

**Draft Decisions and Explanatory Memorandum  
on the Director General's intention to remove  
the Determinations that Vodafone and BT  
Cellnet have Market Influence under Condition  
56 of their respective Licences**

Draft decisions and Explanatory Memorandum

5 March 2002

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Draft Decision

**TO REMOVE THE DETERMINATION THAT VODAFONE HAS MARKET INFLUENCE UNDER THE PROVISIONS OF CONDITION 56 OF ITS TELECOMMUNICATIONS ACT 1984 LICENCE**

(Under Paragraph 6 of Part 1 of Schedule 1 of Vodafone's Licence)

WHEREAS:

1. Condition 56 of the Licence granted by the Secretary of State for Trade and Industry to Vodafone Ltd ("Vodafone") ("the Licensee") under section 7 of the Telecommunications Act 1984 (the "Licence") provides for a power of the Director General of Telecommunications ("the Director") to determine the Licensee to be an Operator having Market Influence in relation to any particular telecommunications market specified by him;
2. The Licensee was determined by the Director as being an Operator having Market Influence as referred to in Condition 56 of its Licence in the market for mobile telephony in the UK, for the reasons given in the Explanatory Memorandum which accompanied the Determination published on 11 April 2001 (the "MI Determination").
3. For the reasons set out in the Explanatory Memorandum to this Determination, the Director considers that the MI Determination should no longer apply to the Licensee;
4. The Director considers that for the time being the market for the purposes of making or removing a determination of Market Influence under Condition 56 of the Licence is the market for mobile telephony in the UK;
5. In accordance with the consultation procedure set out in paragraph 6 of Part 1 of Schedule 1 of the Vodafone licence the Director issued a Notice on 12 December 2001 inviting comments on his intention to remove the MI Determination;
6. In making this decision the Director has taken into consideration representations and observations received as part of the consultation process, and the matters described in the Explanatory Memorandum to this Determination;

NOW THEREFORE THE DIRECTOR, FOR THE PURPOSES OF CONDITION 56 OF THE LICENCE, AND HAVING CONSIDERED THE ARGUMENTS OF THE LICENSEE AND INTERESTED PARTIES, HEREBY DETERMINES THAT:

1. The Determination of 11 April 2001 that the Licensee is an Operator having Market Influence as referred to in Condition 56 of its Licence in the market for mobile telephony in the UK no longer applies to the Licensee and is now
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removed, for the reasons given in the Explanatory Memorandum which accompanies this Determination.

2. Words and phrases in this Determination shall have the meanings ascribed to them in the Licence or the Telecommunications Act 1984 as appropriate.

Peter Waller

5 March 2002

A person authorised in that behalf under Section 8 of Schedule 1 of the Telecommunications Act 1984

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Draft Decision

**TO REMOVE THE DETERMINATION THAT BT CELLNET HAS MARKET INFLUENCE UNDER THE PROVISIONS OF CONDITION 56 OF ITS TELECOMMUNICATIONS ACT 1984 LICENCE**

(Under Paragraph 6 of Part 1 of Schedule 1 of BT Cellnet's Licence)

WHEREAS:

1. Condition 56 of the Licence granted by the Secretary of State for Trade and Industry to BT Cellnet Ltd ("BT Cellnet") ("the Licensee") under section 7 of the Telecommunications Act 1984 (the "Licence") provides for a power of the Director General of Telecommunications ("the Director") to determine the Licensee to be an Operator having Market Influence in relation to any particular telecommunications market specified by him;
2. The Licensee was determined by the Director as being an Operator having Market Influence as referred to in Condition 56 of its Licence in the market for mobile telephony in the UK, for the reasons given in the Explanatory Memorandum which accompanied the Determination published on 11 April 2001 (the "MI Determination").
3. For the reasons set out in the Explanatory Memorandum to this Determination, the Director considers that the MI Determination should no longer apply to the Licensee;
4. The Director considers that for the time being the market for the purposes of making or removing a determination of Market Influence under Condition 56 of the Licence is the market for mobile telephony in the UK;
5. In accordance with the consultation procedure set out in paragraph 6 of Part 1 of Schedule 1 of the BT Cellnet licence the Director issued a Notice on 12 December 2001 inviting comments on his intention to remove the MI Determination;
6. In making this decision the Director has taken into consideration representations and observations received as part of the consultation process, and the matters described in the Explanatory Memorandum to this Determination;

NOW THEREFORE THE DIRECTOR, FOR THE PURPOSES OF CONDITION 56 OF THE LICENCE, AND HAVING CONSIDERED THE ARGUMENTS OF THE LICENSEE AND INTERESTED PARTIES, HEREBY DETERMINES THAT:

1. The Determination of 11 April 2001 that the Licensee is an Operator having Market Influence as referred to in Condition 56 of its Licence in the market for mobile telephony in the UK no longer applies to the Licensee and is now
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removed, for the reasons given in the Explanatory Memorandum which accompanies this Determination.

