

## National roaming condition

On 3 July 2003 Oftel published a consultation document on continuing licence conditions after 25 July 2003. In that document the Director-General of Telecommunications (the 'Director') set out his intention to issue continuation notices to Vodafone Limited ("Vodafone") and O2 (UK) Limited ("O2"). If issued, those continuation notices would have the effect that, as well as other licence conditions, Condition 69A of Vodafone and O2's respective licences would continue to have effect from 25<sup>th</sup> July 2003. Condition 69A requires, *inter alia*, the Licensee to negotiate an agreement with a Relevant Mobile Operator to provide National Roaming. The Licensee must ensure that the National Roaming Agreement entered into contains reasonable terms and conditions. At present Condition 69A also contains a procedure for the Director to resolve disputes relating to National Roaming, for example in the event of a dispute as to the reasonableness of any term or condition in the agreement.

The Director has given further consideration to Condition 69A during the consultation period. On reflection, he currently considers that paragraph 9 of Schedule 18 of the Communications Bill (House of Lords version, published on 2<sup>nd</sup> July 2003, amendments published on 9<sup>th</sup> July 2003) does not permit him to continue those provisions of Condition 69A which relate to the dispute resolution procedure. Accordingly, as this results in a significantly different proposal than that contained in the consultation document, the Director is exceptionally notifying relevant operators and providing an opportunity for comments by **3 p.m. on Friday 18<sup>th</sup> July 2003.** .

The Communications Bill contains powers to resolve disputes, including disputes relating to National Roaming (which is a form of network access as defined in the Communications Bill). The Director considers that to carry forward Condition 69A with the inclusion of the dispute resolution procedure would potentially conflict with those powers in the Bill, and that would cause procedural uncertainty. However, the removal of these provisions from Condition 69A would not result in the loss of right to refer disputes. The Director would also have the power to consider network access questions on his own initiative under Clause 103 of the Communications Bill, and to consider complaints regarding a breach of Condition 69A, including regarding the reasonableness of any term or condition of a National Roaming Agreement.

In the event of a dispute regarding National Roaming referred either under the Communications Bill once it has received Royal Assent or the Disputes and Appeals Regulations should there be interim statutory instruments, in resolving that dispute the Director will have regard to the existing National Roaming guidelines as set out in Oftel's statement of October 1999 on National Roaming. Such a dispute could include a dispute regarding the reasonableness of any term or condition of an existing agreement. In addition, in dealing with any complaint made to the Director regarding a breach of Condition 69A, he would also have regard to those guidelines.

The Director has therefore amended Condition 69A accordingly, and annexed that amended version to this notice. That amended version is the one which is intended to be continued on 25<sup>th</sup> July by way of continuation notice issued to Vodafone and O2.

## ANNEX

### Condition 69A

#### National Roaming

69.A.1 If and for so long as the Licensee or any member of its Group is authorised under the Wireless Telegraphy Acts 1949 to 1998 to use radio spectrum within the ranges 1900 -1980 MHz, 2110 -2170 MHz for the transmission of signals and for so long as it is authorised to use spectrum within the 880 - 915 MHz, 925-960 MHz, 1710-1785 Mhz or 1805-1880 MHz bands under the Wireless Telegraphy Acts 1949 to 1998,<sup>1</sup> it shall negotiate an agreement with a Relevant Mobile Operator or negotiate an amendment to such an agreement, as the case may be, within a reasonable period, if that Relevant Mobile Operator requires it to provide such National Roaming as may be reasonable. A National Roaming Agreement negotiated under this Condition shall take effect at the latest from the date on which the Relevant Mobile Operator has rolled out its 3G network to cover an area in which 20% of the United Kingdom population lives and shall be capable of having effect at least until 31<sup>st</sup> December 2009. It shall cover at least Teleservices and Bearer Services supported over the Licensee's 2G network.

