

Caller Centre Ltd response to Ofcom's consultation on the future regulation of phone-paid services

1. Introduction and summary of the consultation

- 1.1. This document sets out the response of Caller Centre Ltd ('CCL') to Ofcom's consultation on the future regulation of phone-paid services¹ that was published on 21st November 2023 (the 'consultation').
- 1.2. CCL is a provider of Information Call Connection and Signposting Services ('ICSS') and has competed in this sector through a number of different brands for many years. CCL provides a valued service to the public by providing efficient and convenient information and call connection services. Its business is focused on providing a viable alternative to conventional directory enquiry services ('DQ'), competing ICSS providers, and customers seeking information themselves from the web or traditional printed directories.
- 1.3. Under the consultation proposals, Ofcom shall resume full regulatory responsibility for premium rate services ('PRS'). Ofcom proposes to implement this by withdrawing its approval for the PSA's current code of practice (Code 15) and replacing it with its own set of rules by means of a PRS Order in the form of a statutory instrument. The PRS Order will retain the key principles and outcomes of Code 15 — indicating that Ofcom believes the regime is broadly working well. Ofcom will also modify the PRS Condition using its powers under s120 of the Communications Act 2003 ('CA03').
- 1.4. Crucially for CCL, Ofcom additionally proposes to make what we believe is a very significant change to the PRS rules relating to ICSS. Under the proposals, ICSS providers will be required to provide certain pre-contract information to consumers by means of an automated message within the first 60 seconds of a call, *before the consumer is charged*.² For expediency throughout this document, we refer to this as the '**FMF requirement**' or '**FMF proposal**', where '**FMF**' simply means 'first-minute-free'. The required information that must be provided during the first sixty seconds of the call includes details about the service, charging information, and the ICSS provider's name. The consumer must then give their express consent by pressing a button on their phone before it is permitted for them to be charged the service charge by the ICSS provider.
- 1.5. As an ICSS provider, CCL's focus is on the FMF requirement and our response is confined to topics dealt with under questions 9, 20 and 21 of the consultation. CCL has no specific comments to make about other aspects of the consultation.

2. Executive summary

- 2.1. ICSS continue to play an important role in modern life by offering a convenient way for consumers to make contact with large organisations quickly and easily.
- 2.2. In the same way that some consumers prefer not to use DQ, some prefer not to use ICSS. But the customers who choose to use CCL's service like the convenience we give them in speaking

¹ The [Future Regulation of Phone-Paid Services](#), published 21st November 2023.

² As set out under article 29 of the draft PRS Order and discussed at paragraphs 4.142 to 4.155 of the consultation.

to large organisations, many of whom are making their direct phone numbers increasingly hard to find online.

- 2.3. CCL has a number of significant concerns with Ofcom's FMF requirement as it is currently drafted.
- 2.4. We are unconvinced that Ofcom has satisfactorily demonstrated that further regulatory intervention is required at this stage — particularly as the recent raft of ICSS regulation changes made in late 2023 are still bedding-in.
- 2.5. Complaint levels for compliant ICSS remain extremely low³ and rather than imposing yet more regulation, Ofcom's attention may be better directed at swifter and more robust enforcement action against wrongdoers.
- 2.6. Ofcom has failed to address the ongoing problem of access charges under the unbundled tariff regime and these contribute significantly to bill shock and consumer harm. Ofcom also has not explained satisfactorily why it is right and fair that DQ providers are excluded from the FMF requirement.
- 2.7. We are disappointed with the way Ofcom has approached the process. It failed to liaise with industry prior to the consultation to understand important technical issues, and it is relying on the PSA's now outdated research and findings about consumer harm. Its assessment of the impact of the FMF requirement is superficial and fails to engage with a number of important factors in our view.
- 2.8. There are question marks as to whether Ofcom has demonstrated it has fully complied with its relevant statutory duties and satisfied the necessary criteria when setting or amending regulation. It is equally doubtful whether the approach is reflective of good regulatory practice.
- 2.9. There is a lack of clarity about precisely how the FMF requirement will be implemented: what will happen if there is a paucity of FMF price points, no meaningful pricing choice, or originating CPs fail to complete their datafill work promptly or at all.
- 2.10. The four-month timeframe for implementation is far too short in view of the challenges that exist.
- 2.11. These inherent problems with the FMF proposal present an existential threat to ICSS, with ensuing harm to consumers who rely on those services to find information. This situation would amount to a clear regulatory failure that cannot be allowed to occur.
- 2.12. If a FMF requirement really is warranted at this point, CCL has suggested an alternative proposal that addresses many of the shortcomings: it would put Ofcom's FMF proposal on a firm regulatory footing by requiring CPs and their systems to support a fixed number of FMF price points, and would require originating CPs to complete their datafill in a timely manner.
- 2.13. Absent a revised proposal of that nature, CCL firmly believes that there ought to be a regulatory moratorium so that ICSS providers faced with no viable FFM price points or those

³ See paragraph 3.11 below for figures relating to CCL's business.

which are not working correctly because they are yet to be datafilled are permitted to use existing non-FMF numbers and price points until the situation is resolved.

- 2.14. Closer and more informed industry liaison with Ofcom is clearly needed to unpack all the issues and find workable solutions. CCL is keen to play its part in that.
- 2.15. We elaborate on our concerns throughout the rest of this response.

