feasible that BT and other fixed OCPs could behave in a manner similar to MNOs thus causing greater detriment to the consumer.

Q5.1 Do you consider that the analysis set out in this Section and in more detail in Annex 3, fairly represents the wholesale relationship and issues in this market? If not, why?

We agree with Ofcom’s summary of the provision of NGC, as being a two sided market with the consumer being considered as both the caller and the SP, with interaction between the two parties operating via OCPs and TCPs. We also agree that if one side of the market fails this has a negative effect on the other side. However in this case the national MNO has caused the market failure.

We note and support that Ofcom has identified that a complete removal of regulation would exacerbate consumer issues due to the likelihood of BT behaving in a fashion similar to that practiced by other OCPs today, causing further consumer/SP detriment. This is an important consideration and we would expect Ofcom to maintain a consistent view with this.

Q5.2 Specifically, do you agree with our assessment of the market experience for SPs, including in hosting markets? Do you agree with our assessment of SPs’ concerns about price transparency and the impact on their incentives? If not, how would you characterise the market from the SPs’ perspective?

We agree with Ofcom that the hosting market for SPs is generally working well with a supply chain where TCPs offer a competitive and responsive service.

We note that Ofcom has welcomed comments from smaller operators regarding NGN number portability. The FCS survey results reported above demonstrate a continuing concern that number portability is difficult. Non geo number porting should be included in Ofcom’s customer switching project to ensure a comprehensive framework for customer migration is in place in the UK.

Ofcom has noted that SPs have concerns regarding the lack of control over retail prices and this has a knock on effect on how they effectively advertise their prices to consumers. However we believe that Ofcom has not provided sufficient weight to the benefits of adherence to the NTNP and the benefit to consumers through alignment of number ranges with specific price points when calling from BT landlines. Instead Ofcom has chosen to take a general view that price transparency is poor when clearly this is not the case.

We note information provided by PhonepayPlus through research carried out in 2008 that call charges for NGCs from MNOs were widely considered to be a source of consumer mistrust and bill shock, and that these charges were criticised by all stakeholders in the value chain. We also note that the 2010 SP survey confirms that SPs expressed strong concerns about the retail prices charged by national MNOs.

We find it particularly compelling that one respondent to this survey claims that -

"It is the fault and actions of mobile OCPs and it is the non-geographic number/premium rate service industries that are taking the blame. Mobile OCPs are taking 32p out of 40p in total cost and are providing no added value".

Although the 32p out of 40p may not be strictly accurate, this demonstrates the issue faced by SPs. We tend to favour the view of this respondent that the national MNOs provide no benefit or added value to the consumer other than connectivity to the SP. With four national UK MNOs, none of which enjoy SMP [other than in mobile call termination], it is surprising that they have been allowed to add such a significant premium to the cost of NGCs on the grounds of competition in the mobile sector being "healthy". Conversely, TCPs, which add significant value to the call through intelligent network call management services, take no share whatsoever of the excessive premiums added by the MNOs.

It is also particularly disconcerting that SPs have to run the risk of being blamed for the high prices of mobile-originated calls and lose customer trust when they have no control over the retail prices being charged. Even if SPs reduce their termination charges (such as in the case of the 0870 termination rate reduction) there is little evidence of national MNOs' retail prices falling - as demonstrated by the 0870 experience.

In summary we do not believe that Ofcom has given sufficient weight to the SP's view of the origination market being two sided. This can easily be identified from an SP's perspective where fixed origination generally provides good price transparency enabling this side of the market to function well, but mobile origination causes confusion and resentment through very poor transparency among consumers causing detriment to all involved.

Q5.3 Do you agree with our assessment of the OCPs' incentives and behaviour and our preliminary views of the outcome for OCPs under the current market conditions? Are there other factors we should take account of in our analysis? How complete do you consider the tariff rebalancing effect would be in the event of any changes to retail prices **and what impact might any reduction in NGC prices have on consumers?.**

Ofcom has compiled significant evidence to demonstrate the level of consumer harm that exists when making NGCs from mobile phones in comparison to landline phones. Ofcom has identified that national MNOs account for only 11% of total NGC call volumes but account for 49% of the total OCP retention. On a per minute basis, this equates to an average retention of 13.3p in comparison to 1.7p from fixed OCPs.

From this evidence Ofcom has concluded that OCPs are not necessarily earning unduly high profits due to the effect of competition where these high charges are effectively traded off against cheaper services in other parts of the retail bundle such as cheaper geographic calls. This appears to be an assumption made in the absence of any actual supportive evidence.

From this conclusion we agree with Ofcom that OCPs who accrue significant retentions are in effect foregoing revenue since consumers are discouraged from making calls due to price uncertainty and over estimation of NGC charges. This scenario is then likely to lead OCPs to view NGCs on a blanket basis where the incentive is to maintain the "cream" leading to further price increases in the event of call volume reductions.

From these conclusions it would appear that national MNOs hold a view that when making NGC pricing decisions, the NGC pricing from the consumer point is inelastic in that if the price increases the caller will still need to make the call and hence the price is irrelevant. This is likely to be driven by the fact that many NGCs are "locked in" where there is no alternative geographic number for the consumer to call at a cheaper price. Of course over time consumers make alternative arrangements and hence this creates the situation where only 11% of NGC volumes originate from mobile handsets. It would be helpful to understand how this situation has developed

In contrast there is a view that NGC pricing is elastic and that price reductions would significantly stimulate demand, negating any perceived negative "tariff package effects". Such price elasticity has been demonstrated by Ofcom's own research into the effects of the agreement, which made calls to the DWP's 0800 number free from mobiles. "In a sample week before the agreement, 15% of calls came from mobiles (with the remaining coming from landlines or a payphone – 47% and 38% respectively). But this changed to 52% from mobiles (and 30% and 18% from landlines and payphones) in the first week of June 2010 following the change." Clearly this scenario creates a positive outcome for the consumer.

In our view the positive elasticity theory is relevant to these proposals and that Ofcom should explore this as part of its analysis. In the event of a requirement for supporting data, our members, where possible, would be happy to assist Ofcom with this.

Q5.4 Do you agree with our assessment on the complexity of the market relationships between OCPs and TCPs and the balance of bargaining power summarised in this Section and set out in detail in Annex 3? If not, what factors do you consider this analysis should include or give a different weight to?

We agree that Ofcom has assessed the issues of negotiation between OCPs and TCPs sufficiently to conclude that potentially a two sided termination market could develop and hence damage effective competition. The likely outcome would be one side where particularly large OCPs and TCPs could arrive at commercial terms that are more favourable for each party; this would be driven through the available resource and commercial expertise of the larger operators.

