BT's response to PhonepayPlus consultation

"Call for inputs around the extension of PhonepayPlus regulation to remaining revenue-sharing ranges"

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BT welcomes comments on the content of this document. Comments can be addressed via e-mail to Alex Cheetham (alex.cheetham@bt.com) or Giuliana de Falco (giuliana.defalco@bt.com)

1. Executive summary

BT supports well targeted and proportionate policies to enhance price transparency and reduce the scope for consumer harm. However, extending PhonepayPlus (PPP) regulation to all remaining revenue share ranges would be an unjustified and disproportionate regulatory action. The low cost of calls to these ranges - they often have no incremental cost to consumers where they form part of a bundle - means the potential for consumer harm is minimal. And we are aware of no systematic evidence of harm on these ranges that would justify regulation.

We are also concerned about the timing of any regulatory changes given Ofcom's proposals on tariff unbundling in its consultation of December 2010 on 'Simplifying Non-Geographic Numbers.' The changes that Ofcom plans to implement are aimed precisely at improving price transparency. These proposals should be given a chance to work before further regulation is imposed. And, within that consultation, Ofcom and PPP both acknowledge that application of PPP regulation has not in fact translated into pricing clarity.

Whilst BT appreciates that other Communications Providers (CPs) and mobile operators sometimes charge substantially more than BT for calls to these ranges, the case for further PPP regulation is weak:

- The purpose of these remaining ranges differs from Premium Rate Services (PRS) as they tend to contribute to Service Providers' costs rather than be a profit driver themselves. This is fundamental to considering whether PPP regulation is appropriate as the business models and incentives of Service Providers (SPs) differ from those providing PRS (see section 2.2 of our response).
- Imposing regulation does not meet Ofcom's own tests for regulation within its analytical framework for PRS (see section 2.3).
- These proposals would not target the areas of greatest concern (section 2.4) and they have an opportunity cost in terms of diverting PPP's management time in dealing with very low value cases (section 2.5).
- To brand these calls as similar to PRS could cause unnecessary concern in consumers' minds.
- It risks shrinkage in call volumes if the experience of regulatory change with 087x calls of a few years' ago is repeated (see response to question 3).

Aside from this, there would be an additional burden on industry and Service Providers from falling within the regulatory net, which for many will be the first time they do so. This comprises direct costs of contributing to PPP's costs as well compliance costs. Ultimately, consumers may bear some of these additional costs.

Extending regulation to all remaining revenue sharing ranges runs counter to the Government's stated policy to *"reduce the overall burden of regulation by introducing it only as a last resort."* It also does not fit with three of Ofcom's key regulatory principles, namely that:[1]

- Ofcom will operate with **a bias against intervention**, but with a willingness to intervene promptly and effectively where required.
- Ofcom will always seek the **least intrusive regulatory methods** of achieving its objectives.
- Ofcom will strive to ensure that interventions are **evidence-based, proportionate**, consistent, accountable and transparent in both deliberation and outcome [Emphasis added].

[1] Ofcom Annual Plan 2011/2012 at http://www.ofcom.org.uk/files/2011/04/annplan1112.pdf

Applying regulation in a blanket fashion to head off potential cases of consumer harm does not align with these principles and would not be a targeted response. We believe there are a number of alternative approaches, such as building on existing ASA/CAP guidance and asking the Communications Working Group to develop best practice guidelines, that would be better targeted and less intrusive.

The remainder of this response sets out our responses to PPP's consultation questions along with evidence for our views. A few parts of our response include commercially confidential information, which has been redacted in the non-confidential version of our response submitted to PPP.

2 Responses to PPP's consultation questions

1. *Do you consider that PhonepayPlus' consumer protection rules are appropriate for the lower-cost revenue-sharing ranges if they were to be administered by PhonepayPlus? If not, why not? Please supply any evidence that supports your view*.

No. While the desired outcomes (such as price transparency and lack of potential for scams) are desirable, applying PPP's consumer protection regulation would be disproportionate precisely because these are "lower cost" ranges, as the consultation question says. Indeed, a revenue sharing element is not always present on these ranges. Arguably, these outcomes are desirable for *all* number ranges but that does not justify PPP regulating all number ranges.