69.A.2 Where the Licensee is under a duty to negotiate an agreement under paragraph 69.A.1 above, it shall, in addition, be obliged when requested to do so by the Relevant Mobile Operator, to co-operate with it to ensure the Relevant Mobile Operator is in a position to take reasonable advantage of the National Roaming Agreement being or to be negotiated under paragraph 69.A.1

~~69.A.3 The Director may, if requested by either party, make a direction in order:~~

- ~~(a) to specify issues which must be covered in a National Roaming Agreement; or~~
- ~~(b) to lay down specific conditions to be observed by one or more parties to a National Roaming Agreement; or~~
- ~~(c) if he thinks fit, to set time limits within which negotiations of a National Roaming Agreement are to be completed. Any such direction shall also set out the steps to be taken if agreement is not reached within these time limits.~~

~~This paragraph 69.A.3 shall not apply where the parties have concluded a National Roaming Agreement under paragraph 69.A.1~~

69.A.4 The Licensee shall ensure that a National Roaming Agreement entered into or an amendment made under paragraph 69.A.1 contains terms and conditions

---

which are reasonable. To the extent that all or any of the terms and conditions of a National Roaming Agreement made under paragraph 69.A.1 (whether on or after this Condition came into force) cease to be reasonable, the Licensee shall, within a reasonable period, negotiate with the Relevant Mobile Operator an amendment to the National Roaming Agreement so that the terms and conditions of the National Roaming Agreement are reasonable. ~~In the event of a dispute as to the reasonableness of any term or condition under this paragraph 69.A.4 either party may refer the dispute to the Director for determination. The provisions of paragraph 69.A.7 of this Condition shall apply to such a determination.~~

~~69.A.5 The Licensee shall comply with:~~

~~(a) the requirements of any direction made by the Director under paragraph 69.A.3 or any determination under paragraph 69.A.4 in relation to any National Roaming Agreement, or any negotiation of a National Roaming Agreement to which it is or is intended to be a party; and~~

~~(b) the requirements of any determination made by the Director under paragraph 69.A.7 in relation to any dispute over the terms of a National Roaming Agreement under paragraph 69.A.1.~~

~~69.A.6 For the avoidance of doubt:~~

~~(a) any question as to whether any term or condition (including a charge) of a National Roaming Agreement is reasonable, shall be decided by the Director having regard to paragraph 69.A.7 and any guidelines on the application of this Condition issued from time to time by the Director; and~~

~~(b) in considering whether a term or condition (including a charge) of a National Roaming Agreement is reasonable, the Director may take into account, inter alia, the effective date of the term or condition and the period during which that term or condition may already have been in effect; the Director may conclude that a reasonable charge is one which is offered or agreed, as the case may be, on terms that it takes effect in National Roaming Agreements made under paragraph 69.A.1 from the date of a complaint or the date on which the term was first offered or accepted by the Licensee or a Relevant Mobile Operator or from any other date which is considered by the Director to be appropriate in the circumstances.~~

~~69.A.7 Where there is a dispute concerning National Roaming the Director shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request. The determination which the Director makes to resolve the dispute shall represent a fair balance between the legitimate interests of both parties. In so doing, the Director shall take into account, inter alia:~~

- ~~(a) the interests of users~~
- ~~(b) regulatory obligations or constraints imposed on the Licensee or the Relevant Mobile Operator;~~
- ~~(c) the desirability of stimulating innovative market offerings, and of providing users with a wider range of telecommunications services;~~
- ~~(d) the need to maintain the integrity of the public telecommunications network and the interoperability of services;~~
- ~~(e) the nature of the request in relation to the resources available to meet the request;~~
- ~~(f) the need for the Licensee to maintain quality of service and for the Relevant Mobile Operator to provide accurate and timely information in order to facilitate network planning;~~
- ~~(g) the relative market positions of the Licensee and the Relevant Mobile Operator;~~
- ~~(h) the public interest, such as the protection of the environment;~~
- ~~(i) the promotion of competition; and~~
- ~~(j) the provision of National Roaming to Relevant Mobile Operators at a price based on Retail Minus, as defined in this condition and in any guidelines which the Director may from time to time issue.~~

~~The determination shall be published in accordance with paragraph 69.A.9 and shall be binding on the parties.~~

~~— The Director shall not be required to take steps to resolve any dispute referred to him under this paragraph in respect of a Relevant Mobile Operator, where any other dispute has been referred to him under this paragraph or where he has previously resolved a dispute relating to a National Roaming Agreement involving that Relevant Mobile Operator in circumstances where that National Roaming Agreement is:~~

- ~~(i) still valid and in existence; and~~
- ~~(ii) remains in substantially the same form.~~