On the other hand there are in the region of 160 TCPs and many hundreds of smaller OCPs where the understanding of the complexities of bi-lateral agreements through transit suppliers is likely to be limited due to the lack of specialist expertise that is required. The likely outcome here is that these CPs will be grouped together by the larger operators, with potentially less favourable terms that will inevitably damage competition, which is of no benefit the consumer and likely to result in significant harm to the consumer in the long run.

Q5.5 Do you consider that our assessment of the state of the market in the absence of ex ante regulation is a reasonable extrapolation of the evidence? If not, why?

It is clear that Ofcom has identified sufficiently that SPs are adversely affected by the way that the retail level operates. However, as a consequence, and in identifying that the current experience at the wholesale level is recurring disputes between OCP and TCPs, we feel it is essential to identify the reasons for such disputes.

Ofcom has identified a number of disputes that have arisen since 2009. Beginning with 0870, there was widespread objection from some OCPs and the vast majority of TCPs to Ofcom's regulatory intervention to reduce the retail cost of 0870 calls to those of geographic calls. Aside from the actual termination rate, a consistent objection from many TCPs to this intervention was the that the "good chance" basis that Ofcom chose to follow, in hoping that all OCPs would reduce the retail cost of 0870 calls significantly, would not work – and demonstrably, it did not.

As a consequence, although fixed OCPs aligned 0870 rates with geographic rates, the TCPs' fears were confirmed due to the national MNOs who chose to "free ride" on the extra margin and not make any retail price reductions. The result of this intervention clearly did not meet its objective to benefit the consumer as was intended, this was due to no regulatory enforcement to reduce the prices. As a further consequence, the requirement to adhere to the amendments to GC 14.2 in relation to price transparency for consumers also faltered, evidenced by two investigations into this matter conducted by Ofcom.

As we have set out in our answer to Q2.1, this 0870 intervention and subsequent outcome did not meet its objective due to the action of the national MNOs and we therefore consider is should be used as a clear benchmark for consideration of further interventions.

In the case of the 0800/45/70, we must understand how and why these disputes occurred. They came about as a direct consequence of the excessive retail prices that national MNOs apply to these calls. As a result, BT and other TCPs proposed their own termination rates based upon these extreme retail prices. The national MNOs objected to these new charges, citing amongst other things that the retail charges they apply for NGCs were justified and cause no consumer detriment. The outcome of these disputes has resulted in a referral to the Competition Appeals Tribunal, which is due to be heard in April 2011.

A 03 dispute was also raised by a national MNO claiming that the termination rate they pay for 03 calls was excessive due to the regulatory requirement to retail these calls at rates equivalent to those of geographic rates. We note that the draft determination published by Ofcom on 17th December 2010 has found that the termination rate for 03 calls is in fact reasonable. The significant difference between the majority of 03 calls and 01/02 calls is that as an NGC, more often than not, there will be an additional outbound leg of the call (generated by the TCP). This alone justifies the additional 0.25ppm termination rate.

A summary of these disputes as highlighted by Ofcom reveals a consistent theme in that the dispute was a consequence of the inflated pricing of national MNOs. As a consequence of this although the overall conclusion is sound, in that the market would face significant challenges operating in the absence of regulation, a major consideration that Ofcom has had to assess is the elevated retail prices for NGC levied by the MNOs, which has been the cause of the disputes.

In conclusion, if MNOs' retail prices for NGCs were clear, transparent and reasonable, and therefore not causing consumer harm, Ofcom would not have needed to consider a market absent from regulation, as the market would have been operating reasonably well under the current regime.

Q6.1 Do you agree with our assessment of the likely failure of deregulation to address the identified market failures? If not, please explain why, ideally with reference to the analysis set out Annex 2 and 3

With reference to Annex 2 we note that Ofcom has identified a detriment to the consumer of in excess of £500m per annum due to the impact of price overestimation. We believe that the issue would be more accurately and succinctly described by the consumer as ‘overcharging’. In our view it is this unnecessary excess charging that is the cause of the market failures that therefore creates the consequences resulting from these failures.

We also note that Ofcom has considered at a ‘high level’ if competition in the market would achieve a natural equilibrium for NGS calls. Clearly the evidence provided illustrates that the market for NGS calls is not competitive within the national MNO sector, but does show a degree of competition from fixed OCPs as demonstrated by pricing strategies such as including 0845/70 calls in retail bundles.

With reference to our answer in Q4.2, where we highlighted the ‘free riding’ activities of the national MNOs, we would like to reiterate that the identified market failures are largely, if not entirely, provoked by Category 1 (mobile originated calls) relationships and this is where we believe the issues would be even more pertinent in a deregulated environment.

We note the most compelling consequence of these market failures is the exclusion of ‘vulnerable’ citizens from socially important services contactable through NGCs when using a mobile phone. Ofcom has indentified that this results in burdensome avoidance strategies, or worse, loss of access to services, particularly for low-income households. As a result of this we agree that deregulation is not likely to address the indentified market failures. In fact it is likely to make them worse. We also believe that in the event of deregulation further market failures will materialize such as OCPs considerably increasing their call origination fees to TCPs and thus causing even more detriment to the consumer and SP.

Q6.2 Do you consider that we were right to put aside consideration of wholesale intervention at this stage? If you disagree please set out your views, ideally with reference to the wholesale analysis set out Annex 3.

Overall, for the best interest of the calling consumer, it is likely that Ofcom is correct to put aside consideration of wholesale intervention. However, this is not a confirmed view due to the benchmark that Ofcom has used in reaching this conclusion.

We note that Ofcom has referred to the recent 0800/45/70 disputes (ref Q 5.5 for the cause of these disputes) in relation to the laddered termination rates applied by certain TCPs to national MNOs, based upon their retail charges as a measurement for the effectiveness of wholesale intervention. As a result of this Ofcom has concluded that industry is “unlikely to reach a coordinated approach” to variable charges

In determining these disputes Ofcom did not outlaw the practice of variable charges but instead, while stating policy preferences, measured the new termination charges against three principles of cost recovery, benefit to consumers and ease of implementation. In analyzing these very complex disputes Ofcom, amongst many other considerations, had to evaluate the actual retail charges applied by the national MNOs to call 0800/45/70 numbers, to identify if the extra termination charges were viable.

In response to this the national MNOs stated almost unanimously that they were unable to calculate or even assume with reasonable accuracy what they charge their customers for calls to these numbers. We note that Ofcom’s final decision and framework used for determining the disputes has been appealed to the CAT, and the outcome of this appeal may point to a suitable wholesale intervention. It is only after the outcome of this appeal that we will be in a position to answer this question.

