



***BT's response to Ofcom's
Consultation Documents***

'Number Translation Services: Options for the future'

and

'Number Translation Services Call Termination Market Review'

7th January 2005

This paper comprises BT's formal response to Ofcom's two consultation documents, published on 22nd October 2004.

BT would welcome any comments on its views as laid out in this document, which will also be available electronically at <http://www.btplc.com/responses>.

Comments should be addressed to Kath Embleton at kath.embleton@bt.com.

TABLE OF CONTENTS

1 EXECUTIVE SUMMARY	4
1.1 OFCOM'S NTS OPTIONS FOR THE FUTURE	4
1.2 BT BELIEVES OFCOM'S MARKET REVIEW ANALYSIS IS DEEPLY FLAWED	7
1.3 OFCOM'S ANALYSIS RELATING TO NCCN 500	8
1.4 OFCOM'S PROPOSED REMEDIES FOR THE PERCEIVED SMP	8
1.5 ADDRESSING THE REGULATORY PROBLEM, NOT THE COMMERCIAL SYMPTOM	9
1.6 SUMMARY	9
2 INTRODUCTION.....	10
2.1 BT'S POLICY VIEW ON NTS	10
2.2 STRUCTURE OF BT'S RESPONSE.....	11
3 EVALUATION OF OFCOM'S POLICY OBJECTIVES.....	12
3.1 OFCOM'S HIGH-LEVEL POLICY OBJECTIVES FROM ITS ANNUAL PLAN	12
3.2 OFCOM'S SPECIFIC OBJECTIVES IN THIS POLICY REVIEW	13
3.3 BT'S VIEWS ON OFCOM'S POLICY OBJECTIVES AND THE EFFECTIVENESS OF OPTION 2.....	14
4 ASSESSMENT OF THE CONSUMER ISSUES SURROUNDING OFCOM'S PROPOSALS17	
4.1 TARIFF PROLIFERATION, UNDER OPTION 2	17
4.2 TRANSPARENCY OF TARIFF CHANGES, UNDER OPTION 2	17
4.3 ROLE OF ICSTIS.....	18
4.4 CALL PRICE PRE-ANNOUNCEMENTS.....	19
4.5 OTHER CONSUMER PROTECTION MEASURES	20
5 UNINTENDED CONSEQUENCES OF NTS REGULATION.....	21
5.1 INTRODUCTION	21
5.2 UNINTENDED CONSEQUENCES	21
5.3 CONCLUSION.....	22
6 BT'S PROPOSED AMENDMENTS TO OFCOM'S OPTION 2 PROPOSALS	23
6.1 THE RATIONALE FOR CHANGE FROM THE CURRENT NTS REGIME TO OPTION2A	23
6.2 OPTION 2A – PROPOSAL DESCRIPTION.....	23
6.3 BENEFITS OF OPTION 2A.....	24
7 IMPLEMENTATION OF POLICY PROPOSALS.....	26
7.1 CHARGES FOR BT'S TRANSIT SERVICES.....	26
7.2 FUTURE OF BT'S RETAIL DISCOUNTS AND NTS	26
7.3 RETAIL PRICE POINTS	26
7.4 THE NETWORK TARIFF GRADIENT (NTG)	27
7.5 BT'S RETAIL MINIMUM CALL FEE (MCF).....	27
7.6 PHASED IMPLEMENTATION APPROACH.....	27
7.7 NON-GEOGRAPHIC NUMBER PORTABILITY	27
7.8 INCREASED TARIFFING GRANULARITY.....	28
7.9 IMPACT ON RETAIL UPLIFT	28
8 OFCOM'S MARKET REVIEW OF NTS CALL TERMINATION.....	29
8.1 MARKET DEFINITION	29
8.2 OFCOM'S MARKET POWER ASSESSMENT.....	30
8.3 OFCOM'S PROPOSED REGULATORY REMEDIES.....	37
9 OFCOM'S INTERPRETATION OF NCCN 500	39
9.1 NCCN 500 APPLIES TO LIMITED NTS TRAFFIC.....	39
9.2 NTS COMMERCIAL ARRANGEMENTS ARE FOCUSED ON CALL ORIGINATION	39
9.3 CONSUMERS ARE PAYING FOR THE NTS SERVICE	39
9.4 FOLLOWING NCCN 500, OCPs CONTINUE TO MAKE ADEQUATE RETURNS	40
9.5 CONCLUSIONS.....	40

10	ANNEX A – SPECIFIC ANSWERS TO OFCOM’S FRAMEWORK REVIEW QUESTIONS	41
11	ANNEX B – RAPID IMPACT ANALYSIS ON NTS TARIFFING CALL ANNOUNCEMENTS	48
	NTS REVIEW – PRE-CALL ANNOUNCEMENTS FOR VOICE CALLS	ERROR! BOOKMARK NOT DEFINED.
	SECTION 1	ERROR! BOOKMARK NOT DEFINED.
	CALL ANNOUNCEMENT FOR NTS VOICE CALLS	ERROR! BOOKMARK NOT DEFINED.
1	EXECUTIVE SUMMARY	ERROR! BOOKMARK NOT DEFINED.
1.1	REQUIREMENTS.....	ERROR! BOOKMARK NOT DEFINED.
1.2	RECOMMENDATION TO PIF	ERROR! BOOKMARK NOT DEFINED.
1.3	MAJOR ISSUES AND RISKS	ERROR! BOOKMARK NOT DEFINED.
1.4	KEY ASSUMPTIONS/RISKS.....	ERROR! BOOKMARK NOT DEFINED.
1.5	DEVELOPMENT AND IMPLEMENTATION RECOVERY.....	ERROR! BOOKMARK NOT DEFINED.
2	ANALYSIS OF IMPLEMENTING NTS PRE CALL ANNOUNCEMENT	ERROR! BOOKMARK NOT DEFINED.
2.1	ORIGINATING NETWORK OPERATOR IMPLEMENTATION	ERROR! BOOKMARK NOT DEFINED.
2.2	REJECTED OPTION - TERMINATING NETWORK OPERATOR (TNO)	ERROR! BOOKMARK NOT DEFINED.
2.3	CONSUMER IMPACT	ERROR! BOOKMARK NOT DEFINED.
2.4	CALL TARIFF PROLIFERATION.....	ERROR! BOOKMARK NOT DEFINED.
3	CONCLUSION	ERROR! BOOKMARK NOT DEFINED.
	SECTION 2	ERROR! BOOKMARK NOT DEFINED.
	PRE-ANNOUNCEMENT FOR DATA CALLS	ERROR! BOOKMARK NOT DEFINED.
	ASSESSMENT OF ABILITY TO PROVIDE	ERROR! BOOKMARK NOT DEFINED.
1	BTYAHOO! PAYG	ERROR! BOOKMARK NOT DEFINED.
1.1	DIALLER TECHNOLOGY	ERROR! BOOKMARK NOT DEFINED.
1.2	ACTIVE REDIRECT PAGE	ERROR! BOOKMARK NOT DEFINED.
1.3	COSTS.....	ERROR! BOOKMARK NOT DEFINED.
2	BT CLICK.COM & BT CLICK 3RD PARTIES	ERROR! BOOKMARK NOT DEFINED.
2.1	BT PROVISION	ERROR! BOOKMARK NOT DEFINED.
2.2	ISP PROVISION	ERROR! BOOKMARK NOT DEFINED.
3	CONCLUSION	ERROR! BOOKMARK NOT DEFINED.
12	ANNEX C – SPECIFIC RESPONSES TO OFCOM’S MARKET REVIEW QUESTIONS ..	49
15	ANNEX F – BT’S COMMENTS ON OFCOM’S POLICY OBJECTIVES	51

1 EXECUTIVE SUMMARY

1.1 Ofcom's NTS Options for the Future

BT is strongly supportive of the continuation of a market for NTS and would not wish to see regulation impact in other than a positive manner. This market has both shown high growth and demonstrated the flexibility and innovation that competition brings.

1.1.1 Ofcom's Draft Proposals

The excessive weight placed on ensuring that TCPs are insulated from commercial uncertainty shifts that uncertainty to OCPs and leaves consumers exposed in two key respects:

- **Tariff proliferation**

Although not an issue in itself, a dramatic increase in the range of retail prices for 0845/0870 calls from BT's network, without an associated number change, will leave consumers uncertain as to the applicable prices and unaware that a change has taken place; and

- **Transparency of tariff changes**

Under Option 2, as proposed, all TCPs will be in a position to increase tariffs for existing 0845 and 0870 services without explicitly informing customers. Only through the number changes that have characterised the implementation of 118, 0844 and 0871 services, might consumers receive a signal that a significant change has taken place.

Together, BT expects these consumer issues to have two commercial effects on BT:

- Customer complaints will rise and will be received only by BT. This will likely increase costs in BT's customer contact centres; and
- BT's very valuable brand will be damaged and regulatory intervention would be misdirected if it were to enable competitors to devalue that brand through accidental or deliberate actions.

1.1.2 Ofcom's Increasing Regulatory Intervention is Out of Synch with Strategic Policy

Ofcom has proposed increasingly intrusive NTS regulation, with no identified increase in market failure, at a time when Ofcom is also proposing a timetable for almost complete withdrawal from voice regulation. Even if Ofcom believes that further regulatory intervention is required at this time, there is a clear requirement for a road map to withdrawal. BT does not believe that Ofcom's current proposals support such a road map.

In particular, the requirement that TCPs fix the retail price for BT's retail customers would in normal circumstances be likely to attract regulatory scrutiny. Not only should Ofcom consider very carefully whether it is appropriate to proceed in this way, but this also makes regulatory withdrawal more traumatic than needs to be the case.

1.1.3 BT's Proposed Amendments to Ofcom's Option 2 – Option 2a

Individual consumers and consumer groups have already raised a number of concerns with Ofcom's proposals, many of which are addressed in the consultation document. In reviewing Ofcom's proposals, BT has had the advantage of seeing this early consumer feedback and has taken this into account.

In order to take forward Ofcom's broad policy objectives, whilst addressing the consumer concerns that have been highlighted, proposes the following balanced amendments to Ofcom's

Option 2. BT refers to this as Option 2a. These amendments also include proposals aimed both at minimising implementation difficulties (and, hence, implementation timescales) and at avoiding a continuation of the dispute-driven commercial environment that has dogged the NTS framework since its inception:

Amendment to Proposed Option 2	Benefit
Maintain current NTS arrangements for 080 (free-to-caller) and 09 (premium rate) services	No further intervention in a well-functioning commercial arrangement and flourishing market
Remove, over an agreed transition period, NTS arrangements from 0845 and 0870 (commercial arrangements for these charges to parallel geographic services)	Removes any incentive for protracted call holding times and enables full geographic discounts to be applied
Allow existing 0845/0870 services to migrate to 0844/0871 (if necessary, allocate new 08 numbering capacity to maintain memorable numbers through this transition). 0844/0871 services retain current NTS interconnection arrangements	Allows micropayment-based services to continue and leaves 0845/0870 for services that don't require micropayments (e.g. call centres), enabling a new choice for service providers; Consumers get clear signal, through number change, that service is based on revenue share; Removes TCP revenue uncertainty and associated disputes
Require OCPs to match 0845/0870 retail pricing to geographic local/national pricing, rather than suggesting 4p/8p guideline ceilings (variation from this pricing would remain possible, but would trigger a requirement for call announcements, as is the case for 080 calls from mobiles). This restores the linkage between geographic and non-geographic pricing, including discounts	Simple and clear message to consumers, both for OCPs and for NTS service providers; ensures ongoing downward competitive pressure on retail prices, through full retail market competition; Addresses consumer demands for geographic number to be published alongside 0845/0870 number

1.1.4 Additional Implementation Requirements

Whether Option 2, or Option 2a is implemented, BT suggests adding the following qualifications:

Option 2 Implementation	Benefit
Tariffing granularity at 10k number level	Ease and speed of implementation (less than 3 months)
No application of BT's retail discounts to 0845/0870 price points	Removal of revenue uncertainty and avoidance of regulatory disputes
No OCP or TCP pre-call announcements	No viable technical solution for TCP announcements and unrealistic cost/timeframe for OCP announcements (plus not possible to include post-billed discounts in any OCP solution)

These additional requirements will both ensure that the policy achieves its objectives and, crucially, reduce implementation timescales to a minimal level.

1.1.5 Consumer Protection Measures

Ofcom has proposed a number of consumer protection measures, as part of its consultation. BT is broadly supportive of this package of initiatives and intends to work closely with the relevant regulatory, consumer and industry bodies to refine the proposals for implementation.

As noted above, BT does not believe that the Call Announcement and Pop-Up Box proposals are practically implementable. In reality, all TCPs and service providers would need access to the retail pricing of all OCPs (and this is frequently not publicly available information), while all OCPs would need to be able to access post-billed discounts in advance, as many of the available discounts cannot be taken into account until after the call has taken place.

1.1.6 Implementation

- **Charges for BT's transit services**

Commercially, BT is neutral as to who should pay for transit services. BT's charges do not vary, based on the party paying the invoice. However, given that BT can see no competition policy reason for changing current regulatory policy and that any changes would require billing system changes, BT suggests leaving all NTS transit charging as it currently stands.

- **Future of Retail Discounts**

BT notes Ofcom's objectives to improve pricing transparency, to reduce financial uncertainties for TCPs and to limit the regulatory disputes that arise. As such, BT believes that for Option 2 to achieve Ofcom's objectives, it should not require the application of any retail discounts when calculating payments to TCPs. Should TCPs wish to achieve a particular price point, they would be free to request it explicitly, rather than the strange process of requesting a higher price and requesting that it is then discounted.

- **Network Tariff Gradient (NTG)**

BT is unaware of any particular issues with the NTG. The NTG is not related directly to NTS, but affects the pricing of the conveyance components used for call origination.

- **New Retail Price Points**

BT concurs with Ofcom's view that, if Option 2 is selected without amendment, there is no practical means for BT to refuse any valid retail price point.

- **Taking Account of Minimum Call Fees**

BT suggests sticking with the current short/long call mechanism, which has the advantage of requiring no additional implementation for 0845 and 0870. BT has already agreed an 0844/0871 short/long mechanism, in principle, in the NTS Focus Group.

- **Phased Approach**

If Ofcom agrees that BT's proposed Option 2a amendments are appropriate, a suitable transitional period could be agreed through the NTS Focus Group.

1.1.7 Ofcom's Other Policy Options

BT generally agrees with Ofcom's decision not to pursue its other policy options:

- **Option 1** has been distinctly problematic, requiring endless additional regulatory intervention to manage the inherent flaws in the current regulatory framework. Moving away from the current framework will remove the regulatory constraints that have led to Ofcom's NTS Call Termination market review;
- **Option 3** is the most effective alternative to Option 2 (or Option 2a). This represents a deregulatory step, which would be consistent with Ofcom's broader strategic intent. While not a complete removal of regulation, Option 3 does set the groundwork for the proposed

withdrawal from retail regulatory intervention. Without such groundwork, Ofcom will struggle to deal, in terms of future regulatory withdrawal, with an industry that is entirely dependent on intervention;

- **Options 4 and 5** go too far in removing the benefits of NTS and are a poor fit with Ofcom's policy objectives; and
- **NTS Futures** – BT is disappointed that Ofcom appears to have misinterpreted the NTS Futures proposal. The NTS Focus Group did not suggest that retail pricing would be negotiated bilaterally. BT does not undertake retail pricing negotiations with its competitors. Rather, the NTS Futures proposals included bilateral negotiation of OCP-to-TCP payments. Should Ofcom ever remove the NTS Call Origination Condition from BT, this is *precisely* the negotiation that will be required – in the absence of regulatory intervention, the industry will need to get used to conducting commercial negotiations.

1.2 **BT Believes Ofcom's Market Review Analysis is Deeply Flawed**

BT does not fundamentally disagree with Ofcom's view on market definition, although Ofcom's analysis of where market anomalies have arisen suggests that there may be two sub-markets:

- NTS calls that originate on non-BT OCPs and terminate on BT as a TCP; and
- All other NTS calls.

However, BT disagrees strongly with Ofcom's conclusions in relation to Significant Market Power (SMP). Ofcom does not appear to have conducted an adequate forward-looking market analysis, based on tangible and available market data, as is required under the European Commission's *SMP Guidelines*.

