



## The 03 Number Range

Proposal to confirm that revenue-sharing with callers  
is not permitted on the 03 number range

Consultation

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## About this document

This document is a consultation on a proposal to modify the restrictions on the use of 03 telephone numbers.

03 telephone numbers are UK-wide, non-geographic numbers typically used to provide voice services such as customer services helplines and public services. The retail price charged for calls to 03 numbers must not exceed that of calls to standard geographic numbers (i.e. those that begin 01 or 02). Calls to 03 numbers must be included in any call allowances or discounts offered to customers in the same way as geographic calls. Communications providers are not allowed to share revenues they receive for 03 calls with end-users.

We have recently observed the sharing of revenues from wholesale 03 call charges with callers. We consider that this conduct could harm the interests of consumers and citizens. We explain our proposal to address this problem by modifying the restrictions on the use of 03 numbers to make clear that the direct or indirect sharing of revenues with end-users or callers is not permitted on the 03 number range.

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## Section 1

# Executive Summary

## Context

- 1.1 Telephone numbers that begin with 03 are designated as “Non-Geographic Numbers charged at a geographic rate” in the National Telephone Numbering Plan (the Numbering Plan)<sup>1</sup> such that calls to 03 numbers can be “charged at up to the same rate the customer would pay to call a UK Geographic Number”. Also, calls to 03 numbers must be included in “inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers”. In other words, calls to 03 numbers may not be priced at a rate above that for calls to 01 and 02 numbers, and must be included in bundles or allowances offered to customers by communications providers (CPs) for calls to 01 and 02 numbers.
- 1.2 The 03 number range was opened by Ofcom in February 2007 for organisations that required a national, location-neutral number but neither wished to use a revenue-sharing range that would lead to an additional charge to consumers for calling them nor to use a Freephone number that would cost them significantly more to operate than a geographic number. From the point of its introduction, revenue-sharing with end-users was not permitted on the 03 number range.

## Our concern

- 1.3 We consider there needs to be greater clarity on the restrictions on the use of 03 telephone numbers, specifically whether CPs who host 03 numbers are prohibited from sharing the revenue they earn from calls to their 03 numbers with callers who call their 03 numbers. In the absence of a restriction on such arrangements, if the revenue that a CP receives for terminating calls to its 03 numbers exceeds the associated cost, then it may attempt to incentivise callers to call its 03 numbers by sharing some of this revenue with them – either directly or indirectly, for example by offering benefits- or services-in-kind. Recently, we have observed the emergence of telephony services that offer customers financial or other benefits in return for calling their 03 numbers. No genuine communications service is provided on such calls, and inducements offered to callers are proportional to the duration of the call made.<sup>2</sup>
- 1.4 Our provisional view is that that such conduct would ultimately be harmful for consumers and for competition in telecommunications markets for three reasons.
- Originating communication providers (OCPs), fixed-line and mobile, routinely offer their subscribers call allowances. The economic viability of such call allowances could be compromised if callers were to use their inclusive or ‘free’ minutes to earn money, or other benefits-in-kind, offered by other CPs for calling those other CPs’ 03 numbers. OCPs – who must pay the termination charges of such calls even when these calls are not individually charged for within the call allowance – may be compelled to make their call allowances less generous or

<sup>1</sup> See the National Telephone Numbering Plan, Part A, page 11 – available at <http://stakeholders.ofcom.org.uk/telecoms/numbering/>. The restrictions on the adoption and use of 03 numbers are set out in paragraphs B3.2.1-B3.2.3.

<sup>2</sup> In some observed cases callers are advised to leave their phone “off the hook” for extended periods of time to earn benefits.

inclusive, or to withdraw them altogether. They may also respond by raising their out-of-allowance call prices. Such developments may therefore reduce the current level of service to consumers, without offsetting benefits, and also undermine the contribution to retail competition played by call allowances.

- If CPs were to incentivise consumers to call 03 numbers by offering them money or benefits-in-kind, then this may lead to a significant inflation of traffic in the network (with individual calls being measured in hours) but where such traffic is not being used for genuine communications purposes. Such conduct may compromise the ability of public electronic communications networks to reliably provide communications services and may increase the cost of maintaining sufficient capacity on networks.
- The use of 03 numbers in such a manner may harm the reputation of the number range among consumers and organisations, since calls to 03 numbers are intended not to involve revenue-sharing. Consumers should have confidence that organisations they contact using 03 numbers do not benefit from revenues received from 03 calls. We would be concerned if that confidence were undermined.

## **Our proposal**

- 1.5 To address these concerns we propose to modify the restrictions on the adoption and use of 03 numbers set out in the Numbering Plan to spell out in clear terms that revenue-sharing with callers to 03 numbers is not permitted. We consider that this is in the best interests of consumers and of competition in the industry, and is consistent with the policy intentions that led us to open this number range.
- 1.6 We intend to publish a decision in autumn 2014, after we have considered stakeholders' responses to our proposal in this consultation.

## Section 2

# Background

## Policy objective of the 03 number range

- 2.1 Before the opening of the 03 telephone number range, the choice of a non-geographic number for organisations was primarily restricted to either Freephone numbers (beginning 080) or to chargeable numbers (beginning 084, 087 or 09) that allow for revenue-sharing between the CP hosting the telephone number and the organisation being called.
- 2.2 Freephone numbers are more expensive to operate for organisations than geographic numbers because they must pay the call origination charges of OCPs. OCPs are not permitted to charge callers for such calls except when charges are notified to callers at the start of the call by a pre-call announcement. Subject to this requirement, OCPs are currently free to set any price they wish. Calls to Freephone numbers are usually free for callers from fixed-line phones but commonly chargeable when made from mobile phones. From 26 June 2015 calls to 080 numbers will always be free from both fixed-line and mobile phones.<sup>3</sup>
- 2.3 Non-geographic numbers that allow for revenue-sharing between the CP hosting such a number and the party being called have historically suffered from poor price transparency, leading many consumers to overestimate the price of making calls to such numbers.<sup>4</sup> Harmful consequences of this have included reduced consumer demand for services on such numbers.<sup>5</sup> Some consumers have said that they try to keep calls to such numbers to a minimum, and there was also evidence that some consumers were deterred from calling helplines on these ranges.<sup>6</sup> We have also noted our concern that, due to a tendency to overestimate prices, consumers – some of whom are vulnerable – could be deterred from accessing socially-important services provided using 084 numbers.<sup>7,8</sup>
- 2.4 In our April 2006 Statement, *NTS: A way forward*, we said that we believed that public bodies should consider carefully whether it was appropriate to use 084 and 087 numbers in place of Freephone or ordinary geographic numbers. In particular, we considered at that time that it was inappropriate for public bodies to use those numbers exclusively (i.e. without giving equal prominence to a geographic alternative) when dealing with people on low incomes or other vulnerable groups. We did note that, once the geographic link was restored for 0870 calls, these concerns would likely ease. We also noted that we were consulting on a proposal to open a new number range (the 03 range) for SPs who would like to use a non-geographic number but which do not require a revenue share. We said that such a new number range, on which revenue-sharing would be banned, would be well-suited to the