Q6.3 Do you agree with our assessment of the limitations of informational remedies to address the totality of the identified market failures? If not, what informational

solutions would you propose and to what extent do you see that they would resolve the market failures identified, ideally with reference to the analysis set out Annex 4.

We concur with the limitations of price information remedies in isolation as a solution to the identified market failures. Our main concern in reaching this conclusion is that it is not what the caller is told they will be paying for NGCs but rather, how much they are forced to pay for them by unnecessary overcharging, which is the primary fact driving this review. Maintaining the status quo and then merely applying a price information remedy as an attempt to solve the transparency and high level charging issues, does little to solve the overall problem of protecting the consumer and more alarmingly, does nothing to stimulate the consumer to make NGCs.

As a pricing information remedy, we agree that Pre-Call Announcements (PCAs) are likely to be well received in theory, but in practice the cost and feasibility of implementation will be prohibitive. It is also likely that over time consumers will find them annoying. PCAs impose a step increase in network load and are therefore a high-risk option. PCAs interfere with automatic calling equipment, with unavoidable Health and Safety risks. This is a matter known to Ofcom via its abortive work on the 070 range and also acknowledged by the French NRA, as noted within Ofcom's own research annexes to this consultation.

We are concerned that Ofcom has given very little consideration or even mention to Call Price Labeling (CPL) when studying price information remedies, as this is a solution that allows consumers to make a purchase decision at the point of sale i.e. before making the call. This is a far less intrusive remedy that would not cause inconvenience to the caller and serves the purpose of providing call price information. CPL would also enable the UK telecoms industry to comply with established EU and UK trading regulations. This has been the case in France since 1st January 2011. Compared to PCAs, CPL is a lower risk and lower cost option, due to much reduced network traffic demand, plus a gentle call traffic growth glide-path. This will assist safe and measured network modification that does not interfere with normal call handling processes.

We would strongly encourage Ofcom to further examine the merits of Call Price Labeling, if as a result of this review a suitable price information remedy is required to operate alongside other proposals.

Q6.4 Do you agree with our assessment of unbundled tariffs as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of unbundled tariffs in this market? Ideally include in your response reference to the analysis set out Annex 5.

At a high level Ofcom pictures the consumer experience of price transparency through the unbundled tariff as follows.

“This call will cost you 80 pence per minute plus your network’s access charge”.

Based upon this structure Ofcom has made the following high-level assumptions.

[6.71] In this example, the 80 pence per minute figure would be the Service Charge. This enables callers to readily compare the amounts charged by different SPs, which would facilitate competition between SPs. Provided that the caller would also know what the Access Charge charged by their OCP was; the caller would also know the price of the call.

[6.72] We would expect the Service Charge to cover the cost of termination and hosting, and the SP’s revenue share. The Service Charge supports service provision and is set by the SP

(through choosing a number option from their supplier). This is effectively the payment for the service.

[6.73] The Access Charge is set by the OCP and would contribute to the costs it incurs such as origination, retailing, billing plus whatever retail margin the OCP determines. This is the price the consumer would pay for accessing the service.

[6.74] Ensuring that charges are separated into these components also potentially provides a framework within which effective competition can also take place.

Based upon these assumptions, the consumer experience when making an NGC under this structure is as follows:

1. The caller has adopted a fixed or mobile package where a competitive Access Charge exists for making a NGC.
2. The caller is aware of the actual Access Charge applied when making NGCs
3. The caller has indentified the Service Charge through the marketing material provided by the SP or by reference to a Numbering Plan.
4. The caller will now add the two numbers together to arrive at a total cost per minute to make the call and make a decision to place the call.

The caller's source of pricing information must be current or Access Charges and Service Charges are not permitted to change significantly, without formal push technology notice.

Let us now examine these assumptions.

1.

Under the unbundled structure, Ofcom has considered that a competitive environment will develop for the cost of Access Charges (ACs). The assumption is that consumers will be presented with a choice of different ACs per package, from a variety of providers, where they will be able to choose a package that offers a better AC. <u>We note that Ofcom is not proposing (at present) to regulate the level of AC</u>, as if set competitively, this will bring greater benefit to consumers through competition at both the point of subscription and at the point of call.

Broadly, if a competitive environment were to ensue then the AC element of the unbundled tariff is likely to be of benefit consumers when making NGCs. However we have severe reservations that this will actually happen. This concern is based upon the recent history of NTS together with the existing margin aspirations of OCPs.

Our concern partly stems from the analyses of the complete removal of wholesale regulation (ref Q5.1) where Ofcom has indentified that this removal would exacerbate consumer issues due to the likelihood of BT behaving in a similar fashion to that practiced by other OCPs today. In effect under the unbundled structure, regulation will be removed. This raises a concern that given the freedom of setting ACs the margin aspirations of large OCPs (including BT) will take priority to the detriment of consumer benefit.

Under the proposed AC scenario, Ofcom has concluded that the likely average level of ACs based upon current OCP retentions would be 2.3ppm for fixed line OCPs and 14ppm for MNOs. Although at the moment these figures may appear to be reasonable for some, they are in fact only assumptions and should not be taken as a given. From the outset an AC of 2.3ppm provides a very significant margin windfall for BT and other large fixed OCPs, due to the considerable increases in retentions that this 2.3p provides. It could be likely that ACs are set much lower than this at the outset but the underlying motive could be to increase them rapidly after implementation to increase overall margins.

As a benchmark for fixed ACs, Ofcom should note that call set up fees applied by fixed operators have risen considerably of late. This seems to follow a pattern where BT Retail increases the set up fee across its three main residential packages by 1 penny per call on a six monthly basis. Shortly after this, other main competing fixed OCPs follow with a similar increase. Given this, we consider it likely that AC setting will be driven by major OCPs on a regular upward basis. Clearly this will cause consumer detriment and break the integrity of NGCS that exists with fixed OCPs today.

On the other hand, national MNOs have historically charged very high prices for NGCs and justify this through operating in an "extremely competitive" mobile market. As a result of this it is very probable that their ACs will be high at the outset to maintain a status quo of revenue and margin. It is of great concern that the 14ppm AC indicated by Ofcom as guidance could in fact be in the region of 30ppm from the outset to maintain a status quo.

As a benchmark Ofcom should most definitely consider the impact of the recent 0870 intervention (ref Q2.1) where the termination rates were dramatically reduced, but the retail prices of MNOs did not fall in line with Ofcom's policy preference. Given the situation that has now resulted in Ofcom considering the removal of the number range altogether; it is clear that Ofcom cannot rely on chance alone as a reason to believe that ACs will be set competitively.