BT believes that Ofcom's competition law analysis is flawed in two principal respects:

- Ofcom's analysis places too little emphasis on actual and current market data, which strongly supports the conclusion that the market is highly competitive. BT has a market share of only [X]% and barriers to market entry are as low as is possible in telecommunications. BT's price changes, via NCCN 500 in May 2004, have had no identifiable impact on competition and caused no identifiable harm to consumers. NCCN 500 affects only [X]% of NTS traffic. BT's market share has not risen, competing OCPs are not earning less than the returns of an efficient operator and, in parallel, BT's loss of retail customers to CPS-based retailers has not subsided; and
- Ofcom's conclusions are based almost entirely on its assumptions as to the competitive reaction of OCPs, in response to BT taking certain commercial actions and what this says about constraints on BT's pricing, as a TCP. In addition, Ofcom has ignored its own proposals for changes to BT's NTS Call Origination Condition, published on the same day as Ofcom's Market Review. These proposals would remove the very regulatory constraints that have been the cause of the issues Ofcom has highlighted. Ofcom is required, by the European Commission's *SMP Guidelines*, to conduct a forward-looking review of the market, which would necessarily include the effects of Ofcom's own proposals.

1.2.1 **BT Does Face Pricing Constraints**

Contrary to Ofcom's view, for which no tangible supporting evidence has been offered, BT believes that it does face considerable pricing constraints and that there is substantial evidence available to support this view. Under the four competitive responses Ofcom has suggested might constrain BT's pricing as an NTS TCP, only one (other TCPs' ability to retaliate by raising their own charges to BT's OCP activities) can credibly be said not to constrain BT's commercial decisions adequately.

However, this scenario, as Ofcom agrees, is entirely a function of the current regulatory framework and is not related to market power on BT's (or any other TCP's) part. As this is the only issue raised by Ofcom as having a significant impact on the market, the appropriate response is for Ofcom to amend or remove BT's NTS Call Origination Condition. This scenario affects a mere [X]% of NTS traffic (the non-BT originated traffic, to 0845 and 0870 numbers, for which BT is the TCP).

Even in the absence of such changes to the existing regulatory framework, the other constraints on BT's pricing are clear indicators of a lack of market power.

1.2.2 BT Cannot Have SMP in the Relevant Market

Given BT's low market share, the lack of significant barriers to market entry, the clear evidence of pricing constraints and the lack of any evidence either of market failure, or of consumer harm, BT does not believe that any TCP can be shown to have SMP in NTS call termination.

Where market participants find themselves constrained in their commercial negotiations, this is entirely the result of existing regulation. Regulatory constraints are not the result of SMP, however, and can only be addressed through changes to the regulatory framework itself. Ofcom has recognised this and made proposals that would remove this regulatory anomaly. In these circumstances, BT suggests that a finding of SMP cannot be justified and would be counter-productive.

1.3 Ofcom's Analysis Relating to NCCN 500

As BT has set out to Ofcom in the past, there is a fundamental misunderstanding of the nature and impact of the price rises implemented through NCCN 500.

NCCN 500 has brought OCPs' call origination charges closer into alignment with those charged by BT, when it is an OCP. This is entirely the outcome that Oftel and Ofcom have sought through their policy on NTS call origination and their application of regulation as a proxy for competitive outcomes, in the presence of SMP.

In keeping with Ofcom's policy of ensuring that TCPs and service providers (not OCPs) enjoy the commercial benefits of the NTS services they bring to market, BT has rebalanced the financial division of retail revenues for non-BT originated NTS. Other OCPs still generally levy a much higher NTS call origination charges than does BT, however BT and its service providers are (post NCCN 500) better able to benefit from the added value that their NTS products create.

Even after NCCN 500, all OCPs are able to earn at least the returns that BT does for similar traffic, without any need for retail price increases, or any consequent drop in traffic volumes for any party.

1.4 Ofcom's Proposed Remedies for the Perceived SMP

Irrespective of BT's view that no player in this market has SMP, Ofcom's proposed remedies are disproportionate even to its own SMP conclusions.

At no point has BT, or any other operator to BT's knowledge, shown any desire or intent to refuse termination of NTS calls. Such a course of action would be commercially foolish for any TCP. Ofcom's proposal of a Network Access obligation is, therefore, a remedy to a problem that does not exist. This is both disproportionate and contrary to Ofcom's stated policy intention of regulating to the least extent necessary. Ofcom's proposal that such an obligation be applied only to BT places BT at a profound disadvantage in any commercial negotiations, making this remedy unreasonably discriminatory and harmful to the market.

Ofcom has also proposed a non-discrimination obligation that would apply only to BT. The effect of BT being unable to charge differing sums from different OCPs would be that OCPs other than

BT would, through regulatory mandate, earn a substantially higher return than BT on NTS calls. This would distort the retail calls market and represents a discriminatory application of regulation.

1.5 Addressing the Regulatory Problem, Not the Commercial Symptom

The commercial constraints faced by OCPs and TCPs are entirely a function of existing regulatory controls, as Ofcom has repeatedly identified throughout its market review consultation. Ofcom has also recognised this in its parallel NTS Framework Review consultation. Ofcom has justified its proposed further regulatory intervention on the actual competitive constraints caused by existing regulation.

In other words, Ofcom has proposed additional regulation on BT, in order to deal with the failings of its existing regulatory framework. Rather than introduce further regulation to deal with a flawed regulatory framework, it is more appropriate either to change the existing framework, or to remove it altogether.

Ofcom has proposed changes to BT's NTS Call Origination Condition that would directly and explicitly address the same issues it is proposing to address through its SMP remedies. BT supports this approach, as it will address Ofcom's concerns, without introducing further and unnecessary regulation.

1.6 Summary

BT is broadly supportive of Ofcom's direction in its Policy Review consultation. However, BT is mindful of the consumer issues that arise with Option 2 and has proposed certain amendments (Option 2a) that would address these issues more effectively. Whatever implementation Option is selected, BT has proposed a handful of requirements that would ensure minimal implementation timescales.

BT is also concerned that increasing regulatory intervention on NTS runs counter to Ofcom's strategic direction. In particular, extending competitors' ability to set BT's retail prices will likely make subsequent regulatory withdrawal more difficult.

BT strongly disagrees with Ofcom's finding that it has SMP in NTS call termination. Any constraints on TCPs' commercial freedoms are entirely the result of current regulation, rather than market dominance on the part of BT. Ofcom has proposed changes to the BT NTS Call Origination Condition that would remove even this constraint. BT suggests that Ofcom correct the flaws in current regulation, rather than undertaking substantial additional regulatory intervention, to counter-balance the effect of those flaws.

2 INTRODUCTION

Ofcom's two consultations, published in October 2004, are timely reviews of a commercially important area of the telecommunications market. With Number Translation Services (NTS) traffic representing around half of all PSTN minutes, it is vital that the regulatory framework does not inadvertently discourage both innovation and growth of these services. Equally, as internet access progresses from narrowband to broadband access mechanisms, regulation should not interfere with incentives both for consumers and for the many companies investing now for a broadband future.

Ofcom's document '*Number Translation Services: Options for the Future*' (referred to in BT's response as 'the Policy Review consultation') attempts to draw a balance between a number of conflicting commercial, competitive and policy drivers. The document '*NTS Call Termination Market Review*' (referred to in BT's response as 'the Market Review') reviews current commercial activities and proposes further regulatory intervention in order to overcome failings with the current regulatory framework.

In parallel with the NTS consultations, Ofcom is undertaking its Strategic Review of Telecommunications (the Strategic Review). Ofcom's proposals in the Strategic Review explicitly recognise the distorting impact that regulation can have. Ofcom has stated its intention to focus regulation on access to the lowest levels of infrastructure, based on what cannot reasonably be bypassed or replicated.

Ofcom has also stated its policy aims as including withdrawal from regulation of downstream services and intervening in markets only where absolutely necessary. This has included a possible roadmap to withdrawal from regulation of all retail and most wholesale voice markets.

It is against this strategic policy backdrop that BT has reviewed Ofcom's proposals.

2.1 BT's Policy View on NTS

BT is strongly supportive of an NTS commercial environment that fosters innovation and supports further growth of narrowband services. Undoubtedly, Oftel's past intervention has aided the development of this market to become vibrant and competitive. However, the inherent tensions within the regulatory framework have become more pronounced under the weight of cash that now flows through NTS.

Since 1996, the industry has been dogged by an unending series of disputes and complaints relating to NTS. Oftel, and now Ofcom, was forced to devote disproportionate resource to dealing with these issues, while active competition and investment were likely constrained to some degree by the ongoing regulatory uncertainty.

More recently, NTS disputes have arisen not because of commercial disagreement between the parties involved, but rather as a result of the mechanistic manner in which Ofcom's regulatory framework operates. In particular, where retail voice markets have faced increasing competitive pressures, regulation has forced these pressures to intrude on NTS interconnection arrangements, which has created unnecessary interconnection disputes that are welcomed by nobody.

Moving on from this regulatory and commercial uncertainty is a key objective for BT. However, BT also hopes to see either a reduction in regulatory intervention in these downstream markets, or at least regulatory changes that will allow Ofcom's anticipated withdrawal in the future.

Throughout the pre-consultation period, BT has made a number of points clear to Ofcom and to industry colleagues:

- When NTS traffic forms more than half of BT's PSTN minutes, harming this commercial environment is not an option credibly available to BT;

- BT's share of OCP minutes continues to decline rapidly and its share of TCP minutes has only recently stabilised at [X]%, after a decade-long decline; and
- BT explicitly values NTS as a means by which to sell services to the ever-increasing number of consumers who are not BT's retail voice customers (4.4 million CPS customers, 4.7 million cable customers, 50.7 million mobile customers and 1.2 million other network customers)¹.

In this context, commercial resolution is highly likely between interconnected operators and regulation likely to be unnecessary. Indeed, high-level commercial agreement was reached between BT and members of the NTS Focus Group and was undermined only when Ofcom made clear that it intended to continue with regulation as a preferable alternative to the draft commercial agreement².

It is important that Ofcom's final decisions do not continue an environment in which business plans are permanently reliant on a regulatory structure, as the result will be a continued need for further intervention, in order to prop up what is already a detailed regulatory framework. After almost ten years, the NTS market is characterised by relatively fragmented market shares, low entry barriers and widespread product use. Traffic volumes have peaked and are now declining. Margins are low and customers shop around widely for the best price/quality/functionality packages.

Most importantly, the fragmented market shares mean that network interconnection is vital to all parties. Not even BT is in a position to act independently of its industry colleagues (which are simultaneously suppliers, customers and competitors). It would be reasonable at this stage to expect the market to be able to operate with less, rather than more, regulatory involvement.

2.2 Structure of BT's Response

This document provides comments on both of Ofcom's current NTS consultations. BT does not believe that these can be viewed separately. Certainly, the European Commission's SMP Guidelines (the SMP Guidelines) are explicit in requiring that Ofcom's market reviews take account of expected changes in the market and Ofcom's Policy Review proposals undoubtedly represent changes in the market.

BT's response begins by addressing the Policy Review consultation, followed by comments relating to the Market Review. The bulk of supporting evidence, data and analysis is contained in Annexes. Specific responses to Ofcom's consultation questions are collated in Annex A (Policy Review questions) and Annex C (Market Review questions).

¹ Source: Ofcom's 'Fixed Telecoms Market Update (May 2004)', Oftel's 'Market Information: Mobile Update (December 2003)' and BT's CPS KPIs to November 2004

² See later comments relating to Ofcom's views on the NTS Futures proposal

3 EVALUATION OF OFCOM'S POLICY OBJECTIVES

The NTS regime has, to date, been extremely successful in encouraging a wide range of services to be made available by a broad selection of service providers and communications providers. However, most parties would recognise that the current regulatory framework has suffered strains as the NTS market has grown explosively, then settled into a more mature and competitive state. The policy objectives and, crucially, how Ofcom's preferred option measures up against them, are crucial in developing a sound and sustainable regime for the future.

This section provides feedback on Ofcom's nine policy objectives and how well Ofcom's proposals align with those objectives. These comments are provided against the backdrop of the proposals in Ofcom's Strategic Review and Ofcom's key objectives, as set out in its Annual Plan. This backdrop is further underpinned by the requirements of the Communications Act 2003 and the relevant European Directives.

In this context, BT believes that any ongoing regulation of NTS should be tightly focused on areas where there is clear evidence of market failure and where the case for intervention is sufficiently strong. The risks of regulatory failure and unintended consequences arising from that regulation are powerful reasons for intervening only where absolutely unavoidable.

Ofcom, in its Market Review, has highlighted an issue that has resulted from the current regulation. It has felt this is such a significant issue that it has proposed using its powers to find SMP in the NTS termination market, in order to address the issue. Later in this response, BT will set out its views on why *more* regulatory intervention is not an appropriate solution for failings of existing regulation.

BT feels strongly that it is impossible to see the full consequences of regulatory intervention and that regulation has a tendency to breed more regulation and to push the market to become addicted to, and reliant upon, ever-more intervention. BT is not confident that Ofcom's policy statements sit well with its proposals for continued and increased intervention in the NTS market, which is both highly competitive and awash with innovation.

3.1 Ofcom's High-Level Policy Objectives from its Annual Plan

In its Annual Plan, Ofcom has articulated the following to be key amongst its aims and objectives:

- "Ofcom exists to further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition" (Ofcom's mission);
- "We are determined that Ofcom's overall approach will be that of a light touch regulator"; and
- "Ofcom aims to take a strategic and evidence-based approach to regulation."

BT is concerned that these aims have not sufficiently driven Ofcom's policy objectives and its particular its policy preference in this NTS consultation.

3.1.1 Furthering the Interests of Citizen-Consumers

As Ofcom has recognised, the proposals under Option 2 clearly raise a number of consumer issues. Ofcom's consumer protection issues go some way to address these issues, but BT feels that some modification to the Option 2 proposals would be more effective in ensuring consumers are not harmed as a result of regulation. BT has proposed some amendments later in this document.

3.1.2 Light-Touch Regulation

Almost ten years after Oftel intervened in the NTS market and just one year after Oftel declared that market to be highly competitive, Ofcom has proposed *increased* regulatory intervention. This is true both of the Policy Review and the Market Review proposals.

Ofcom notes, in the Market Review, that regulation has in fact constrained certain commercial options for communications providers, although has proposed still more regulation as its response.

Ofcom has also proposed extending the ability for competitors to set BT's retail prices for these types of calls, via regulatory means. In the absence of a mandatory legal requirement, such a situation would undoubtedly be subject to scrutiny to assess whether there was an appreciable impact on competition. This leads BT to two conclusions:

- that Ofcom should consider whether the alleged benefits to citizen consumers truly justify the imposition of regulation in this way; and
- this reduces Ofcom's ability to withdraw regulation in future if these commercial arrangements are to continue.

BT does not, therefore, believe that Ofcom's proposals are consistent with light-touch regulation today, or that they offer the means by which regulatory touch would lighten in the future.

3.1.3 Strategic and Evidence-Based Approach

BT is concerned that this objective is poorly achieved through Ofcom's two consultations.

In the context of the Policy Review, Ofcom has offered no roadmap from this increased regulatory intervention to the regulatory withdrawal proposed in its Strategic Review. As noted above, BT is concerned that the Option 2 proposals will leave Ofcom facing continued reliance on regulation to support business plans, which will only increase the difficulty of withdrawing from regulation in the future.

Later in this response, BT will discuss the substantial increase in regulatory intervention proposed in the Market Review. In particular, BT is alarmed that the Market Review has identified no evidence of market failure, or consumer harm and offered no tangible evidence to support its conclusions.

3.2 Ofcom's Specific Objectives in this Policy Review

The table below sets out Ofcom's policy objectives in its Policy review.

Medium & Long Term Objectives	Transitional Objectives
<ul style="list-style-type: none"> • Promoting consumer interests • Promoting competition • Promoting access and interconnection • Implementing Ofcom's regulatory principles 	<ul style="list-style-type: none"> • Minimising consumer disruption • Minimising costs of number migration • Minimising required expenditure on billing and interconnect systems • Minimising negative revenue impact on TCPs and NTS Service Providers • Making it as easy as possible to communicate the changes to stakeholders

Ofcom's Policy Review document appears to place the greatest emphasis on the Transitional Objectives. Yet Ofcom makes no real effort to explore the length of the transition, or the means by which movement to the longer-term objectives would be achieved. BT is concerned that this

approach is not consistent with undertaking a complete bottom-up review of NTS regulatory policy and, in particular, that there is no obvious way to move past the transition and into the regulatory world that Ofcom is defining in its Strategic Review. The transitional Objectives are particularly indicative of an absence of regulatory easing.