2. Words and phrases in this Determination shall have the meanings ascribed to them in the Licence or the Telecommunications Act 1984 as appropriate.

Peter Waller

5 March 2002

A person authorised in that behalf under Section 8 of Schedule 1 of the Telecommunications Act 1984

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# Explanatory Memorandum

## Chapter 1

### Introduction

1.1 On 12 December 2001, the Director General published Notices of his proposed decision to remove the determinations that Vodafone and BT Cellnet have Market Influence (MI) under Condition 56 of their respective licences. Representations on these Notices were invited from interested parties by 20 January 2002. Representations were received from 8 respondents. There then followed a second period of consultation during which interested parties had the opportunity to comment on the representations received during the first period of consultation. A list of the respondents to the Notices is provided at Annex A to this document.

1.2 A finding of MI triggers additional obligations in an operator's licence. An operator designated as having MI is required to:

- supply mobile service providers with airtime;
- provide separate accounts;
- not show undue preference and not unduly discriminate in the provision of services; and
- publish charges, terms and conditions for services.

1.3 The effect of the determinations, if adopted by the Director General, will be to remove the determinations, made in April 2001, that Vodafone and BT Cellnet have MI, and therefore de-trigger the additional obligations, outlined above, in the licences of Vodafone and BT Cellnet.

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## **Chapter 2.0**

### **Draft Decisions**

2.1 Having considered all representations and observations received, the Director General has decided to publish his draft decisions to remove the determinations that Vodafone and BT Cellnet have MI under Condition 56 of their respective licences.

2.2 As required by paragraph 6(f) of Part 1 of Schedule 1 of the licences of Vodafone and BT Cellnet, in addition to the publication of these decisions, these draft decisions are being sent to Vodafone, BT Cellnet and the interested parties who commented on the Notices.

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## Chapter 3

### Further Consultation

3.1 All interested parties now have a further 14-day period, **ending on 20 March**, to comment on the draft decisions. At the end of this additional period the Director General will consider all comments and inform interested parties of his final decision.

3.2 Representations, observations and comments should be made in writing and, where possible, sent by e-mail to [chandley@oftel.gov.uk](mailto:chandley@oftel.gov.uk). However, copies may also be posted or faxed to the address below. If any interested parties are unable to respond in one of these ways, they should discuss alternatives with the Oftel manager named below:

**Chris Handley**

Oftel  
50 Ludgate Hill  
London  
EC4M 7JJ

Tel: 020 7634 8863  
Fax 020 7634 8847  
email [chandley@oftel.gov.uk](mailto:chandley@oftel.gov.uk)

#### Further copies of this document

3.3 This document can be viewed in the *Publications* section of Oftel's website at [www.oftel.gov.uk/publications/mobile/2002/vobt0302.htm](http://www.oftel.gov.uk/publications/mobile/2002/vobt0302.htm). Paper copies and alternative formats such as large print, Braille, disc and audio cassette can be made available on request. Please contact Oftel's Research and Information Unit by phoning 020 7634 8761 or by sending an e-mail to [infocent@oftel.gov.uk](mailto:infocent@oftel.gov.uk).

#### Publication of representations, observations and comments

3.4 Representations, observations and comments will be published, except where respondents indicate that a response, or part of it, is confidential. Respondents are therefore asked to separate out any confidential material into a **confidential annex which is clearly identified** as containing confidential material. Oftel will take steps to protect the confidentiality of all such material from the moment that it is received at Oftel's offices. However, in the interests of transparency, respondents should avoid applying confidential markings wherever possible.

3.5 All non confidential responses can be viewed on Oftel's website in the *Publications* section under [www.oftel.gov.uk/publications/mobile/2002/vobt0302.htm](http://www.oftel.gov.uk/publications/mobile/2002/vobt0302.htm) *Responses to Oftel*

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*consultations*. They can also be viewed at Oftel's Research and Information Unit. Appointments must be made in advance (see contact details in paragraph 3.2).

### **Publication of the Director General's decision**

3.6 When the Director General informs BT Cellnet and Vodafone of his decision, he will publish that decision and the reasons for it in the same way as this present document is published.

