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**TERMS OF REFERENCE**

**under section 13 of the Telecommunications Act 1984**

**Charges made by Vodafone and BT Cellnet for terminating calls**

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**To:**

**Competition Commission  
New Court  
48 Carey Street  
London WC2A 2JT**

The Director General of Telecommunications (the "Director"), in exercise of his powers under section 13 of the Telecommunications Act 1984 (the "Act"), hereby refers to the Competition Commission (the "Commission") for investigation and report, the following questions:

1. Whether any of the following matters operate, or may be expected to operate, against the public interest:
  - (a) the charges, in the absence of a charge control mechanism on those charges, made by Vodafone Limited ("Vodafone") to operators of fixed or mobile public telecommunications systems for calls to telephone handsets connected to Vodafone's mobile public telecommunications system;
  - (b) the charges, in the absence of a charge control mechanism on those charges, made by BT Cellnet Limited ("BT Cellnet") to operators of fixed or mobile public telecommunications systems for calls to telephone handsets connected to BT Cellnet's mobile public telecommunications system.
2. If so, whether the effects adverse to the public interest which the above-mentioned matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the respective licences granted under section 7 of the Act to Vodafone on 9<sup>th</sup> December 1993 and to BT Cellnet (formerly Telecom Securicor Cellular Radio Limited) on 22<sup>nd</sup> March 1994.
3. For the purpose of assisting the Commission in carrying out its investigation on this reference:
  - (a) the Director hereby specifies, pursuant to section 13(3)(a) of the Act, that in his opinion the adverse effect to the public interest that the absence of a charge control mechanism on the above-mentioned charges has, or may be expected to have, is the harm likely to be caused to consumers. The Director has in his recent investigation found that Vodafone's and BT Cellnet's current

interconnection charges for termination of calls on their respective mobile networks are excessive in relation to cost, to the detriment of consumers<sup>1</sup>; and

(b) the Director further specifies, pursuant to section 13(3)(b) of the Act, that in his opinion that effect adverse to the public interest could be remedied or prevented by modifications of the conditions of the respective licences granted to Vodafone and BT Cellnet by inserting in each of those licences a condition substantially in the form of that set out in Annex A attached to this reference.

4. For the purposes of this reference, a “call” shall have the same meaning as in the condition set out in Annex A.
5. The report on this reference shall be made within a period of six months beginning with the date of this reference.

[ ] **January 2002**

**DAVID ALBERT EDMONDS**

Director General of Telecommunications

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<sup>1</sup> The conclusions following that investigation are set out in Oftel’s Statement ‘Review of the Charge Control on Calls to Mobiles’ (26 September 2001) which is in Annex B attached to this Reference.

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**Annex A**  
**Licence Condition Proposed by the Director**  
**Referred to in**  
**Paragraph 3(b) of the Terms of Reference**

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The modifications to the Licences of BT Cellnet and Vodafone would be by the replacement of existing Conditions 70 and 70A by a new Condition 70 as follows:

## **CONTROL OF INTERCONNECTION CHARGES**

**70.1** Except to the extent that the Director otherwise consents under paragraph 70.6 below, the Licensee shall take all reasonable steps to secure that, during any Relevant Year, the Average Interconnection Charge does not exceed the Target Average Charge for any such Year.

**70.2** For the purposes of this Condition, the Average Interconnection Charge shall be:

- (a) calculated as the average of the Interconnection Charges during the Relevant Year in question, weighted according to the profile of the Licensee's call minutes by charging period in the Base Year. Where any Interconnection Charges are in force during a part only of a Relevant Year (commencing or ending at a date in the course of the Relevant Year), the weighting shall be derived from the profile of call minutes by charging period in the corresponding part of the Base Year; and
- (b) determined according to the Licensee's standard charges, and no account shall be taken of any discounts offered by the Licensee, whether in respect of any particular customer or any category of customers or any category of Calls.