3.3 BT's Views on Ofcom's Policy Objectives and The Effectiveness of Option 2

Annex F contains BT's specific thoughts on each of Ofcom's policy objectives. It also sets out BT's views on how well Ofcom's policy proposals, under Option 2, meet these objectives.

Overall, BT believes that Ofcom's Option 2 scores poorly against its criteria, in particular against the criterion to promote consumer interests and against its regulatory principles.

3.3.1 Ofcom Appears to Have Over-Weighted its 'TCP Aid' Criteria

It appears to BT that Ofcom has weighted its decisions excessively towards maintaining or increasing revenue for TCPs and Service Providers. It is not clear why there is a valid role for a communications regulator in deciding which segments of the industry deserve revenue certainty and which should receive active support, particularly when the NTS market has already reached a relatively mature state.

For example, Ofcom's fourth Transitional Objective is to "*Minimise the negative revenue impact on TCPs and NTS Service Providers.*" BT does not understand why Ofcom has the relative protection of TCPs and NTS Service Providers' revenue position as an objective (e.g. what market failure is being addressed through this regulatory intervention?), or why some form of protection is needed relative to Originating Communication Providers (OCPs)³, which face complex and aggressive retail market competition and are the key players in Ofcom's future vision, through its Strategic Review.

Ofcom's proposals will force all OCPs to face *cost* uncertainty, at a time when they are assessing the investments necessary to compete in the world envisaged in Ofcom's Strategic Review. If Ofcom truly believes that it is these investments that will drive sustainable competition, then it is odd to pursue a policy direction for half of PSTN traffic that undermines this strategic objective.

BT is concerned that Ofcom's overriding policy objectives have been:

- To increase revenue certainty for TCPs; and
- To minimise disruption from any change to the NTS regime for TCPs and to the Service Provider industry, regardless of whether this change might better meet Ofcom's overall mission.

BT does not consider that Ofcom has presented a case or evidence to show how increasing revenue certainty for TCPs would either promote increased competition amongst TCPs, or promote the interests of citizen-consumers. These are the key tests towards which Ofcom's proposals should be weighted. In BT's view, Ofcom's approach appears designed to lead to a particular distribution of income (i.e. increasing income for TCPs and Service Providers), rather than being driven by Ofcom's Communications Act duties or its mission.

BT suggests that Ofcom's starting point for assessing NTS regulatory decisions must be identification of a market failure, assessment of the minimum necessary intervention and then assessment of whether that intervention is fit for purpose. BT cannot see this train of thought clearly in Ofcom's proposals.

³ BT has made this point to Ofcom in its pre-consultation period

3.3.2 *Option 2 Raises Significant Consumer Concerns*

The inevitable proliferation of tariffs would increase consumer confusion beyond even the levels currently faced. Whilst this may not be a substantial consumer problem in itself, given the low tariff understanding currently, it becomes an issue when seen in the light of the full Option 2 proposal.

Option 2 would enable TCPs to raise prices for existing 0845 and 0870 services, without the transparency that a number change would offer. This exacerbates the lack of transparency that a greater number of price points will bring and is highly likely to leave both consumers and service providers surprised by higher retail pricing than they had expected.

BT will be unable to manage this tariff proliferation for its own retail customer base, yet BT will face the consumer discontent. BT's proposed amendments to Option 2, set out later in this response, would minimise the extent of this issue, while maintaining the broad flexibility proposed by Ofcom.

3.3.3 *Option 2 Promotes Continuation of Regulation, Not Competition*

Option 2, as it stands, is an expansion of regulatory intervention. The only apparent market failure that Ofcom has identified, as justification for this, is that TCPs are unduly impacted by BT's retail pricing decisions (i.e. TCPs face revenue uncertainty).

However, this is a function of the existing regulatory controls and not a failure of the market, or the result of deliberate action by BT. BT does not believe that this situation supports Ofcom's increased regulatory intervention and particularly not in a discriminatory manner, on BT alone.

In its Strategic Review, Ofcom has been exploring the means by which regulation can be withdrawn from markets. It has based its proposals on ensuring adequate regulation of the lowest infrastructure layers possible, letting facilities-based competition address downstream markets. However, its NTS proposals run counter to this approach.

As noted earlier, in the absence of a legal requirement, BT believes that Option 2 would attract regulatory scrutiny, as it involves a competitor setting BT's retail price for these types of calls. In any other circumstances such price fixing is likely to be investigated to assess whether such activity harmed competition. BT therefore finds it odd that Ofcom is advocating these measures as a way of increasing competition in the NTS market. Almost certainly, were Ofcom to withdraw from regulating NTS at some future point, this aspect of commercial arrangements would have to change immediately.

Notably, Ofcom's proposals apply almost entirely to BT alone. BT expects this to have two negative consequences:

- BT market share of OCP NTS traffic is falling as the cable industry and, in particular, CPS-based service providers expand their retail customer bases. So, the TCP revenue uncertainty associated with non-BT OCP traffic is already significant and will increase steadily and Ofcom's proposals will not address this; and
- Providing BT's competitors with the ability to set its prices also offers them the opportunity for gaming in the retail market. Ofcom, in its Market Review, suggests that the ability to affect another communications provider's retail pricing would distort the retail market. Although BT does not agree with Ofcom's view that the market would be distorted substantially, Ofcom displays a lack of consistency in these two policy conclusions.

3.3.4 *Revenue Certainty Does Not Promote Competition*

BT is not clear as to how 'revenue certainty' can be described as promoting competition. Competition brings uncertainty not only in revenues, but also in the very ability to survive as a going concern. Not even monopoly, or regulatory protection from competition, brings certainty over revenues.

BT would agree that a relevant regulatory aim should be that one communications provider's revenue should not be tied to the unrelated pricing decisions of a competitor and that *this* type of uncertainty should be removed. Of course, this uncertainty is an explicit requirement of the current regulatory framework, rather than part of a commercial decision taken by BT.

There appear to be four areas that currently drive revenue uncertainty for TCPs:

- Regulated transit charges for NTS traffic;
- Regulated call origination charges for NTS traffic from BT's retail customers;
- Regulated Retail Uplift charges for NTS traffic from BT's retail customers;
- Application of BT's retail discounts when calculating BT's payments to TCPs.

BT struggles to believe that the first three of these represent substantial uncertainty for TCPs. The transit and call origination charges are subject to an existing price control that provides very accurate degrees of certainty over a four-year timeframe. Ofcom has also proposed a price control for the Retail Uplift that will provide similar levels of certainty.

The regulated transit and call origination charges have been in use for many years, beyond NTS. A key basis of the current price controls, to which these services are subject, is to bring *certainty* over communications providers' costs. BT cannot understand how this then translates to *uncertainty* when the same prices are used in NTS calculations.

The last item (application of retail discounts) is forced by regulatory requirements and would be unlikely to appear in a commercially negotiated outcome. Discounts and customers' take-up of discount packages are clearly very dynamic, in response to a rapidly-changing retail market and BT agrees that this brings uncertainty to TCPs.

BT is supportive of removing the regulatory linkage between what it pays TCPs and the retail discounting offers it makes to customers. This would remove one of the more bizarre areas of regulatory dispute and would remove an unnecessary linkage between disparate markets.

3.3.5 *SPs Will Remain Unable to Select Retail Prices at Will*

There is a trade-off between implementation practicality, consumer pricing transparency and the ability of service providers to select retail pricing, which has numbering granularity at its centre. Anything other than single-number retail pricing discrimination will mean that service providers are subject to the pricing decisions of their TCPs, for the entire number block in question. BT does not believe that this is a substantial commercial issue, but it does reflect a likely constraint to pricing flexibility that has not been explored explicitly.

4 ASSESSMENT OF THE CONSUMER ISSUES SURROUNDING OFCOM'S PROPOSALS

As noted above, BT has concerns in relation to the impact of Ofcom's proposals on consumers and the knock-on impact on BT's brand value and customer service costs. Some of these concerns would be addressed by BT's proposed amendments to Ofcom's Option 2.

4.1 Tariff Proliferation, Under Option 2

Given the consumer concerns Ofcom lists in Chapter 3 of its Policy Review consultation, BT feels that Option 2, as currently defined, has some drawbacks.

Ofcom has proposed increasing the number of possible retail price points for each of 0845 and 0870 by up to one thousand times the current number (assuming 10k number block granularity). BT expects dozens and possibly hundreds of these price points to be populated, dramatically reducing tariff transparency for consumers.

Given the dramatic increase in tariff granularity, it will no longer be immediately apparent what the cost of calling a particular 0845/0870 number is, or that calls to different 0845/0870 numbers will be charged at significantly different rates.

BT is surprised that Ofcom is not proposing adopting an option that builds on the current level of pricing awareness, rather than removing it entirely. In the case of fixed to mobile calls, for example, a significant concern for Ofcom/Oftel was clarity over prices. However, Ofcom appears to have put these concerns to one side in the case of NTS.

BT's proposed amendments to Option 2, set out later in this response, are intended to address this issue.

4.2 Transparency of Tariff Changes, Under Option 2

BT is concerned about the scope for TCPs to increase BT's retail prices under Option 2, without consumers being aware. While price increases are not necessarily a bad thing, issues arise given the lack of indication that a change has taken place. BT feels that only a number change will indicate this price change has taken place.

For example, Ofcom notes "low consumer awareness of NTS call prices" and says "Ofcom has particular concern about the low levels of awareness amongst consumers about what they can expect to pay for calls to 084 and 087 numbers."⁴ Option 2 would, even with the proposed consumer protection measures, exacerbate these concerns.

Currently, BT's customers can tell with relative ease what they will pay for calls to 0845 and 0870 numbers and know that calls to all 0845 numbers (for example) are charged at the same price (subject to customer-selected retail discounts such as Friends & Family). Customers of other network operators may pay different amounts as determined by their suppliers. Indeed Ofcom notes that BT's competitors tend to charge significantly higher prices for these calls, and quotes a figure of competitors' 0845 prices being 60% more expensive than BT's⁵.

BT believes an analogy with another regulatory change is instructive here. Ofcom liberalised the Directory inquiry (DQ) market in 2003, hoping that this would lead to lower prices and improved service for customers. This has not turned out to be the case to date. However Ofcom notes that the change of dialled number was significant in the case of DQ⁶. BT agrees that the change of

⁴ ¶ 3.8, Policy Review consultation

⁵ BT believes that this scenario suggests either that regulation is being focused in the wrong place, or that it is having a substantial distorting effect on the market

⁶ Market Review consultation, ¶ 4.56

dialled number provides an important flag to consumers that pricing may have changed. BT expects that tariff confusion is also likely to arise under Ofcom's Option 2 proposals.

The BBC's Money Programme also recently noted:⁷

"Almost a year after the deregulation of directory enquiries, there are calls for the telecoms regulator to step in and simplify the bewildering choice of numbers and charges that customers now face....."

And despite, or perhaps because of, the rise in the number of providers, customers have deserted in droves.....Research by the 118 Tracker organisation suggests that the number of calls to directory enquiries has fallen by about half since deregulation.

Although, by all accounts, the chances of getting the right number have since improved, it is still difficult to know what you are being charged, with calls from mobile networks sometimes costing double."

BT has never received either a complaint or a dispute whose objective is the *reduction* of payments to TCPs. Nor has Ofcom ever intervened on its own initiative to force down these payments. Consequently, BT cannot imagine any scenario other than that Option 2 will cause an *increase* in retail pricing for 0845 and 0870 calls. Given the competitive pressures to retain NTS Service Providers' business (via price reductions/revenue shares), BT also expects that all TCPs will be driven to increase retail pricing to follow each other.

The experience with the introduction of the 0844 and 0871 number ranges in 2002 also provides useful evidence. Ofcom's proposal seeks to impose similar regulation on 0845/0870 calls as currently exists for 0844/0871 calls, where similarly the price is set by the TCP not BT. Both number groups (0845/0870) and (0844/0871) are used to access similar services. However the billed revenue is significantly higher for the 0844/0871 number ranges as terminating operators have tended to price above BT's prices for 0845/0870.

However, in the case both of DQ and of 0844/0871 services, the explicit requirement to change dialled numbers provided a clear signal to consumers that something had changed. BT feels that the high likelihood of 0845/0870 price increases *requires* a specific signal to consumers. That signal would best be through a change to the dialled number. So, moving away from the retail pricing for 0845/0870 would require a move to an 0844/0871 number range.

4.3 Role of ICSTIS

BT considers that, by and large, the ICSTIS committee-secretariat model is fit for purpose and we are supportive of it and its current independent operational remit within the co-regulatory structure. The existence of, and compliance to, a code of practice instils a degree of 'discipline' within the industry that has a direct and positive impact on consumer protection.

BT has noticed an increase in adult content appearing on 0870 and 0871 numbers, and, as the retail prices for these fall outside the definition of CPRS, are thus not subject to ICSTIS code regulation. No doubt some dialler activity has moved to these numbers, however the main concern relating to diallers is IDD.

Whilst we have some reservations about extending ICSTIS' remit to take on additional work until such time as the dialler issue has been brought under demonstrable control, we would not oppose the proposed limited amendment to the definition of CPRS to include adult content and dialler services, regardless of the charge for accessing such services, (thus bringing them within the scope of the ICSTIS code) provided that the industry had assurances of continued improvement in ICSTIS' performance. Any widening of ICSTIS' remit should include obligations

⁷ Ed Petter, BBC Money Programme at <http://news.bbc.co.uk/1/hi/business/3724875.stm>

on ICSTIS to introduce improvements to the customer experience for enquiry and complaint handling.

Finally, any extension of ICSTIS' responsibilities would require funding and it is assumed that the existing funding arrangements (the 'levy') would be applied to any additional services/number ranges. Terminating Communication Providers would, of course, be required to collect this additional funding on behalf of ICSTIS and we would hope that suitable time-scales are provided before implementation to ensure that the industry's contractual obligations and invoicing procedures may be managed accordingly, with adequate notification for all parties.

4.4 Call Price Pre-Announcements

Ofcom has sought views on whether pre-announcements of tariffs could be implemented either by OCPs, or by TCPs. Ofcom has also sought views on whether some form of pop-up information would provide this same function where internet services are being accessed.

Annex B contains BT early technical feasibility assessment of these proposals. BT has, in assessing the potential for delivering pre-call announcements, been able to only look at minimum implementation of basic options. This is due to timescale, resource and cost constraints which were a barrier to the ability of BT to provide a more detailed study in response to the consultation.

In summary, BT does not see how they can be implemented with any useful degree of accuracy. Any inaccurate implementation would face issues of misrepresentation and would add no value to consumers.

4.4.1 Pre-Announcements by OCPs

OCPs will not be able to assess the actual price of the call if whole-bill, or post-billed discounts are applied. There is also a non-trivial cost to implementing this option in the network, particularly where the current network is already being replaced.

OCPs use a range of resellers, each of which will have its own selection of retail tariffs. These resellers do not have platforms that can apply a call announcement and their underlying OCPs do not have access to the resellers' Tariffing information. This becomes particularly acute where call-by-call indirect access is used and customers make use of a range of tariffs, that varies at the customer's discretion.

BT does not believe that OCP pre-announcements can be implemented practically, given the complexity of calculating retail tariffs accurately, prior to the call taking place and the expanse of tariffs that would exist, with increase retail pricing granularity.

4.4.2 Pre-Announcements by TCPs

In order to implement this, TCPs would need access to all OCPs' retail pricing information and to their customers' discount package arrangements, all of which data is commercially sensitive and frequently not published. This would need to be updated daily, if it was to have any value, and there would be no means of calculating post-billed discounts (e.g. discounts against full-month billed value).

Resellers of a given OCP will be charging different retail prices, making it almost impossible to know the specific tariff applicable to a given customer. Number portability further clouds TCPs' ability to know what price has been charged, at the retail level, for a call. Finally, use of call-by-call indirect access affects yet more calls and cannot be identified by a TCP.