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## Chapter 4

### Reasons for the Director General's draft decisions

4.1 The Director General publishes his draft decisions on the basis of the information available and taking into account the representations made to him during the consultation on the Notices. Oftel responds to the representations made in Chapter 5 of this document.

4.2 The representations received have not changed the Director General's view as expressed in the Explanatory Memorandum to the Notices that the MI determinations made in April 2001 should be removed from Vodafone and BT Cellnet.

4.3 For the Reasons set out in the Explanatory Memorandum that accompanied the Notices and in Oftel's responses to the points raised by respondents in Chapter 5, and based on the analysis in the *Effective competition review: mobile* Statement, September 2001, Oftel still considers it appropriate to remove the MI Determinations from Vodafone and BT Cellnet.

4.4 There is evidence to suggest that, in the absence of the MI regulations, some operators will continue to supply services to independent service providers (ISPs). Furthermore, there is no apparent correlation between successful ISPs and the MI regime, and the costs of the MI regime appear to outweigh its benefits. Please refer to the Notices and Oftel's response to comments received for further details.

4.5 The Director General considers that the MI Determinations currently on Vodafone and BT Cellnet are not appropriate and he therefore concludes that they should be removed.

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## Chapter 5

### Oftel's response to the points raised in the consultation

5.1 This chapter provides Oftel's response to the representations put forward during the consultation.

#### MI and the Oftel formula return

5.2 Several respondents question the relationship, made in the Explanatory Memorandum to the Notices, between MI and the proposal to cease requiring regular financial data returns from Vodafone and BT Cellnet for the Oftel formula ("*The Oftel formula returns*" consultation, 12 December 2002").

#### Oftel's Response

5.3 The original rationale for requiring BT Cellnet and Vodafone to provide regular returns to monitor the Oftel formula was due to the concern that BT Cellnet and Vodafone might cross-subsidise their tied service providers (TSPs) in order to weaken their competitors and eliminate ISPs from the Market.

5.4 For the reasons set out in the Explanatory Memorandum to the Notices and this document, Oftel considers that the MI obligations are no longer required, and that in the absence of regulation some operators will continue to supply services to service providers.

5.5 Furthermore, the incentives on the operators to cross-subsidise their TSPs in order to reduce retail competition are much reduced now that all four operators are well established. Several ISPs have now negotiated supply deals commercially, outside of the regulatory framework.

5.6 If an operator refused to supply services to an ISP, the ISP could negotiate an agreement with another operator, as is evidenced by the deals already negotiated outside the regulatory framework. Therefore, refusing to supply an ISP appears to have much less impact in reducing retail competition than was previously the case, when only two operators were well established. There appears no need, therefore, to continue monitoring the Oftel formula if the MI designations are removed.

#### Proposal to remove MI is unlawful

5.7 Two respondents raise concerns over the lawfulness of the Director General's decision to remove the MI determinations from Vodafone and BT Cellnet, arguing that Condition 56 does not convey a discretionary power on the DG to remove MI from operators that have market power.

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## Of tel's Response

5.8 Condition 56.1 of the mobile PTO licence states that: "The Director **may**, in accordance with the procedure set out in paragraph 6 of Part 1 of this Licence, determine the Licensee to be an Operator having market influence [...]". (Emphasis added.)

5.9 Use of the word 'may' in this context clearly demonstrates that the Director has discretion in deciding whether to determine that a mobile Licensee has MI. It follows from this that the Director also has discretion to decide that a MI Determination should no longer apply to a mobile Licensee.

5.10 Furthermore, paragraph 6 of Part 1 of the Licence states that: "Where the Director makes a [MI Determination], or decides that such a determination **shall no longer apply**, the procedure shall be as follows [...]" (emphasis added.) Thus, the Licence gives the Director not only the discretion to, but also the power to, dis-apply a determination that a mobile Licensee has MI.

5.11 Vodafone and BT Cellnet were determined by the Director as being operators having MI as referred to in Condition 56 for the reasons given in the Explanatory Memorandum which accompanied the Determinations published on 11 April 2001 (the MI Determinations).

5.12 However, as referred to in the Notice dated 12 December 2001, the consultation document entitled *Effective Competition Review: mobile*, published in February 2001 (mobile review consultation) asked stakeholders to comment on the appropriateness of the MI Determinations.

5.13 In the light of the growing competitiveness of the mobile sector and some of the arguments made in support of removing formal regulation, the resulting statement *Effective Competition Review: mobile* published in September 2001, (mobile review statement) proposed removing the MI determinations.