There are a number of reasons for our view, which are set out below along with accompanying evidence. In summary:

- There is no systematic evidence of consumer harm.
- The remaining revenue share ranges have a different purpose from PRS, which is fundamental to the choice of appropriate regulation.
- Imposing regulation does not meet Ofcom's own tests for regulating within its analytical framework for PRS.
- Regulation would not be well targeted at the areas of greatest concern.
- There's an opportunity cost to PPP extending its remit.
- Branding these calls as similar to Premium Rate calls could cause unnecessary concern among consumers.
- It risks shrinkage in call volumes if the experience of regulatory change with 087x calls of a few years' ago is repeated (see our response to question 3).

Our response to question 2 sets out some alternative approaches.

2.1 Low potential for harm & no systematic evidence of harm

The low price of calls to these remaining ranges minimises the potential for consumer harm. Similarly, we are not aware of any systematic evidence of fraud or consumer harm deriving from these remaining 08x ranges that would warrant them falling within PPP's remit.[2]

This is backed up by evidence from the Advertising Standards Agency (ASA). There have been very few adjudications by the Committee on Advertising Practice (CAP) around advertising of call charges. Only four cases have been published on their website since 2007, and even in these, call charges were only a small part of the overall complaint in each case. The very low number of cases implies the case for regulation is weak.

[2] We're aware of one case [**confidential**].

Indeed the CAP's guidance for 08x number ranges advises that pricing information does not have to be given if prices are below a certain level. The CAP says that, if the cost of calling the number is always less than the cost of a call for BT's Weekend Unlimited customers to a geographic number made at the same time, no pricing information has to be given. At the end of 2009, BT aligned its charges for residential customers for calls to 0870 numbers with its standard rates for UK calls.

For low cost number ranges, there also comes a point when the price of a call becomes so low that it is not worth the cost to the consumer of expending more time in researching prices. This will vary by consumer depending on how they value their time, but at some stage the issue becomes *de minimis* as incomes rise and the price of calls continues to fall and voice telephony expenditure becomes a much smaller as a percentage of consumers' incomes.

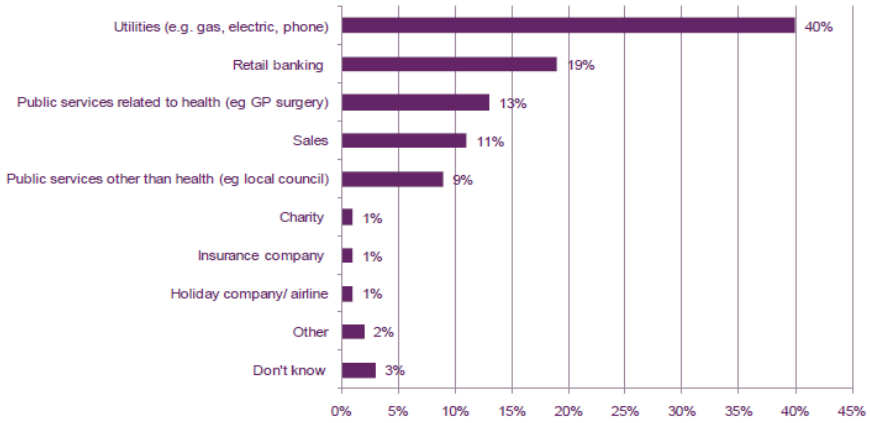
2.2 Remaining ranges have a different purpose from PRS calls

The purpose and degree of revenue sharing on lower cost ranges differs from PRS. Calls to these remaining revenue share ranges tend to be contributions to service costs rather than a profit driver themselves (the revenue share element sometimes doesn't exist or is just "noise"). This is fundamental to decisions on the application of PPP regulation as the business models and incentives of SPs differ from those providing PRS.

This is demonstrated in Ofcom survey evidence on "Non-Geographic telephone numbers" published last November. At paragraph 4.3 Ofcom reported the following, accompanied by figure 11 below:

> *Respondents who had called or considered calling an 08 number that they didn't know the price of calling were asked about the type of organisation that they were (considering) calling (Figure 11). The most common organisations mentioned were utility companies (40%), retail banks (19%) or public services relating to health (13%). Other mentions were to sales companies (11%), other public services (9%), charities (1%), holiday companies (1%) and insurance companies (1%).*[3]

Figure 11: Type of service for which made/considered call to 08 number



This shows that the top three reasons for calling - accounting for nearly 75% of calls – were not PRS-type calls. Rather, they were for support or information functions or calls to public services, where telephony is not the primary business of the provider. [**Confidential:**].