<sup>3</sup> See our December 2013 NGCS Statement, *Simplifying non-geographic numbers*, available at <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/final-statement>.

<sup>4</sup> April 2012 NGCS Consultation, Part B, paragraphs 8.8, 8.18-8.20, available at <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>.

<sup>5</sup> April 2012 NGCS Consultation, Part B, paragraphs 8.31-8.38.

<sup>6</sup> April 2012 NGCS Consultation, Part B, paragraphs 8.33-8.34.

<sup>7</sup> April 2012 NGCS Consultation, Part B, paragraph 8.47.

<sup>8</sup> In our December 2013 NGCS Statement we set out regulatory changes to address the problems we had identified with the revenue-sharing non-geographic ranges.

needs of many public bodies and would address such consumer concern.<sup>9</sup> We also noted that some public sector organisations had requested Ofcom to consider providing a number range on which call prices would be the same as that for geographic calls and revenue-sharing would not be permitted.<sup>10</sup>

2.5 To address this need we opened the 03 number range in February 2007.<sup>11</sup> We said that we wanted callers dialling 03 numbers to have confidence that they were paying for the call only and were not paying for any additional services provided by the organisation being called through the price of the call.<sup>12</sup> To ensure that consumers would have certainty and confidence in relation to 03 calls, we placed the following conditions on 03 call charges.

- We required that prices to call 03 numbers not exceed the rates for national geographic calls.<sup>13</sup> We also required that calls to 03 numbers be treated like calls to standard geographic numbers with respect to their inclusion in call allowances and whether they qualify for discount packages.<sup>14</sup>
- We prohibited revenue-sharing with end-users of revenue earned by CPs from calls to 03 numbers.<sup>15</sup>

2.6 To ensure that these restrictions on the use of 03 numbers, as set out in the Numbering Plan, were effective, we subsequently amended General Condition 17 (GC17) of the Conditions of Entitlement<sup>16</sup> such that all OCPs were formally obligated to adhere to the service and tariff descriptions of 03 numbers in the Numbering Plan.<sup>17</sup>

2.7 Finally, we said that rates payable by service providers (SPs) for operating 03 numbers and interconnection charges for 03 calls were matters of commercial negotiation between SPs and CPs and CPs and CPs, respectively.<sup>18</sup> (If such negotiations between CPs fail, then they are able to refer their dispute to us for resolution.) We also said that the GC18 general obligation in relation to number portability would apply to 03 numbers.<sup>19</sup>

## Regulatory impact on 03 calls of subsequent decisions and policy

2.8 Since the 03 range was opened in February 2007 Ofcom has published two dispute determinations that have affected the wholesale charging arrangements for calls to 03 numbers. We explain these below in brief.

<sup>9</sup> April 2006 Statement, paragraphs 1.14, 1.52 and 4.199, available at [http://stakeholders.ofcom.org.uk/consultations/nts\\_forward/statement/](http://stakeholders.ofcom.org.uk/consultations/nts_forward/statement/).

<sup>10</sup> April 2006 Statement, Annex 1, paragraph A1.44.

<sup>11</sup> See our February 2007 Statement, *Raising confidence in telephone numbers*, available at <http://stakeholders.ofcom.org.uk/consultations/numbering03/>.

<sup>12</sup> February 2007 Statement, paragraph 1.13.

<sup>13</sup> February 2007 Statement, paragraphs 3.50 and 3.52.

<sup>14</sup> February 2007 Statement, paragraphs 1.13, 3.52 and 3.86.

<sup>15</sup> February 2007 Statement, paragraphs 1.13 and 3.87.

<sup>16</sup> Available at <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>.

<sup>17</sup> February 2007 Statement, paragraph 3.56; May 2007 Statement, *Raising confidence in telephone numbers: Amending General Condition 17*, available at <http://stakeholders.ofcom.org.uk/consultations/numbering03/statement/>.

<sup>18</sup> February 2007 Statement, paragraphs 3.81-3.82.

<sup>19</sup> February 2007 Statement, paragraph 3.84.

- 2.9 We start with a discussion of the 0870 termination rate dispute (June 2009). The 0870 range shares with 03 the characteristic that the retail price of an 0870 call should be the same as that of a geographic call. 0870 was the first such range where we considered how the termination rate for such ranges should be determined.
- 2.10 In the subsequent 03 termination rate dispute (January 2011) we decided that the principles and analytical framework set out in the 0870 dispute determination were applicable to the 03 range and then determined that the termination rate for calls to 03 numbers should be aligned with those for calls to 0870 numbers.
- 2.11 In addition, we provide brief summaries of more recent Ofcom and Government policy guidance and legislation that are relevant to our consideration of 03 numbers:
- our December 2013 review of non-geographic call services (NGCS);<sup>20</sup>
  - the UK Government’s December 2013 decision to favour the use of 03 numbers for the provision of public services by telephone; and
  - consumer rights regulation that came into force in June 2014 that requires businesses operating customer helplines to make available at least one “basic rate” number for customers to call.