5.14 The Director has a duty under Directive 97/13/EC (the Licensing Directive) only to impose or maintain Licence conditions which are proportionate. As referred to in Chapter 4 paragraph 13 of the mobile review statement, the Director concluded that, given the state of competition in the mobile sector, imposing the MI-triggered conditions on mobile operators with market power would not be appropriate.

5.15 Therefore, based on the reasons set out in this Explanatory Memorandum, and the Explanatory Memorandum accompanying the Notices, the Director is minded to exercise his discretion and dis-apply the MI Determinations on Vodafone and BT Cellnet.

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## **Change in Policy**

5.16 The Mobile Independent Service Provider group (MISP) of the Federation of Communications Service, an industry trade association, argues that the change in policy in respect of the MI determinations between the mobile review consultation and mobile review statement was not fully justified, particularly as the operators designated as having MI are still deemed to have market power.

## **Oftel's Response**

5.17 Stakeholders were asked during the mobile review consultation exercise whether they agreed with Oftel's assessment that the MI designations were necessary and appropriate. At paragraph 4.12 of the mobile review statement Oftel notes that it found some of the arguments made by stakeholders, in favour of lifting the MI designations persuasive. Oftel concludes, at paragraph A5.4, that having taken account of the responses, that the present MI framework is not appropriate. Oftel disagrees that this conclusion was not fully justified.

5.18 The mobile review consultation presented the view that the MI obligations might guard against anti-competitive behaviour and ensure that service providers would continue to be supplied until the mobile market became effectively competitive. These principles remain valid, but it is necessary to balance them against the positive effect on competition that ISPs have, to ensure that the regulation is proportionate and the minimum necessary to achieve the appropriate outcome.

5.19 Data and arguments put forward in the mobile review statement (particularly paragraphs A5.5 – A5.7) and the Explanatory Memorandum to the Notices show that, over time, ISPs have had little impact on end-user prices. While Oftel recognises that ISPs may add value in the range and quality of services they offer, these are areas where customer satisfaction has been continuously above 90% in the last 12 months (*Oftel Survey - January 2002*). Oftel considers that additional regulation to improve these aspects of mobile service is unwarranted.

5.20 The mobile review statement (paragraphs A5.12 – A5.14) also notes the lack of any clear correlation between the MI regime and successful ISPs and the fact that the existence of the MI regime may have unduly focussed operators and service providers attention on a single model for the wholesale supply of airtime (paragraphs A5.15 – A5.16).

5.21 The Director General considers that the evidence and arguments outlined in the mobile review statement fully justify the proposal to remove the MI determinations from BT Cellnet and Vodafone.

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### **Undue discrimination in the provision of new services**

5.22 Two respondents ask how, in the absence of the MI regulations, the Director General will prevent markets for new services, such as mobile Internet, from being foreclosed by operators with market power.

#### **Oftel's Response**

5.23 Oftel would not normally seek to regulate new and emerging markets, such as that for mobile Internet services, as it considers that the operation of market forces, rather than formal regulation, provides the best environment for new services to develop.

5.24 Furthermore it may be that the evolution of new services will bring a countervailing power to consumers and service providers providing new services as network operators may not be best placed to develop the required applications and content. In the event that consumers were denied access to new services, such as the mobile Internet, Oftel would consider the most appropriate form of regulatory action. Such action might include some form of formal access regulation (although not necessarily in the form of the current MI regime) or other less formal approaches.

### **Prospectively competitive market**

5.25 MISP asks why the Director General is considering removing the MI regulations when the market is not yet effectively competitive and there is no sign that it will be within the 2-year time frame considered by the review.

#### **Oftel's Response**

5.26 The decision to remove the MI obligations from BT Cellnet and Vodafone, notwithstanding that the Director General in the mobile review statement decided that they continued to possess market power, is based on ensuring that the regulatory intervention is kept to a minimum and is appropriate to the required outcome.

5.27 As referred to above in paragraphs 5.19 and 5.20, Oftel considers that there is sufficient evidence to suggest that the MI regulations are no longer required. Some operators will continue to provide service providers in the absence of regulation, service providers have had little impact on end-user prices and there appears little correlation between successful service providers and the MI regime.

5.28 Furthermore, looking to the future, Oftel considers it likely that competition will continue to develop, with a new operator, Hutchison 3G, expected to launch services shortly.