3. The role of ICSS in society and CCL's approach to running its services

- 3.1. The current ICSS market is supported by a number of different service models using a variety of price points — some on a per-call basis, and some charge on a per-minute basis. The maximum charges for both service charge options (being £3.00 per minute and £5.00 per call, both excluding VAT) are set out in the National Telephone Numbering Plan ('**NTNP**').⁴
- 3.2. CCL provides a valued service to the public by providing efficient and convenient information, connection and signposting services. Its business is focused on providing a viable alternative to conventional DQ services, competing ICSS providers, and customers seeking information themselves from the web or traditional printed directories. As an established service provider, CCL provides services that genuinely provide an alternative to significantly more expensive DQ services.
- 3.3. ICSS fill a gap by providing to consumers quickly and conveniently information that may be otherwise hard for them to find. It is a known fact that many large organisations deliberately make their direct phone numbers difficult to find online to help steer customers to other forms of communication — such as email or online chat. This helps those organisations limit the costs of staffing and operating call centres, as receiving communications from customers by email or chat is typically more cost-effective and convenient for organisations. But this is often less convenient for customers who may wish to speak to the organisation by phone. ICSSs help customers do exactly that. These problems have been well-documented in the press in recent years — including in a 2022 article in the Financial Times entitled 'the strange death of the company phone number'.⁵ Among other things, that article noted that:
 - An increasing number of organisations no longer feature phone numbers on their websites or make them hard to find;
 - It is rare to find a company phone number that is featured prominently on the company's website, as is having a call answered quickly by a person;
 - While many queries can be addressed online or through other communication methods, the first choice of many customers is to contact an organisation by phone — particularly for complex or sensitive issues. This trend applies across all demographics; and
 - Many websites 'bury' contact information at least five links deep because some organisations wish to discourage direct customer contact. Where contact information is available, it is often an online form or email address only.
- 3.4. The usefulness of ICSS being able to help customers of organisations to easily get in touch by phone is demonstrated by a recent incident that was widely reported in the mainstream

⁴ See the [National Telephone Numbering Plan](#) on the Ofcom website.

⁵ See the Financial Times article, '[The strange death of the company phone number](#)', dated 18th September 2022.

media. A customer of the courier, DPD, was trying to find tracking information for a parcel and interacted with an ‘unhelpful customer service AI chatbot’ on the DPD website.⁶ Sky News reported that the customer found ‘it couldn't give me any information about the parcel, it couldn't pass me on to a human, and it couldn't give me the number of their call centre.’ This is one of those occasions where a customer may have preferred to have made contact with the end organisation more quickly and conveniently through using an ICSS. Ofcom and the communications industry should recognise the ongoing usefulness that ICSS can provide to customers who choose to use them — even in the age of increasing use of AI and the prevalence of chatbots on websites.

- 3.5. CCL has long been concerned about the PSA’s support for search engines’ policies preventing ICSS being advertised — directly leading to consumer detriment for those who currently make use of these services instead of finding information themselves online or using a DQ service. The PSA has openly acknowledged⁷ that it agrees with Google’s policies to restrict the advertising of ICSS via the Google search engine. The ultimate effect of this risks cutting off the ‘air supply’ needed for ICSSs to exist, thereby denying consumers the right to be able to choose to use such services for which there is a clear and demonstrable need.
- 3.6. The PSA’s Code 15 and the draft PRS Order impose comprehensive requirements on ICSS providers to ensure that promotional landing pages seen by customers (which is the ‘way in’ to a customer calling an ICSS PRS number) are very clear about the nature of the service and the cost of using it. This is embodied in the PSA Code as the transparency *standard*, augmented by a number of detailed *requirements* with which ICSS providers must comply in order to achieve the standard.⁸ This is further reinforced by detailed transparency *guidance* to help providers understand what they need to do in practice to comply with the transparency standard and requirements.⁹ There are a number of provisions throughout the PSA’s transparency guidance which are expressly directed at ICSS providers (rather than other forms of PRS).
- 3.7. Among other things, the rules on transparency stipulate that ICSS providers must make it fully clear that their service is an ICSS (not the end organisation itself), what the cost of calling the number is, and that the information and direct number may be available from the end organisation directly at a lower or no cost. The pricing information itself must be prominent, clear, legible, visible and proximate — with detailed explanations in the PSA transparency guidance about what each of these things mean in the context of PRS promotions. On the subject of prominence, the PSA transparency guidance says:

Pricing information needs to be put where consumers will easily see it. It is likely to be judged as prominent if the information is clearly visible when a consumer makes their purchase and triggers the payment. Both the font size and use of colour are important to establishing pricing prominence[.]

The prominence of pricing information also needs to be considered in comparison to the prominence of the call to action. For example, the appearance and prominence of the call to action should not decrease the prominence of, or detract from, the pricing information.

⁶ See [article on the Sky News website](#), dated 20th January 2024.

⁷ Including in the [ICSS compliance update published by the PSA](#) on 6th April 2023, where the PSA said it ‘strongly recommend[s] providers follow search engine advertising policies and do not take steps to circumvent them’.

⁸ See paragraphs 3.2.1 to 3.2.18 of the [15th PSA Code](#).

⁹ See the [PSA’s guidance on the Transparency standard and requirements](#).