### **0870 Determination (June 2009)**

- 2.12 In June 2009 we published a determination (0870 Determination) to resolve a dispute between BT and various other CPs over termination charges payable by BT to these other CPs for the termination by them of calls to 0870 numbers they hosted.<sup>21</sup>
- 2.13 In this determination we noted that we had set out our policy objectives for non-geographic numbering in our September 2005 Consultation, *NTS: A Way Forward*, and these included price transparency, consumer protection and the promotion of competition.<sup>22</sup> We further noted that in our April 2006 Statement we proposed to restore the link between the retail prices of these calls and geographic calls. To reduce the potential for arbitrage that this proposal created we also determined that 0870 calls should be removed from the scope of the BT NTS SMP Condition AA1 which required BT to retail and originate calls to 0870 numbers on behalf of other CPs on cost-related terms, thereby enabling revenue sharing on 0870.<sup>23</sup>
- 2.14 We had also noted in our April 2006 Statement that once the link to geographic calls was restored, 0870 calls were likely to be included in flat-rate call packages offered by most major OCPs to their subscribers. If 0870 termination charges remained too high, there would be an incentive to encourage additional 0870 calls, at no cost to the caller, “solely in order to generate a revenue share”.<sup>24</sup> Faced with this sort of arbitrage activity, we said that OCPs were likely to explore several options:
- take measures to prevent such calls being made, e.g. by blocking access to affected numbers;

<sup>20</sup> Telephony services provided by means on non-geographic numbers are collectively called non-geographic call services (NGCS).

<sup>21</sup> Available at <http://stakeholders.ofcom.org.uk/consultations/resolve0870calls/>.

<sup>22</sup> 0870 Determination, paragraphs 1.3 and 2.26.

<sup>23</sup> 0870 Determination, paragraph 1.4.

<sup>24</sup> 0870 Determination, paragraph 2.30.

- take measures to prevent a revenue share being made on such calls; and/or
  - raise the retail prices of their call packages.
- 2.15 We therefore said that our concern was to ensure that out-payments made by TCPs through revenue-sharing would not be sufficient to enable artificially-inflated traffic (AIT)<sup>25</sup> to be profitable as this would undermine our aim of improving price transparency through the restoration of the link between 0870 and geographic national calls.<sup>26</sup>
- 2.16 In the 0870 Determination, we found that BT’s proposed termination charges were not sufficient to adequately cover certain costs for which we thought BT should be responsible. Therefore, we included an adjustment for costs related to how calls to such numbers are physically routed across BT’s and the TCP’s networks – a routing principle which is called “near-end handover”.<sup>27</sup>
- 2.17 Further, in light of our policy to re-establish the link between retail prices for 0870 calls and those for geographic calls, we found that 0870 termination charges proposed by a number of TCPs were too high to be reasonable and were likely to deter BT (the OCP) from linking the retail prices for calls to 0870 numbers to the prices for calls to geographic numbers.<sup>28</sup>
- 2.18 The methodology we adopted in calculating the termination rate for 0870 calls, in order to resolve this dispute, ensured that 0870 termination charges were set at a rate that allowed TCPs to recover geographic call termination charges plus other costs that we considered relevant, namely (i) costs related to near-end handover and (ii) an allowance for interconnection circuit costs.<sup>29</sup>
- 2.19 As part of our economic analysis we determined a “no-arbitrage ceiling”.<sup>30</sup> Noting that arbitrage was the practice of taking advantage of a price differential, we said that high termination charges could create the risk of arbitrage activity by TCPs. Our intention was to prevent the exploitation of a price differential in this way, and we said that the no-arbitrage ceiling represented a level above which we would consider a termination charge to be unreasonable. Any charges above this level would carry an “unacceptable risk of encouraging arbitrage activity” on 0870 numbers and would also undermine BT’s (the OCP’s) ability to maintain the alignment of 0870 and geographic retail call charges.

### **03 Determination (January 2011)**

- 2.20 In January 2011 we published a determination (03 Determination) to resolve a dispute between Everything Everywhere (now EE) and BT over BT’s termination charges for calls made to 03 numbers.<sup>31</sup>
- 2.21 BT had aligned its termination charges for calls to 03 numbers with those for calls to 0870 numbers (as determined by us in our 0870 Determination of June 2009),

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<sup>25</sup> AIT is essentially telephony traffic which is fraudulent or has no apparent legitimate commercial purpose.

<sup>26</sup> 0870 Determination, paragraph 2.31.

<sup>27</sup> 0870 Determination, paragraph 1.17.

<sup>28</sup> 0870 Determination, paragraph 1.19.

<sup>29</sup> 0870 Determination, paragraph 1.21.

<sup>30</sup> 0870 Determination, paragraph 1.23.

<sup>31</sup> Available at <http://stakeholders.ofcom.org.uk/consultations/draft-everything-bt-termination/determination>.

effective 1 September 2009. EE submitted that the termination charges for calls to 03 numbers should be the same as or similar to those for calls to geographic numbers.<sup>32</sup>

2.22 In summary, in our analysis of this dispute:<sup>33</sup>

- we recalled that in our 0870 Determination we had set termination charges with a view to enabling OCPs to retail 0870 calls at geographic call rates. Termination rates for 0870 calls were calculated on the basis of the cost of terminating 0870 calls, which was the geographic termination charges plus relevant additional costs for terminating 0870 calls calculated on a fully allocated cost basis;
- we found that there were no material differences in the routing and costs of terminating 03 calls and the routing and costs of terminating 0870 calls. Therefore, for this dispute we used the same analytical framework we used in our 0870 Determination;
- we said that the prohibition on OCPs from setting 03 calls prices which are higher than those for geographic calls did not have any effect on the costs of terminating 03 calls;
- we noted that EE (the OCP) had neither suggested nor provided evidence that it was failing to recover its efficiently incurred costs on calls to 03 numbers;
- although EE had said that the increased termination rates would be passed on to callers, we had not been provided with any evidence to suggest that there was a realistic prospect of retail prices for calls to 03 or geographic numbers increasing;
- we noted that if the termination charges for 03 calls were aligned with those for geographic calls then TCPs would not recover their costs for terminating 03 calls from termination charges – because terminating 03 calls is more costly than terminating geographic calls; and
- no party had argued, and we had seen no evidence to suggest, that BT's revised 03 call termination charges would have a negative effect on competition.

