

## Consultation response form

Please complete this form in full and return via email to [mct.2018@ofcom.org.uk](mailto:mct.2018@ofcom.org.uk) or by post to:

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## Your response

<p><b>Question 3.1: Do you agree with Ofcom's view of the relevant market and assessment of significant market power? If not, please explain why.</b></p>	<p>Confidential? –N</p> <p>We agree with the assessment of SMP but have concerns about the view of the relevant market. Annexe 11 A11.21 indicates an assumption that calls from outside the EEA will be normal routine services with reciprocal calls from within the EEA providing an ability to negotiate rates and bring them down. This is not always the case. Some services are provided solely to callers in countries that have oppressive regimes forbidding certain types of service that would be allowed in other countries, including the UK. Providing these callers with UK numbers attracts less attention and gives callers more freedom and enhances their personal safety. Examples of the services provided are Voicemail redirection facilities, Location based sample surveys, NTS, IVR, Intelligent routing numbers, P2P and A2P communication, voting and competitions. Providing these services to these locations incurs higher costs than would otherwise be the case, mobile numbers with a higher MTR are the only viable way of providing these services to these locations. There is therefore no outflow of cash and no impact on UK consumers interests.</p>
<p><b>Question 4.1: Do you agree with our assessment of the harm that could result from</b></p>	<p>Confidential? –N</p> <p>Yes except that different criteria apply to</p>

<p><b>a lack of effective competition in MCT markets?</b></p>	<p>services marketed in and provided exclusively to countries outside the EEA where costs can be higher than the current MTR cap. As shown in Annex 11 and elsewhere, most countries within the EEA have higher termination rates than the UK and the majority of countries in the EEA either do not include calls from outside the EEA in their MTR caps but there is no evidence of any harm. Annex 11, A11.56, points up an alleged risk of nuisance calls. Within Telecom2 there is significant experience of resolving AIT gained in other companies and we are not aware of Mobile numbers being used for nuisance calls. We find it difficult to envisage a situation where manipulated CLI would provide a significant advantage to those committing this practice.</p>
<p><b>Question 4.2: Do you agree with our assessment that ex post competition law alone would not be sufficient to address the competition problems we have identified, and that therefore ex ante regulation is required?</b></p>	<p>Our experience is that using law is both protracted and expensive . Regulation is by far the best way to address competition issues provided the regulator is adequately resourced to enforce the regulation by accepting and resolving complaints.</p>
<p><b>Question 4.3: Do you agree with our proposal to impose an obligation to provide network access on reasonable request on all MCT providers with SMP? If not, please explain why.</b></p>	<p>Yes provided “reasonable” takes full account of the issues the MCT has. It also has to be pointed out that CPs offering the services referred to in the answer to question 3.1 are far from being in dominant positions so there is no likelihood of their being able to influence the rest of the MCT market.</p>
<p><b>Question 4.4: Do you agree that our proposal to impose a charge control on all MCT providers with SMP is appropriate? If not, please explain why.</b></p>	<p>We are unable to agree to a blanket charge control because some services have costs far in excess of routine services. As stated in our answer to question 3.1, certain services are provided only to callers outside the EEA in countries that have oppressive regimes forbidding certain types of service that would be very acceptable in other countries, including the UK. These services have far higher costs but there are no other suitable ranges on which they can be provided. Provision of the services and their charges has no impact on the market in the EEA, brings foreign currency into the UK and enhances the reputation of the UK in those countries.</p> <p>There needs to be an acceptance of this</p>

	<p>situation and a realisation that one size doesn't fit all in this case.</p> <p>The already low UK MTR cap puts UK MCPs at a significant disadvantage when compared to the rates offered by the majority of EEA MCPs and while it assists the UK consumer it is a major cause of the cash outflow complained about by some large UK MCPs.</p> <p>Regarding notifying OFCOM of MTRs, this is not an efficient way of monitoring MTRs. The best way would be for OFCOM to download the Carrier Price List, a one off operation each year with guaranteed accuracy. This would be in line with OFCOM's comments in 4.87:</p> <p>"Third, the BT Carrier Price List (CPL) provides the termination rates for all MCT providers who interconnect with BT. The CPL is fully available to all users who complete a simple registration form on BT's website. The CPL is a mechanism that is understood by industry stakeholders. Although not every small MCT provider interconnects with BT, the CPL contains the MTRs charged by most MCT providers. " MCPs who have MTRs outside the CPL could be compelled to notify OFCOM if this was appropriate.</p>
<p><b>Question 4.5: Do you agree with our proposal that LRIC should continue to be the appropriate cost standard? If not, please explain why.</b></p>	<p>We have no objections to LRIC being used</p>
<p><b>Question 4.6: Do you agree with our proposal to apply the charge control to all calls, including those originated outside the EEA?</b></p>	<p>We do not agree with this proposal as it stands. The justifications given in the consultation are valid for normal routine services but there needs to be a distinction between those and services that are specifically marketed at callers domiciled outside the EEA and where access to them from within the EEA is barred. These latter services have no impact on the UK or EEA market or suppliers but are expensive to provide. The higher MTR used for these services has nothing to do with MTRs in those countries but everything to do with the higher costs of providing the services. Further costs are caused by BT withholding payment for traffic from overseas using the AIT process and</p>

justifying it with spurious reasons. The MTR has to take account of the need to cover calls that haven't been paid for on the interconnect. Access to other number ranges that would permit higher termination charges is barred to traffic from outside the UK.