In summary we consider the levels of AC as the most crucial element of the unbundled structure working and it is clear that Ofcom cannot solely rely on the chance of competition driving the changes they would like to happen.

2.

In considering the public awareness of the AC we agree that it is important that this element of the call is not complicated. Ofcom has expressed a preference for one access charge per retail package charged on a per minute basis; however this does present certain issues. The likely Service Charges (SCs) will form a variety of billing increments such as per minute, per call or a combination of both. Clearly with short duration calls a per-minute AC may not collect the costs for the OCP. To overcome this, consideration needs to be given to allow the AC applied to replicate the type of SC. A simple solution would be to have a single AC that is applied on a per-call or per-minute basis dependant on the SC. However to accommodate DQ type calls this may not be practical and further thought will need to be given to this.

Clearly this creates a concern that it will not be possible to operate a retail package with a single AC; in fact there may be a need for multiple ACs. As a result, the benefits of the simplicity of the unbundled structure will be lost.

It is also likely that ACs will change, possibly on a frequent basis. Given this, it is important that the consumer is made aware of such changes. Equally it is important that consumers that have subscribed to a package where the AC was not a concern at the point of purchase, but are then subsequently faced with making NGCs, are able to access the price of the AC to check the rate that applies at the time. This may be more relevant to consumers that do not receive a bill as part of the package. To overcome this Ofcom is encouraged consider a price information remedy to work alongside the ACs.

We do not believe that a GC 14.2 pricing obligation alone is sufficient as it is clear that this approach has not worked as intended. It is possible that this approach could be more effective if more stringent regulation was applied. This could take the form of enforcement through PhonepayPlus, however this approach is likely to be very intrusive and unwarranted, and not really supported by our members. Instead Ofcom could look to apply a remedy such as a variation of Call Price Labeling to ACs. This could be a simple method where the consumer would make a call to a uniform 3-digit prefix from the device that is intended to be used for the NGC. Upon answer, an automated solution would match the CLI to the AC relevant to the package that the consumer has subscribed to, thus enabling the caller to know the cost of the AC before placing the call. It should be noted that historically, potential barriers to CPL have been implementation issues due to combinations of multiple price points and packages. Under the unbundled tariff structure these multiples are drastically reduced.

3.
The assumption is that the consumer will be aware of the SC due to this being prominent on the SP's marketing material, or alternately through a short pricing message played on commencement of the call. This is similar to how the market works today for NGCs over 5ppm. It is also likely that under the unbundled regime there will be a degree of correlation with the numbering plan linking the number range to the SC level. This will be further enhanced through caps on the SCs of particular number ranges ensuring that the consumer is aware of maximum prices per range. For these reasons we believe that the price of the SC will be sufficiently available to the consumer. However, in considering price transparency for lower band ranges, we note, with concern, that Ofcom is considering placing theses ranges under the PRS condition and therefore being regulated by PhonepayPlus as premium rate numbers.

Our members are very clear that this is not necessary and would consider it "ridiculous" if this was implemented. This is because there being no evidence that consumer harm has occurred on these low value numbers and secondly, as demonstrated with the 0871 range, it is clear that association with much higher value premium rate services damages the confidence and trust in the range overall.

One benefit of the SC structure is the likelihood that competition will evolve between SPs to the benefit of the consumer due to the removal of the incentive to select price points at the highest level, such as 5p 0844 instead of 4p 0844. This has historically been caused due to large OCPs, particularly national MNOs, grouping all price points into one maximum band in their retail offerings and therefore giving the SP no incentive to choose a lower price. Under the unbundled regime the SCs will not be grouped at a maximum level but will instead be variable such as 3p, 4p, 5p. Clearly this creates an environment where SPs can compete and this can only be viewed as a benefit.

4.
Although we discuss our concerns about the structure and implementation of ACs and SCs further on in this response, we do consider that the AC and SC should be presented to the consumer in clear denominations such as penny and half penny increments to avoid confusion and thus ensuring that this proposal works. Although it is likely that many consumers will be able to recognize 2p + 5.5p equals 7.5p as the total charge, this may become more difficult if 17.69p has to be added to 5.37p to arrive at a total charge. This complexity may deter the consumer from making the call and as consequence the benefits of the unbundled tariff start to erode.

Conclusions: the Preferred Route.

We believe that unbundling of tariffs into "access and "service" charges may in the long term provide a solution to remedy the market failures identified in the consultation. We understand at how this conclusion has been arrived and to a degree we support this approach as the preferred route. However our most pressing concern, which we discuss further in our overall conclusions, is that: **We are not convinced or even slightly encouraged that a competitive environment will exist between OCPs when setting ACs, thus totally**

derailing the unbundled approach as a whole. If Ofcom were to implement measures to overcome this concern then undoubtedly we would take a more favorable view of this option.

We also appreciate that this approach will be a major step change for consumers when making NGCs and as a result will carry no guarantee of being understood or well received. As a result we look forward to the results of the further research that Ofcom is conducting in assessing the unbundled tariff structure.

Q6.5 Do you agree with our assessment of maximum price as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of maximum prices in this market? How should such a scheme be structured? Ideally include in your response reference to the analysis set out Annex 6.

There is a clear and potentially rapid benefit to introducing maximum prices (MPs) for NGCS and this approach at face value would certainly seem attractive to the consumer and SP alike. We agree with Ofcom's conclusion that setting the MP at levels that would allow the current highest charges in the market to remain possible would be counterproductive as no consumer benefit would result. We also agree that setting prices too low may create incentives to deny access to NGC from OCPs causing consumer and SP detriment.

From the consumer perspective, MPs create a far simpler method to ascertain the price of the call when compared to the situation today. *"calls to this number cost no more than x ppm from all networks"* is clearly a better presentation than *"calls to this number cost no more than x ppm from BT landlines, possibly more from other landline providers and considerably more from mobile networks."*

In considering MPs as a permanent solution, the following options could be applied. We note that Ofcom has concluded that implementation of MPs should be on the basis of the removal of the current constraints placed on BT for the retailing of NGCs

1. Maximum prices that follow the current alignments in the NTNP for all OCPs
2. Maximum prices that follow the current alignments in the NTNP but differ between fixed and mobile OCPs
3. Setting a maximum cap on sub ranges that apply to all OCPs

1.
For consumers and SPs this is more than likely the most obvious solution to solve the current issues facing the NGC and probably the most desired outcome. The benefits of price transparency are clearly unambiguous *"calls to this number cost 10 pence per minute".* This is the price the caller will pay irrespective of the type of origination. Furthermore the NTNP provides for granularity within sub number ranges where price points range from 0.5ppm to £1.53ppm. A strict adherence to these designations would provide clear benefits for both the consumer and SP through absolute price transparency.

