

Determination: Rollover of Control of Interconnection Charges

12 February 2002

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Annex A: Condition 70A of Vodafone's Licence

Summary

S1. This document contains a determination relating to the rollover of the control of interconnection charges under Condition 70A of the licence of Vodafone Limited ('Vodafone').

S2 The effect of the determination is that the provisions in Conditions 70A.2 and 70A.3 of the Licence shall have effect.

DETERMINATION RELATING TO THE ROLLOVER OF THE CONTROL OF INTERCONNECTION CHARGES UNDER CONDITION 70A OF THE LICENCE OF VODAFONE LIMITED ('VODAFONE')

WHEREAS:

- (A) the Secretary of State for Trade and Industry (the 'Secretary of State') granted to Vodafone on 9th December 1993 a licence (the 'Licence') under section 7 of the Telecommunications Act 1984 (the 'Act') for the running of the telecommunications systems specified in Annex A to the Licence;
- (B) Part K of Schedule 1 to the Licence contains a condition, Condition 70, which imposes a control on Vodafone's interconnection charges. The period of that control is due to expire on 31 March 2002;
- (C) on 5th September 2001 the Director General of Telecommunications (the 'Director'), in exercise of the powers conferred on him by section 12 of the Act, modified the conditions in Part K of Schedule 1 to the Licence by inserting Condition 70A, which is annexed to this determination;
- (D) Condition 70A enables the Director to make a determination that any or all of the provisions in Conditions 70A.2 and 70A.3 shall take effect, in order to extend the period of control provided for in Condition 70 to 31 March 2003;
- (E) the Director may make the determination referred to in paragraph D above if the conditions in Condition 70A.1 (a) to (c) are satisfied by 31 January 2002. Those conditions have been satisfied before 31 January 2002 in that:
- (i) the Director gave notice on 12th October 2001 in accordance with the requirements of sections 12(2) and (3) of the Act that he proposed to replace Condition 70 in the Licence and considered representations or objections made following that proposal;
 - (ii) Vodafone objected to the proposed modification in whole under section 12(4B) of the Act on 12th November 2001; and
 - (iii) On 7 January 2002 the Director made a reference to the Competition Commission under Section 13 of the Act in relation to the proposed replacement of Condition 70 in the Licence;
- (F) in making this determination, the Director has taken into account representations and observations received as part of the consultation process, and the matters described in the Explanatory Memorandum attached; and
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NOW, THEREFORE, THE DIRECTOR GENERAL, PURSUANT TO CONDITION 70A OF THE LICENCE, HEREBY DETERMINES THAT:

the provisions in Conditions 70A.2 and 70A.3 of the Licence shall have effect.

CHRISTOPHER CHARLES KENNY

**DIRECTOR OF REGULATORY POLICY
FEBRUARY 2002**

**A Person Authorised under Paragraph 8 of Schedule 1 to the
Telecommunications Act 1984**

EXPLANATORY MEMORANDUM

E1. Part K of Schedule 1 to Vodafone's Licence contains a condition, Condition 70, which imposes a control on Vodafone's interconnection charges. That control on the charges Vodafone makes to other operators for terminating calls on its network was set at a level of RPI-9%. The control is due to expire on 31 March 2002. In order to give himself the power to extend that control, on 5 September 2001, the Director, in exercise of his powers under section 12 of the Act, modified Vodafone's licence by inserting Condition 70A in Part K of Schedule 1 to the licence. No representations or objections had been made in respect of the proposed Condition 70A. A copy of Condition 70A is annexed to this document.

E2. The effect of that modification was to give power to the Director, if the conditions in Condition 70A.1 (a) to (c) were satisfied by 31 January 2002, to determine that any or all of the provisions in Condition 70A.2 and 70A.3 should take effect. Conditions 70A.2 and 70A.3 provide for the insertion of wording into Condition 70.1 of Vodafone's Licence which would extend the period of control provided for in that Condition until 31st March 2003. The conditions in Condition 70A.1 (a) to (c) were satisfied, in advance of 31st January 2002, in that:

- (i) the Director gave notice on 12th October 2001 that he proposed to replace Condition 70 in the Licence and considered representations or objections made following that proposal;
- (ii) Vodafone objected to the proposed modification under section 12 (4B) of the Act on 12th November 2001; and
- (iii) on 7 January 2002 the Director made a reference to the Competition Commission under Section 13 of the Act in relation to the proposed replacement of Condition 70 in the Licence.