**70.3** For the purposes of this Condition:

- (a) the Target Average Charge shall be calculated as the Adjusted Base Target Charge multiplied by the sum of 100% and the Controlling Percentage;
- (b) the Adjusted Base Target Charge shall be calculated as the Base Target Charge divided by the sum of 100% and the Adjustment Percentage; and
- (c) the Base Target Charge shall be calculated as the average of the Interconnection Charges during the Base Year, weighted according to the profile of the Licensee's call minutes by charging period in the Base Year. Where any Interconnection Charges were in force during a part only of a Base Year (commencing or ending at a date in the course of the Base Year), the weighting shall be derived from the profile of call minutes by charging period in that part of the Base Year.

**70.4** The Licensee shall not make any Interconnection Charge for:

- (a) a Call which terminates on a recorded announcement provided by the Licensee informing the caller of an inability to complete the Call so as to establish a two-way path where the mobile handset used by the called party is switched off, or rings and remains unanswered, or where coverage is not available from the Licensee's system; and

- (b) an unanswered Call which is diverted in respect of the period before the Call is answered.<sup>2</sup>

**70.5** Notwithstanding (and without prejudice to the generality of) the obligation imposed on the Licensee by paragraph 70.1 above:

- (a) if the Licensee has failed to secure that the Average Interconnection Charge has not exceeded the Target Average Charge for any Relevant Year, the Licensee shall make such adjustments to its Interconnection Charges and by such day in the following Relevant Year as the Director may, after consultation with the Licensee, consider to be appropriate for the purpose of remedying that failure, and so direct the Licensee. Such adjustments in the following Relevant Year shall not be relevant for the purpose of establishing compliance with paragraph 70.1 above in that Relevant Year; and
- (b) if it appears to the Director that the Licensee is likely to fail to secure that the Average Interconnection Charge for the last Relevant Year, which begins on 1 April 2005 and ends on 31 March 2006, does not exceed the Target Average Charge for that Year, the Licensee shall make such adjustments to its Interconnection Charge and by such day in that Year as the Director, after consultation with the Licensee, considers appropriate for the purpose of avoiding that failure, and so directs the Licensee.

**70.6** Where the Average Interconnection Charge is less than the Target Average Charge for any Relevant Year, the Licensee shall not make such adjustments to its Interconnection Charges in the following Relevant Year to recover the difference between the Average Interconnection Charge and the Target Average Charge for the Relevant Year in question, unless the Director has given his prior written consent to such adjustments. Such adjustments in the following Relevant Year shall not be relevant for the purpose of establishing compliance with paragraph 70.1 in that Relevant Year.

**70.7** Unless the context otherwise requires, in this Condition:

**“Adjusted Base Target Charge”** has the meaning given to it in paragraph 70.3(b) above;

**“Adjustment Percentage”** means:

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<sup>2</sup> This paragraph (paragraph 70.4) of the proposed replacement Condition 70 is currently contained in the existing Condition 70 in the licences of Vodafone and BT Cellnet. It prohibits the Licensee from charging for calls answered on recorded announcements and unanswered calls which are diverted. It was included in the licences of Vodafone and BT Cellnet following the reference made to the Competition Commission (then the Monopolies and Mergers Commission) on charges made by Vodafone and BT Cellnet for terminating calls from fixed line networks, and the proposals made by the Competition Commission as a result of that reference (report presented December 1998). The Director wishes to retain that prohibition on charging for such unanswered calls in the licences of Vodafone and BT Cellnet, and has therefore included paragraph 70.4 in the new proposed licence modification as a matter of convenience so that he may simply replace the current Condition 70 in its entirety. Paragraph 70.4 is therefore not a matter which the Competition Commission should consider in answering the questions in this Reference.