- 3.8. CCL has always been very careful to design and construct its promotional landing pages in a way that fully complies with these principles.
- 3.9. The robust requirements on transparency referred to above are intended to ensure that customers are properly informed about service *before* the ICSS number is called and charges incurred. The same levels of information provision and consumer protection at the promotion stage are not present in DQ services or other forms of premium rate services, such as competitions.¹⁰ For comparison, a copy of CCL's mobile landing page is included at Annex 1 alongside that of a DQ provider and the pages from other premium rate services. Unlike CCL's promotion, it is questionable whether some of the other examples shown at Annex 1 comply properly with the transparency guidance stipulating that '[t]here should be sufficient contrast levels between background and text, for example grey text on grey background should not be used and text should not appear on top of busy, patterned backgrounds'.¹¹
- 3.10. The comprehensiveness of the requirements already imposed on ICSS providers ensures consumers are properly informed — and that their welfare is protected — at the promotion stage of the 'customer journey'. In our view, issues with consumers misunderstanding the cost of using an ICSS are due to providers not complying with the existing provisions in the Code.
- 3.11. CCL prides itself for being a diligent and responsible ICSS provider, paying close attention to very high standards of customer service and ensuring its service is fully compliant with the PSA Code. The volume of complaints that CCL receives is incredibly low — with [redacted] enquiries from over [redacted] calls to the service during the period 3rd August to 4th October 2023. We believe this data needs to be taken into account by Ofcom as part of any assessment that is made as to the scale and nature of the consumer harm being attributed to ICSS.

4. Key requirements of Ofcom under the CA03 and CCL's concerns

- 4.1. There are a number of statutory provisions set out in the CA03 that are relevant to how Ofcom must go about performing its regulatory activities and the requirements that Ofcom must take account of when setting or modifying conditions. Two particularly important provisions in this regard are summarised below:
- a. S3(3) CA03 requires that Ofcom must have regard in all cases to the principle that its regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles that appear to Ofcom to represent best regulatory practice. We refer to these as the 's3(3) duties'.
 - b. S120(5) CA03 is clear that the requirements of s47(2) apply equally to Ofcom setting or modifying a PRS condition as they do to any other type of condition under the CA03. S47(2) requires that any setting or modification of a condition is:
 - i. Objectively justifiable;
 - ii. Does not unduly discriminate against a person or class of persons;
 - iii. Is proportionate to what the condition or change is intended to achieve; and

¹⁰ While the PSA transparency standard and requirements apply to all relevant forms of PRS, there are numerous provisions in the transparency guidance that apply only to ICSS providers and which impose greater regulatory safeguards for consumers in respect of ICSS compared to other forms of PRS.

¹¹ See pages 3-4 of the transparency guidance referenced at fn. 9 above.

iv. Is transparent,

(collectively the '**s47(2) criteria**').

4.2. CCL has a number of significant concerns about the FMF requirement. These concerns relate to whether further regulatory change is warranted at all, the way in which Ofcom is proposing to implement the FMF requirement, and the legion of technical and timing challenges that combine in CCL's view to make Ofcom's proposal untenable in its current form.

4.3. CCL is also concerned as to whether, as currently proposed, Ofcom's FMF proposal is compatible with either its s3(3) duties or the s47(2) criteria.

4.4. We expand on and detail our concerns throughout paragraphs 5 to 8 below.

5. There have been too many regulatory changes too quickly to ICSS, and the existing framework already provides consumers with robust protection

5.1. The FMF proposal is the latest in a sequence of rapid changes to ICSS regulation and comes soon after the last regulatory change to ICSS in 2023.¹² Those changes came after the earlier Thematic Review of ICSS in 2022¹³, changes as part of implementing the new Code 15 in 2021¹⁴ and an earlier raft of changes in 2019¹⁵. The regulatory burden placed on ICSS providers over the last few years has been considerable and unrelenting.

5.2. Instead of making yet a further change at this stage, CCL believes that time should be given for the 2023 changes to properly bed-in, and an assessment made at a later date. The 2023 PSA changes to ICSS had been in place a mere eight weeks before Ofcom published its proposals in the consultation to amend ICSS regulation yet again.

5.3. The rapid sequence of regulatory changes made over the past few years has deprived the sector of regulatory certainty. This is bad regulatory practice and denies a wide variety of stakeholders involved with PRS and communications services stability and certainty in the landscape within which they operate. This period of ongoing flux could have been something Ofcom could have taken steps to address by preserving the status quo of the current regime — at least for now. Once the PRS order had been given time to get established, Ofcom would be in a better position to make an accurate and meaningful assessment about how well the current regime is working and whether further ICSS regulation is really required. In our view, Ofcom's approach does not make for a positive or constructive start to its resumption of regulatory responsibility for PRS.

5.4. In CCL's view, the current regulatory set-up of Code 15 is working well. It appears that Ofcom is of a similar view given the very close similarities in the principles embodied in the PSA Code 15 and the draft PRS Order. Both contain a large number of consumer protection measures

¹² In March 2023, the [PSA consulted](#) on implementing changes requiring ICSS providers to i) insert a voice prompt at the start of calls to provide certain information, ii) provide the facility of a positive opt-in that customers must use for the call to continue, iii) ensure that service charges for calls are capped at £40 and iv) alerting customers that calls will cut off once the maximum charge is reached. The [PSA issued a statement](#) on the changes it decided to implement in July 2023, with the requirement that the changes had to be implemented by 18th September 2023. There was a [compliance update issued to industry](#) in April 2023 requiring some changes made to services.

¹³ See the [ICSS Thematic Review](#).

¹⁴ See the [Consultation on the Code of Practice 15](#).

¹⁵ See the [Consultation on changes to regulatory framework for ICSS](#).

focused on ensuring that consumers are properly informed about the nature of the service they may choose to purchase, and that there are robust requirements for efficient remedy processes if something goes wrong and the customer is dissatisfied.