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## Constraint on innovation

5.29 Several respondents suggest that the MI regime, and in particular the non-discrimination condition, is hampering the development of new services and restricting innovation in the mobile sector. In its response, MISIP suggests that this argument is fallacious as the obligation only places a prohibition on undue discrimination, not on discrimination *per se*. The obligation therefore allows for a degree of discrimination in the supply of services to service providers. On the other hand, both Wireless Intelligent Network Ltd (an independent service provider) and Vodafone maintain the line of argument that MI is hampering the development of new services and also preventing an operator's ability to offer flexible and distinctive services to service providers dependent on their customers requirements.

## Of tel's Response

5.30 Of tel states at paragraph 2.10 in the Explanatory Memorandum to the Notices that the MI regime may cause some service providers to rely unnecessarily on the MI regulation to secure the supply of wholesale services, and that this might distort the commercial negotiations that would otherwise develop.

5.31 Several respondents to both the mobile review consultation and the Notices, suggested that the prohibition on non-discrimination, notwithstanding that legally the prohibition relates to **undue** discrimination, also deters operators and service providers from seeking business models other than the conventional provision of airtime to service providers.

5.32 Given the responses received, on balance, Of tel believes that the weight of the arguments suggest that the prohibition on undue discrimination and the tendency of service providers to focus on a particular business model might be adversely affecting the development of innovative wholesale deals between service providers and operators.

## Market Indicators

5.33 MISIP argues that recent changes in the mobile market mean that the Director General's conclusion that the market is prospectively competitive and is moving towards effective competition is no longer reliable. In particular, MISIP argues that retail prices will no longer fall as the market reaches saturation and the marketing focus moves to increasing average revenue per user (ARPU).

## Of tel's Response

5.34 Of tel disagrees with this argument and believes that the conclusions of the mobile review statement do remain valid. Taking a forward look at likely developments in the mobile sector, Of tel considers that the outlook is positive. Two major developments which are likely to further develop competition in the

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mobile sector, are the launch of services by the new 3G entrant, Hutchison 3G, and the continuing development of new services in the run up to 3G.

5.35 Oftel's *Effective Competition Review Guidelines* set out four groups of indicators for effective competition: Consumer Outcomes; Consumer Behaviour; Market Structure and Supplier Behaviour. Weighed against these indicators Oftel does not consider that the change in marketing focus to increase ARPU referred to by MISP would alter the Director General's conclusion that the mobile market is prospectively competitive and that the MI obligations be removed from BT Cellnet and Vodafone.

### **Vertical integration**

5.36 MISP argue that the removal of MI will lead to a convergence of market shares between the four operators as they seek to vertically integrate their retail and wholesale businesses. In its response however, Vodafone suggests that the choice of supplying ISPs is a commercial rather than regulatory decision and points to the lack of correlation between an operators' use of service providers and the MI regime as evidence of this.

### **Oftel's Response**

5.37 Oftel disagrees with the argument that the removal of MI will lead to the mobile operators fully vertically integrating their businesses. As noted above there is evidence to suggest that operators will supply services to service providers in the absence of regulation where service providers can provide a competitive advantage to the mobile operator.

5.38 Evidence of this is shown by the apparent lack of correlation between successful service providers and the MI regime. One2One for example, which is not regulated, has several commercially negotiated deals with ISPs, Virgin Mobile being the best known of these. Compared with BT Cellnet, which is subject to the MI obligations, four times as many One2One subscribers are served through ISPs.

5.39 Furthermore, while Oftel accepts that where there is a degree of market power at the wholesale level there is the incentive to leverage this power into the downstream retail level, the incentive and ability to do so decreases as competition increases. Oftel believes that the established position of Orange and One2One constrains the ability of either Vodafone or BT Cellnet from leveraging their position of market power sufficiently to weaken competitors and significantly raise end-user prices or their market share, even in a situation of exclusive dealing where all operators only deal with their TSPs.

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## **Market Structure**

5.40 Two respondents argue that the removal of MI will diminish retail service competition which, given that the oligopolistic structure of the market is consistent with a range of outcomes, from vigorous competition to collusion, will restrict the possible outcomes away from effective competition and towards muted competition, ultimately leading to increased prices for consumers.

## **Oftel's Response**

5.41 Data published in both the mobile review statement and the Explanatory Memorandum to the Notices indicate that ISPs have had little impact on prices to end-users, although Oftel notes that ISPs do bring value to the market through increased choice and quality of service particularly to business customers. However these are areas that consistently show high levels of customer satisfaction.