3.69 of the consultation says:

“ Therefore, the MTR BT agrees with each MCT provider acts, to some extent, as both a ‘ceiling’ (when added to the BT transit rate) and a ‘floor’ on MTRs for individual bilateral negotiations between originating providers and terminating providers.”

This is not always the case. MCPs offering services exclusively to callers outside the EEA will often connect to those countries through the international calls exchange. Minutes are sold to the highest bidder, this is not affected by UK or EU regulation and the MCP has little or no control over the rates paid.

The consultation (4.57) allows for the possibility of a lower cap where the smaller MCPs have lower costs than larger MCPs, if this is the case then surely there should be scope for a higher cap where the costs for a smaller MCP are higher. Even with routine services a smaller MCP will not have the economies of scale associated with large networks.

The consultation (4.72) refers to effects on the UK market but the charges for the services specifically provided to callers domiciled outside the EEA have no impact whatsoever on the EEA market.

The 2009 EC recommendation specifically allows for deviations from charge control where the deviation is based on objective cost differences outside the control of the individual providers, we believe this is just such a case. Annex 11 to the consultation, supporting application of the charge control to calls originating outside the UK also fails to take account of services marketed and available exclusively to people domiciled outside the EEA. These services have absolutely no impact whatsoever on the UK market or consumer

<p><b>Question 4.7: Do you agree with our proposal to remove the non-discrimination obligation on the four largest mobile providers?</b></p>	<p>We have concerns with this. While we agree that discrimination is unlikely, we have found that the costs and timescales involved in using the law to resolve issues are prohibitive and can seriously damage a CP's business.</p>
<p><b>Question 4.8: Do you agree with our proposal to remove the price transparency obligation on all MCT providers with SMP? If not, please explain why.</b></p>	<p>We have no concerns with this proposal.</p>
<p><b>Question 5.1: Do you agree with our proposed modelling approach as discussed in Section 5, the supporting annexes and the 2017 MCT model? If not, please discuss the specific proposals that you disagree with.</b></p>	<p>While we're surprised by the lack of change in variables from 2015, we agree with the proposed approach to modelling</p>
<p><b>Question 6.1: Do you agree with our proposed approach to implementing the MCT charge control? If not, please discuss the specific proposals that you disagree with.</b></p>	<p>Again, the proposed approach takes no account of the services provided outside the EEA.</p> <p>Implementing the Charge Control across all services, far from promoting efficiency would make some services not viable and reduce the amount of cash coming into the UK without impacting on the outflow of cash from the UK. This would have the effect of removing all benefits to consumers concerned rather than "conferring the greatest possible benefits on the end-users of public electronic communication services (PECS)."</p> <p>6.31 says "We provisionally judge that the proposed charge control condition would be appropriate for promoting efficiency as it would address the inefficient structure of charges that results from excessive MTRs." Seen in the light of the costs involved in the services specifically mentioned, the MTRs for those services are not excessive.</p> <p>Implementing the charge control across all services would in fact be unduly discriminatory, in that it would discriminate against those providing specific high cost services.</p> <p>6.37 says: "We have had regard, in particular, to the interests of consumers in respect of choice, price, quality of service and value for</p>

money. Of the prescribed statutory objectives in section 3(2), we consider that securing the availability throughout the UK of a wide range of electronic communication services is particularly relevant to this review.” This is adequate for UK consumers but it does not provide justification for imposing the charge control on CPs providing some services aimed at consumers outside the UK and barred from access within the EEA.

6.40 says:

“Finally, we are minded to regard our proposals as in accordance with the six European Community requirements set out in section 4 of the Act. Particularly relevant are the requirements to promote competition in the provision of ECN and ECS.”

Implementing the Charge Control across all services will promote competition in that it will be more competitive to provide the services outside the UK.

6.41 says:

“We have explained above our provisional assessment that the proposed charge control condition and our choice of a LRIC cost standard would be an appropriate and proportionate means to address our competition concerns and promote the interests of end-users. In seeking to maximise consumer benefit, we would be promoting the interests of EU citizens. In this context, we have also considered the needs of specific social groups of consumers and take the view that our proposals would not result in significant equity concerns. “

This is UK, and to a lesser extent, EEA centric. Our customers for these services are a specific social group but their needs have not been taken into consideration and implementing a blanket charge control will cause them harm until they can move the services to MCPs outside the UK whose higher MTRs will allow these services to be economically viable. There will be no impact on EU citizens and the interests of end users within the UK will not be served.

**Question 6.2: Do you have any other**

It is important that we are able to continue

**comments on the matters raised in this consultation?**

providing the services mentioned to people outside the EEA. Callers physical safety would be endangered were the services to be provided on local numbers or UK numbers that were obviously for providing services and brings foreign money into the UK with minimal outflows, if any. If the proposals in this consultation are implemented with no exceptions we will not be able to provide the services, there are no viable alternatives. The services will be provided by MCPs in other countries in the EEA with higher caps or no caps at all with a subsequent detriment to the UK's reputation and income.

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