- 5.5. However, the effectiveness of consumer protection would be improved by faster and better enforcement against clearly non-compliant providers — where a more proactive approach with swifter intervention and acting on ‘tip offs’ would have led to better regulatory outcomes. This is a point that CCL has been making to the PSA repeatedly in recent years¹⁶ and it is perhaps a point that Ofcom can act on once it fully takes back the regulatory reins for PRS.

6. Ofcom’s proposal on the FMF requirement continues to ignore the problem of access charges

- 6.1. Under the non-geographic call service regime implemented by Ofcom in 2015, as well as a service charge imposed by the PRS provider, a caller will also incur an access charge. The access charge is set and received by the caller’s originating communications provider (‘CP’) on a per minute basis.
- 6.2. An ICSS provider has absolutely no control over the setting of the access charge and they can vary considerably across different CPs, call packages and tariffs. However, some communications providers charge callers a per-minute access charge of 83p — which can quickly amount to considerable cost over the length of a call. In many cases, the access charge can make up a much greater proportion of customer’s call cost than does the service charge — particularly where the ICSS provider uses a per-call tariff (also known as a ‘drop charge’). Access charges have risen extortionately during the last few years and it is self-evident that these high per-minute costs are leading to significant consumer harm.
- 6.3. CCL has long believed that access charges are a significant source of bill shock and consumer harm, and we have made these points repeatedly to the PSA and Ofcom in recent years.
- 6.4. The current problem of high access charges contributing significantly to customers’ bill shock is not addressed at all by Ofcom’s FMF proposal. In fact, while the FMF requirement means the ICSS provider cannot charge a service charge for the first 60 seconds of the call, the customer’s originating CP certainly will charge the caller an access charge. This arrangement leads to a perverse outcome in CCL’s view, and if the FMF proposal is pursued in any form, the same FMF treatment ought to be applied to the access charge as it is to the service charge.
- 6.5. In any event, CCL believes strongly that Ofcom ought to re-examine the issue of access charges and the effectiveness of the non-geographic calls services regime and unbundled tariff. Now the regime has been in place for nearly a decade, there is a wealth of experience, data and learning that should be taken into account during a review.

7. There is a need for regulatory parity between ICSS and DQ services in respect of the FMF requirement

- 7.1. ICSS and DQ services compete with each other and share many similarities, yet the regulatory regimes that apply to each differ. We believe that the differences that now exist between DQ services and ICSSs are negligible, and are not relevant to the common issues of consumer

¹⁶ See, for example, paras 6.2 to 6.10 of [CCL’s response to the 2019 ICSS regulatory framework changes](#), and paras 5.10 and 6.6 of [CCL’s response to the March 2023 ICSS changes](#).

protection. Because of this, there are strong arguments that broadly the same regulatory regime ought to apply to both, with sufficient flexibility to ensure that genuine differences demanding divergent treatment can be accommodated — but in a reasonable and proportionate way. The FMF requirement shouldn't be one of those differences in our view.

- 7.2. Ofcom's proposal for the FMF requirement clearly carves-out DQ services from the FMF requirement. This imposes an unfair and unwarranted burden on ICSS providers, and correspondingly presents an unfair advantage to DQ providers; we believe this divergence of treatment is unjustifiable. CCL would urge Ofcom to reconsider this point and give serious consideration to applying any FMF requirement to DQ providers as well as to ICSS providers.
- 7.3. It is worth noting that the requirement imposed by the PSA in 2023¹⁷ where ICSS providers must provide an audio announcement at the start of calls providing information about the nature and cost of using the service, as well as requiring express consent from the customer before providing onward connection or sending a chargeable SMS, do not apply to DQ services. Again, we believe this divergence in treatment between ICSS and DQ is unjustifiable and should be urgently reconsidered.
- 7.4. Because of the exclusion of DQ services from the ICSS requirements, CCL has concerns as to whether Ofcom has satisfied the no undue discrimination element of the s47(2) criteria.

8. Problems with the FMF proposal

- 8.1. CCL is concerned that Ofcom's approach to the FMF requirement appears rushed, with a lack of pre-consultation liaison with industry. We are equally concerned that Ofcom has not engaged properly with the implications of the considerable technical work and time needed to implement the FMF proposal, and that it has not satisfactorily made the case — judged against the s47(2) criteria and Ofcom's s3(3) duties — that regulatory action is warranted at all. In addition, we believe Ofcom's approach simply does not demonstrate good regulatory practice.

The impact of the FMF requirement is significant, requiring more detailed consideration and analysis that should have amounted to a separate piece of work

- 8.2. The FMF requirement constitutes a significant amendment in its own right to ICSS regulation that cannot safely proceed without detailed consideration and robust scrutiny. We believe it should not be annexed to a separate piece of work focused on implementing Ofcom's resumption of regulatory responsibility for ICSS. As noted in paragraph 5, the timing is particularly poor and perpetuates the regulatory instability seen in the ICSS sector over recent years. As we note throughout this response, CCL believes Ofcom would better demonstrate good regulatory practice by allowing both the 2023 regulatory changes and the forthcoming PRS order to properly bed-in before any accurate and meaningful assessment can be made as to whether yet further ICSS rule changes are warranted.