For this solution to work, where the consumer experience for NGC retail charges will be the same from all networks, a cost of origination, which includes margin, will need to be derived to form the OCP retention across all types of calling platform. These costs will also need to take into account additional factors such as bad debt provision, which may vary significantly by number range.

In light of the call origination conditions being removed from BT there is no obvious starting point for these negotiations. Furthermore mobile origination costs are argued to be far higher than fixed origination. If this is the actual case then TCPs will be likely to receive lower termination rates from mobile originated calls when compared to fixed calls. In the worst case it may be that TCPs would have to pay back origination costs to MNOs for lower value NGCs due to these higher costs. The outcome of this will therefore limit the choice for SPs and consumers.

2.

For the same reasons outlined in option 1, there still remain clear benefits to consumers and SPs. The only difference being that mobile originated calls may be more expensive, but the caller would still be provided with a sufficient indication – *"calls to this number cost 10ppm from landline phones and 12ppm from mobile phones"*

With this option a similar set of issues arises as with option 1. However these are now separated between fixed and mobile calls. This does create a clearer outcome for the TCP and SP. However this is at the expense of the consumer due to the slight erosion of price transparency.

Importantly, we should not assume that TCPs would be simply looking at two sets of termination rates (fixed or mobile originated) as there may be differences in the costs of origination from each individual network therefore creating a multitude of rates. In this case the TCP would need to be able to identify the originator of each call, which is currently not straightforward, to correctly bill SPs and mitigate any arbitrage concerns.

Both options 1 and 2 also have a main complication in that many OCPs and TCPs do not interconnect and negotiate directly. In these cases the both the OCP and TCP are reliant upon a transit provider to hand over the calls. Given the complexity of multiple termination rates dependant of the call originator and the issues this creates, the transit providers will need to give consideration to the billing requirements of both the OCP and TCP. As a consequence, if an MP strategy is adopted, the industry will need to mindful that that the extra costs in developing these requirements could be large and it is likely that these charges will passed on in extra transit charges, more than likely to the TCP.

3.

This option potentially creates a worse situation for the consumer due to the likelihood of OCPs aligning their prices to the highest level of caps for each sub range rather than pricing at a granular level. This is the situation that applies today with mobile originated calls, where predominantly all 08 calls are charged at a single rate. If this pricing behavior was to develop in the fixed market, perhaps driven through margin aspirations of fixed OCPs, then consumer detriment will occur. A further consequence is that SPs will be incentivized to select price points that are close to the maximum of the cap, thus eroding competition in the SP sector.

This approach potentially creates a consumer experience of a very limited set of rates for NGC calls that are likely to be higher than they are today. Clearly this is not in the best interest of consumers and SPs alike. However we have not dismissed a variation of this as a short-term solution, which we discuss further in our answer to Q 7.2.

Conclusions, the Alternative Route

We agree with Ofcom that a form of MP, if implemented, could be a relatively straightforward strategy for consumers to achieve a better understanding of the price of NGCs. However, for this to work, considerable commercial negotiation is required between OCPs and TCPs to arrive at agreed termination rates for each number range.

As a result of this we believe any form of MP will need cumbersome regulatory intervention for it to work, as it is unlikely that commercial negotiation alone between OCPs and TCPs will reach an agreed outcome. Even if this were to be achieved there is still the consequence of revenue uncertainty for both the TCP and SP due to the likelihood of OCP retentions changing on a frequent basis that will result in further regulatory intervention.

Q6.6 Do you agree with our assessment of the impact of different options relating to calls to free phone numbers summarized in this Section and set out in full in Annex 7? In particular, do you agree with our preference for 080 to be "free-to-caller"?

In general our members agree with Ofcom's preference that 080 calls should be "free to caller". We also fully support Ofcom's assessment that "The message that Freephone refers to calls that are free to caller is clearly a message that consumers should readily understand." Clearly Ofcom has gathered considerable evidence to confirm that there is "substantial consumer confusion about the costs 080 numbers" despite this being "the most recognised and understood number." For these reasons, Ofcom is correct to consider the consumer detriment caused by OCPs, which take little account of the preferences of SPs (the "vertical externality") and the free riding of MNOs on the reputation of the 080 number range (the "horizontal externality").

The fundamental issue for consumers is that freephone calls are "free" from fixed OCPs, but with few exceptions are chargeable from national MNOs. As a result, Ofcom has correctly identified the impact to consumers through the "Distribution Concerns" which illustrate how low-income users - often mobile only households - are severely disadvantaged due to the high charges levied by the MNOs.

Under the current regime, the SP will agree commercially a per minute payment, which often includes a translation to a geographic number with their chosen TCP for the provision of an 080 service. The TCP will then make an origination payment, often through a transit provider, to the OCP, to cover their costs, plus a small uplift for originating the call for free. Currently these origination payments are approximately 0.5 - 0.7 pence per minute. This system currently works well for fixed origination. In contrast mobile origination charges have resulted in costs to the consumer of up to 40ppm for freephone calls. It is these enhanced charges by the national MNOs - which incidentally provide them with extra profits of £70 million per year - that have resulted in significant mistrust of a freephone brand which Stephen Carter, then Ofcom CEO, referred to as "strong and trusted" in July, 2006.

As a justification, national MNOs claim that mobile origination costs are far higher than fixed and that the SP should meet these costs if 080 calls were to be free. We have yet to understand how the high costs of mobile origination are justified and have seen no evidence to support these claims in Ofcom's consultation. Ofcom has not yet formed a preference of what the origination payments to national MNOs should be, but it is considering the following cost based origination options.

1. The same level of as the origination payment to fixed OCPs (approx 0.5 -0.7ppm)
2. The incremental cost to MNOs (approx 0.7ppm)
3. The incremental cost to MNOs plus a contribution to network common costs. (approx 2ppm)

We note that option 3 may prove to be the most attractive for Ofcom due to the conclusions drawn from the recent MTR consultation together with the view that 080 call volumes increase. The MTR consultation estimates that unit costs of termination (on a LRIC+ basis) are 1.6 – 1.8 ppm. Together with the current NTS Retail Uplift of 0.1848 ppm an origination charge of 2ppm is derived. At this level of charge, based upon the call volume increase, Ofcom considers that the MNOs will remain revenue neutral.