BT does not believe that this is practical to implement, or that it would bring substantial benefit to consumers.

4.4.3 Internet Service Provider Splash Boxes

This option suffers from the same issues as TCP pre-announcements. Internet Service Providers have no way in which to know the full range of retail prices on offer. Moreover, service providers may not examine the CLI of the call, or know which OCP (or OCP reseller) it came from.

4.4.4 Other Dial-Up Data Services

Internet access is not the only data service accessed via the PSTN. BT has not explored the wealth of such other services, but expects these to be even less conducive to pre-announcement arrangements.

4.5 Other Consumer Protection Measures

Ofcom has proposed some additional consumer protection measures, based around improving communication on pricing and codes of practice.

4.5.1 Improved OCP Pricing Information

BT is always seeking ways in which to improve how it communicates pricing to customers. BT's price lists are heavily driven by regulatory requirements, making them more complex than would otherwise be the case. For example, the tariff proliferation that Option 2 would bring has the potential to increase 0845/0870 prices from single entries to dozens or hundreds of retail prices. This, combined with BT's substantial product set and requirements to publish prices, leads to unwieldy documentation.

BT is, however, more than willing to work with relevant groups to explore ways in which pricing information could be made more accessible.

4.5.2 Improved TCP Pricing Information

This is a more difficult issue to address, in that it is impossible for any TCP to know the full panoply of pricing for calls to their services. For example, the majority of customers' pricing is neither published, nor collated by any organisation.

Whilst BT is, again, willing to work with relevant bodies to develop thinking in this area, it is unclear that any practical way forward will be found. This is the same problem as is encountered when looking at call pre-announcements by TCPs, or ISP-presented tariff information.

4.5.3 ASA Guidance

BT would be pleased to support Ofcom's work with the ASA, to provide guidance on compliant advertising of calls to NTS. Pricing can more easily be identified if Ofcom accepts BT's proposed amendments to the Option 2 proposals, as Option 2 will offer almost no clarity over pricing and hence no tangible advertising message. Ofcom has not made clear how it intends to enforce its retail price limits (4p and 8p) across the industry, which makes even these messages unlikely to be accurate.

5 UNINTENDED CONSEQUENCES OF NTS REGULATION

5.1 Introduction

NTS is an example of a service market created and sustained in its present form by regulation, rather than through open commercial negotiation. Suppliers using 0845 and 0870 numbers are dependent on the margin allowed by Ofcom, rather than one created by their ability to stimulate demand. At present, this margin is constrained (for calls made by BT's contracting retail customer base) through its linkage to standard prices for local and national calls. In future, Ofcom proposes (under Option 2) to give suppliers the choice of selecting their margin within an extended price range.

Ofcom sees the guiding principles for its regulatory framework for this market as including the provision of 'regulatory underpinning for revenue sharing', 'revenue certainty' and 'ensuring the availability of services on NTS'.

However, in a fast-changing technology-based sector like telecommunications, where regulation is widespread, there is a high probability of the NTS regulatory framework creating, or being impacted by, effects elsewhere. These are unintended consequences.

5.2 Unintended Consequences

The unintended consequences of the existing and proposed NTS regulatory frameworks include:

- **reducing the margin available to NTS service providers from BT**

Regulatory initiatives to increase competition in voice calls elsewhere (e.g. IA, CPS, encouragement of infrastructure based competition) have reduced the margin available to NTS (especially Internet) service providers. A similar margin compression has occurred for FRIACO based ISPs through greater competition in broadband Internet, flowing from regulatory initiatives to lower LLU and bitstream access prices.

- **distorting competition in retail voice markets**

Ofcom continues to increase regulation of retail revenues. Constraints on BT's retail margins include NTS (cost-oriented), Fixed-Mobile (cost-reflective), Directory Enquiries (cost-oriented), national averaging of tariffs and the Retail Price Control. These regulatory interventions bite hard into the ability of retailers to make sufficient margin to survive. This is likely to frustrate Ofcom's objectives through the Strategic Review.

- **reducing price transparency for NTS calls**

Ofcom's consumer research shows low comprehension of retail pricing for 0845 and 0870 services. By extending pricing points, Ofcom's Option 2 would create further consumer uncertainty in terms of NTS call costs.

An unintended consequence of introducing competition in the market for directory information has been increased consumer uncertainty of call costs. This has led to another unintended consequence, in terms of a reduction of circa 50% in the number of calls to directory enquiries⁸.

- **producing substitution of geographic numbers by NTS numbers**

By enabling companies, individuals and service providers to generate revenue from NTS calls, NTS regulation has created a strong incentive for all parties to replace geographic

⁸ <http://news.bbc.co.uk/1/hi/business/3724875.stm>

numbers (which offer only cost-covering payments) with NTS numbers. This has resulted in consumers paying much higher average prices for NTS calls (see previous point) than originally envisaged in linking them to national and local call prices.

- **reducing consumer choice and weakening incentives to innovate**

NTS is described by Ofcom as a micro-payments system. It is one designed by a regulator and network effects have led to it being widely adopted. The substitution of NTS numbers for geographic numbers and the proposed de-coupling of 0845/0870 numbers from local and national call prices will combine to ensure this micro-payments system leaves consumers with no alternative but to pay higher prices. The promotion of this system by the regulator and the related networking effects in terms of its adoption have stymied development of possibly better alternative micro-payment systems, that give consumers the choice to opt-in or opt-out of paying for services, rather than one based on compelling them to pay.

- **creating unfair incentives for service providers to use OLOs to terminate traffic**

For 0845/0870 numbers originated on BT's network, the revenue share available to service providers is fixed and, because of the link to standard local and national call prices, declining. These are outcomes of regulation. For the same numbers, OCPs charge up to 60% more than BT, producing a potentially much bigger margin for revenue share with service providers.

- **creating a requirement for further regulatory intervention**

NTS is essentially a synthetic market, created and sustained in its present form by regulatory intervention rather than by open commercial arrangements.

As competitive conditions in telecommunications change, such a market will always require regulatory intervention to sustain its present form. This conflict between the need for flexible regulatory policy on the one hand and the static approach of policy on the other results in practice in market micro-management, in terms of further regulatory interventions.

The cost of such intervention is never recognised in existing cost-benefit assessments favouring the current NTS regulatory framework, because any proposed regulatory solution is seen as an end in itself, rather than just one of a series of interventions.

5.3 Conclusion

The NTS system measures up badly by almost every metric of competition. It reduces price transparency for consumers. It encourages those involved in the supply chain to exploit the regulatory system to gain unfair competitive advantage. It is also inflexible to rapidly-changing circumstances and requires constant micro-management.

6 BT'S PROPOSED AMENDMENTS TO OFCOM'S OPTION 2 PROPOSALS

For reasons discussed earlier in this document BT considers that a change to the current regime for NTS products is welcome. However BT considers that the proposal supported by Ofcom, Option 2, although going some considerable way to alleviating the revenue concerns of Terminating Communication Providers (TCPs) and Service Providers (SPs), does not equally address the concerns raised by citizen-consumers. This is especially the case with regard to tariff transparency and the potential abuse of call length driven by revenue share opportunities. BT believes that it is possible to provide a variant of Option 2 which would go some way to address this imbalance and increase tariff transparency for the consumer as well as increase choice for the TCP and SP industries. BT has labelled this Option 2a.

6.1 *The Rationale for Change from the Current NTS Regime to Option2a*

A number of key concerns, identified by various parties within the NTS environment, can be seen to be strong drivers for change:

- One of Ofcom's key objectives is to develop a NTS methodology that greatly reduces the high level of disputes in this area.
- Many TCPs and their SP customers have requested a regime which continues to offer revenue share opportunities and provides more certainty of revenue with as little disruption as possible.
- Consumer Groups⁹ have stressed that they have concerns regarding the possible extension of call time by revenue sharing SPs. Consumers are also concerned that the move to a plethora of price points on a pricing ladder, without number change or notification, would increase tariff confusion and the likelihood of increased call charges.
- A number of non-revenue sharing SPs are anxious that consumer tariff confusion, coupled with assumptions that all numbers dialled generate a revenue share opportunity could result in customer dissatisfaction and loss of custom.

BT considered the above views and felt that Option 2 only went some way to address the issues raised. BT agrees that to fully comply with the wishes of all of the players in the NTS world would be impossible, but did feel something could be done to achieve a methodology which more fully balanced the expectations of all players.

The following sets out a proposal that BT believes delivers a NTS regime that more fully represents the requirements of citizen-consumer, Industry and Ofcom.

6.2 *Option 2a – Proposal Description*

BT determined that a more balanced proposal would be required that maintained and built on the integrity of geographic local and national call charges as perceived by the consumer but which also provided a fair choice and revenue certainty for TCPs and SPs.

With this objective in mind BT has developed the core thinking in Ofcom's Option 2. With Option 2a:

- revenue share on 0845 and 0871 number ranges would cease;
- charges for all calls on 0845 number ranges would be at BT Retail geographic local call rates and TCP charges would match geographic call termination charges;

⁹ At the NTS Focus Group meeting 18/11/04, Ofcom stated that consumer feedback was strongly against revenue share on 0845/0870 voice calls, but that consumers did accept that revenue share was reasonable for calls to ISPs.

- calls to 0870 number ranges would be at BT Retail geographic national call rates and TCP charges would match geographic call termination charges;
- Both 0845 and 0870 call charges would attract all applicable BT discount options.
- It would be in the interest of consumers and SPs if Ofcom were able to require all Originating CPs (OCPs) to equally tariff calls to 0845 and 0870 at geographic local and national call rates¹⁰. Ofcom has already set precedence for this - Freephone calls are free from all fixed line packages. Variance from this would trigger a requirement for a specific call announcement, from the OCP's network;
- Revenue share will be maintained on 0844, 0871, 09 numbers and TCPs are free to implement/migrate any services on/to these numbers.

6.3 Benefits of Option 2a

6.3.1 Number Migration

Providing a pricing ladder opportunity on 0845 and 0870 number blocks, as would be the case with Option 2, would allow TCPs to determine rates on 0845 and 0870 numbers, this would disempower both consumers and SPs. Although initially this would appear to solve the issue of number migration, SPs would have very limited or no influence over the charges allocated to their 0845 and 0870 numbers by the TCP from whom they receive service. SPs that had exported from their range-holder would be in a particularly weak position, and could suffer considerably from an absence of influence.

Consequently it is worth considering that If TCPs require SPs to migrate to different 0845 xxx numbers as opposed to 0844 xxx in order to achieve certain tariffs, it would seem that there is no advantage in Option 2 as a solution to the issue of number migration. Whether it is within 0845/70 numbers or to move to 0844/71 numbers, a number migration is a number migration. It would appear that the migration factor is the same whichever proposal is adopted, however it is likely that Ofcom's Option 2 would discriminate in favour of the largest company on any block to the detriment of others, and very much against those who had exported their numbers (indeed, range-holders could use tariff leverage in order to coerce companies back to them).

There are, however, benefits if a SP moves to 0844 to maintain revenue share. Within this scenario a SP has:

- choice over the tariff at the point of migration;
- for Option 2a there is scope for a planned migration for all revenue share SPs at the same time, which would reduce the impact of churn;
- SPs could choose to delay their migration and choose a better time for their business, foregoing revenue share until they migrated; and
- consumers would be aware that there has been a change to the number for the service they receive, alerting them to a possible tariff change. This would considerably alleviate the risk of confusion due to lack of tariff transparency and remove the need for tariff call announcements.

¹⁰ One of the respondents to Ofcom's consultation, Alexander Munro, proposes such a scheme, i.e. "The only way that extended call price competition can work is by forming a clear and obvious relationship between the number dialled and the cost of the call, and this to be mandatory for all telecoms companies offering dialled voice call service."

6.3.2 Simple and Clear Message to Consumers

With Option 2a all calls to 0845 and 0870 numbers will be priced at geographic local and national rates with the following advantages:

- Tariffs could be advertised as local/national rate for BT customers. This would provide tariff clarity both for consumers and for SPs;
- The application of BT geographic rates to 0845 and 0870 calls would continue to apply downward pressure on prices as they are linked with local and national rates, in contrast to likely tariff inflation under Option 2; and
- Consumers will be reassured that as there is no revenue sharing on 0845 and 0870 numbers, therefore 0845 and 0870 SPs gain no financial benefit from receiving longer calls.

This element of Option 2 also provides an opportunity for certain SPs to prove they are not on revenue share and advertise it as such¹¹. SPs can have clear message to put to customers:

- "calls will not be charged at more than local and national geographic rates from BT lines"

This could and, in BT's opinion, should be extended to all OCP 0845 and 0870 traffic.

The application of geographic rates to these number blocks will enable SPs to continue to state the local/national rate link in their advertising.¹²

Option 2a, therefore, builds on the level of tariff awareness of 0845 and 0870, rather than removing it completely, as under Option 2. This provides an opportunity to rebuild the reputation of these number ranges. Additionally, by retaining a simple single tariff approach, inbound international calls to 0845/0870 numbers are more likely to continue (a significant volume of traffic). In general, such calls are not facilitated in 0844/0871 currently.

6.3.3 Provides Choice to SPs

Option 2a provides a specific NTS range with no revenue share for which Ofcom's market research suggests there is demand. Those SPs/ISPs who wish can choose to have a revenue share number, via the 0844/71 pricing ladders. This allows TCPs the opportunity to set rates in 0844/0871, and SPs to choose the right tariff for themselves from the beginning of the new regime.

The differential of revenue share number ranges from non-revenue share number ranges removes need to have a geographic number published alongside an 0845 and 0870 number.¹³

¹¹ In paragraph 4.39 of Ofcom's research results which demonstrates that many SPs are more interested in positive messages to consumers than revenue share, Ofcom states "only a minority (28%) of businesses using 084 numbers involved in the survey actually make money from these numbers".

¹² Source of information – Yahoo search engine for 0845 and 0870 products: <http://uk.search.yahoo.com/search?fr=fp-tab-web-t-1&ei=ISO-8859-1&p=0845+and+0870&meta=vc%3DcountryUK>

¹³ Publishing a geographical number alongside a non geographic number would negate the advantages in quality of service provided by the SPs.

7 IMPLEMENTATION OF POLICY PROPOSALS

The comments in this section refer to the implementation of Ofcom's proposed Option 2, unless otherwise explicitly noted. Following Ofcom's final policy decisions, BT proposes to discuss any outstanding implementation questions through the NTS Focus Group.

7.1 Charges for BT's Transit Services

BT currently operates a mixture of transit charging arrangements, driven by Oftel's various policy positions in the past. BT is neutral as to whether OCPs or TCPs (or any other communications provider, for that matter) pays for its transit service for NTS calls. However, Ofcom has stated a clear desire to find a low-impact, fast implementation, which suggests as little change to billing systems and processes as possible.

BT can see no particular policy argument, or market failure, that would justify Ofcom forcing a change to which communications provider should pay for transit services. In the absence of a clear reason for additional regulatory intervention and given that billing systems are currently operating effectively, BT suggests that Ofcom makes no change to the transit arrangements. This would minimise implementation timescale, cost and effort.

7.2 Future of BT's Retail Discounts and NTS

If Ofcom directs BT to implement an unchanged Option 2, then BT proposes that it is no longer viable for NTS retail calls to be subject to retail discounts. Instead, TCPs can specify the retail price point that they would like to have implemented, rather than specify a pre-discount price, based on knowledge of what discounts might look like. This would have three key advantages over the application of discounts:

- **Pricing transparency to consumers** – given that every other aspect of Option 2 reduces such transparency, the lack of discounting would make the applicable retail price more clear;
- **TCP revenue certainty** – although BT is unconvinced that this is a valid reason for regulatory intervention, the lack of unpredictable discounts would leave TCPs with greater control over revenues. This is one of Ofcom's primary objectives from the Policy Review;
- **Avoidance of disputes** - it is the application of unpredictable retail discounts that has driven the most recent formal NTS disputes. Avoiding these unnecessary disputes is an objective both for BT and for Ofcom and separating retail discounts from payments to TCPs is an essential part of achieving this.

It would not be practical for TCPs to opt-in to a smorgasbord of retail discounts and would further reduce pricing transparency for consumers. The most practical and transparent approach is for discounts no longer to apply to 0845 and 0870 services and for TCPs to set BT's retail prices on the basis of the final price they want consumers to pay, a position which has been much vaunted by members of the NTS Focus Group.