Ofcom has not satisfactorily demonstrated that additional ICSS regulation is required at this stage

- 8.3. CCL remains unconvinced that Ofcom has satisfactorily made the case that further regulatory intervention at this stage is required *at all*. Ofcom devotes essentially just five paragraphs in

¹⁷ See the [PSA's statement following consultation on Code 15](#), dated 24th July 2023.

the consultation¹⁸ to analysing the pre-contract information requirements implemented into the PSA's Code 15 in 2023 and concluding that it ought to go further by requiring that information to be provided *before* the customer is charged. It proposes to do this using powers that it has but that the PSA lacks. Ofcom then leans heavily on the high-level comments saying:

- a. It has considered the PSA's statement where the PSA said 'consumers are unaware that they were using [an ICSS] and that consumers often believe that they are using an official number rather than the ICSS provider'¹⁹; and
- b. It 'agree[s] with [the PSA's] assessment of consumer harm and, in particular, the high levels of financial detriment suffered by consumers, many of whom do not know they are going to charged'.²⁰

8.4. It seems clear that Ofcom has relied heavily on the PSA's earlier analysis and assessment of consumer harm without conducting further or more up-to-date research and analysis. Crucially, the PSA's assessments on which Ofcom is relying were made before the PSA's 2023 amendments to the Code requiring pre-contract information to be provided to the customer had been implemented (the '**2023 ICSS amendments**'). We believe Ofcom ought to give the 2023 ICSS amendments time to establish themselves before an accurate and safe assessment can be made as to whether further regulation is really necessary. It follows that that Ofcom's reliance on the PSA's (now outdated) assessment is unsafe and cannot be said to demonstrate the discharge of its s3(3) duties concerning proportionate and targeted action, nor with the s47(2) criteria relating to the proposed measures being objectively justifiable or proportionate. It is also not consistent with the good practice of making decisions on regulatory interventions that are properly evidence-based.

8.5. As part of this, CCL further believes that Ofcom has not satisfactorily demonstrated an appropriate balancing of its competing duties under the CA03 — for example, in relation to the principal duty under s3(1) CA03 of a) furthering the interests of citizens in relation to communications matters and b) furthering the interests of consumers in relevant markets, where appropriate by promoting competition. In CCL's view, Ofcom has placed disproportionate focus on consumer protection measures in a way that ignores the benefits brought by ICSS to customers who choose to use them, and by failing to consider whether the regulation it proposes is capable of promoting competition. If proper attention were paid to promoting competition, it would help ensure that the regulation imposed was conducive to providing an environment in which the ICSS sector can remain healthy and viable — thereby continuing to serve the needs of consumers who choose to use such services. As we go on to discuss below, taking steps to ensure (rather than simply hope) that a variety of FMF price points will be available for ICSS providers to use would be one such way of demonstrating that proper consideration had been given to the promotion of competition.

¹⁸ See paragraphs 4.143 to 4.148 of the consultation.

¹⁹ See paragraph 4.145 of the consultation.

²⁰ See paragraph 4.146 of the consultation.

The FMF requirement amounts to a form of price regulation

- 8.6. Ofcom itself acknowledges that its FMF requirement will mean that network operators must create new service charge price points²¹ set at the rate of zero for the first 60 seconds and then chargeable thereafter.²² The pricing options for the portion of calls after the first minute could take many forms: a single per-call charge of different amounts or any number of different pence-per-minute options — in both cases up to the regulated maximum²³. The offering of effective price granularity was an important consideration in the NGCS regime that stakeholders brought to Ofcom’s attention when it was consulting on the design and implementation of the unbundled tariff from 2012 - 2015.²⁴
- 8.7. In CCL’s view, by requiring a new category of price points to be available that are free for the first minute is tantamount to a form of price regulation. Ofcom itself admits the FMF proposal amounts to regulation concerning pricing²⁵, which, unlike the PSA, it has the power to impose under s122(2) CA03.
- 8.8. Given the direct economic effects that price regulation has, it is right that any regulator proposing it must satisfy a high bar in demonstrating that it has conducted detailed analysis as to the effects (including unintended consequences) and risks associated with the imposition of that regulation, and come to an evidence-based conclusion that it is the right course of action in the circumstances. CCL remains concerned that Ofcom has not done this because of the weaknesses in demonstrating that regulatory intervention is required (see paragraphs 8.3 to 8.5 above) and its concerningly brief analysis of the impacts involved with its proposed FMF requirement (see paragraphs 8.17 to 8.20, and 8.26 to 8.28 below).

Precisely how the FMF proposal will work in practice is unclear

- 8.9. The precise way in which Ofcom intends the FMF functionality to be implemented isn’t entirely clear from the face of the text in the consultation — and it has been left to respondents to parse the text and make a best guess as to what Ofcom has in mind. This lack of clarity arguably means the FMF proposal, as drafted, fails to satisfy transparency requirements set out in the s3(3) duties and the s47(2) criteria.
- 8.10. All Ofcom says on the subject is contained within two sentences set out in paragraph 4.155 of the consultation and one footnote (94) — all of which can be summarised as follows:
- a. To implement the FMF requirement, it is ‘likely’ that CPs will need to offer new price points that are FMF;
 - b. Ofcom ‘understands’ that industry has started discussions in this regard, but it refers to no demonstrable progress or conclusions from those discussions — nor what will happen if nothing concrete emerges from the discussions and suitable FMF price points are not made available;

²¹ The term ‘price point’ was created as part of the unbundled tariff in the NGCS reforms, and is now defined in the General Conditions as ‘a rate which may be set as a Service Charge and is used for calculating or billing the Service Charge Element of the retail price for a call to an Unbundled Tariff Number which is charged to a Consumer’.

²² See paragraph 4.155 of the consultation.

²³ For details of the maximum permitted charges, see paragraph 3.1 above.

²⁴ For example, see paragraph A21.170 of [Ofcom’s Simplifying non-geographic numbers – Part B Annexes](#).