2.23 We concluded that it was fair and reasonable for BT to align its termination charges for calls to 03 numbers with those for calls to 0870 numbers – to reflect the costs of termination as calculated in the 0870 Determination.<sup>34</sup>

### **NGCS Final Statement (December 2013)**

2.24 In our recently-concluded review of NGCS<sup>35</sup> we set out our policy objectives to address the consumer harm we had identified in the non-geographic number ranges. We said there was “clearly identified substantial consumer detriment arising from the retail market failures and this supports a case for reform of that market”.<sup>36</sup>

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<sup>32</sup> 03 Determination, paragraphs 1.2 and 1.3.

<sup>33</sup> 03 Determination, paragraph 1.5.

<sup>34</sup> 03 Determination, paragraph 1.8.

<sup>35</sup> See our December 2013 NGCS Statement, *Simplifying non-geographic numbers*.

<sup>36</sup> April 2012 NGCS Consultation, Part A, paragraph 1.3.

- 2.25 We stated our intent to address these concerns by simplifying the non-geographic number ranges, “making the pricing structures clearer to consumers and removing confusing and misleading inconsistencies”.<sup>37</sup>
- 2.26 While this review did not seek to change the regulation of the 03 number range, the existence of the 03 range as a reasonable alternative for organisations to the Freephone and revenue-sharing ranges was frequently referenced in our analysis of the options for those ranges.
- 2.27 Long-term consumer understanding and confidence in the 03 range is, therefore important as it offers a migration path for service providers who consider that the changes made to the Freephone and revenue-sharing ranges mean that those ranges will no longer meet their needs.

## **Non-Ofcom guidance and regulation**

### HM Government Guidance for Customer Service Helplines

- 2.28 On 26 December 2013 the UK Government issued guidance on the setting up and use of customer service helplines.<sup>38</sup> This guidance was aimed at all UK central government departments, public bodies that fall within their organisational hierarchy and services provided by external partners on behalf of a government department. The guidance was prepared by a cross-departmental group convened by the Cabinet Office; for transparency we note that Ofcom is an advisory member of this group.
- 2.29 The guidance said that an overarching principle when deciding what telephone numbers to use for providing public services is that the resulting charges are “fair to callers”: “It is inappropriate for callers to pay substantial charges for accessing core public services, particularly for vulnerable and low income groups.”<sup>39</sup>
- 2.30 For this reason it said that, where a non-geographic number was needed, departments should use 03 numbers “as a default policy position for the provision of core public services”.<sup>40</sup> In cases where 0845 numbers would mean lower charges for callers in certain circumstances and from some providers, the guidance said that departments should then offer 0345 and 0845 numbers in parallel – so that callers could make the choice of the number to call based on their personal call allowance arrangements – and should regard their 0345 number as the primary number.
- 2.31 By contrast, the guidance said that “free to call” 080 numbers were appropriate in “certain circumstances” and revenue-sharing numbers only in “exceptional cases” and where departments are delivering “value add” services beyond their core services.<sup>41</sup> Departments that did not adopt a geographic or an 03 number for their customer helpline, or offer multiple helplines with 03 as the primary number, would be required to write to the Minister for Civil Society to justify their choice.<sup>42</sup>

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<sup>37</sup> April 2012 NGCS Consultation, Part A, paragraph 1.8.

<sup>38</sup> Available at <https://www.gov.uk/government/publications/hmg-guidance-for-customer-service-lines>.

<sup>39</sup> HMG Guidance for Customer Service Helplines, paragraph 2.2.

<sup>40</sup> HMG Guidance for Customer Service Helplines, paragraph 2.3.

<sup>41</sup> HMG Guidance for Customer Service Helplines, paragraphs 2.5-2.6.

<sup>42</sup> HMG Guidance for Customer Service Helplines, paragraph 2.10.

## The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations

- 2.32 On 13 June 2014 the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the Regulations) came into force. Regulation 41(1) provides that where a trader operates a telephone line for consumers to contact them about a contract entered into with the trader, the consumer “must not be bound to pay more than the basic rate” for such telephone calls. This means that traders must make available at least one basic rate number for consumers. Provided they do this, they are not prevented from using other non-geographic numbers alongside the “basic rate” number.
- 2.33 The term “basic rate” is not defined in the Regulations. However, on 13 December 2013 the Department of Business, Innovation and Skills (BIS) issued guidance<sup>43</sup> on how businesses can comply with the Regulations, explaining that the following numbers, if used, would comply with the Regulations:
- geographic numbers or numbers which are set at the same rate as geographic numbers, e.g. 01, 02 or 03 numbers;
  - numbers which can be free of charge to call, e.g. 0800 and 0808 numbers; and
  - mobile numbers.<sup>44</sup>
- 2.34 The BIS Guidance made clear that such customer helplines should not provide the trader or business with a contribution from callers’ calling costs and the use of revenue-sharing numbers for such helplines would not comply with the Regulations.<sup>45</sup>
- 2.35 Noting that the Regulations do not require that all numbers operated by a business are at the “basic rate”, the BIS Guidance states that where a business maintains access to non-basic rate numbers alongside the “basic rate” number, the “basic rate” compliant number should be communicated as prominently as one that is not.<sup>46</sup>

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<sup>43</sup> BIS, *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations: Implementing Guidance*, December 2013 (BIS Guidance) available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/310044/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310044/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf).

<sup>44</sup> BIS Guidance, paragraph J2.

<sup>45</sup> BIS Guidance, paragraphs J1 and J4.

<sup>46</sup> BIS Guidance, paragraph J8.