We would urge caution if taking this approach. The national MNOs, amongst other things, might debate that their retailing costs are considerably higher than the current NTS retail uplift of 0.1848 ppm to arrive at 2ppm giving rise to possible disputes. It is also possible that different national MNOs may have different cost bases giving rise to a multitude of rates that the TCP will find difficult to identify and bill correctly. We note that Ofcom has not carried out any detailed assessment of an origination payment based upon incremental costs and would suggest that this work would be central to its conclusions. Importantly, we would like to see a clear demonstration to confirm that MNO origination costs are indeed higher than fixed OCPs for 080 calls.

Ofcom has demonstrated the positive elasticity of demand for 080 calls when they are free to the caller from the DWP experience. Considerable increases in call volumes become an important consideration for SPs if significant additional costs were to be applied to their charges. As an example if common network costs plus an uplift were applied resulting in a charge of 2ppm this would represent a ceiling for many of our members - and even then, this would result in a level of migration.

Although we would not dismiss any of the options, our overriding concern is that based on previous experience a dispute and possible appeal will be very likely once a solution has been identified. This will create revenue uncertainty for everyone while the dispute and resulting appeal is in process, particularly if it is taking place post implementation. This situation would be unacceptable and we would seek to avoid any possibility of revenue uncertainty, which in turn could give rise to SPs making repayments as a result of a successful appeal.

In summary, we support the proposal that a universal Freephone service should be provided for the benefit of the consumer, particularly the vulnerable consumer. However it is imperative, that if extra charges apply to SPs then these charges are confirmed from the outset. We look forward to a further consultation, which investigates the origination costs options to implement this initiative.

Q6.7 Do you agree with our assessment of the impact of different options relating to calls to numbers which prices are linked to the prices of geographic calls (03, 0845, 0870) summarized in this Section and set out in full in Annex 7? In particular, do you agree with our preference for 03 to be the only range with calls prices at geographic rates?

We agree that it is only necessary to have one geographically rated range and this range should be positioned so that it is widely recognised and trusted by consumers. The 03 ranges suit this purpose, and although the take up has been relatively slow 03 still retains an undamaged reputation. To preserve this reputation a de-linkage from 0870 is inevitable. This is due to the link between 03 and 0870 where they are both supposed to be charged at geographic rates. Clearly this is not the case, due to the high rates charged by the national MNOs.

As a result of the 0870 intervention failing, we understand Ofcom's consideration to close this range and this view is supported by many of our members. An alternative could be for the 0870 ranges to be aligned with 0871 price points. If any 0870 SPs do require a geographic presence then the equivalent 0370 ranges are available to fulfill this. This approach could be more cost effective than closure and is worthy of consideration.

Likewise we agree that the appropriate treatment for the 0845 range would be for alignment with 0844 price points. This will remove the consumer misunderstandings that these calls are charged at local rates. Similar to 0870, if SPs require a number that is geographically charged then the equivalent 0345 ranges are available.

Q6.8 Do you agree with our assessment of the impact of different options relating to calls to revenue share ranges (084, 087, 09, 118) summarized in this Section and set out in full in Annex 7? In particular, do you agree with our preference for: Adoption of the unbundled tariff for these ranges, with a maximum tariff to apply for consumers' protection on the Service Charge; and - 0845 to be treated the same as 0844?

With reference to our answer to Q 6.4 we agree that the unbundled approach may, in the long term, overcome the current NGC issues. <u>However, this is totally dependent on the level of ACs levied by OCPs. Unless this is on a competitive basis where ACs are reasonable, any structure of SCs will be totally irrelevant as the unbundled approach will be broken from the outset.</u>

However, on the proviso that Ofcom will overcome these concerns, we agree that the SCs will form a suitable method for the revenue that is passed to the TCP and SP to be transparent and operate in a suitably competitive environment to benefit of the consumer and SP.

We agree that an MP should apply to each of the 084, 087 and 09 ranges. However, as a starting point, the de facto tariffs, which currently apply to these ranges, will need to be revisited. We note that Ofcom has suggested that a starting point for SCs could be an alignment with the current TCP POLOs that apply at present. In this case the averaged (Daytime, Evening and Weekend) POLOs for a transit call (non BT originated) for the maximum tariff in each range effective from the 1st June 2011 are as follows.

			Rate Net	**Rate Gross**
G6	0844	5ppm	5.6520	6.7824
G7	0871	10ppm	10.6795	12.8154
P0	09	150ppm	122.4318	146.9182

Note – The POLO for G6 and G7 calls is above the price point due to the call set up fee applied by BT being factored in. The POLO for P0 is below the price point due to the PRS bad debt provision, which is applied to these calls.

We concur with Ofcom that the POLOs, which apply at present should form the starting point for SCs. However, to achieve this, the table above demonstrates that the Numbering Plan would need to be amended so that the MPs, which apply to 0843/4/5 ranges, are increased to 7ppm and the MPs for 0870/1/2/3 are increased to 13ppm. This is assuming that the MPs will be VAT inclusive. As a result of this, consideration will also need to be given to amending the PRS condition so that calls under 7ppm are excluded. As discussed in Q 6.4 we can see no justification for 0843/4/5 calls requiring PhonepayPlus regulation in any form.

In the case of the MP for PRS calls, we agree that an increase is long overdue, as this maximum has been in place for some considerable time. This has created an issue for PRS SPs where they cannot provide a service to compete with reverse billed SMS services provided by MNOs. These services can incur charges of up to £10 and there are no restrictions on MNOs issuing further short codes with even higher prices. This is clearly a situation that favors MNOs and should be addressed promptly, even if the unbundled option is not chosen as the preferred route.

As discussed in Q 6.4 we consider that the SCs should be structured in half penny increments for calls up to 13 ppm and one-penny increments thereafter, thus enabling a selection of price points that is similar to today, enabling effective competition among SPs. For the sake of price clarity for the consumer it appears best that the SC price points are inclusive of VAT. While we appreciate that this could cause revenue uncertainty for SPs when there is a VAT change, the benefit is that prices remain transparent for the consumer.

We consider that the structure described above would be relatively straightforward to implement due to the similarity of how price points and subsequent termination rates are displayed in carrier price lists today. An issue, which does arise, is the calculations of TCP POLOs for those TCPs, which have invested heavily into interconnection network infrastructure in comparison to those TCPs that have limited points of interconnect. To overcome this, when deriving rates, the same tandem levels of calculation could be used which apply today. Similarly, for transit calls, the same principle of near end handover could apply. Finally, to align the anomaly of certain call types, such as 070 where the TCP bears the transit charge, these charges could be aligned with 0844/71 types calls where this cost is borne by the OCP. This would be the preferred route for FCS members as these charges can easily be factored into the OCPs AC.