²⁵ See paragraph 4.144 of the consultation.

- c. There is an obligation on CPs under GC B1.28 and B1.29 to be able to offer up to 100 different price points and that those must reflect on a fair and reasonable basis the rates proposed by other providers; and
 - d. There is only one FMF price point currently — SC073 — which is ready to use.
- 8.11. Ofcom appears to be relying on its thinking from 2013 – 2014 when it was refining the NGCS regime and unbundled tariff, and discussing how it saw the new price point arrangement working. At the time, Ofcom said that both originating and terminating CPs should ‘have due regard to the pricing requirements of [service providers] (‘SPs’)’ so that price points are ‘representative of SP demand’.²⁶ Ofcom further observed that as SPs are the customers of terminating CPs, it expected terminating CPs to ‘have a commercial incentive to seek price points that are in line with SP demand’ and requiring 100 price points to be supported meant there would be sufficient scope to provide pricing flexibility and choice.²⁷ However, concerns continued to exist with how the price point negotiations would work and precisely what the obligations on CPs were. This led to Ofcom producing revised guidance on price points in 2014.²⁸
- 8.12. In short, it seems that Ofcom’s FMF proposal is based on the *hope* that there will be enough CPs who offer PRS termination services interested in offering an array of FMF price points to provide pricing choice, and that originating CPs will perform the necessary datafill work promptly so that the calls route and are charged correctly. This all must happen in a way that a) meets the Ofcom implementation deadline and b) continues to work reliably thereafter so that ICSS providers’ businesses remain viable. This appears to CCL to be a very significant presumption indeed, with no evidence that it will come to fruition as Ofcom expects.
- 8.13. While the consultation is correct in saying that a FMF price point (SC073) exists currently, it is CCL’s understanding that it has been enabled only by a handful of very small terminating CPs, but that no originating CP of any size has datafilled numbers at that price point. This means that it is unlikely a person could successfully call numbers charged at the SC073 price point in a way that the call routing and charging will work correctly; quite simply the calls would fail, meaning no ICSS provider could build services using numbers that have adopted that price point. This will remain the case until originating CPs complete their datafill work.
- 8.14. Ofcom appears to have given no real thought to what would happen if the various actors involved behave in a way that does not align with Ofcom’s expectations. The absence of the process being on a firm regulatory footing is very concerning to CCL as a ICSS provider, where any failure in the process working as Ofcom hopes and intends will represent an existential threat to CCL’s business.

The proposal is likely to limit pricing granularity available to ICSS providers and, in turn, consumers

- 8.15. Left to their own devices, terminating CPs may offer only one FMF price point, or a very small number of price points. Absent specific regulation requiring it, there may be no FMF per-call price point options offered to ICSS providers at all. This would severely curtail the price point choices/granularity available to ICSS providers — and would have the effect of essentially

²⁶ See paragraph A21.153 of [Ofcom’s Simplifying non-geographic numbers – Part B Annexes](#)

²⁷ *ibid.*

²⁸ See Ofcom’s [revised guidance on Service Charge price points](#), dated 16th October 2014.

dictating a specific price or prices.²⁹ We disagree with Ofcom's assessment in footnote 163 of the consultation that only two price points will be required; Ofcom's logic appears to be that only the two price points used by 99% of ICSS will be needed (the per-minute charge of £3.60/min and £6/call).

- 8.16. Pricing granularity is an important feature of a competitive PRS and ICSS market and Ofcom should take all reasonable steps to ensure that any FMF proposal it proceeds with is able to ensure a healthy number of pricing options for ICSS providers to choose from. Failing to do this would not be acting in the interests of either consumers of ICSS or the ICSS providers themselves — and would be difficult to reconcile with Ofcom's s3(3) duties, the s47(2) criteria, and other Ofcom duties, such as under s3(4)(b) CA03, which requires Ofcom, when performing its regulatory functions, to have regard to promoting competition in relevant markets.

Ofcom's proposal may produce unintended consequences representing an existential threat to ICSS which would amount to a clear regulatory failure

- 8.17. But the risks to ICSS providers go further than pricing granularity. There is also a very real risk that network operators may align their behaviour with one another to offer no FMF price points at all (with SC073 being also withdrawn/unsupported). Alternatively, even if FMF price points are made available by terminating CPs, it is entirely possible that originating CPs may fail to perform the necessary datafill work (either promptly or at all) so consumers on those networks would be unable to successfully call the FMF numbers. CCL's fears are based on past experience where some originating CPs have taken many months (and, in some cases, years) to datafill new service charge price points — and the existing requirement of GC B1.28 requiring CPs to have 'systems to accommodate up to 100 different price points' has proven to be ineffective in ensuring that prompt datafill work occurs.
- 8.18. Quite simply, as the proposal stands, if originating CPs fail to complete their datafill work (either promptly or at all), ICSS providers would be stuck between rock and a hard place: having no workable FMF numbers to use with their service, but being prevented by regulation from using non-FMF numbers.
- 8.19. That situation would effectively kill almost immediately the ICSS market and thereby deprive those customers who choose to use the speed and convenience of ICSS. This represents a real existential threat to ICSS as a whole. Such an outcome would amount to a clear regulatory failure that Ofcom should make every effort to avoid and prevent. Ofcom does not currently have the required legal powers to prohibit or outlaw a whole category of lawful communications services and its regulatory action must not be allowed to create that effect. Failing to consider the unintended consequences of its regulation brings into question Ofcom's adherence to its s3(3) duties, the proper performance of an impact assessment under s7 CA03, and the demonstration of good regulatory practice.
- 8.20. From the face of the consultation, it does not appear that Ofcom has given any thought as to what would happen if originating CPs fail (either at all, or in a timely way) to complete their datafill work so that the FMF price points work as intended. If that's right, this is a significant oversight, and CCL would urge Ofcom to revisit its proposal and liaise with industry to find a

²⁹ Currently, only one FMF price point exists — SC073 — which has no service charge for the first sixty seconds of the call and is then chargeable at £2.50 per minute, plus the caller's Access Charge.

workable solution that addresses this issue. CCL puts forward one option for this at paragraph 9.2 below.