## Section 3

# Commercial conduct of concern and case for intervention

## Commercial conduct of concern

### Revenue-sharing with callers

- 3.1 At present those who use 03 numbers are prohibited from sharing “with any End-User any revenue obtained from providing a service on those numbers”.<sup>47</sup> This prohibition on revenue-sharing reflects our policy intent with respect to the 03 range, which we discussed in the previous section. The drafting of the restriction reflected our understanding in 2007 of how and *with whom* TCPs were likely to engage in revenue-sharing.
- 3.2 Whether callers to 03 numbers are caught by this prohibition depends on whether they fall within the definition of an end-user, which is defined by reference to a public electronic communications service (PECN).
- 3.3 Section 151(1) of the Communications Act 2003<sup>48</sup> (the Act) provides that an “end-user”, in relation to a PECN, means –
- (a) *a person who, otherwise than as a communications provider, is a customer of the provider of that service;*
  - (b) *a person who makes use of the service otherwise than as a communications provider; or*
  - (c) *a person who may be authorised, by a person falling within paragraph (a), so to make use of the service.*
- 3.4 The definition of end-user is therefore tied to the particular electronic communications service or services under consideration and, in some, but not necessarily all, cases a calling party will fall within the legal definition of an end-user. There may, however, be cases where it is arguable that a calling party is not an end-user in the context of the particular service or services under consideration. In the light of that ambiguity, and in order to give effect to our policy intentions as regards the banning of revenue-sharing on the 03 number range, we consider it appropriate to reconsider the existing formulation of the restriction on the use of 03 numbers to ensure that there are no ambiguities and that our policy intentions are properly reflected.
- 3.5 In the recent past we have observed the emergence of telephony services that are using 03 numbers and offering customers benefits in return for calling their 03 numbers. The benefits offered that we have observed include:
- cash payments through the PayPal money transfer system;
  - cash vouchers for purchases from the online retailer Amazon;

<sup>47</sup> Numbering Plan, Part B, paragraph B3.2.1.

<sup>48</sup> The Communications Act 2003 is available at <http://www.legislation.gov.uk/ukpga/2003/21/contents>.

- credits to top up subscriber accounts;
  - credits for making international phone calls; and
  - bitcoins.
- 3.6 In each of the aforementioned cases observed the caller is rewarded (i) merely for calling the indicated 03 number and (ii) in proportion to the length of the call they make. The call itself need not be used for any genuine communications service, i.e. the caller would not be calling the 03 number with the primary intent of speaking to someone or making use of a communication-based service through the call. In some observed cases the caller is advised by the service to simply leave their phone “off the hook” for an extended period of time, such as one or more hours, in return for a benefit, such as “credits” towards international calls, the value of which is proportional to the duration of the 03 call made.

### Harmful impacts of this conduct

- 3.7 We consider that if CPs hosting 03 numbers are allowed to share their revenues from calls to 03 numbers with the callers making these calls, then the following harmful effects may manifest themselves.
- 3.8 The economic viability of bundles offered by OCPs would be threatened. OCPs, fixed-line and mobile, routinely offer their subscribers call allowances or bundles. Such bundles – which normally include a certain amount of call minutes, text and data for which no incremental charge is applied – are a significant feature of the retail proposition and an important component of retail competition. In their advertising and other promotional activities, OCPs compete for subscribers by drawing attention to their latest bundles. The economic viability of such bundles could be compromised if callers were to use their inclusive or ‘free’ minutes to earn money, or other benefits-in-kind, offered by other CPs for calling those other CPs’ 03 numbers. OCPs – who must pay the termination charges of such calls even when these calls are not individually paid for by the caller – may be compelled to make their call allowances less generous or inclusive, or to withdraw them altogether. In response to TCPs encouraging callers to use their bundles to make calls to their 03 numbers:
- OCPs may reduce the quantity of ‘free’ minutes, texts and data they offer within their bundle; and
  - OCPs may also raise their retail prices for out-of-allowance calls, texts and data.
- 3.9 Such a development would negatively impact on consumers generally as it would reduce the current level of service they receive, and/or make it more expensive than it would otherwise be. It would harm a major element of telecommunications competition at the retail level, where the bundle plays a key role.
- 3.10 Inflation of traffic would harm the ability of communications networks to provide genuine services. If CPs were to incentivise consumers to call 03 numbers by offering rewards such as money or benefits-in-kind, then this may lead to a significant inflation of traffic in networks because such rewards would be linked to the length of the calls made. However, this traffic would not represent the use of networks for genuine communications services. If traffic caused by such conduct were to increase significantly, then:

- the ability of PECNs to reliably provide communications services may be compromised by a reduction in capacity available for genuine communications services; and
  - the cost of maintaining sufficient capacity on PECNs may also increase.
- 3.11 These effects would be harmful for consumers generally as they would negatively affect the provision of services on the 03 range and the costs of this provision.
- 3.12 The reputation of the 03 number range, and of NGCS generally, would be harmed. As noted above, there is evidence that, contrary to our policy intent (see paragraphs 2.4-2.5), some forms of revenue-sharing are occurring on the 03 range. This is likely to harm the reputation of the 03 range among consumers and organisations at a time when 03 numbers are increasingly being adopted for public services and customer helplines as a result of Government policy and changes in consumer rights law. Such revenue-sharing would undermine our goal of giving consumers confidence that organisations called using 03 numbers were not benefiting from revenues received from 03 calls. In the longer-term there may also be a spill-over effect, i.e. the damage to the reputation of the 03 range among consumers and organisations may contribute to suspicion about non-geographic numbers generally.

### **Beneficial impacts of this conduct**

- 3.13 We also acknowledge that such conduct may be immediately beneficial for two parties.
- 3.14 TCPs operating 03 numbers would be able to earn economic profits from calls made to these 03 numbers insofar as they are able to charge termination rates which exceed their costs of terminating these calls. If they are also able to incentivise callers to call their 03 numbers when these callers would otherwise not call their 03 numbers, by sharing revenue earned from such calls with callers – or offering them other benefits, then these TCPs would be able to generate increased profits through such use of 03 numbers. Also, they would not need to provide a legitimate communications service to do so.
- 3.15 Callers with bundles from their OCPs would be able to use these bundles in order to earn cash payments or other benefits-in-kind (see paragraph 3.5) from the TCPs whose 03 numbers they were calling. They may, if so motivated, exhaust all of their remaining call minutes in their bundles to maximise such benefits to themselves – with no incremental cost to themselves.
- 3.16 However, such conduct by TCPs may not be ultimately beneficial for consumers if OCPs were to respond in ways that harm consumers and competition – a concern that we expressed in our 0870 Determination (see paragraph 2.17).

### **Regulatory change proposed**

- 3.17 On the basis of the concerns we have set out above (paragraphs 3.8-3.12) and in order to secure the identity and reputation of the 03 number range – as an important national, “basic rate” non-geographic range on which revenue-sharing is not permitted – and to maintain the trust of citizens, consumers and organisations in 03 telephone numbers, we propose the following regulatory change.
- 3.18 In the Numbering Plan, where the restrictions on the use of 03 numbers currently state that those who adopt or use 03 numbers “*shall not share with any End-User*

*any revenue obtained from providing a service on those numbers*”,<sup>49</sup> we propose to replace this text with: “*shall not directly or indirectly share with any End-User or any Calling Party any revenue obtained from providing a service on those numbers*”. (The text that we propose to add has been underlined.)