Clearly the unbundled option can offer benefits to both the TCP and SP through the revenue certainty that this option provides. This will then create price transparency for the benefit of the consumer. Furthermore the requirement for BT to issue OCCNs is removed, thus limiting the scope for disputes.

Overall, this option works well for TCPs and their subsequent SPs, which have direct interconnect with BT. However, this solution does create a problem for resellers that purchase termination from these TCPs. This arises from the fact that the TCP will need to add a margin to the SC to recover their cost of providing access to these numbers.

The interconnected TCPs will be clear of what POLOs they will receive together with what termination charges they will pay, this is due to these rates being clearly identified in the relevant sections of the BT carrier price list. As stated, this will not apply to resellers. On the assumption that the reseller does not want to retail these calls at a loss, then a problem arises with price transparency for the reseller consumers. This is due to the likelihood of the actual SCs being charged higher than stated. In these cases, the consumers are often businesses where the reseller has provided a competitive package to reduce the overall telephony cost. FCS members that operate as resellers have reported that NGCs can often account for 10-12% of the total voice call bill.

A solution could be for the reseller to adjust their AC to mitigate against any losses on the SC; however this will put the reseller at a disadvantage when competing against larger providers, which are fully interconnected. Although at this stage we cannot identify a possible solution, these are important considerations for Ofcom when evaluating the proposals, as the market size of business consumers making NGCs is considerable.

In summary, we agree with the concept of SCs. However, any benefit that SCs bring will be completely eroded if the AC set by the OCP is too high. This remains our overriding concern, which we believe is justified, and is a barrier to success that Ofcom must address when considering these proposals.

Q6.9 Do you agree with our assessment of the impact of different options relating to calls to 07 numbers which are not mobile numbers (070/076) summarized in this Section and set out in full in Annex 7? In particular, do you agree with our preference for reducing the revenues available from these calls so as to remove the incentives for fraud?

With 070, we do understand that there will be a strong argument for withdrawal due to the continued misuse of this range. It is unfortunate that even with regulatory intervention from Phonepay Plus there are still many instances of missed call scams that cause consumer harm. No doubt it is these ongoing scams that fuel the argument for withdrawal.

In contrast, there are likely to be many genuine users of 070 and these users should not be penalised due to the actions of those that scam. We note that Ofcom has identified that the correct use of a 070 number is for end users to be able to receive calls at any telephone number, landline or mobile. With this in mind and also taking into account that revenue share is not permitted to the end user, then Ofcom is correct to consider that a termination rate or SC that recovers the cost of termination to mobile phone is appropriate, an SC cap of around 3ppm would suit this purpose. However, Ofcom has not considered 070 calling to numbers, landlines or mobiles in the EU and other international destinations. Here a significantly higher SC is needed to fund this established traffic stream. We suggest a long-term figure approaching 10p might be less disruptive, with a glide path from current levels, over a number of years, as per the MTR intervention.

Our preferred route would be to address the fraud issues through further strict enforcement with severe outcomes for those that continue to abuse this range and allow the genuine providers to continue with their businesses.

A valuable lesson should be learned from the market failures that 070 has produced and this is an adoption of improved measures of due diligence when allocating numbers, this will be a vitally important component when considering higher value PRS MPs to ensure their success.

Q7.1 Do you consider 18 months would be a reasonable period for the implementation of an unbundled tariff structure? What are you views on staging for the potential implementation? In particular, would it be desirable to move more quickly to restructuring charging to reflect the new regime even if detailed billing would not be ready? What are your views of the technical cost of potentially introducing the new regime and how could implementation be staged to minimise these cost (see also Annex 7 for a discussion of costs)? What are your views on the communications' challenges for potentially introducing this new structure and how should they be addressed?

Ofcom has given weight to the benefits of staging implementation to minimise the costs involved. We note, from the Implementation study, that many OCPs questioned were only able to provide an estimate of the costs involved to provide granular billing. We also note that these were mainly large OCPs. We are concerned that little analysis has been conducted with smaller OCPs, who also provide itemised billing. A large proportion of our members fall into this category. It is important that a more detailed grasp of these costs is gained, since higher costs of billing may well be passed on to customers in the form of higher ACs, effectively negating the benefits of unbundling. This may be further compounded for smaller OCPs whose total call volumes are much lower, so the unavoidable granular billing development costs must be amortised over this reduced call volume, leading to higher AC uplift.

We note that Ofcom has considered that the billing implementation burden could be reduced by not presenting the ACs and SCs on a per call basis, but instead presenting them on an aggregated per number range basis. We believe that it is important that the consumer is able to reference the total cost of a call and may be less concerned to see a breakdown of the individual elements of those costs. Since the consumer will be informed transparently of the AC and SC to arrive at a total call cost at the point of purchase, this suggestion would seem reasonable.

As discussed in Q6.8 we believe that the calculations of SCs should be based on current NTS POLOs and amendments are required to the NTNP to increase the MP of 0843/4/7 and 0871/2/3 ranges. This will result in SCs that are charged in half penny increments for these lower value ranges. From the outset it will be imperative that <u>all OCPs</u> are able to provide granular billing for SCs to their customers. We note that at present fixed OCPs in general provide this level of billing granularity, though MNOs often group all 08 charges into one band.

For the unbundled approach to be a success, then the SCs must be billed by all major OCPs on a granular level from the outset. It will not be acceptable to allow 08 prices to persist as a single SC as happens today. Otherwise the whole intervention would be rendered impotent and therefore pointless. The consequence will be a complete breakdown in the trust of NGCs as a whole and thus render the whole exercise a disaster from both a consumer protection and competition perspective. If granular billing were not feasible from the national MNOs then a form of MPs would be a more suitable route for a solution.

In this scenario, a further consequence, as highlighted by some of our members who are interconnected TCPs, is that they will be compelled to apply a termination charge that is equivalent to the maximum SC charged by the OCP for SPs that are below this maximum.

If, as a result of this review, an unbundled tariff structure is chosen, our members consider that a "switchover" date should be derived for implementation, as any staging period is likely to cause further consumer harm together with revenue uncertainty for SPs. Although we agree in principal that for implementation a full retail billing solution is not required, we do consider a specific policy of what the ACs and SCs actually are is vital. For this reason we believe that, after careful consideration of the responses Ofcom should implement a strategic plan to arrive at a "switchover" date.