[3] "Non-geographic telephone numbers: Omnibus survey", Ofcom Research Document, November 2011

2.3 Imposing regulation does not meet the tests within Ofcom's analytical framework for PRS

In assessing the risk of consumer harm and whether PRS regulation is appropriate, Ofcom has developed an analytical framework.[4] Ofcom's framework is set out in the first column of table 1 below, which replicates figure 11 in Ofcom's most recent application of the framework in July 2011. The second and third columns are our assessment of whether the proposals in PPP's Call for Inputs meet the test for services to become akin to Controlled PRS.

While there are a couple of similarities with Controlled PRS (i.e. there are some ticks in the final column), the vast majority are crosses, indicating that there is very limited overlap with Controlled PRS. Therefore, using Ofcom's own framework, there is a very weak case for bringing these remaining low cost revenue share ranges within PPP's remit.

Table 1

Ofcom analytical framework for assessing a Controlled Premium Rate Service	BT comment	Overall, Is the service sufficiently similar (tick) or dissimilar (cross) to Controlled PRS to be put in the same category?
Supply side factors		
Is the OCP the actual supplier of the PRS?	No. Tends to Controlled PRS	✔
Complexity and fragmentation of supply chain	Limited. Chain is OCP-TCP-SP/IP. Tends away from Controlled PRS	✕
Barriers to entry and exit	Low. Similar to Controlled PRS	✔
Demand side factors		
Is service an experience good?	No. Tends away from Controlled PRS	✕
Is there bill-supply separation?	Not relevant as the services offered tend to be supporting a non telephony business. Tends away from Controlled PRS	✕
Is expenditure low?	Yes. Tends away from Controlled PRS	✕
Susceptibility to impulse purchases? (i.e. easy sales process with little or no authentication)	NA. Not relevant as the services offered tend to be supporting a non telephony business. Tends away from Controlled PRS	✕
Inappropriate/offensive content?	Not in this channel. Dissimilar to Controlled PRS	✕

[4] Most recently applied by Ofcom in July 2011 in its consultation "Review of Premium Rate Services: An application of the analytical framework" at http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/summary/condoc.pdf

Appeal to children?	NA or likely to have low appeal. Services offered tend to be supporting a non telephony based business rather than a service in its own right. Tends away from Controlled PRS.	✕

2.4 Increased regulation would not target the areas of greatest concern

The main area where there's a lack of price transparency are the prices that mobile companies choose to charge their customers compared with BT's tariffs. This should be the focus of PPP's concern (see BT's response of 20 January 2011 to PPP's consultation on its business plan & budget for 2012/13). Extending PPP regulation to low cost revenue share ranges including calls from fixed lines would not target this.

Ofcom and PPP have themselves acknowledged that their rules have not translated into pricing clarity. Ofcom said in its December 2010 consultation on non-geographic call services:

> *The PhonepayPlus Code of Practice states that 'Service Providers must ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge.' However, as noted by PhonepayPlus in their response to the Call for Inputs, this rule has not translated into pricing clarity as there can be dozens of different prices charged by OCPs for the same 09 service. Service Providers have instead taken to advertising the BT price for their service, with a caveat that calls from other networks may vary and that calls from mobiles may cost considerably more. The decline of BT's retail base has reduced the effectiveness of this message over time. In 2009, BT only retailed approximately [...] of 09 call volumes.*[5]

Given this, we're surprised at the proposal to extend PPP's remit and consider it unlikely to be well targeted.

2.5 Opportunity cost & administrative burden

Although the additional direct costs of PPP could be covered by a levy, there is an opportunity cost of PPP's management time spent on number ranges where consumer issues are minimal compared with PRS ranges. There are also direct costs for PPP of taking on this regulation and compliance costs for those range holders and SPs affected. The number of 08xx range-holders is roughly double the number of 09 range-holders. Ofcom's data on allocations and availability of numbers published on their website[6] also show that if PPP registration were extended to include all 08xx number ranges, 210 more range holders would need to ensure that all the SPs they serve (potentially tens of thousands) were registered. This increased burden could interfere with effective regulation of PRS services, which is where the consumer concerns lie.

2.6 Inclusion in service bundles & concerns over branding

Some 08xx ranges are included within service bundles with no incremental cost to the caller, in contrast to 09x calls. To effectively brand these calls in the same way as PRS calls could cause

[5] Paragraph A7.370 in Ofcom's consultation "Simplifying non-geographic numbers, " December 2010 at http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/

[6] See http://www.ofcom.org.uk/static/numbering/index.htm

unnecessary concern among consumers.[7] Alternatively, creating a new branded range is likely to be expensive and difficult to achieve.