- 3.19 In other words, we propose to amend the prohibition on revenue-sharing by those who adopt or use 03 numbers such that it is clear that the sharing of revenue – whether directly in the form of a payment or indirectly by some other benefit-in-kind (for example account credits or bitcoins) – from calls made to 03 numbers *with the person making the call* is forbidden. Our proposal refers expressly to the Calling Party<sup>50</sup> as well as to End-Users to make it clear that revenue sharing with the person initiating the call is prohibited on 03 numbers (whether or not they are an End-User of the service being provided, within the legal definition). We recognise that, in many cases, the Calling Party is likely to fall within the definition of End-User: they are not mutually exclusive categories. However, as noted above, there may be circumstances where it is arguable that a Calling Party is not an End-User of the particular service(s) in question. Therefore, for the avoidance of doubt, and in order to ensure that revenue-sharing with all Calling Parties is caught by the restriction on revenue-sharing on the 03 number range, we propose to refer expressly to both End-Users and Calling Parties.

### Provisional assessment of regulatory change proposed

- 3.20 We consider that the regulatory change proposed above would be consistent with the policy objective that led to us establish the 03 number range in 2007 (see paragraphs 2.4-2.7) because it would ensure that consumers can be confident that organisations using 03 numbers are not doing so with the primary intent of earning profits from the charges paid for 03 calls. The form of revenue-sharing with callers that we have observed recently and described above was not envisaged in 2007, and we consider that amending the Numbering Plan to address this issue directly, as we have proposed above, would end any ambiguity on the matter.
- 3.21 By expressly prohibiting revenue-sharing from 03 calls with end-users and any callers, we would prevent the consequent consumer harm that we have set out above (paragraphs 3.8-3.12).
- 3.22 The proposed change would provide the telecoms industry, as well as organisations, with regulatory clarity that forms of revenue-sharing that are contrary to the policy objective for the 03 number range are not permitted on the range. Thus, all else being equal, it would have a greater deterrent effect against conduct of the kind we have described above than the current formulation of the prohibition.
- 3.23 The increasing take-up of 03 numbers by Government departments, public bodies, their agents or contractors, and other public-sector entities – at least partly as a consequence of current Government policy that actively favours the adoption of 03 numbers for helplines – emphasises the growing importance of this number range for the provision of citizens’ services in the UK. New regulation to implement the EU Consumer Rights Directive will also encourage the take-up of 03 numbers by businesses in the UK which need to provide their customers with national, location-neutral customer service helplines. By virtue of this combination of purposes, served distinctly by the 03 number range, we consider that the characteristics of the range

<sup>49</sup> Numbering Plan, Part B, paragraph B3.2.1.

<sup>50</sup> “Calling Parties” are defined in the Numbering Plan as “persons making contact by means of a telephone call”.

merit protection. By preventing the misuse of 03 numbers for primarily profit generation and, by effect, so protecting the reputation of this range, the proposed change would go further in ensuring that public bodies and socially-important services continue to favour 03 numbers for their helplines. This would help ensure that consumer access to such services was not compromised as a consequence of reputational harm to the range.

- 3.24 Protecting the reputation of the 03 range would also have the beneficial effect of encouraging investment and innovation by CPs and SPs in the provision of services by means of 03 numbers, which would additionally benefit citizens and consumers.
- 3.25 Therefore, our provisional assessment is that the change we have proposed is necessary to prevent the harm we have identified earlier and appropriate for the reasons set out above. We note that the change we have proposed does not reflect or imply a change of our policy objective for the 03 range. Rather, we consider that the proposed change brings the restrictions on the use of the 03 number range in line with our policy objective for it and, therefore, is consistent with it.

*Consultation question 3.1: Do you agree that the modification to the Numbering Plan that we propose – which would prohibit direct or indirect revenue-sharing with callers and/or end-users by those who use 03 numbers – is appropriate and proportionate to address the conduct of concern that we have described in this document? If not, please explain why.*

## Section 4

# Relevant legal framework

## Our legal powers and duties in relation to telephone numbering

4.1 The Communications Act 2003 (the Act) sets out Ofcom’s powers and duties in relation to telephone numbering. Amongst other things, under section 56 of the Act Ofcom is required to publish, and from time to time review, the Numbering Plan. The Numbering Plan sets out:

- the numbers that Ofcom have determined to be available for allocation by Ofcom as telephone numbers;
- such restrictions as Ofcom consider appropriate on the adoption of numbers available for allocation in accordance with the Numbering Plan;
- such requirements as Ofcom consider appropriate, for the purpose of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers so adopted or available for allocation; and
- such restrictions as Ofcom consider appropriate on the other uses to which numbers available for allocation in accordance with the Numbering Plan may be put.

4.2 Section 60 of the Act provides for the modifications of provisions in the Numbering Plan and explains the procedures for doing so. Section 60(2) provides that:

“OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is—

- (a) objectively justifiable in relation to the matters to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.”

4.3 Section 60(3) further provides that:

“Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification—

- (a) stating that they are proposing to do so;
- (b) specifying the Plan or other document that they are proposing to revise or modify;
- (c) setting out the effect of their proposed revisions or modifications;
- (d) giving their reasons for making the proposal; and

(e) specifying the period within which representations may be made to OFCOM about their proposal.”

4.4 Ofcom also has a general duty under section 63(1) of the Act in carrying out its telephone numbering functions:

“(a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and

(b) to encourage efficiency and innovation for that purpose.”

### **Ofcom’s duties under sections 3 and 4 of the Act**

4.5 In addition to its duties in relation to telephone numbering functions set out above, under section 3(1) of the Act, Ofcom’s principal duty in carrying out any of its functions is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

4.6 As part of the fulfilment of these principal duties, under section 3(2) it is Ofcom’s responsibility to secure the availability throughout the UK of a wide range of electronic communications services. Section 3(5) of the Act further provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

4.7 Pursuant to section 3(3) of the Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.

4.8 In this regard, we note our general regulatory principles<sup>51</sup> including in particular the following in the present context:

- operating with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
- consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.