7.3 Retail Price Points

If Ofcom chooses to oblige BT to set retail pricing at the request of TCPs (Option 2), BT currently envisages this to use the same processes as are used for implementing price points for 0844, 0871 and 08 services. BT agrees with Ofcom's view that there is no practical way to limit the number of requested retail price points, which is likely to increase steadily, removing even the limited consumer understanding of pricing.

BT does not wish to be in the position of policing industry pricing, or finding itself in formal disputes over such matters. However, current operating practices do occasionally involve some discussion as to suitable alternative (and existing) retail price points, when new price points are

requested. There has been no dispute to date on implementing these prices and commercial discussion has always resolved any disagreement.

The Policy Review consultation also suggests that BT is able to implement new number ranges and price points in 56 days, whereas other communications providers need 85 days to have this same thing made available to BT's retail customers. This is not correct.

BT's own pricing and DMA implementations use precisely the same processes and timescales as are used for implementing the same access to other communications providers' services. Ofcom appears to have confused pricing notification timescales with operational implementation timescales. These are unrelated.

7.4 The Network Tariff Gradient (NTG)

The NTG is not related to NTS, but rather to the charges for the call origination services that are used for NTS calls, as they are for many other services. BT is unclear as to what issues Ofcom feels need to be addressed in relation to the NTG, other than TCPs wishing BT to provide longer price change notification than the current 90 days.

The NTG is simply a component of how BT sets its prices and future changes will be the result of BT's commercial decisions, as they have been in the past.

7.5 BT's Retail Minimum Call Fee (MCF)

For reasons of practicality, BT intends to continue to charge a minimum call fee for NTS services, as it does for other calls. This currently drives the payments to TCPs for short duration 0845 calls and also an adjustment in the payments for 0870 calls. BT proposes continuing with these practices, unchanged.

BT has already had considerable discussion with TCPs, through the NTS Focus Group, on how to deal with billing developments for short-duration 0844/0871 calls. However, there has been no Focus Group interest in this subject since the summer of 2004. BT will, of course, discuss this again, if interest revives.

7.5.1 Minimum TCP Payments

Ofcom has suggested that a minimum payment to TCPs would be a possible alternative to short-duration calls. However, this approach would substantial billing system changes for no obvious benefits to any party and would be complex to implement. This can be discussed in more detail at the NTS Focus Group, but BT does not believe there is a practical way to implement this approach.

7.6 Phased Implementation Approach

If Ofcom agrees with BT's proposed implementation of Option 2a, then a suitable transitional period can be agreed, to enable migration of services to their ultimate numbering arrangements.

7.7 Non-Geographic Number Portability

Number portability raises no specific issues in relation to any of the NTS commercial options. However, communications providers and service providers should note that where an NTS number is ported between networks, the recipient TCP will not be able to set the retail price (assuming retail and wholesale pricing are not set at the individual number level). Pricing and interconnection payments for 0845 and 0870 numbers will be uniform across whatever size of number block is finally chosen by Ofcom, meaning that the 'owner' of that number block will be setting BT's retail pricing. BT does not believe that this should cause substantial problems.

7.8 Increased Tariffing Granularity

Ofcom discusses setting 0845 and 0870 tariffs at a number of levels of numbering granularity. Of these, BT believes that the 10k level provides the optimum balance between pricing flexibility, number conservation and operational implementation. BT has had separate discussions with Ofcom concerning lowering the level of block sizes to the 1k level. Such a reduction has a significant impact on network operators, as there is limited network resource available for such a strategy. Given the pressures in the geographic numbering area (numbers starting 01), BT believes that any such reduction in routing (and therefore tariffing) granularity should be used to address the urgent need there.

BT's Retail Price List and Carrier Price List would both require some amendment to cater for the much-expanded tariff granularity. The Carrier Price List, in particular, would mushroom in size and become difficult to interpret. BT would explore ways in which this can be managed sensibly if the need arises.

7.8.1 Billing System Implications

Interconnect billing systems already operate at this level of granularity and should require minimal development (assuming that the number of 10k number blocks does not rise substantially more than the normal run-rate). Wholesale commercial and traffic routing arrangements also currently operate at the 10k number block level and therefore should require no change apart from any currently being discussed at the EBC Review.

BT's retail billing systems are also capable of operating at this level. Therefore BT billing development requirements and timescales are considered to be insignificant and as up to 3 months (providing no changes to number granularity).

Option 2a would require a transitional period for the removal of revenue share from 0845 & 0870. Development of commercial arrangements could take up to 6 months, with anticipated billing system development of up to 6 months. All activities could, of course, be arranged in tandem.

BT does not, therefore, expect there to be any significant implementation effort required in its systems, where TCPs set BT's retail prices at the 10k level.

7.9 Impact on Retail Uplift

Ofcom is currently reviewing the magnitude of the Retail Uplift in BT's NTS call origination charges. BT would expect the additional customer service costs associated with reduced tariff clarity and increased prices to be considered within that review.

8 OFCOM'S MARKET REVIEW OF NTS CALL TERMINATION

This section provides feedback on Ofcom's draft review of the NTS Call Termination Market. Specific responses to the questions raised in Ofcom's Market Review consultation can be found in Annex C.

8.1 Market Definition

Ofcom states that it has followed the European Commission's guidelines and recommendations in carrying out its market review. (Market Review Consultation Document ¶ 3.4) These include conducting a "forward-looking" and "prospective" market analysis by taking into account expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review¹⁴. The main purpose of market definition is to identify the competitive constraints that undertakings face. (*Commission Recommendation*, ¶ 3.1).

Following this approach, Ofcom reaches two principal conclusions, which it finds support a single NTS call termination market:

- that there is likely to be a degree of substitutability between calls to each of the NTS number ranges from the perspective of end users, as well as competitive constraints from supply side substitution. (Market Review Consultation Document ¶¶ 3.24-3.34). According to Ofcom, this suggests a single NTS call termination market covering all of the NTS number ranges. Ofcom also states that common pricing constraints appear to exist between voice and data traffic, which justifies finding that NTS voice and data calls are in the same market. (Market Review Consultation Document ¶ 3.35); and
- that the majority of NTS calls (namely NTS calls terminated on behalf of ECS providers such as ISPs) are substitutable. Consequently, Ofcom considers that for the "average" NTS call type, TCPs face competitive pressures. In this context, Ofcom concludes that the calling party pays externality is likely to play a limited role in the termination of NTS calls, which suggests a single NTS call termination market. (Market Review Consultation Document ¶¶ 3.49, 3.53).

A proper analysis of the NTS call termination market – taking into consideration the current regulatory controls (i.e. the NTS Call Origination Condition) and their effects on competitive constraints, as well as likely market developments over a reasonable horizon (i.e., Ofcom's proposed changes to the NTS regulatory framework in the NTS Policy Option Consultation) – indicates that NTS calls are substitutable and that all TCPs' pricing behaviour for NTS calls is constrained.

For some reason, however, Ofcom has not mentioned the NTS Call Origination Condition nor its proposed regulatory changes in its market definition analysis. Nevertheless, BT assumes that both factors are implicit in Ofcom's analysis. Otherwise, Ofcom's approach to market definition would be inconsistent with the Commission's guidelines and recommendation and its proposal for a single NTS call termination market would lack the necessary economic and legal justification.

To the extent Ofcom did consider both factors for the purposes of market definition, BT finds it entirely inconsistent that Ofcom did not reach a similar conclusion for purposes of SMP assessment. As discussed in 9.7 below, Ofcom concluded that its proposed changes to the NTS Call Origination Condition should not be considered as part of its forward-looking SMP assessment. The market and regulatory factors relevant to both assessment should be the same.

¹⁴ See Commission guidelines on market analysis and the assessment of significant market, 2002/C 165/03 ("SMP Guidelines"), ¶ 35; Commission Recommendation on relevant products and service markets, 2003/311/EC ("Commission Recommendation"), ¶ 3.1

Lastly, even if Ofcom concludes that its proposed regulatory changes to the NTS Call Origination Condition are not relevant for purposes of market definition, Ofcom still must consider the effects of the NTS Call Origination Condition on 0845 and 0870 calls terminated by BT and originated on non-BT networks. Such consideration might lead to the conclusion that substitutability patterns (and competitive constraints) are different between these types of calls and other NTS calls and would suggest the following two separate NTS call termination sub-markets:

- The sub-market for 0845/0870 calls terminated by BT and originated on non-BT networks; and
- The sub-market other types of NTS calls.

8.2 Ofcom's Market Power Assessment

8.2.1 Scope of Ofcom's SMP Assessment

Ofcom proposes to find that BT (and only BT) has SMP in the market for termination of all NTS calls (including all 080, 0844, 0845, 0870, 0871 and 09 numbers, with specific exceptions). Ofcom's key justification for this conclusion is that BT is a vertically integrated TCP and OCP, and because of BT's position at the OCP level, it can act independently of its competitors. This is based on supposition about competitors' reactions to a rise in payments to BT for termination of NTS arising out of the interconnection pricing changes notified in NCCN 500.

However, only 0845 and 0870 services were subject to price change under NCCN 500. Accordingly any justification for a conclusion that BT is able to act independently of its competitors can only apply to these particular services. The circumstances that Ofcom, analyses cannot possibly arise in the case of 080, 0844 and 0871 services, as these are subject to very different commercial and regulatory arrangements to the services addressed in NCCN 500. Nor can they arise in relation to 09 services. The position with regard to other NTS services is as follows:

- 080 services do not have a termination charge at all;
- for 0844 and 0871 services, the TCP has, for several years, been free to specify its desired termination charge and consequent retail price; and
- for 09 services, there has been no change to the existing reciprocal commercial arrangements since 1995.

Ofcom's finding that BT is able to act independently of its competitors in regard to the termination of *all* NTS calls therefore is both disproportionate and unsupported by any adequate analysis. Indeed, Ofcom did not find a lack of competitive constraints for all NTS services, but rather only with respect to 0845 and 0870 services terminated by BT and originated by non-BT providers. This accounts for only [X]% of NTS traffic.

Therefore, to the extent Ofcom may ultimately conclude that BT has SMP, this should only apply to the sub-market for 0845/0870 calls terminated by BT and originated on non-BT networks. The sub-market for all other types of NTS termination services has competitive constraints and therefore is effectively competitive. There is no basis for additional regulation on this other [X]% of the NTS market.

However, as set out below, BT strongly disagrees with Ofcom's provisional conclusion that BT has SMP even with respect to 0845/0870 NTS termination services, where BT is not the OCP.

8.2.2 Ofcom's Analysis of SMP

In BT's view, Ofcom has not conducted a proper prospective, forward-looking market assessment. The Commission's SMP Guidelines require that NRAs conduct a thorough and overall analysis of the economic characteristics of the relevant market before coming to a conclusion as to the

existence of significant market power. The SMP guidelines also outline the criteria that can be used to measure the power of an undertaking to behave to an appreciable extent independently of its competitors, customers and consumers.

Ofcom's analysis fails to produce reasoned evidence in accordance with these criteria that demonstrates an ability to act independently of competitors or consumers, (even when the price changes notified in NCCN 500 are taken into account) so as to justify a conclusion of SMP.

In addition despite its claims that Ofcom has taken the utmost account of the Commission's Guidelines, Ofcom's analysis has taken no account of its own proposed changes to the NTS regulatory regime (as set out in the Policy Review consultation), which Ofcom acknowledges would likely mitigate any position of SMP. (Market Review Consultation Document ¶ 4.80)

Ofcom's own market data indicates that BT's current market share in the NTS call termination market is only [X]%. Evidence of market share below 40% is typically a strong indication that an undertaking does not enjoy SMP in the market concerned, although SMP *may* exist where an undertaking has a low market share. (*SMP Guidelines*, ¶ 75, 78).

However in order to make this determination, a national regulatory authority must undertake a thorough and overall analysis of the economic characteristics of a relevant market before reaching a conclusion. (*SMP Guidelines*, ¶¶ 75, 78).

The *SMP Guidelines* list a number of criteria in addition to market share that national regulatory authorities should use to assess the power of an undertaking to behave to an appreciable extent independently of its competitors, customers and consumers. Important among these criteria is barriers to entry, the absence of which usually deters independent, anti-competitive behaviour by an undertaking, even where it has high market share. (*SMP Guidelines*, ¶¶ 78, 80). Ofcom acknowledges that entry barriers are a key factor in the assessment of SMP (Market Review Consultation Document ¶ 4.22) and goes on to find that barriers to entry in the NTS call termination market are "relatively low". (Market Review Consultation Document ¶¶ 4.18).

According to Ofcom, BT's low market share and low barriers to entry together lead to the "sensible *a priori* expectation . . . that all players in the market for NTS call termination would be subject to fairly substantial competitive pressures . . . and that no single TCP would be likely to enjoy a position of SMP." (Market Review Consultation Document ¶ 4.22). This conclusion is entirely consistent with the finding of Ofcom's predecessor, Oftel, in November 2003 that the NTS call termination market was competitive. (*Review of fixed geographic call termination markets*, Final Explanatory Statement and Notification, 28 November 2003, ¶ 2.4).

Ofcom's apparent view, however, is that BT's implementation of NCCN 500 on 1st May 2004, in combination with the BT NTS Call Origination Condition, gives rise to concerns that BT might have SMP in the market for NTS call termination (Market Review Consultation Document ¶ 2.18), despite its own contrary conclusions from the analysed market share and entry barrier evidence.

8.2.3 Ofcom's Assumptions on TCPs' Pricing Constraints Where BT is Not the OCP

Ofcom has assumed four likely competitive reactions to an increase in payments from an OCP to a TCP, concluding that none of these presents a significant constraint on BT's pricing behaviour as an NTS TCP:

- The OCP does not like the size of the payment and ceases to purchase the relevant service(s) on behalf of its retail customers;
- The OCP continues to purchase the relevant service(s), without changing the pricing offered to its retail customers;
- The OCP continues to purchase the relevant services(s) and increases the pricing offered to its retail customers; and/or

- The OCP demands increased charges for its own NTS services, in its role as a TCP.
- **Scenario 1 – Refusing to Buy the NTS Service**

Under the first scenario, Ofcom asserts that this would be unlikely to happen, as it would place the OCP at a competitive disadvantage to BT¹⁵ in the retail calls market. However, this is precisely the outcome that arose when Ofcom imposed regulatory changes for calls to directory enquiry (DQ) services. The three largest OCPs refused to purchase BT's DQ service at the offered price, opting instead to bar calls to BT's services. BT had, until that time, held a far higher market share for terminating DQ calls than it does as an NTS TCP.

Ofcom dismisses the DQ experience as a guide to OCPs' behaviour in the context of NTS. This is done on the basis that telephone numbers had changed for all DQ service providers and that no operator had captive customers.

Instead Ofcom relies on the assumption (based only on information received from OCPs) that OCPs would be unlikely to adopt this strategy because they risk losing market share because of customer annoyance. Tellingly however Ofcom has made no analysis of the value to customers of the ability to access particular NTS numbers as opposed to other elements of an OCP's retail offering. Nor does Ofcom produce any evidence to substantiate its claims that loss of market share would follow. Accordingly there is no reasoned basis for why Ofcom ignores actual market behaviour as a guide to future conduct by OCPs .

What is clear from the DQ example is that refusal to buy is a perfectly feasible commercial response to unsatisfactory pricing and that this response is effective even in circumstances where the purchased service has a substantially higher market share than BT's termination of NTS calls.

Ofcom has also ignored the commercial pressures faced by NTS service providers and the corresponding commercial pressure on TCPs. NTS service providers will inevitably seek to maximise their addressable market of retail customers, through shifting between TCPs. This was the case with DQ services, where BT faced a desire from DQ SPs to move *all* of their business from BT to other TCPs, as a result of the major OCPs barring calls to BT's hosted DQ services, in a situation where BT alone of all the OCPs was *required* to originate calls to all DQ numbers.

Given that access from BT's customer base is always available (courtesy of the NTS Call Origination Condition), SPs are inevitably drawn to use other OCPs as their TCP in the same way as occurred in the DQ situation. Accordingly the likelihood of a loss of all of the traffic to a given service provider from BT's TCP services, (where service providers did not have access to such a substantial segment of the addressable market because of behaviour by OCPs) in itself provides a substantial constraint on BT's pricing behaviour.