Relying solely on industry discussions/negotiations for implementing new FMF price points would be uncertain and unsafe

- 8.21. CCL believes it would be a mistake to rely on the very uncertain process of negotiation of new price points without any kind of regulatory backstop or firm regulatory obligation. That low level of uncertainty isn't in the interests of *any* category of stakeholder — as it would mean:
- a. Consumers are deprived of the certainty of ongoing ICSS availability;
 - b. Originating CPs, terminating CPs and ICSS providers have no clarity as to the what the negotiation process will be. There is equally no clarity around the timescales for it and for the associated technical work that follows it to actually create and databuild the new price points on new number ranges, or what happens if negotiations fail to produce a suitable number of new price points;
 - c. It is not made explicitly clear to originating CPs that they need to complete their datafill work in a timely way so that customers trying to call the new FMF price point numbers can do so successfully; and
 - d. Crucially, ICSS providers need choice in price point options and assurances as to the ready availability of FMF numbering that works reliably on the Ofcom implementation date and beyond.
- 8.22. During the time that the unbundled tariff was being developed, concerns were raised by industry about the clarity of obligations around creating and accommodating price points. That led Ofcom to produce a revised version of its guidance on service charge price points in 2014.³⁰ However, that guidance document contains no provisions that would provide any assurance or certainty to ICSS providers that terminating CPs would provide a suitable variety of FMF price points in time for the implementation date, nor that originating CPs would complete their datafill work at the necessary time. This would leave ICSS providers in the invidious position of being unable to trade and customers unable to use ICSS.

Timing for implementation

- 8.23. The proposed four-month implementation period for the FMF requirement is simply far too short — particularly in view of the numerous substantive and procedural concerns identified in this response. Ofcom appears to have looked at the implementation period used for changes following its 2019 DQ review and concluded that this is an equally suitable period of time for implementing the FMF proposal.³¹
- 8.24. CCL would argue that the two things are very different and that a four-month period is unworkably short. The comparison between that and the FMF proposal is not a good one; the 2019 DQ review was to implement a price cap, which is quite different to a process through which terminating and originating CPs agree on and introduce brand new price points. New price points must be created as there are no existing FMF price points which are close to the existing tariffs used by 99% of ICSS. For there to be pricing granularity, we disagree with Ofcom's assessment in footnote 163 of the consultation saying that only two price points will

³⁰ See Ofcom's [revised guidance on Service Charge price points](#) referenced at fn. 28 above.

³¹ See footnote 163 of the consultation.

be required, where Ofcom's logic appears to be that only two price points (of £3.60/min or £6/call) will be needed as these are the ones used by 99% of ICSS. In any event, it is interesting to note that several CPs responded to the 2019 DQ review saying that, in their view, four months was not a sufficient period within which to complete the necessary work.

- 8.25. In summary, agreeing and implementing new service charge price points is a very different matter to implementing the 2019 DQ price cap in terms of time, work and processes involved. The four-month period in the DQ review shouldn't be regarded as an appropriate benchmark and a longer, more feasible implementation period is required.

A thorough impact assessment should have identified these issues

- 8.26. The fact that these issues don't appear to have been considered by Ofcom is worrying. In CCL's view, a more thorough impact assessment ought to have been carried out in accordance with s7 CA03. At paragraph 4.144 of the consultation, Ofcom says it discusses the issue of 'technical feasibility below' but then goes on to perform what appears to be a superficial piece of analysis, not reflective of good industry practice. Ofcom notes that its FMF proposal is 'likely to mean a loss of revenue'³² to ICSS providers and CPs, and then (as we refer to above) speaks in imprecise terms about how the FMF functionality will actually be implemented.
- 8.27. A more detailed impact assessment exercise would have considered the consequences of implementing the FMF requirement, with reference against the counterfactuals of not acting and implementing other options. This exercise ought to have extended to the financial consequences and other forms of impact on all stakeholders involved. CCL has concerns that Ofcom's approach fails to demonstrate compliance with s7 CA03 to perform an appropriate impact assessment. We believe the proposed FMF requirement should be considered unsafe on this basis alone.
- 8.28. As discussed above, the commercial and technical work associated with implementing the FMF requirement is particularly demanding and is dependent on multiple actors coming to agreement and carrying out specific activities in time for the implementation date. Analysis needs to be carried out on the various externalities associated with the FMF proposal, and consideration given to how events might play out if actors involved in the process do not behave as presumed (particularly originating CPs failing to complete datafill work). The consultation sadly fails to do this.