4.9 When carrying out its regulatory functions such as considering revisions to the Numbering Plan, Ofcom must also take into account the six Community requirements as set out in section 4 of the Act. These include the requirement to promote competition in the provision of electronic communications networks and services, and the requirement not to favour one form of network, service or associated facility or one means of providing or making available such network, service or associated

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<sup>51</sup> See <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>.

facility over another, as well as the requirement to promote the interests of European citizens.

- 4.10 The various legal tests and duties, and how Ofcom has complied with them in making this proposal are set out below.

## Legal tests

- 4.11 We may not modify the Numbering Plan unless we are satisfied that the modification is objectively justifiable, not unduly discriminatory, proportionate and transparent.<sup>52</sup> Our provisional view is that our proposed modification meets these requirements.

- 4.12 In particular, we consider the proposed modification to be:

4.12.1 **objectively justifiable**, in that this modification of the Numbering Plan would contribute to our objectives of (i) stopping the sharing of revenues received from calls to 03 telephone numbers,<sup>53</sup> and (ii) ensuring that the conditions that govern the use of 03 numbers continue to reflect our policy objective in establishing the 03 number range;

4.12.2 **not unduly discriminatory**, in that it would apply equally to all those who adopt or use 03 telephone numbers;

4.12.3 **proportionate**, in that it is the least restrictive means of ensuring that those who adopt or use 03 numbers do not share revenues they receive for operating these numbers with other parties; and

4.12.4 **transparent**, in that the condition is transparent in its operation and has been accompanied (in this document) by an explanation of its intended operation and effect.

- 4.13 We consider that we are fulfilling our general duty in relation to telephone numbering functions, as set out in section 63 of the Act, by:

4.13.1 **securing the best use of telephone numbers**, in that our modification would stop the use of 03 numbers for purposes that do not reflect the policy intent for which 03 numbers were provided, thereby reserving the use of 03 numbers for purposes that are consistent with the policy objective that led to the opening of the 03 number range;<sup>54</sup> and

4.13.2 **encouraging efficiency and innovation**, in that our modification is likely to ensure, as a consequence of increased regulatory certainty for industry and the reputational protection of the 03 number range among consumers, that consumers make purchasing decisions that reflect their individual consumption preferences and are not deterred by concerns about price transparency. We also consider that the modification would protect the reputation of the range, thereby furthering the incentives for public-sector bodies and private businesses to innovate and invest in the provision of services by means of 03 telephone numbers.

<sup>52</sup> See section 60(2) of the Act.

<sup>53</sup> See paragraphs 3.5-3.6 above.

<sup>54</sup> We note here that we already provide several telephone number ranges on which revenue-sharing is permitted (e.g. 0843/4/5, 0871/2, 09). Therefore, our proposed prohibition would not end revenue-sharing on all number ranges. We consider that it will help ensure that revenue-sharing is restricted to those number ranges where consumers and organisations would expect revenue-sharing to happen.

- 4.14 We also consider that our proposed modification is consistent with our principal duty under section 3 of the Act, and the Community requirements set out in section 4 of the Act. In particular:
- 4.14.1 we consider that our modification would result in benefits to **consumers and citizens** (sections 3(1), 3(5) and 4(5)) by preventing commercial conduct – on a telephone number range that is vital to the provision of essential public and costumer services – that would harm their overall interests;
  - 4.14.2 we consider that our modification would result in improvements in **efficiency, investment and innovation** (section 3(4)(d)) as set out above in paragraph 4.13.2;
  - 4.14.3 in carrying out our review we have had regard to the needs of **vulnerable consumers** (sections 3(4)(h) and (i)) by the consideration of the extent to which our decision would impact on vulnerable consumers' access to socially-important services; and
  - 4.14.4 we have also had regard to the principle that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to other principles **of best regulatory practice** (section 3(3)). We have explained earlier in this section why we consider that regulatory intervention is required, and above why we consider that it is proportionate and transparent.

## Impact assessment and equality impact assessment

- 4.15 The analysis presented in this document constitutes an impact assessment as defined in section 7 of the Act.
- 4.16 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, *Better policy-making: Ofcom's approach to impact assessment*, which are on our website.<sup>55</sup>
- 4.17 In carrying out our functions we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups,

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<sup>55</sup> Available at

[http://stakeholders.ofcom.org.uk/binaries/consultations/ia\\_guidelines/summary/condoc.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/ia_guidelines/summary/condoc.pdf).

in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

- 4.18 Such equality impact assessments also assist us in making sure that we are meeting our principal duty under section 3 of the Act.
- 4.19 We have therefore considered what (if any) impact the proposal set out in this statement may have on equality. We do not consider the impact of the proposals in this consultation to be to the detriment of any group within society. Therefore, we do not consider it necessary to carry out a full equality impact assessment.

*Consultation question 4.1: Do you have any comments on the draft modifications to the Numbering Plan that we are proposing, as set out in Annex 7? Where you disagree with any of the proposed modifications, please explain why.*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 4 September 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/03-modification/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response cover sheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email [NGCSReview@ofcom.org.uk](mailto:NGCSReview@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Samir Prakash  
Competition Group  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Samir Prakash on 020 7783 4156.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in autumn 2014.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email: [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don’t have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

A4.1 Below is a list of the consultation questions asked in each part of this consultation.

## The 03 Number Range Consultation

### Section 3 – Commercial conduct of concern and case for intervention

*Consultation question 3.1: Do you agree that the modification to the Numbering Plan that we propose – which would prohibit direct or indirect revenue-sharing with callers and/or end-users by those who use 03 numbers – is appropriate and proportionate to address the conduct of concern that we have described in this document? If not, please explain why.*

### Section 4 – Relevant legal framework

*Consultation question 4.1: Do you have any comments on the draft modifications to the Numbering Plan that we are proposing, as set out in Annex 7? Where you disagree with any of the proposed modifications, please explain why.*

## Annex 5

# List of sources

A5.1 A list of Ofcom research reports, previous consultations and other external reports relevant to this consultation is provided below. While this list includes the main documents and research reports we have relied upon, it is provided for convenience only and is not intended to be exhaustive.