- **Scenario 2 – Absorbing Increased Payments in Existing Retail Pricing**

Ofcom and OfTel have repeatedly based their NTS regulatory intervention on an assumption that, absent BT's position of SMP in call origination, the competitive market would constrain OCPs' NTS retentions to cost plus a reasonable rate of return on capital. Ofcom's basis for applying the NTS Call Origination Condition to BT is that it is only BT's SMP that prevents this outcome.

2004. It is clear that, prior to NCCN 500, the significant OCPs were charging substantially more for call origination, per NTS minute, than BT. This is also true after the effects of

¹⁵ Ofcom focuses its attention solely on BT, on the basis that BT is both an OCP and a TCP and BT has SMP as an OCP.

NCCN 500 are accounted for, although the differential is reduced. Ofcom also recognises this in its consultation (Market Review Consultation Document ¶ 4.58).

A fuller exploration of the realities of NCCN 500 is set out later in this document.

Ofcom has not explored whether or not there has been any actual harm caused by increased payments from OCPs for BT's NTS services, although this financial information is publicly available. Given that payments to BT do still allow a reasonable return for OCPs, BT cannot accept that there has been harm caused to competition. Ofcom also offers no explanation as to why, if BT was truly unconstrained in its pricing behaviour, OCPs are still able to earn at least the same returns as BT's own business, without the need to change retail prices.

Ofcom states that OCPs would be placed at a competitive disadvantage to BT if they were simply to increase payments to BT without changing their retail prices. However, if this action still results in OCPs having call origination charges that are the same as, or more commonly greater than, BT's, it is difficult to see how this places the OCPs at a competitive disadvantage. Ofcom offers no explanation as to how this might be the case.

BT submits that all available evidence shows that its pricing behaviour, in relation to NCCN 500, has clearly been constrained. BT took explicit account of the commercial drivers of OCPs, setting pricing that would not cause them either to cease buying BT's NTS services, or to increase retail pricing with its consequent impact on purchased volumes. The result was pricing that set call origination charges on a broadly reciprocal basis between OCPs, while leaving all parties a reasonable return for an efficient operator.

- **Scenario 3 – Increasing Retail Pricing**

Ofcom has noted that OCPs generally charge more than BT for calls to NTS services and have done so for some considerable time. However Ofcom also states, without providing any evidence to justify such a statement, that having to charge more than BT for such calls would place OCPs at a competitive disadvantage to BT and that therefore scenario 3 is not an option that OCPs would take.

In making the later statement Ofcom does not appear to have analysed actual market data, but rather has relied on an assumption that the retail voice market is driven substantially by prices for a particular call type. Ofcom has, in its Policy Review consultation, noted the very low levels of consumer knowledge of NTS retail pricing. In addition there is no evidence as to how important to consumers NTS calls are in comparison with other services offered by OCPs. Accordingly BT struggles to see how Ofcom can make conclusions that consumer behaviour would be substantially affected by changes to NTS pricing in the 2nd and 3rd decimal places of a penny.

In any case, BT's pricing in NCCN 500 was explicitly designed to avoid retail price changes by OCPs. OCPs are, of course, free to set their prices where they wish, but BT was careful to ensure that existing retail pricing would still allow adequate returns for OCPs. BT was conscious that an increase to retail prices could have a detrimental impact on traffic volumes and might cause OCPs to stop buying the service. The mere fact that BT considered these matters coupled with the level of the pricing contained within NCCN 500 (the key actual market example), provides clear evidence that BT is not unconstrained in its actions. BT is unclear as to the evidence that leads Ofcom to conclude that no such constraint exists.

- **Scenario 4 – Competitive Retaliation Through Increased Charges as a TCP**

As Ofcom notes, other vertically-integrated communications providers (i.e. those that are both OCPs and TCPs) do face constraints in demanding increased charges from BT for calls to their NTS services. Ofcom also recognises that this is entirely a function of the current regulatory framework.

The effect of existing regulation is not something over which BT has control. Nor is it indicative of any market power on BT's part. Rather, the impact of existing regulation is merely an existing convention that while relevant to a consideration of the overall circumstances of the market, cannot be regarded as a factor which enables BT to act independently of its customers or competitors.

This is particularly so in the context of forward looking assessment in circumstances where Ofcom has proposed changes to the regulatory framework that would address this aspect of pricing constraints in the market.

8.2.4 All TCPs Are Constrained Where BT is the OCP

Where BT is the OCP, the existing NTS Call Origination Condition provides an explicit constraint on the pricing behaviour of all TCPs, including BT. Ofcom has found (and Ofcom has reiterated) that BT has SMP in the origination of NTS calls, with the result that all TCPs' pricing behaviour (including BT's) is entirely constrained by regulation for the dominant flow of NTS traffic.

Ofcom suggests (Market Review Consultation Document ¶ 4.44) that this is not, in fact, the case and that BT's TCP activities in some way benefit from being part of the same company as BT's OCP activities. Ofcom does not explain the source of this advantage, nor quantify it in any way. Nor does Ofcom explain why the existing NTS Call Origination Condition fails to achieve its primary purpose of ensuring that BT does not benefit unduly from its SMP position in call origination.

BT is unclear as to the basis of Ofcom's assertions and BT can see no way in which its own TCP activities are treated any differently to those of other TCPs, where BT is the OCP. This regulation provides an explicit constraint on BT's charges as a TCP, for what Ofcom (through its decision that BT has SMP in call origination) deems to be the dominant volume of NTS traffic.

8.2.5 Ofcom's Conclusion that BT Faces No Competitive Constraints is not Based on Any Concrete Evidence

From the discussion above, it is clear that there is significant evidence, taken from actual market data and market experience, to support the view that BT (as a TCP), in common with every other NTS TCP, is subject to commercial and regulatory constraints on its pricing. In other words, regulation constrains the pricing activity of *all* TCPs for the majority of NTS traffic.

Ofcom's conclusion that BT has SMP in the NTS call termination market, on the other hand, appears to rest solely on its finding that BT is unconstrained when it raises its termination prices for those NTS calls that neither originate on, nor transit via, BT's network.¹⁶ (Market Review Consultation Document ¶ 4.71). Ofcom does not appear to have based this finding on any concrete evidence that BT's pricing behaviour as a TCP is unconstrained or, for that matter, evidence that the NTS call termination market is not currently effectively competitive.

From Ofcom's Market Review consultation, it is clear that there has been substantial consultation, prior to publication, with OCPs and TCPs. However, BT (the clear focus of Ofcom's analysis) was not consulted. Nor did BT receive either formal or informal requests for information. BT is not entirely surprised, therefore, to find no evidence supporting Ofcom's assertions. Indeed, when BT wrote to Ofcom in June, offering to meet and discuss concerns relating to NCCN 500, Ofcom refused this meeting, stating instead that "this [refusal to reverse NCCN 500 charges] is not in BT's best interests"¹⁷, although without explanation as to why that might be so.

¹⁶ By contrast, where BT originates and/or transits NTS traffic, Ofcom concludes that the pricing behaviour of all TCPs is constrained as a result of the BT NTS Call Origination Condition. (Market Review Consultation Document ¶ 4.34).

¹⁷ email from Sean Williams to Colin Annette, 28th June 2004

However, it is telling that eight months after BT implemented NCCN 500, BT's market share in the NTS call termination market has not changed noticeably. Nor is there any evidence to suggest that BT's pricing behaviour has in any way affected the churn of retail customers between service providers¹⁸. This strongly suggests that BT's pricing behaviour as a TCP continues to be constrained by the actions of OCPs and other players in the market and that there is no evidence of actual competitive damage in the market.

Ofcom also suggests in the Consultation document that NCCN 500 introduced differential termination charges for the first time. In reality, however, NCCN 500 was aimed at bringing retail OCP retentions *closer into line* (i.e. trending them towards reciprocal charges for call origination), which is precisely the commercial structure that has existed for 080 (freephone) NTS since 1995¹⁹. The consequence of this, in circumstances where OCPs' retail prices are free-floating, is that payments to the relevant TCP (in this case, BT) increased.

This debate highlights two philosophical/commercial points of view:

- One, in which OCPs are selling call origination to TCPs; and
- The other, in which TCPs are selling call termination to OCPs.

There is no right answer to this philosophical debate. However, Ofcom's entire existing and proposed regulatory framework for NTS is based around the first of these philosophical views. Ofcom and Oftel have consistently maintained the view that, for NTS calls, the value is added by TCPs and that, therefore, a rational economic outcome would limit OCPs to a narrow call origination charge, while any surplus monies flowed to the TCP. Further, Ofcom's basis for intervention on NTS services is that of SMP in call origination.

However Ofcom's key concern with NCC500 appears to be that BT has increased its charges for *termination* and is therefore reducing the returns of OCPs. BT is unclear why this policy position would have shifted so markedly in this case. If Ofcom is suggesting that an OCP should reasonably recover substantially more than its costs (including a reasonable return on capital), then this should certainly be addressed in the final decisions on a future NTS regulatory framework. However, using regulation to *ensure* higher returns for OCPs other than BT would appear to be discriminatory and not in the interests of consumers.

8.2.6 Ofcom's Policy Objectives Are Confused

Ofcom has created a series of policy tensions that are impossible to resolve. If its aim is to drive down call origination charges through competition between OCPs (or regulation, where SMP limits competitive behaviour), then this will (where retail pricing for calls varies between OCPs) drive differential payments to TCPs by each OCP.

If its aim, on the other hand, is to drive down termination rates through competition between TCPs (or regulation, where SMP limits competitive behaviour), this will (where retail pricing for calls varies between OCPs) drive differential origination retentions (or call origination charges) by each OCP. In this circumstance, it would no longer be appropriate for BT and Kingston Communications to be subject to a cost-oriented constraint on their own retail activities, as this would generate a significant retail market distortion.

18

¹⁹ 080 services are, in effect, the 'purest' form of NTS. With no retail revenues to cloud the issue, the industry broadly levies the same call origination charge on other communications providers. NCCN 500 simply moves 0845 and 0870 call origination charging back towards this charging model.

Finally, it is once again important to remember that competition law is not an appropriate implementation tool for ex-ante regulatory policy. It exists to address market failure.

8.2.7 Ofcom Has Not Undertaken a Proper Forward-Looking Market Assessment

In assessing whether or not BT faces competitive constraints on its pricing, the *SMP Guidelines* make clear that SMP is found not only by reference to the assessment of existing market conditions, relying on criteria such as market share and barriers to entry, but also by reference to a forward-looking analysis of the market. (*SMP Guidelines*, ¶ 75). For this reason, another important criterion the European Commission advises national regulatory authorities to consider is the absence of potential competition. (*SMP Guidelines*, ¶ 78).

The current regulatory controls on BT are the sole sources of the issues that Ofcom has suggested create a competitive issue. They constrain TCPs from demanding higher charges from BT for NTS traffic where BT is the OCP, while obliging BT to transit NTS calls in a non-discriminatory manner. However, both of these regulatory failures are able to be remedied by Ofcom.

Ofcom acknowledges as much, stating that its preferred option from the Policy Review consultation that Option 2, if implemented, "has key features that may mitigate BT's position of SMP on a forward-looking basis".²⁰ (Market Review Consultation Document ¶ 4.80). In reality, of course, the fact that regulation constrains competitive behaviour is not a reasonable basis on which to claim SMP for any player in the affected market, particularly not when that player is the only OCP subject to the flawed regulation. Nevertheless, Ofcom concludes that its proposal to amend the BT NTS Call Origination Condition should not be considered as part of Ofcom's forward-looking market assessment. (Market Review Consultation Document ¶¶ 4.75-4.81).

According to Ofcom, there will be a "time lag" before the regulatory modifications proposed in the NTS Policy Options Consultation come into operation, principally because changes to the regulatory framework will need to be put in place after completion of the NTS Policy Options Consultation and BT may need time to make changes to its billing and interconnect systems. (Market Review Consultation Document ¶ 4.59). As noted earlier in this response, BT does not believe that there is a significant "time lag" associated with this implementation, at all.

Ofcom also states that it cannot be "definitive" on how these proposed regulatory modifications will impact the competitiveness of the market for NTS call termination until after they are implemented. (Market Review Consultation Document ¶¶ 4.78-4.79). Ofcom therefore proposes to consider whether the proposed regulatory modifications have had their desired impact on the competitiveness of the NTS call termination market at its next market review in 18 months to two years. (Market Review Consultation Document ¶ 4.81).

However, a proper prospectively, forward-looking analysis requires that Ofcom take account of these proposed regulatory modifications right now, particularly given that they will come into operation at around the same time as Ofcom's market review proposals. This is well before the 18 months to 2 years Ofcom proposes before its next market review, a period over which enormous market distortion could be caused by unnecessary, disproportionate and discriminatory regulatory intervention.

The fact that the impact of Ofcom's proposed regulatory modifications is uncertain is not, however, important. A forward-looking market analysis, by definition, is meant to consider possible developments to the market, the impact of which are not entirely certain. Indeed, Ofcom's own speculation of the "likely" and "unlikely" strategies OCPs will adopt in response to a termination price increase by BT heavily influenced Ofcom's provisional conclusion that BT has SMP.

²⁰ Option 2 (and BT's proposed Option 2a) would both provide all TCPs with the ability to change their NTS charges for calls from BT's retail customers. This would remove the aspect of the BT NTS Call Origination Condition that Ofcom claims has distorted normal market behaviour

Ofcom does not appear to have taken adequate account of future regulatory developments in the market, when conducting its market review. These future developments will be decided and implemented in parallel with this market review and are very much within the control of Ofcom.

BT suggests that Ofcom review its conclusions both in light of the evidence presented in this document and taking clear account of the impending market impact of its other proposed regulatory intervention on this currently competitive market.

8.3 Ofcom's Proposed Regulatory Remedies

Based on its draft finding of SMP, Ofcom proposes to impose two SMP conditions on BT – an obligation to provide Network Access and an obligation not to unduly discriminate. BT considers neither of these conditions to be proportionate to what each condition is intended to remedy.

8.3.1 There is No Market Failure to Redress

Ofcom acknowledges that the purpose of *ex ante* regulation is to address market failures and entry barriers that otherwise prevent effective competition from being established. (¶ 5.13) (*Commission Recommendation*, ¶ 3.2).

In addition the SMP Guidelines require that any obligation imposed by NRAs must be proportionate to the problem to be remedied. (*SMP Guidelines*, ¶117). As the guidelines make clear, in order to establish that a proposed measure is compatible with the principle of proportionality, the action to be taken must pursue a legitimate aim, and the means employed to achieve that aim must be both necessary and the least burdensome, i.e. it must be the minimum necessary to achieve the aim. (*SMP Guidelines*, ¶118).

In the NTS call termination market, Ofcom has identified that barriers to entry are low and this is a factor suggesting that BT does not have SMP in the NTS call termination market. (Market Review Consultation Document ¶ 4.22). Ofcom has also not identified any market failures in the market for NTS call termination. Indeed, it is Ofcom's own regulation of the NTS call origination market that constrains the pricing freedoms of all TCPs, where BT is the OCP.

The only regulatory response that can remedy the identified problem is to amend or to remove the regulation that has caused the problem in the first place. This is what Ofcom has proposed to do in its NTS Policy Options Consultation and BT is unclear as to why Ofcom would simultaneously seek to use further regulatory intervention to address this same issue.

8.3.2 Condition to Provide Network Access

Ofcom proposes to require BT to provide Network Access on reasonable request. (Market Review Consultation Document ¶¶ 5.36-5.39). Significantly, Ofcom has not identified any instance where BT has refused to provide access to its network termination services for NTS calls and has not identified this as a problem which causes BT's pricing behaviour to be unconstrained. Nor has Ofcom provided any explanation as to why BT might in the absence of an *ex ante* condition refuse to provide network access given the importance of NTS services to BT. In the absence of such evidence or explanation there is no basis for the imposition of such a condition.

Indeed, as noted above, if any failure exists with respect to NTS services, it is the inability of all TCPs to raise their termination charges where BT is the OCP. Requiring BT to provide Network Access as a TCP will not remedy this problem and certainly will not address the underlying flaws in the current regulatory framework. The Network Access condition is therefore an inappropriate and disproportionate remedy to impose on BT.