- (i) for the purposes of the first Relevant Year (which, for the avoidance of doubt, means for the period of 12 months beginning on 1 April 2002 and ending on 31 March 2003) only, the percentage by which the Starting Charge was above or below (as the case may be) 10.20 pence per minute, and, for the avoidance of doubt, the “Starting Charge” for these purposes shall have the meaning set out in this paragraph 70.7 below; and
- (ii) for the purposes of each of the subsequent Relevant Years, the percentage by which the Average Interconnection Charge in the Base Year was above or below (as the case may be) the Target Average Charge in the Base Year.

For the avoidance of doubt, the Adjustment Percentage shall be:

- (a) negative, if the Average Interconnection Charge in the Base Year was below the Target Average Charge in the Base Year (or, for the purposes of the first above-mentioned Relevant Year only, if the Starting Charge was below 10.20 pence per minute);
- (b) zero, if the Average Interconnection Charge in the Base Year was equal to the Target Average Charge in the Base Year (or, for the purposes of the first above-mentioned Relevant Year only, if the Starting Charge was equal to 10.20 pence per minute); or
- (c) positive, if the Average Interconnection Charge in the Base Year was above the Target Average Charge in the Base Year (or, for the purposes of the first above-mentioned Relevant Year only, if the Starting Charge was above 10.20 pence per minute);

“**Average Interconnection Charge**” has the meaning given to it in paragraph 70.2 above;

“**Base Target Charge**” has the meaning given to it in paragraph 70.3(c) above;

“**Base Year**” means the year ending on 31 March immediately preceding the Relevant Year in question. For the avoidance of doubt, in relation to the first Relevant Year, the reference in this definition to the “year ending on 31 March immediately preceding the Relevant Year in question” means the period of 12 months beginning on 1 April 2001 and ending on 31 March 2002;

“**Call**” means a circuit switched conveyance of a speech teleservice only (as defined in the relevant ETSI standards) originating in a telecommunication system which is connected to any of the Applicable Systems of a fixed or a mobile telecommunication system and intended to terminate on a GSM mobile handset using the GSM air interface for the conveyance of that speech call, which is connected to the system of the Licensee. For the purposes of this definition:

- (a) “the relevant ETSI standards” means the European Telecommunications Standard (ETS) of ETS 300 905 (GSM 02.03 version 5.3.2), Third Edition, January 1998, which has been produced

by the Special Mobile Group (SMG) of the European Telecommunications Standards Institute (ETSI); and

(b) "GSM" means the Global System for Mobile communications (GSM) as defined in the relevant ETSI standards.

**"Controlling Percentage"** means, in relation to any Relevant Year, the amount of the change in the Retail Prices Index in the period of 12 months ending on 31 December immediately before the beginning of that Year, expressed as a percentage (rounded to two decimal places) of that Index as at the beginning of that period, reduced by 12;

**"Interconnection Charge"** means the standard charge made by the Licensee for the interconnection of a Call, and "interconnection" has the same meaning as in the Interconnection Regulations;

**"Relevant Year"** means any of the four periods of 12 months beginning on 1 April starting with 1 April 2002 and ending on March 31 2006;

**"Retail Prices Index"** means the index of retail prices compiled by Her Majesty's Government in respect of all items;

**"Starting Charge"** means the charge which shall be:

(a) calculated as the average of the Interconnection Charges during the Year 2001-2002, weighted according to the profile of the Licensee's call minutes by charging period in the Year 2000 – 2001. Where any Interconnection Charges are in force during a part only of the Year 2001-2002 (commencing or ending at a date in the course of the Year 2001-2002), the weighting shall be derived from the profile of call minutes by charging period in the corresponding part of the Year 2000-2001; and

(b) determined according to the Licensee's standard charges, and no account shall be taken of any discounts offered by the Licensee, whether in respect of any particular customer or any category of customers or any category of Calls;

**"Target Average Charge"** has the meaning given to it in paragraph 70.3(a) above; and

**"Year"** means the period of 12 months beginning on 1 April and ending on 31 March.

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**Annex B**

**OfTel Statement 'Review of the Charge  
Control on Calls to Mobiles'  
(September 2001) referred to in footnote 1 of  
the Terms of Reference**

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