~~69.A.8 Any determination made under paragraph 69.A.7 shall automatically lapse upon the entry into force of any subsequent National Roaming Agreement to which the same Relevant Mobile Operator is a party.~~

~~69.A.9 The Director shall ensure that up to date and specific information in accordance with paragraph 69.A.7 is made available on request to interested~~

~~parties, free of charge, during normal working hours.~~

69.A.10 In this Condition:

“Authorised Mobile” means an item of telecommunications apparatus or a telecommunications system that is Compliant Terminal Equipment designed or adapted to be capable of being used while in motion for the transmission of reception of messages at frequencies in the range 1900-1980 MHz, 2110-2170 MHz.

“Group” means for the purposes of this Condition, in relation to the Licensee:

- (a) any parent undertaking of the Licensee;
- (b) any subsidiary undertaking of the Licensee;
- (c) any subsidiary undertaking of any parent undertaking referred to in (a);
- (d) a shareholder or partner in the Licensee which beneficially owns (directly or indirectly) shares in the Licensee in circumstances where there is one other shareholder or partner in the Licensee which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder or partner has control;
- (e) any undertaking of which the Licensee beneficially owns (directly or indirectly) shares in circumstances where there is one other shareholder or partner in that undertaking which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder nor partner has control;
- (f) any undertaking in circumstances where two or more of its shareholders or partners which acting in concert together beneficially own (directly or indirectly) more than 50% of the shares or voting rights in that undertaking, acting in concert together beneficially own (directly or indirectly) more than 50% of the shares, or voting rights of the Licensee; and
- (g) any undertaking of which the Licensee beneficially owns (directly or indirectly) together with one or more undertakings acting in concert more than 50% of the shares or voting rights of that undertaking,

and:

- (i). “parent undertaking” and “subsidiary undertaking” shall have the meanings given to them in section 258 of the Companies Act 1985;
- (ii). “undertaking” and “shares” shall have the meanings given to them in section 259 of the Companies Act 1985;
- (iii). “acting” in concert” means acting in co-operation with another shareholder or partner to obtain or consolidate control of an undertaking; and

- (iv). “control” means the holding of a majority of the voting rights in that undertaking, the right to appoint or remove a majority of the board of directors of that undertaking, the right to exercise a dominant influence over that undertaking by virtue of provisions contained in that undertaking’s memorandum or articles of association or by virtue of a control contract, or the holding of the majority of the voting rights in that undertaking pursuant to an agreement with other shareholders or members.

“National Roaming” means the provision of Connection Services by means of the Applicable Systems to Authorised Mobiles in respect of Teleservices and Bearer Services pursuant to a National Roaming Agreement between the Licensee and a Relevant Mobile Operator.

“National Roaming Agreement” means an agreement which provides for Connection Services by means of the Applicable Systems to Authorised Mobiles in respect of Teleservices and Bearer Services.

“Teleservices and Bearer Services” means services defined within the relevant ETSI/GSM standards.

“Relevant Mobile Operator” means any operator which is authorised to use radio spectrum within 1900-1980 MHz, 2110-2170 MHz under the Wireless Telegraphy Acts 1949 to 1998 and licensed under section 7 of the Telecommunications Act 1984 to provide Mobile Radio Telecommunication Services other than such an operator which has been authorised to run systems and provide Mobile Radio Telecommunications Services before 1 April 1999 at frequencies in the ranges 880-915 MHz, 925-960 MHz, 1710-1785 MHz or 1805-1880 MHz bands or an operator which is a member of the Group of an operator authorised to run systems and provide Mobile Radio Telecommunications Services before 1 April 1999 at frequencies in the ranges 880-915 MHz, 925-960 MHz, 1710-1785 MHz or 1805-1880 MHz.

~~“Retail Minus” means the price charged by the Licensee for the provision of a service to end users less any elements of cost that are not incurred in providing the same service to a Relevant Mobile Operator plus any elements of cost reasonably incurred solely to provide roaming services.~~

“2G” means, for the purposes of this Condition spectrum within the 880-915 MHz, 925-960 MHz, 1710-1785 MHz or 1805-1880 MHz bands.

“3G” means, for the purposes of this Condition spectrum within the 1900-1980 MHz, or 2110-2170 MHz.