5.42 Given that ISPs currently account for only 7% of total subscribers, and that Oftel believes that, in the absence of regulation, that some operators will continue to provide services to ISPs, Oftel disagrees that the removal of MI will diminish retail service competition in the mobile sector.

## **Future regulation**

5.43 MISIP asks how the Director General intends to address anti-competitive behaviour if the MI Determinations are removed, given that the market is not effectively competitive and in MISIP's view the provisions of the Competition Act 1998 do not apply.

## **Oftel's Response**

5.44 There are a number of regulatory mechanisms, through the Licence or under certain conditions through the provisions of the Competition Act 1998, which would allow the Director General to take action in the event that either BT Cellnet or Vodafone sought to abuse their market power. Obviously the appropriate regulatory response would be dependent upon the type of anti-competitive behaviour identified.

## **Effect of the removal of MI**

5.45 MISIP argues that the decision to remove MI will be, in practice, irreversible. And that the Director General's recognition that if market forces fail to ensure that reasonable demand is met the swiftest way to rectify the failing may be to re-activate the MI trigger, is of no value.

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### **Oftel's Response**

5.46 Oftel disagrees that the decision to remove the MI obligations will be, once taken, irreversible. Oftel has stated quite clearly in the mobile review statement and the Explanatory Memorandum to the Notices that it will continue to collect market information and monitor developments in the mobile market if the decision to remove the MI Determinations is confirmed.

5.47 Such monitoring arrangements, alongside information provided directly from service providers will allow Oftel to re-trigger the MI obligations swiftly should it become evident that service providers' reasonable demands are not being met. For this reason, notwithstanding the evidence on which the decision to remove MI is based, the Director General does not intend to remove the MI triggered conditions (Conditions 56-58) from the licences of the mobile operators.

### **Consumer protection**

5.48 MISP questions the consistency between Oftel's objective to ensure that consumers are adequately protected by effective competition or regulation and the proposal to remove MI given the mobile sector was found to be not effectively competitive.

### **Oftel's Response**

5.49 Oftel's goal is to ensure that consumers get a good deal in terms of quality, choice and value for money. Oftel believes that the best way to achieve this is through the development of effective and sustainable competition. In the event that market forces fail to deliver competition, Oftel will consider the appropriate regulatory intervention. Oftel does not consider the current MI regulations to be appropriate and therefore proposes to remove them.

5.50 Oftel believes that this proposal is consistent with its objectives and its strategy of appropriate and proportionate regulation.

### **ISP market share**

5.51 MISP comments that the downward trend of ISP market share overtime, presented in the Explanatory Memorandum to the Notices, is misleading. MISP argues that as Orange do not support ISPs and as the provision of pre-pay services is not available to ISPs, the number of subscribers using these services should be removed from the total number of subscribers before examining ISP market share. Calculated on this basis, ISP's market share has increased over the time period considered.

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**Oftel's Response**

5.52 It is evident that ISP's market share of subscribers has grown by a few percentage points over the second half of the period covered by the data presented in the in the Explanatory Memorandum to the Notices (June 2000 – June 2001) if pre-pay subscribers and Orange subscribers are omitted from the calculation. However, the point that Oftel was making in presenting the ISPs market share was that overall, prices decreases had occurred during a period when ISPs market share was declining. The two sets of data that Oftel used were comparable, that is, total ISP market share and total price decreases.

5.53 MISP notes in its response that Virgin and Telecom Plus are two ISPs that have helped to achieve the recent increase in subscribers supplied by ISP. It is also relevant that both of these ISPs operate outside of the regulatory framework so this recent growth has nothing to do with the current regulatory framework, adding weight to the argument that it is now redundant.

**Market information**

5.54 MISP asks how, in the absence of the MI regulations, the Director General plans to collect information on the supply of services to service providers.

**Oftel's Response**

5.55 Oftel currently collects market information from a variety of sources. All of the mobile operators provide information, including that on the provision of services to service providers, to Oftel on a voluntary basis. Oftel sees no reason why this should not continue if the MI obligations are removed.

5.56 As stated in the Explanatory memorandum to the Notices, Oftel will continue to monitor market developments to ensure that its view that market forces will meet reasonable demand from service providers is correct. To this end Oftel is happy to meet members of the industry, including ISPs, as and when it is necessary or appropriate.

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## **Annex A**

### **Respondents to the Consultation:**

Mobile Independent Service Providers group (MISP)  
Centrica  
Wireless Intelligent Network Ltd  
BT Cellnet  
Vodafone  
3 confidential responses

### **Comments on Comments:**

BT Cellnet

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