In section 4 of the Call for Inputs, PPP sets out its view that the concerns over its regulation of 0871 have not been founded (see also our response to question 3 below). Yet this misses the point: further regulation of lower cost number ranges should be judged on its own merits, not on whether concerns with regulating 0871 have or have not transpired. The case for PPP regulating these additional lower cost ranges has not been made.

2. *In the event of the lower-cost 08xx revenue-sharing ranges being subject to PhonepayPlus regulation, do you consider it would be necessary to modify the branding or presentation of this regulation? If so, what changes would you consider to be necessary?*

We don't agree that PPP regulation would be appropriate. The type of SPs operating on remaining revenue share ranges differs markedly from PRS. For example, SPs range from large banks to single person businesses, such as electricians or plumbers. Ofcom and PPP cannot expect a single person business to become familiar with, and comply with, PPP regulation. This would represent an unjustified increase in business costs at a time when the Government is driving to reduce red tape. The Government's stated policy is to *"reduce the overall volume of new regulation by introducing regulation only as a last resort."* In April 2010, the Prime Minister said: *"I want us to be the first government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it."*[8]

Were PPP regulation to apply, we also question whether the increased branding costs to businesses are a justifiable cost for regulators to impose. An effective branding activity could be very expensive and would have to be appropriate to any future changes to the NGCS regime (see Executive Summary). It could also be harmful to associate 08x numbers in consumers' minds with PRS. Industry is concerned about the damage such a link might have, with shrinkage of the size of the calls market size a distinct possibility (see response to question 3).

We would strongly urge PPP and Ofcom to allow the changes to the NGCS regime that Ofcom is already planning via unbundling of access and service charges to bed down before further change is considered.

If, however, Ofcom chooses to act before seeing if tariff unbundling is successful, we believe other options exist which are more proportionate and targeted than an extension of PPP's remit. Firstly, it's important to understand the magnitude of the issue. If the changes from Ofcom's NGCS review are implemented, CPs will face requirements to publish the "access charge" element (via a change to General Conditions) of the call charge. The "service charge" element will be regulated and, crucially, will be the same regardless of whether the call is made from a fixed line or a mobile.

This should minimise the extent of any price transparency problems. With this in mind, we propose the following options:

- **Build on the current ASA/CAP guidance**: The ASA/CAP already provides guidance on price transparency for 08x number ranges. This guidance could be built upon. If Ofcom were to apply

[7] Some consumers already see these calls as similar to PRS, but we do not think any consumer confusion should be propagated further by effectively branding these calls with PRS

[8] The Coalition's Strategy for regulation is set out by the department for Business, Innovation & Skills (BIS) at http://www.bis.gov.uk/policies/bre

the provisions of the National Telephony Numbering Plan (NTNP) and detailed price points in the National Numbering Scheme (NNS) to all providers – or, as a lighter touch option, point to this as best practice - this could enable the ASA/CAP to extend its guidance. This would have the following advantages:

- Providers are already familiar with ASA/CAP guidance. Hence this builds upon the existing approach, rather than making a much more radical change by bringing many new SPs within PPP's net.
- Ofcom is already planning to amend the NTNP as a result of its tariff unbundling proposals. Ofcom could, at the same time, say the NTNP and NNS applies to all, or at least that it should be best practice.
- It would create more of a level playing field in the application of the NTNP.

- **Develop best practice**: The Communications Working Group (which has been established as part of Ofcom's NGCS review) could develop best practice on pricing transparency, and possibly develop a code of practice. This could draw on ASA/CAP and PPP guidance. Best practice guidelines could also extend to areas such as information provided to SPs in sales forms etc.

If PPP regulation is being proposed in part to "solve" the issue of having a central database of industry charges for each number range, we believe there are other ways to tackle this which avoid the downsides of PPP regulation. Ofcom could, for example, bring its S8 and S9 Excel spreadsheets (which are hosted on its website under 'Numbering'[9]) up to date and cover providers other than BT.

In summary, there are more proportionate and more targeted ways of achieving greater price transparency than extension of PPP regulation to remaining low cost ranges.

3. *We discuss the appropriateness the application of the existing PhonepayPlus rules to the remaining 08xx ranges in Section 3. Do you have any comments on the potential additional regulatory burden that inclusion of a low-cost number range in the PhonepayPlus regulatory controls might impose, and how we can ensure it is proportionate to the risks identified in Section 3?*

The potential risks in the 08x ranges are limited by the tariff ranges (e.g. free in package up to 5p) and by the nature of the services that tend to use these ranges, e.g. utilities, banking and public services. Our response to question 1 sets out evidence on why we think inclusion of low cost number ranges within PPP regulatory controls would be entirely disproportionate to the risks.