Ofcom ought to have liaised closely with all relevant industry stakeholders to inform its thinking prior to formally consulting

- 8.29. There was another opportunity for Ofcom to have unearthed and understood the various challenges associated with implementing a FMF requirement: it should have liaised extensively with all relevant aspects of industry prior to the consultation. That liaison should have involved a significant cross-section of players involved in the provision of PRS and the routing of ICSS calls: ICSS providers, originating CPs, terminating CPs and intermediary providers. If Ofcom had taken the opportunity to explore these issues in this way, it would have had a much better grasp of the art of the possible and how problems could be overcome and accommodated. This would have informed its thinking at an earlier stage and it would have made for a better and more efficient consultation process. For example, the problems

³² See paragraph 4.153 of the consultation.

around an uncertain negotiation process and timeline for establishing new price points, plus the very real risk of inaction of some originating CPs in respect of datafill work could have been uncovered and understood before a word of the consultation had even been written.

- 8.30. That Ofcom did not carry out this pre-consultation liaison is particularly surprising given that its own consultation principles³³ state that:

Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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.

[...]

If we are not able to follow any of these principles, we will explain why.

- 8.31. Ofcom appears to have done neither of these things.
- 8.32. CCL itself wrote to Ofcom in very early January 2024 seeking clarification as to how Ofcom saw the FMF requirement working and offered a face-to-face meeting or a call to discuss our concerns and explore the relevant issues. Sadly, Ofcom did not pursue our offer of a meeting or a call, and declined to provide any further information at that stage on its proposals and how it intended the FMF proposal to work.

9. An alternative solution

- 9.1. Assuming that Ofcom is able to satisfactorily demonstrate that further regulatory action at this stage is warranted to implement the FMF functionality, CCL believes there is a potential solution available to address many of the technical concerns identified in paragraph 8 above.
- 9.2. As Ofcom's proposal is based on terminating and originating CPs supporting a new category of price points, it does not seem right that ICSS providers and consumers are left at the mercy of an uncertain negotiation process for a variety of FMF price points to be agreed and implemented. Instead, it would be far better if Ofcom put the requirements on a firm regulatory footing by:
- a. Explicitly requiring that terminating and originating CPs support a certain number of FMF price points³⁴ (akin to the requirement in GC B1.28 stipulating that a minimum of 100 price points must be supported). It should be remembered that Ofcom used the 100 different price point requirement in 2013-2014 to address industry concerns about the availability of pricing granularity³⁵; and
 - b. Impose a specific obligation on originating CPs to complete their datafill and other necessary work in a timely way to support the new FMF price points. This would ensure that call routing and charging works as intended, that consumers can call ICSS, and ICSS providers' businesses remain viable. Given the lack of timeliness experienced currently

³³ See the [Ofcom consultation principles](#), dated 16th November 2023.

³⁴ CCL believes that greater industry liaison should occur to help identify a suitable number, but in order to provide sufficient pricing granularity and for per-call and per-minute options to be available, this number should not be less than 10.

³⁵ See paragraph A21.176 of [Ofcom's Simplifying non-geographic numbers – Part B Annexes](#)

with many originating CPs completing their datafill work, CCL believes it would be insufficient to rely on the existing GC B1.24, and a strict regulatory requirement on originating CPs is needed.

- 9.3. This arrangement would create strict regulatory obligations on the originating and terminating CPs and would provide all actors involved with the certainty they need. Such changes would likely require changes to the General Conditions and possibly the NTNP, but Ofcom has these powers under the CA03. Indeed, Ofcom relied on s56(1)(ba) and s58(1)(aa) CA03 when it was implementing the unbundled tariff in 2012-2015.³⁶
- 9.4. If Ofcom chooses not to pursue revising its FMF proposal so it is put on a firm regulatory footing — as suggested in paragraph 9.2 above — an alternative arrangement must be secured to prevent unfairness and harm occurring to both ICSS providers and the consumers that choose to use those services. CCL suggests that this could take the form of a regulatory moratorium to be used for so long as there is not a reasonable number of FMF price points and/or where relevant originating CPs do not complete their datafill work in time. The effect of the moratorium should be that ICSS providers are able to make use of non-FMF price points lawfully until the situation is resolved satisfactorily and the FMF options can be viably used.
- 9.5. A parallel could be drawn between this and the one-touch-switching ('OTS') regime not being in place by the deadline Ofcom imposed.³⁷ Although Ofcom is investigating the issue and is considering using enforcement action against CPs who have collectively failed to ensure OTS is operational by the required time, the fact remains that all industry can do in the meantime is to default to the existing switching arrangements until OTS comes on-line. In much the same way, if viable FMF price points are not available or have not been correctly datafilled, all ICSS providers would be able to do in order to continue to trade would be to use the numbers and non-FMF price points that are available to them. We think it is important that Ofcom recognises that this arrangement would be permissible and compliant if the relevant circumstances came to pass.

10. Concluding remarks

- 10.1. CCL urges Ofcom to take account of the issues raised in this response. If regulatory intervention of a FMF proposal is truly warranted at this stage, CCL submits that Ofcom needs to work more closely with all relevant industry players to identify a solution that addresses the myriad of concerns and problems that exist with the current proposal, and that Ofcom should revise its proposal accordingly.
- 10.2. CCL stands ready to work constructively with Ofcom in whatever way it can to secure a better outcome for all stakeholders than the adverse outcome that almost certainly will arise from the current FMF proposal being implemented in its current form. We would be happy to liaise and participate in one-to-one or industry-wide discussions as appropriate.

³⁶ See paragraphs 6.5 – 6.7 of Ofcom's [Simplifying non-geographic numbers: Policy position on the introduction of the unbundled tariff and changes to 080 and 116 ranges](#), dated 2013.

³⁷ See [Ofcom investigates broadband providers for failing to implement simpler switching](#), dated 3rd April 2023.

Annex 1: comparison of CCL's landing page against those of a DQ provider and other forms of PRS