8.3.3 Condition Not to Unduly Discriminate

Ofcom also proposes to impose the obligation on BT not to unduly discriminate in order to ensure that BT will not have the ability to raise its NTS termination charges for non-BT OCPs above what it charges itself for its own NTS retail calls. (Market Review Consultation Document ¶¶ 5.45-5.53).

However, such a condition could only be considered as a remedy if the underlying policy tension between whether TCPs are buying call origination, or whether OCPs are buying call termination is first resolved.

Applying unnecessary regulatory constraint to this environment will necessarily interfere with competition in the retail market, driving inefficient behaviours. It will also not address Ofcom's identified problem, which can only be resolved effectively through Ofcom's NTS Framework Review. In light of this fact, BT would argue that the imposition of an undue discrimination condition is not proportionate, given that the least burdensome means of addressing the problem is through Ofcom's NTS Policy Review.

9 OFCOM'S INTERPRETATION OF NCCN 500

Ofcom makes much of the price changes introduced through NCCN 500, claiming that increasing payments to BT's NTS services indicate the existence of SMP. However, it is clear that there remains some misunderstanding about these price changes.

For a more complete background on NCCN 500, Ofcom should refer to BT's letter to Sean Williams, in June 2004.

9.1 NCCN 500 Applies to Limited NTS Traffic

NCCN 500 applies charges to 0845 and 0870 traffic, where BT is the TCP and other communications providers are the OCP. BT was unable to change charging arrangements for traffic where it is also the OCP, because of Ofcom's NTS Call Origination Condition.

9.2 NTS Commercial Arrangements are Focused on Call Origination

080 (freephone) services are the simplest form of NTS, being unclouded by retail revenues. 080 services, throughout the industry, attract broadly similar levels of call origination charge. Few communications providers have suggested that these call origination charges represent a problem and Ofcom has not suggested, through its Market Review, that there are concerns with the level, or the reciprocal nature, of these call origination charges.

Prior to NCCN 500 however, there were substantial differences in 0845 and 0870 call origination charges, across OCPs.

NCCN 500 sought to bring 0845 and 0870 call origination charges closer to those for 080 services.

9.3 Consumers are Paying for the NTS Service

As Ofcom makes clear in its Policy Review consultation, the basis for its NTS regulatory intervention is that NTS represents a valued micropayment structure through which consumers are able to purchase services from a wide range of service providers. BT has no objection to this policy objective.

Other communications providers have been charging substantially more than BT for retail calls to all TCPs' NTS. NCCN 500 simply sought to capture the value of BT's NTS services, through interconnect charging. This is precisely the policy objective that Oftel and Ofcom have pursued in relation to NTS.

If BT were to increase its retail pricing of 0845 and 0870 calls to match that of other OCPs, all TCPs would increase their charges to BT. This is formulaically implemented via the BT NTS Call Origination Condition, although a less formulaic approach can be taken where BT is not the OCP (i.e. in the absence of SMP, detailed and regular pricing calculations would not be worthwhile). Again, this is what BT has implemented through NCCN 500 and varies in no way from the commercial actions undertaken by all TCPs, or by Ofcom through its regulatory dispute resolutions.

BT is unclear, then, as to how NCCN 500 creates an outcome that is inconsistent with that which Ofcom has explicitly sought through its existing and proposed regulatory framework for NTS. If Ofcom's policy objectives are then found to be inconsistent with the requirements of competition law, this is a matter for Ofcom to address through its Policy Review and is not a sign of SMP in the market.

9.4 Following NCCN 500, OCPs Continue to Make Adequate Returns

Even after NCCN 500, all OCPs continue to receive at least the same call origination charges as BT does. This also allowed OCPs to keep retail pricing unchanged and NCCN 500 had no consequent impact on the retail market.

9.5 Conclusions

BT has implemented price changes, through NCCN 500, that relate to a tiny part of the NTS market. These price changes are based on precisely the commercial structure that is at the heart of Ofcom's regulatory policy and objectives.

BT has chosen interconnect pricing that will not *force* a change to retail pricing and that leaves OCPs with at least the returns for call origination as those earned by BT for similar calls. BT clearly faced commercial constraints in setting these prices, with the need to retain access to its service providers' services and the desire not to reduce call volumes through increased retail pricing.

There is no evidence that either competitors or consumers have been unduly harmed by this pricing. There is substantial evidence to show that this is precisely the commercial outcome that would result if BT were to increase its retail pricing as an OCP. BT does not, therefore, accept that NCCN 500 represents a problem under competition law, or is anything other than entirely consistent with the outcome that Ofcom actively seeks through its regulatory intervention in NTS call origination.

10 ANNEX A – SPECIFIC ANSWERS TO OFCOM'S FRAMEWORK REVIEW QUESTIONS

Q1 *In relation to call centre waiting times, Ofcom would welcome stakeholders' views, supported by evidence if available, as to whether the revenue share available on NTS numbers provides sufficient incentive to encourage NTS Service Providers to artificially extend call durations or indeed whether this has actually occurred ?*

In considering any regulation, BT does think it is important for Ofcom to draw a clear distinction between the conditions of competition within the supply of NTS services and the conditions of competition within the downstream markets that NTS serves e.g. in the financial services sector. If financial service companies have long call waiting times for customers, this may give some indication about the degree of competition within the financial services sector but cannot be an indicator of the level of competition within the NTS sector. It is important, therefore, not to combine the two markets, mixing the two could lead to the application of telecommunication regulation in order to address competition issues in related sectors.

Although calls to Service Providers may vary considerably in duration, BT has no evidence to demonstrate that Service Providers deliberately extend NTS call length to gain increased revenue opportunities. BT does, however, agree with Ofcom that a number of Consumers perceive that the revenue sharing element of some call charges encourage Service Providers to deliberately extend the duration of the call.

Option 2 of the Ofcom consultation document does not appear to address issues associated with Service Provider revenue share as mentioned above for the following reasons:

- it does not allay Consumer concerns as to the basis for the call charges incurred or if call charges have been generated within a revenue share application; and
- it does not provide a clear Customer message for Service Providers who wish to provide a service outside of a revenue share regime.

However, in Option 2a as proposed by BT in Section 6 of this document, the application, (or not), of a revenue share arrangement by a Service Provider becomes much more transparent. It will be clear to Consumers that Service Providers who choose to offer access to services via 0845 and 0870 number ranges are applying geographic rates only, without any risk of artificial call extension such as may be perceived as driven by a revenue share arrangement.

Q2 *Do stakeholders think that Ofcom has captured all of the main issues that stakeholders have with the current NTS regime? Are there any other key issues that should be taken into consideration in this consultation?*

BT believes that Ofcom has captured the main issues identified with the current NTS regime within the Ofcom consultation.

Q3 *Do stakeholders agree with Ofcom's policy objectives?*

BT's view is that Ofcom's policy objectives for the NTS Review should closely match regulatory objectives driven by the Communications Act 2003, the European Union Directives and other such legislative requirements.

BT is disappointed that Ofcom has not chosen to adopt a more light handed regulatory approach to the issues identified with the current NTS regime, especially as "light touch" regulation is one of the key objectives promoted within the Ofcom Strategic Review. BT believes that there is a requirement to balance the needs and expectations of all players in the 0845 and 0870 NTS markets, namely, citizen-consumers, Originating Communication Providers, Terminating Communication Providers and ISPs. It would

appear that Option 2 of the NTS Review consultation document, does not provide such a balance but is biased towards the commercial needs of the Termination and ISP market with negative impact on the needs and expectations of the citizen-consumers. It was with this imbalance in mind that BT sought to develop the 0845 & 0870 NTS market option 2a, which built on the Option2 objective to provide revenue certainty for Terminating CPs and ISPs but also went some way to allay the issues identified by citizen-consumers.

Q4 *When evaluating the options, what weight should Ofcom give to the various policy objectives, bearing in mind the trade-offs that may exist between them?*

BT believes that Ofcom has disproportionately place considerably more emphasis on Ofcom's Transitional Objective; "Minimising negative revenue impact on TCPs and NTS Service Providers" than on any other. The over-emphasis within the consultation document for the protection a competitive Termination market would appear to be in contradiction to one of Ofcom's key Medium and Long Term objectives of "promoting Consumer interests" or, indeed, of promoting competition. In practice, given that there will be potential tariff uncertainty for SPs/ISPs on transition from the existing regime, BT does not believe the option even scores high for the community for whom it most seems to have been tailored.

BT firmly believes in the benefits of an NTS commercial framework and of revenue share opportunities within the NTS, but would have welcomed a more balanced approach by Ofcom, with greater emphasis on the considerations of Telecommunication customers and providers. BT would also have welcomed a more convincing indication from Ofcom that the regulator is keen to minimise regulation in voice markets.

Q5 *Ofcom welcomes stakeholders' views on what (if any) special provisions should be made to help non-profit organisations to obtain preferential rates for receiving inbound NTS calls should Options 3, 4, or 5 be introduced?*

BT does not believe that providing bespoke lower cost variants for non-profit organisations would be appropriate. Should these be public policy objectives, and the case is not made here, then they should be appropriately funded from outside the industry.

BT is always willing to discuss constructively issues faced by the THA and any other non-profit organisations.

Q6 *If Option 3 were implemented do stakeholders think non-ECS NTS Service Providers that are already using 0844 and 0871 numbers should be allowed to continue to benefit from the regulatory underpinning for revenue sharing for these number ranges?*

BT believes that there is no evidence to support a change to the existing position for non-ECS NTS Service Providers as currently offered within the 0844 and 0871 number ranges.

Q7 *If Option 5 were implemented, do you think that Ofcom should retain the BT NTS Call Origination Condition for freephone calls? If not, what alternative basis should be applied to BT's call origination charges for freephone calls?*

Current commercial arrangements for freephone calls work acceptably and BT would expect commercial arrangements to be broadly similar in the absence of regulation should the NTS Call Origination Condition be removed.

Q8 *In connection with Options 3, 4 and 5, do stakeholders think that it would be appropriate for Ofcom to seek to prevent revenue sharing on the relevant NTS number ranges in order to prevent CPs from negotiating commercial revenue sharing arrangements if the current regulatory support for revenue sharing is removed ?*

BT's preferred option would benefit from, a specific prohibition by Ofcom of revenue sharing, were appropriate, such as is the case in 05 and 070

Q9 *Ofcom has identified 5 options for evaluation. What other options do stakeholders think that Ofcom should consider ?*

BT has proposed an alternative to Ofcom's Option 2, Option 2a. Within the BT proposal, the key features would be as follows:

PROPOSAL	BENEFIT
No change to 080 and 09 numbers.	The current arrangement works well, and is understood by consumers
Revenue share would be prohibited in 0845 and 0870.	Pricing structure transparency for consumers, and more choice for ISPs
0845 and 0870 number ranges would be fully tariff-linked to geographic calls, including "flat top" tariffs.	Pricing transparency for consumers for 0845 & 0870 calls, and access to all BT discount options
Termination rates for 0845 & 0870 calls should be the same as those applied, on a reciprocal basis, for geographic call termination	This would remove any incentive by Terminating Operators to extend call holding times.
All CPs should be required to adopt proposal. Ofcom could enforce this in the same way as cost of calls to 080 numbers as free are enforced.	No discrimination, all consumers, regardless of Originating Operator would receive benefits. Reduction in customer confusion
0844 and 0871, like 080 and 09, should remain as currently applied, and become the natural destination for 0845/0870 SP/ISPs who wish to maintain a revenue share to help fund their business.	<ul style="list-style-type: none"> • Much reduced implementation costs and time scales. • A scheduled migration time frame could be agreed with CPs. • Although number change required (would likely be the case with Option 2) initial churn would apply to all revenue share ISPs at the same time. • Ofcom could make additional 084/087 numbering space available to simplify migration for SPs.

BT believes that this option is simple, and provides a balanced NTS service regime for Consumers, Communication Providers and for Service Providers.

Q10 *Do stakeholders agree with Ofcom's initial view that Option 2 performs best against the evaluation criteria and should be implemented? If not, what other option(s) do stakeholders consider should be implemented and why?*

A detailed description of the BT alternative option can be found in Section 6 of this Response.

Q11 *Ofcom welcomes comments from Industry on the feasibility of (preferably free-to-caller) pre-announcement of the cost of voice calls to 084/087 numbers supported by technical descriptions and likely costs.*

BT has considered two Options for providing a free-to-caller pre-announcement for voice calls:

- Option 1 – provided by the Network Operator on which the call originates

- Option 2 – provided by the Network Operator that owns the 084/087 number range

Option 1

Technically, a solution could be deployed, but current indication is that development cost would be high (in the region of £10m+) both for industry and, as costs are filtered through to call charges, to consumers.

There are also timescale issues as BT's current IN platform will not support capacity developments of this scale. A development and implementation of this kind would need to be scoped and developed on the planned replacement platform. This would be in excess of two years from the date of being requested to implement it.

BT is unable to assess the cost or complexity for implementation by other communications providers. In particular, many providers have not previously needed to invest in IN platforms, making this approach difficult to implement. The added complexity of multiple retailing resellers for a given OCP, underlines the large platform capacity that would be required.

Overall, BT does not believe that Option 1 presents a cost-effective solution.

Option 2

BT does not believe that there is a viable technical solution for playing an announcement at the terminating operator's network.

BT has produced a rapid impact analysis of the feasibility of implementing a free-to-caller announcement, for both Options above. This can be found in Section 1 of the Annex B of this document

Q12 *Ofcom welcomes comments from Industry on the feasibility of informing callers of the cost of data calls to ISPs supported by technical descriptions and likely costs.*

Two of BT's product groups would be affected by the requirement to provide pre-call call charge information:

- BTYahoo! PAYG
- BT Click.com & BT Click 3rd Parties

BTYahoo! PAYG is the NTS narrowband dial up Internet product supplied by BT's retail organisation. Although BT considers that the provision of an active redirect page may be the only option available which could provide pre-connect information, this option would not be able to provide tariff information for calls to BTYahoo which are not BT originated.

Costs have been estimated as being in the region of £60-80k for initial set-up, and £20k to £25k per year for operation. This assessment does not include helpdesk or other customer contact or service costs.

BT Click.com & BT Click 3rd Parties are NTS narrowband dial up internet products provided by BT's wholesale organisation. BT does not consider that it is possible to provide a pre-announcement service for these products on the BT platform, as there is no link between the PSTN billing system and the modem in the PoP that answers the call.

BT considered that ISPs could provide the announcement. It is possible for an ISP to send an executable file to all its end users with call rate information so that when a consumer double clicks on an icon the pence per minute rate is displayed. However this raises further issues around viruses and other computer security risks and would require

ISPs to collate and regularly update retail pricing across all OCPs, with substantial overhead cost issues. This presents the same issues as identified for the previous considerations above namely access to tariff information from all OCPs. This coupled with the ability to keep tariff information from so many sources accurate and up to date would prove prohibitive to the supply of such a service.

BT believes that the issues identified above for all both BTYahoo PAYG and BT Click products present significant barriers to the ability of to provide the necessary tariff information to dial up NTS customers.

BT's assessment of the ability to provide call tariff information to dial up Internet customers of ISPs can be found in Section 2 to the Annex B of this document.

Q13 *What comments do stakeholders have on the consumer protection measures that Ofcom has defined, in particular which measures or combination of measures should be implemented? Do you think additional consumer protection measures are required?*

BT is generally supportive of these measures, although feels that it's Option 2a proposals would add more tangible strength to them. However, the pre-announcement proposal does not appear to be implementable with any accuracy and, in the absence of accuracy, appears to add little value in return for substantial cost. For similar reasons, it is also unclear how TCPs would be in a position to provide their service provider customers with accurate retail pricing information.

Q14 *Do stakeholders agree with Ofcom's assessment of the steps Ofcom would need to take to implement Option 2? Do stakeholders consider that any steps are missing or unnecessary?*

BT believes that the steps as proposed by Ofcom within Section 7.6, 7.7 and 7.8 are reasonable and necessary. Any requirements for further billing development should Option 2 be implemented would depend if number granularity greater than at the 10k level is imposed.

BT does not envisage a significant increase, if any, to the level of price points required by Operators to that currently in place on the 0844 and 0871 pricing ladders. Therefore it is not anticipated that this element of implementation would generate any further development of systems.