<u>Most importantly this plan should identify solutions that overcome our grave concerns</u> <u>that ACs will fail to be set competitively by major OCPs.</u> Furthermore, this plan should also take into account the timescales required for CP contract changes, the need for retail billing solutions, the very important need for granular SC retail billing development, by all major OCPs. An agreed structure of how the SCs are derived and finally the necessary amendments to the NTNP.

As discussed, we believe that a switchover date is the best method for implementation that avoids many of the suggested stages of implementation that potentially cause havoc. Clearly there is a need for a strategic plan, which details a policy framework to implement this structure that concludes to a switchover date. It is only with this additional information that our members feel that a more erudite input can be provided that properly assesses the risks of such a proposal.

Q7.2 Do you consider 6 months would be a reasonable period for the implementation of the maximum price structure? What are your views of the cost of the potential new regime and how could implementation be staged to minimise these cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

We consider, at face value that an MP structure as a long term solution does potentially provide the fastest solution to implement a new structure. However adoption of an MP approach may well lead to a series of disputes that will considerably delay any implementation date. We note that Ofcom has recognised that *"there are currently inherent tensions in the OCP – TCP relationship"* and *"we are not, at this stage, able to comment on how any such disputes would be resolved"*

With reference to our answer to Q6.5 we have identified that a form of MPs that follow the current designations of the NTNP, will lead to the most unambiguous delivery of price transparency. However in achieving this, the major obstacle will be the agreement of the retention by the OCPs. We have no doubt that inevitably Ofcom will have to set these retentions. This risk could be somewhat mitigated by applying MPs that apply separately to fixed OCPs and MNOs that account for the differences in the costs of origination (however firstly we would like to resolve whether these differences actually exist), but this approach again would require Ofcom to set retentions.

To reach a conclusion and to fully understand an outcome of a form of MPs, we reiterate that there is a pressing requirement for a strategic plan with clear policy objectives that has a proposed implementation date.

Taking into account the obvious need for Ofcom to intervene to decide the OCP retentions and the risk of a CAT challenge against any decision, a 6-month period of implementation is entirely unrealistic. More likely a period of 18 – 24 months is needed. We do acknowledge that delivery of MP based regulation is still likely to be in a shorter period than the implementation of the unbundled option.

However, in our answer to Q6.5 we conclude that a form of MP may be appropriate as a short-term solution to stem the extreme consumer harm that occurs while longer-term, parallel regulatory intervention bites.

In our answers to Q4.2 and 4.3 we have indentified, based on the evidence presented by Ofcom, that the source of consumer detriment can be located almost entirely to one consumer relationship - *The relationship between a National Mobile OCP and the Consumer*. It is this "free riding" relationship, due the rapacious pricing activities, that has resulted in the breakdown of NGCs as a whole and a total failure of the 0870 intervention, in August 2009, to deliver on its policy objectives. It is this <u>problem</u> that Ofcom most urgently needs to address.

We note that under the transposition of the revised EU Framework into UK legislation Ofcom will be presented with the following power.

Paragraph 1 of Part C of the Annex to the Authorisation Directive has been amended to clarify that national regulatory authorities have the power to adopt tariff principles or to set retail tariff caps in relation to certain numbers or number ranges. This is intended to create greater transparency for consumers calling (e.g.) non-geographic numbers and to help prevent consumers receiving bills with unexpectedly high call charges ('bill shock'). We propose to amend the Communications Act 2003 to clarify that Ofcom has this power.

The evidence that Ofcom has presented to conclude that severe consumer harm is caused through these high NGC charges, including 0800 freephone, alone is overwhelming and surely cannot be dismissed. Furthermore when considering the distributional concerns affecting vulnerable citizens that need to make NGCs, including 0800 freephone, a requirement for swift action is absolutely compelling.

We believe that it is imperative that Ofcom consider applying these powers to set MPs for NGCs on the national MNOs by early 2012. We believe that the intervention should be kept as simple as possible by limiting the MPs. We consider that a single MP should apply 080x, 0845 and 0870, 0844/3 and 0871/2/3. For 09 calls MPs should be set at 25p, 50p, 75p, 100p and 150p. As a benchmark we consider that the current MTRs should be used to derive a suitable "headroom" for the national MNO to recover their cost of origination.

The table below (in pence/minute) demonstrates the range and the subsequent MP for 08 calls, the MTR has been taken from the BT carrier price list effective 1st April 2011.

Range	POLO	MTR	MP Net	MP Gross
080x	0.0000	3.0000	3.0000	4.0000
0845/70	1.8000	3.0000	4.8000	6.0000

0844/3	5.6520	3.0000	8.6520	11.000
0871/2/3	10.6795	3.0000	13.6795	17.000

While we appreciate that this or one similar solution, does not reach the long-term requirements, in the shorter term it does address the major concern that Ofcom has identified which is "consumer welfare is at the heart of our analysis"

A further consideration in adopting this approach as a temporary measure is that it may be inevitable that the national MNOs and major fixed OCPs will raise disputes if either of the two main options are adopted. These disputes would undoubtedly cause immense disruption to the whole value chain. With this approach it is also obvious that the national MNOs will raise a dispute but at least this will be confined to them and will not affect the rest of the industry while these are in place.

Q7.3 What are you views on the implementation period of up to 6 months for the change to Free phone charges? What are your views of the challenges to the implementation of the new regime and how could implementation be managed to overcome these challenges and minimise any cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

We agree with Ofcom that the key implementation consideration is the revision of commercial arrangements between MNOs and TCPs. As laid out in our answer to Q 6.6 we are concerned that it is unlikely the industry will reach an agreement for a justified increase to origination payments for mobile calls. Given this we would expect that intervention would be required to decide this rate.

As previously stated, we consider that an unacceptable situation would be one that creates revenue uncertainty if a dispute is in process after implementation. It is important that contracts are not subject to significant change after implementation as a result of an appeal that significantly changes the origination payments.

In summary, although the consumer benefit is without doubt, it is only with an accurate indication of the level of origination payments that a decision can be made to either maintain 080 services or migrate to other ranges.

Q7.4 What are you views on the implementation period of up to 3 years for the modification of the 0870/0845/070/076 ranges? What are your views of the challenges to the implementation of the new regime and how could implementation be managed to overcome these challenges and minimise any cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

We fully agree that a suitable timeframe should be allowed to cater for migration to other ranges; a period of 3 years is more than adequate for this.

Q7.5 Do you consider that the potential approach to the potential price publication obligations would be likely to be effective?

As per our answers to other questions, a clear strategic plan that details the implementation plan of any policy is required for consideration of the project as a whole. This strategic plan should contain evidence of detailed consumer research that supports the chosen strategy. It is only then that full consideration can be given to the most effective ways of communicating the changes