## Previous Ofcom consultations, statements or determinations

- i) *Simplifying non-geographic numbers: Final statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller*, 12 December 2013 (**December 2013 NGCS Statement**), published at: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/final-statement.pdf>
- ii) *Simplifying Non-geographic Numbers: Detailed proposals on the unbundled tariff and Freephone*, 4 April 2012 (**April 2012 NGCS Consultation**), published at: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>
- iii) *Determination to resolve a Dispute between Everything Everywhere and BT about BT's termination charges for 03 calls*, 17 January 2011 (**03 Determination**), published at: <http://stakeholders.ofcom.org.uk/consultations/draft-everything-bt-termination/determination>.
- iv) *Determination to resolve 0870 call termination rate disputes between BT and various operators*, 17 June 2009 (**0870 Determination**), published at: <http://stakeholders.ofcom.org.uk/consultations/resolve0870calls/>.
- v) *Raising confidence in telephone numbers: Amending General Condition 17*, 31 May 2007 (**May 2007 Statement**), published at: <http://stakeholders.ofcom.org.uk/consultations/numbering03/statement/>.
- vi) *Raising confidence in telephone numbers: Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17*, 13 February 2007 (**February 2007 Statement**), published at: <http://stakeholders.ofcom.org.uk/consultations/numbering03/>.
- vii) *NTS: A Way Forward*, 19 April 2006 (**April 2006 Statement**), published at: [http://stakeholders.ofcom.org.uk/consultations/nts\\_forward/statement/](http://stakeholders.ofcom.org.uk/consultations/nts_forward/statement/).

## Other publications

- i) HMG Guidance for Customer Service Helplines, 26 December 2013, available at: <https://www.gov.uk/government/publications/hmg-guidance-for-customer-service-lines>
- ii) Department of Business, Innovation and Skills Guidance on Consumer Contracts (Information, Cancellation and Additional Charges) Regulations, 13 December 2013, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data](https://www.gov.uk/government/uploads/system/uploads/attachment_data)

[/file/310044/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf](#)

## Annex 6

# Glossary

### **Call Termination:**

The service provided by a TCP to allow an OCP to connect a call with the intended recipient on that TCP's network.

**Communications Act 2003 (the Act):** The Act of Parliament that sets out Ofcom's duties in relation to electronic communications networks and services, and the powers which Ofcom has to discharge those duties.

### **Communications Provider (CP):**

This is a person who provides an electronic communications network or provides an electronic communications service.

### **Free-to-caller:**

This means a number that is accessed at no charge to the customer and, in the case of public payphones, without having to use coins or cards.

### **Freephone:**

A number that is reached free of charge to the customer, except where a charge is notified to the caller at the start of the call. 080 numbers (e.g. 0800 and 0808) are currently Freephone (although will become free-to-caller for consumers from 26 June 2015).

### **General Conditions:**

Obligations on all Communications Providers imposed by Ofcom in exercise of its powers set out in the Act.

### **Geographic number or geographic call:**

A telephone number, or call to a telephone number, where part of the digit structure (beginning with 01 or 02) contains a geographic area code that is used for routing calls to the physical location of the subscriber to whom the number has been assigned.

### **National Telephone Numbering Plan (Numbering Plan):**

This is a document setting out telephone numbers available for allocation and the restrictions on the adoption and other uses of those numbers, and as provided for in section 56(1) of the Act.

### **Non-geographic call (NGC) or non-geographic number:**

A telephone number, or call to that telephone number, which is used to identify a type of service rather than a geographic location. These services include number translation service (NTS) and premium rate service (PRS) numbers. Mobile and personal numbers are also non-geographic numbers.

### **Non-geographic call services (NGCS):**

A service that is provided by means of a non-geographic number.

### **Service Provider (SP):**

This is a provider of voice or data services to third parties using non-geographic numbers.

### **Terminating Communications Provider (TCP):**

The CP on whose network a call terminates.

## Annex 7

# Notification of proposed modifications to the provisions of the Numbering Plan under section 60(3) of the Act

1. General Condition 17 of the General Conditions of Entitlement has effect by reference to the provisions of the Numbering Plan.
2. In accordance with section 60 of the Act, Ofcom proposes to modify the provisions of the Numbering Plan.
3. The draft modifications to the Numbering Plan are set out in the Schedule to this Notification.
4. Ofcom's reasons for making these proposals, and the effect of the proposed modifications, are set out in the accompanying consultation document.
5. Ofcom considers that the proposed modifications comply with the requirements of section 60(2) of the Act.
6. In making these proposals, Ofcom has considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
7. Representations may be made to Ofcom about the proposed modifications until 5pm on 4 September 2014.
8. If implemented, the modifications in Schedule 1 shall enter into force on [date of publication of Ofcom's final statement].
9. In this Notification:
  - a. "the Act" means the Communications Act 2003;
  - b. "the General Conditions of Entitlement" means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
  - c. "Ofcom" means the Office of Communications; and
  - d. "Numbering Plan" means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time.
10. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
12. The Schedules to this Notification shall form part of this Notification.

A handwritten signature in black ink that reads "Yih-Choung Teh". The signature is written in a cursive style and is contained within a thin black rectangular border.

**Yih-Choung Teh**

**Competition Policy Director**

**10 July 2014**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

## SCHEDULE 1

1. In Part B, Section B3.2 is modified as shown highlighted in yellow:

### **B3.2 Non-Geographic Numbers**

#### ***03 numbers***

- B3.2.1 Those who Adopt or otherwise use Non-Geographic Numbers starting 03 shall not **directly or indirectly** share with any End-User **or any Calling Party** any revenue obtained from providing a service on those numbers.
- B3.2.2 Those who are Allocated Non-Geographic Numbers starting 030 shall assign those numbers only to Subscribers that are public sector bodies or not-for-profit bodies.
- B3.2.3 Those Communications Providers who Adopt or otherwise use Non-Geographic Numbers starting 034 or 037 shall only do so for the purpose of providing a service to a Customer who is migrating from a Non-Geographic Number starting 084 or 087 which is exactly identical to the 034 or 037 number except for the second digit (a “matching 084 or 087 number”). A Non-Geographic Number starting 034 or 037 shall not be Adopted or otherwise used by a Communications Provider where no matching 084 or 087 number is in use by a Customer.