In addition, consumer harm is limited by the fact that outpayments are not guaranteed - and indeed are not applicable - below significant volume thresholds. [**Confidential:**]. There is not a "one size fits all."

BT's data shows that the overall 087x market has been in decline for a number of years, but this trend became particularly marked after the regulatory regime changed in 2009 both for 0870 and 0871/2/3 (which fell under PPP's remit for the first time). [**Confidential:**].

We had expected some of the calls lost to the 0870 range to shift to 0871, but that hasn't happened. We think that's due in part to more onerous regulations on 0871. We know from our own discussions with SPs that they are put off taking 0871 numbers because of the additional layer of PPP regulation and requirements for due diligence. Some of the traffic has moved to 0844, where PPP regulation does not apply.

[9] See http://stakeholders.ofcom.org.uk/telecoms/numbering/

Overall, the decline in the 0870 calls market as a result of regulatory change has not been matched by growth elsewhere in this sector. Our concern is that increases in regulation have exacerbated market decline and we don't want to see this pattern repeated elsewhere.

PPP discusses its experience of regulating 0871/2/3 in paragraphs 2.8 to 2.11 of the Call for Inputs. This needs to be put in context. The number of complaints around 087x numbers has been very small. In paragraph 2.9 of the Call for Inputs, PPP reports that in the first two years of regulating the 087x market, they dealt with "*more than 400 complaints about 087x services.*" From the PPP Quarterly Operational Reports we know that the total number of complaints in the same period (October 2009 to September 2011) was 12,561. This means that complaints about 087x services were between 3% and 4% of the total.

Moreover there is only 1 adjudication on 0871 recorded on PPP's website in 2011. We're not aware of any cases that went to a Tribunal. These data also need to be put into context. PPP's draft Business Plan & Budget for 2012/3 shows that the vast majority of consumer complaints – over 80% - concern mobiles. Of the remaining 20% of complaints about landlines, only a subset will relate to 0871/2/3.[10] These statistics don't further the case for extending PPP regulation to lower cost services.

While SPs now find it less attractive to offer services over 087x number ranges because of the costs of regulation (and small customers will avoid additional bureaucracy altogether), recent research emphasises that a large slice of the public think all 087 numbers are expensive calls and charged at similar rates to 09 calls[11]. This has also been the consequence of the "say no to 0870" campaign. Hence we are far from convinced that PPP regulation of 0871/2/3 numbers has "solved" the problem of price transparency. Rather it seems to have had the perverse effect of shrinking the market.

We believe that the only way not to worsen this market trend whilst increasing pricing clarity is to take proportionate action and adopt unbundled pricing and regulation of the service charge so that it's equivalent whether it's a fixed or mobile call as proposed by Ofcom in its non-geographic call services consultation of December 2010.

In conclusion, looking at the evidence above, it's clear that regulation of these number ranges would not be a proportionate regulatory response and could have the perverse result of shrinking the market, as we believe has happened with 087x.

4. *Do you have any views on whether the current levy approach would be appropriate for the low-cost revenue-sharing ranges?*

Applying the current levy approach would lead to both practical problems as well as increased costs for industry, costs which in many cases would ultimately be borne by consumers.

In practical terms, some number ranges (e.g. 0844) are a mix of both revenue sharing and non-revenue sharing, as discussed above. It's not clear how the levy could apply practically in these cases.

If the providers of remaining 08x ranges are subject to PPP registration, due diligence, promotional obligations and a levy, then what is already a net cost service for these providers would be much

[10] See figure 15 in PhonepayPlus consultation, "Business Plan & Budget 2012/13", 2 December 2011
[11] See "Non-geographic telephone numbers: Omnibus survey", Ofcom Research Document, November 2011

more costly, potentially leading to price increases or, in the extreme, market exit. The cost of applying the PPP Registration Scheme to these numbers would add significantly to providers' burdens and to PPP's costs for the registration database. If the registration fee requirement were waived to reduce SPs' costs, the benefits of due diligence and other protections (which is presumably the purpose of extending regulation) would be reduced.

If a levy was introduced (even at a lower percentage of the full levy or the 087 levy) a new range of providers – corporate and public sector organisations - would be included in PPP regulation for the first time, which would increase both direct business costs as well as compliance costs. This would run directly counter to Government policy.

END