Q15 *What comments do stakeholders have about the need for and content of a public communications plan to inform consumers about changes in the retail pricing arrangements for 0845 and 0870 calls under Option 2? What roles should Ofcom, the Industry and other groups have in implementing this plan?*

BT will communicate BT prices to BT customers and anticipates that other CPs will also provide such information to their own customer base. Should Ofcom itself wish to provide a public communication BT would have no objection.

Q16 *What comments do stakeholders have on the following issues in the event that Option 2 is implemented?*

- *the network tariff gradient;*
- *new price points and timescales for their introduction;*
- *what 'opting into' discounts means;*
- *responsibility for payment of transit charges; and*

- *the long/short call duration mechanism for calculating 0845 interconnection payments.*

Network Tariff Gradient (NTG)

The NTG is not specific to NTS and is simply a cost allocation mechanism between different time of day bands. BT is unclear as to the policy issues that Ofcom feels need to be addressed in relation to the NTG and NTS. However, BT can see no reason for change in this context and has seen neither a complaint, nor a dispute, on this subject.

New Price Points and Timescales for Their Introduction

BT believes that the current processes and timescales for the introduction of new price points for 0844 and 0871 would simply expand to cover either Option 2, or Option 2a. These processes and timescales have proven effective for several years. Where particular communications providers have required urgent implementation, due to administrative/process failings by either party, BT has done its best to accommodate these requirements.

Meaning of 'Opting into Discounts'

The key driver proposed by Ofcom for the change to Option 2 is the provision of revenue certainty for TCPs. It would appear to be inconsistent, therefore, to continue to apply BT discounts to TCPs charges for NTS and, as a consequence, perpetuate an environment that has been much stated as a factor that generates revenue uncertainty for TCPs. Moreover, to continue to include BT discounts in such a scenario would not further Ofcom's objective of reducing disputes as a result of BT's influence on TCP's POLOs.

Further, Ofcom has not indicated that there will be a distinction between internet access and non-internet access (as currently for 0844/71). Such a lack of distinction would present BT with significant operational problems as each of these categories are eligible for different BT discounts.

Transit Charging

BT is neutral regarding who pay for BT's transit services for NTS, OCPs or TCPs. However, in the context of rapid and simple implementation, BT does not believe that change would be helpful, as this would require amendments to billing systems and processes.

Ofcom notes the original driver for OCP-pays transit in 0844/0871 as being revenue certainty. BT is, firstly, unclear as to why Ofcom would have a policy view that suggests TCPs should be able to offload revenue uncertainty onto OCPs. Secondly, given that BT's transit charges, NIPP data and EBC matrix are all published information, it is unclear where any significant uncertainty might arise in relation to BT's transit charges (other transit providers tend not to publish this information to such an extent).

Long/Short Call Duration Mechanism for Calculating 0845 Interconnection Payments

BT anticipates that should Option2 or 2a be implemented then it would appear, at this time, that the most suitable process for calculating Long/short duration payments for these options would be to apply the process currently adopted to calculate short duration payments for geographic linked 0845 and 0870 NTS calls. Currently there is no methodology in place for the 0844 and 0871 pricing ladders and further consideration may be necessary if the application of the 0845/70 process for calculation proves problematic when applied to the numerous price points of Options2 & 2a.

- Q17 *Do stakeholders agree with Ofcom's assessment of the steps Ofcom would need to take to implement Options 1, 3, 4 and 5 ? Do stakeholders consider that any steps are missing or unnecessary?*

Option 1 will, of course, require no implementation as this Option already is in place.

Option 3, 4, and 5 will require some billing development to end the revenue sharing arrangements in the BT billing systems. Timescales are a minimum of 3 months at a cost of £50k- £100k.

- Q18 *What views do stakeholders have on combinations of policy options (either as presented in this document or otherwise suggested by stakeholders) that Ofcom should consider for phased changes to the current NTS regime, and what would be the advantages of this phasing ?*

BT does not anticipate that it is necessary to provide combinations of options via a phased process. BT believes that to implement Option 2a the following estimated timescales would be required:

Transitional period for the removal of revenue share from 0845 & 0870 is estimated to be 6 - 9 months from the publication of Ofcom's statement on the NTS regime.

Development of billing systems would be 3 to 6 months from publication (providing no significant changes to current 10k number blocks).

Development of commercial arrangements 6 to 9 months from publication.

11 ANNEX B – RAPID IMPACT ANALYSIS ON NTS TARIFFING CALL ANNOUNCEMENTS

The report, below, contains BT's early feasibility assessment of implementing call announcements relating to tariffs for the call.

IN COMMERCIAL CONFIDENCE

12 ANNEX C – SPECIFIC RESPONSES TO OFCOM'S MARKET REVIEW QUESTIONS

- Q1 *Do stakeholders agree with Ofcom's initial view that the termination of all NTS call types (0845/0870, etc, also voice and data calls) should be included within the same market?*

BT agrees that substitutability patterns and pricing constraints suggest a single NTS call termination market covering all of the NTS number ranges and including voice and data traffic.

The significantly different substitutability patterns between NTS calls to ECS providers (i.e., ISPs) and NTS calls to non-ECS providers (i.e., banks) does raise the possibility that separate sub-markets exist, based on the ECS versus non-ECS distinction. Given BT's assessment that no TCP has SMP in either market, however, a single market definition is both appropriate and proportionate.

- Q2 *Do stakeholders agree with Ofcom's initial view that there is a single market for NTS call termination, i.e. that the market should not be defined on a TCP specific basis?*

BT agrees with Ofcom's view that the availability of immediate substitutes for the majority of NTS calls supports a single market for NTS call termination. This degree of substitutability suggests that the calling party pays externality is likely to play a limited role in the termination of NTS calls, which suggests against defining the market on a TCP specific basis.

- Q3 *Do stakeholders agree with the approach to SMP assessment that Ofcom has used, especially the fact that an analysis of market shares has not been decisive to the proposed finding?*

BT does not agree with the approach to SMP assessment that Ofcom has used. BT's market share of [X]% and the existence of low barriers to entry create a strong presumption that BT does not have SMP in the NTS call termination market. Against this backdrop, the necessary evidence required to overturn this presumption must be robust and incontrovertible. Ofcom has produced no such evidence.

Moreover, Ofcom's predecessor Oftel found the market to be competitive just over a year ago and there is no evidence that BT's introduction of NCCN 500 in May 2004 has had a detrimental impact on levels of competition. In fact, the actual evidence of the current competitive state of the market supports a continued finding of effective competition and a conclusion that BT continues to face strong commercial constraints on its pricing and other commercial activities.

Ofcom chooses instead to rely on speculation as to how OCPs are likely to react to an increase in payments to BT as a TCP. Based on these assertions and assumptions, Ofcom concludes that BT's pricing behaviour is not constrained and that BT has SMP. These assumptions should not be given undue weight and cannot overturn the key factors of low market share and more importantly low barriers to entry which support a finding of no SMP.

If Ofcom places significant weight on these assumptions as to possible behaviour by OCPs, then it must give a similar if not greater weight to the fact that it is likely to amend or remove the regulatory condition that is directly responsible for the market anomalies that Ofcom seeks to address within a similar timeframe.

- Q4 *Do stakeholders agree with Ofcom's assessment of SMP in the NTS call termination market?*

For the reasons stated in response to Question 3, BT does not agree with Ofcom's assessment of SMP in the NTS call termination market.

Q5 *How do stakeholders think the position is likely to change, if at all, during the next 18 months to two years?*

Assuming that Ofcom adopts its proposals (or a variant thereof) in its NTS Policy Options Consultation, BT's believes that this will address the issues Ofcom has raised. This would remove any possible basis for a finding that BT has SMP in the NTS call termination market. Implementation of Ofcom's proposals, if appropriately framed, can be achieved in substantially less than the 18 months that Ofcom has suggested.

Q6 *What impact, if any, do stakeholders think that Option 2 from the NTS Policy Options Consultation, if implemented, will have on the competitiveness of this market?*

The implementation of Option 2 from the NTS Policy Options Consultation will remove the factors identified by Ofcom as distorting competitive behaviour. Therefore, implementation of Option 2, or a variant of Option 2, will ensure the continued competitiveness of the market.

Q7 *Do stakeholders agree with Ofcom's assessment of the appropriate options for regulatory remedies for the NTS call termination market?*

No, BT disagrees with Ofcom's proposed imposition of the Network Access and Undue Discrimination conditions. Neither of these conditions remedies the problem identified by Ofcom, namely the fact that existing regulation constrains all TCPs from raising the charges levied on BT as an OCP. The only regulatory response that can remedy this problem is the amendment or removal of BT's NTS Call Origination Condition. Ofcom's proposed SMP conditions are therefore disproportionate to what they are intended to achieve and unnecessary in the light of other regulatory measures.

In addition, there has been no occasion of which Network Access has been refused by BT for NTS services and no circumstance in which this is a credibly likely outcome. Application of Ofcom's proposed regulatory remedies, in the absence of any evidence of market failure (flaws in a regulatory framework cannot be classified as market failures), is both disproportionate and contrary to European Commission guidelines and Ofcom's own stated policy.

Q8 *Do stakeholders consider that there are other regulatory measures that should be imposed as remedies to BT's proposed SMP in the NTS call termination market?*

BT has been unable to find any evidence of SMP, on the part of any TCP. Regulatory intervention is, therefore, not only undesirable but inconsistent with Ofcom's statutory obligations. NTS call termination is a vibrant and competitive market. The appropriate remedy to the issue identified by Ofcom is the removal of existing regulatory anomalies not the creation of further ex ante regulation.

13 ANNEX F – BT'S COMMENTS ON OFCOM'S POLICY OBJECTIVES

The following table sets out BT's views on Ofcom's medium and long term objectives, along with its views on how well Ofcom's proposals meet those objectives.

Ofcom Policy Objective	Ofcom Policy Evaluation Criteria	BT Comment on Evaluation Criteria	BT's View on Whether Ofcom's Option 2 Meets Evaluation Criteria
Promoting consumer interests	Downward retail price pressure	Valid where costs of providing calls are falling	There is no evidence from the regulatory changes for DQ, 0844, or 0871, to support the view that handing control of retail pricing to competitors would cause downward pressure on that pricing. Indeed, this would normally be likely to draw regulatory attention in itself.
	Tariff transparency	Tariff transparency is a valuable facility for consumers in the retail market.	Likely to increase consumer confusion from tariff proliferation without transparency. Option 2 is likely to reduce tariff transparency.
	Promoting service innovation and availability	Ofcom has a valid role in ensuring that innovation can occur, but the market should be left to deal with 'promotion'	Options 2 and 2a provide an environment for innovation
	Sustaining narrowband metered internet access model	Natural commercial drivers, such as demand, should sustain the development and provision of services. It is therefore, unclear, if this a valid policy objective for the regulator	Neutral, unless NTS metered access call rates rise such as to make un-metered internet access products more attractive.
	Promoting innovative billing	Innovation best promoted by markets, as stated above. Billing is not a telecommunication product therefore BT is unclear what would be the market failure that would warrant regulatory intervention?	The NTS options require that BT continue billing for NTS. Billing innovation can only flourish where NTS service providers conduct their own billing
	Control of adult content and other high risk services	This is an important role for Ofcom and always a significant policy issue	Possible increases of use of 0845/70 numbers for such services as SPs move to escape ICSTIS constraints.

Promoting competition	Providing TCP/SP revenue certainty	There is no clear explanation made by Ofcom as how it is envisaged that revenue certainty would promote competition. Revenue certainty does not seem to be a valid objective for a regulator. However, it would be reasonable for Ofcom to ensure that competition, not competitors' direct control of each other's charges, drives revenue certainty	There are ways to do this which is more in line with Ofcom's objectives taken as a whole and would be more beneficial to consumers and SPs - see BT's proposals in Option 2a
	Providing NTS SP pricing flexibility	There is no evidence that a market failure on SP pricing flexibility exists. SPs are fully able to launch services in the existing 0844/0871 numbering and commercial space	Option 2 & 2a will provide pricing flexibility for Service Providers, although no more than exists already
	Minimising SP entry barriers	Where the provided service is a telecommunications services, this would be a valid pursuit for a telecommunications regulator	Ofcom has identified no SP entry barriers and Options 2 and 2a neither erect, nor reduce, entry barriers
Promoting access and interconnection	Facilitating non-SMP negotiations	Ofcom should not foster regulatory dependency by being too willing to intervene and thereby undermine scope for commercial negotiations. Communications providers that are not capable of managing their commercial negotiations should suffer their inevitable fate and make way for more competent market entry	Continued reliance on regulation will further delay non-SMP communications providers from pursuing the necessary commercial negotiations
Implementing Ofcom's regulatory principles	Ofcom will regulate with a clearly articulated and publicly reviewed annual plan, with stated policy objectives	BT supports this policy approach	Ofcom's NTS proposals run counter to the aims in its Annual Plan.

	Ofcom will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve	This is an important regulatory objective	There is no articulation by Ofcom as to why markets cannot achieve the necessary goals in this case, e.g. Ofcom has rejected the industry-led NTS futures proposal. During the development of this proposal, it was clear that Industry was capable and willing to work to achieve a solution without the need for undue regulatory intervention. BT believes that any public policy goals for NTS were long ago achieved
	Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required	BT has always supported this approach	Ofcom's proposals (in both the Options and Market Review consultations) represent a considerable increase in intervention, which BT does not believe to be justified or necessary compared with alternative options and which Ofcom had not justified adequately
	Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome	Again, BT has always supported this approach	BT sees Ofcom's proposals as failing this objective, above all others
	Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives	Again, BT has always supported this approach	This has not always been the case within this consultation, especially in the case of the NTS Call Termination Review where an increase in regulation has been applied in a situation where de-regulation (removal or amendment of the NTS Call Origination Condition) would achieve Ofcom's goals. Ofcom has identified no new market failure to justify its further intervention.
	Ofcom will research markets constantly and will aim to remain at the forefront of technological understanding		BT welcomes Ofcom's research behind this consultation process, although it has shown little that is conclusive. Certainly, it is difficult to see how the Option 2 proposals flow from this market research

	Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market		BT welcomes Ofcom consulting on its NTS proposals and hopes that the responses from stakeholders will inform and influence Ofcom's final proposals
Criteria flowing from Ofcom's regulatory principles which are specific to the NTS review	To reduce the amount of regulatory involvement required to maintain the NTS regime	BT believes this objective is particularly valid in the case of the NTS review	BT believes that its proposed Option 2a would achieve this aim adequately
	To minimise regulatory dependence	BT believes this objective is particularly valid in the case of the NTS review	Option 2 (or even Option 2a) will likely perpetuate and even increase regulatory dependency. In particular, the requirement that competitors set BT's retail prices requires ongoing regulation if it is itself to avoid regulatory scrutiny

The next table contains BT's views on Ofcom's transitional policy objectives and the extent to which Option 2 addresses these.

Ofcom Transitional Objective	Ofcom Policy Evaluation Criteria	BT Comment on Evaluation Criteria	BT's View on Whether Ofcom's Option 2 Meets Evaluation Criterion
Minimising consumer disruption	Minimising short-term price increases		Experience suggests that CPs will increase prices with the move to a pricing ladder option.
	Minimising short-term confusion over prices		Consumer groups are indicating that they anticipate an increase in consumer confusion and dissatisfaction from tariff proliferation
	Minimising the impact on the viability of PAYG internet services		Neutral unless price increases are significant enough to drive consumers to flat rate internet access products.
Minimising transitional revenue impact	Revenue impact for TCPs	BT is unclear why this objective should be biased to the termination market. It is valid that all markets, including the call origination market should receive suitable revenue for the service provided. The termination market is fully competitive and, therefore should not require such support and regulatory intervention.	Option 2 & Option 2a would support this objective
	Revenue impact on NTS SPs	Same comments as for TCPs, above.	Option 2 & Option 2a would support this objective
Minimising billing and interconnect system expenditure			Option 2 and Option 2a should not require significant billing system development, provided that BT's additional implementation proposals are adopted
Minimising number migration costs			Option 2 will require number migration were SPs need to move to price points not allocated by Terminators to SP's current number ranges. Option 2a will also require number migration to achieve revenue share but would reduce churn risk as there would be a window of opportunity for all SPs.
Ease of communication			BT believes that consumer understanding of Ofcom's Option 2 will be difficult to achieve because of tariff proliferation