E3. The Director proposed to replace Condition 70 in Vodafone's licence (and the licence of BT Cellnet Limited) { The Director also proposed a new charge control in the licences of the operators Orange and One2One, who had not previously had charge control conditions in their licences.} following a review of competition in the market for mobile call termination (Of tel's Statement 'Review of the Charge Control on Calls to Mobiles' (September 2001)). As a result of that Review, the Director concluded that competitive pressures do not currently exert sufficient constraints on the termination charges of any of the four mobile operators (i.e. Vodafone, BT Cellnet, Orange and One 2 One), nor are they likely to do so in the near future. The proposed new Condition 70 provided for a new period of control on the charges Vodafone makes to other operators for terminating calls on their networks at a level of RPI-12%. Vodafone objected to the proposed new Condition 70 on 12th November 2001. The Director was therefore precluded from replacing Condition 70, as the requirements of section 12(4B) of the Act were not fulfilled.

E4. On 7 January 2002 the Director therefore made a reference to the Competition Commission under Section 13 of the Act on the question whether Vodafone's termination charges for voice calls, in the absence of a charge control, operate against the public interest and if so, whether those effects adverse to the

public interest may be remedied by means of a licence modification. The Director has proposed that those effects may be remedied by a licence modification, a replacement to Condition 70, annexed to the reference, which is similar to the replacement Condition 70 proposed by the Director on 12th October 2001. The Competition Commission has a period of up to six months, which may be extended to up to a year, to investigate and report on the questions contained in that reference. Once the Competition Commission has reported on those questions in accordance with section 14 of the Act, and assuming the Competition Commission concludes that the matters specified in the reference operate against the public interest and that those effects can be remedied by a modification to Vodafone's licence, in particular the replacement Condition 70 proposed by the Director, then the Director has the power under section 15 to make a modification to Vodafone's licence for the purpose of remedying the adverse effects identified in the Competition Commission's report.

E5. The current control contained in Condition 70 of Vodafone's licence will expire on 31 March 2002, in all probability before the Competition Commission has completed its investigation referred to in paragraph 4 above. The conditions in Condition 70A.1 have been fulfilled, in advance of the specified deadline of 31st January 2002, so that the Director now has the power to make a determination that the provisions of Condition 70A.2 and 70A.3 shall have effect.

E6. The Director issued a draft of this determination on 8 January 2002 requesting representations from interested parties. Only one representation was received by the Director, which was from the Northern Ireland Advisory Committee on Telecommunications and supported the making of the determination. The Director is therefore making the determination so that the existing controls on Vodafone's termination charges will be maintained, in order to protect consumers, pending the outcome of the Competition Commission investigation. A similar determination is being made simultaneously in respect of BT Cellnet Limited.

DETERMINATION RELATING TO THE ROLLOVER OF THE CONTROL OF INTERCONNECTION CHARGES UNDER CONDITION 70A OF THE LICENCE OF VODAFONE LIMITED ('VODAFONE')

Annex: Condition 70A of Vodafone's Licence

CONDITION 70A

ROLLOVER OF CONTROL OF INTERCONNECTION CHARGES

70A.1 If by 31 January 2002:

- (a) the Director, having given notice and considered representations or objections in accordance with the requirements of Section 12(2) and (3) of the Act, has submitted to the Licensee proposals for Condition 70 of this Licence to be replaced or modified; and
- (b) the Licensee has objected to those proposals in whole or in part under Section 12(4B) of the Act; and
- (c) the Director has made a reference to the Competition Commission under Section 13 of the Act in relation to any part of the proposals (including the whole) to which the Licensee has objected as referred to in paragraph (b) above, but in relation to no other matter,

the Director may determine that, in order to extend the period of control provided for in that Condition, any or all of the provisions in Conditions 70A.2 and 70A.3 below shall take effect.

70A.2 In Condition 70.1 of this Licence, the following text of a new paragraph (d) shall be inserted after paragraph (c):

“(d) during the Year 2002-2003, the amount in pence per minute that is the product of the amount calculated in accordance with 70.1(c) above multiplied by the sum of 100% and the Controlling Percentage (deducting that Percentage if it is negative).”

70A.3 In Condition 70.4 of this Licence, the following text of a new paragraph (c) shall be inserted after paragraph (b):

“(c) If it appears to the Director that the Licensee is likely to fail to secure that the Average Interconnection Charge for the Year 2002-2003 does not exceed the level specified in 70.1(d) above, the Licensee shall make such adjustments to the Interconnection Charge 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.”
