

**DRAFT DIRECTIONS UNDER THE PROVISIONS OF REGULATION 6(6) OF THE
TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 OF A
DISPUTE BETWEEN ORANGE PERSONAL COMMUNICATIONS SERVICES
LIMITED (“ORANGE”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”)
CONCERNING;**

- (i) INTERCONNECT CHARGES FOR ORIGINATION OF CALLS TO
FREEPHONE NUMBERS; AND**
- (ii) THE RECOVERY OF DONOR OPERATOR TRANSIT CONVEYANCE
COSTS ON CALLS TO NUMBERS PORTED TO ANOTHER NETWORK**

Issued by the
Director General of Telecommunications

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50 Ludgate Hill
London
EC4M 7JJ
Tel: 020 7634 8700
Fax: 020 7634 8943

www.oftel.gov.uk

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DRAFT DIRECTION UNDER THE PROVISIONS OF REGULATION 6(6) OF THE TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 OF A DISPUTE BETWEEN ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED (“ORANGE”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”) CONCERNING:

INTERCONNECT CHARGES FOR ORIGINATION OF CALLS TO FREEPHONE NUMBERS

WHEREAS:

- (A) the Secretary of State for Trade and Industry granted to British Telecommunications on 22 June 1984 a licence (the “BT licence”) under section 7 of the Telecommunications Act 1984 (the “Act”) for the running of telecommunications systems specified in the BT licence;
- (B) by virtue of section 109 of, and paragraph 20 of Schedule 5 to, the Act the BT licence has effect as if granted to British Telecommunications plc (“BT”);
- (C) the Secretary of State for Trade and Industry has granted to Orange Personal Communications Services Limited (“Orange”) on 27 July 1995 a licence under Section 7 of the Act for the running of a telecommunications system as specified in that licence;
- (D) regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 (the “Interconnection Regulations”), provides that, where there is a dispute concerning interconnection between organisations, the Director General of Telecommunications (the “Director”) shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request;
- (E) Orange entered into a Standard Interconnect Agreement with BT on 13 December 1996 (the “1996 Agreement”);
- (F) Orange has served a Review Notice on BT under the review provision of the 1996 Agreement on 27 June 2000 seeking to review the charging arrangements for calls made by Orange customers to freephone numbers as per schedule 110 of the 1996 Agreement, and request that a similar approach as per the Payphone Access Levy arrangements be adopted for freephone calls originated on the Orange network;
- (G) BT formally responded to Orange on 16 January 2001 dismissing Orange’s proposals. Orange and BT are unable to agree on this matter and are therefore in dispute;
- (H) on 20 March 2001, Orange referred, in accordance with the provisions of regulation 6(6) of the Interconnection Regulations, this dispute to the Director for his determination;
- (I) the Director has considered, *inter alia*, the information provided by the parties and the matters set out in regulation 6(8) of the Interconnection Regulations. The principal points are summarised in the Explanatory Memorandum that accompanies, and is published with, this Direction. The Explanatory Memorandum also contains a full statement of the Director’s reasons for making this Direction;

- (J) a draft of this Direction and the Explanatory Memorandum was issued to interested parties on [...]. Comments were invited by [.....] and further comments on comments by [.....];

NOW, THEREFORE, THE DIRECTOR, PURSUANT TO REGULATION 6(6) OF THE INTERCONNECTION REGULATIONS, AND HAVING CONSIDERED THE VIEWS OF THE PARTIES AND THOSE MATTERS SET OUT IN REGULATION 6(8) OF THOSE REGULATIONS, HEREBY MAKES THE FOLLOWING DETERMINATION TO RESOLVE THE DISPUTE BETWEEN ORANGE AND BT:

1. BT is not required to amend schedule 110 of the 1996 Agreement with Orange in order to review charging arrangements for calls made by Orange customers to freephone numbers.

**VINCENT AFFLECK
COMPLIANCE PROGRAMME MANAGER**

A person duly authorised under paragraph 8 of Schedule 1 of the Telecommunications Act 1984

2 August 2001

DRAFT DIRECTION UNDER THE PROVISIONS OF REGULATION 6(6) OF THE TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 OF A DISPUTE BETWEEN ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED (“ORANGE”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”) CONCERNING:

THE RECOVERY OF DONOR OPERATOR TRANSIT CONVEYANCE COSTS ON CALLS TO NUMBERS PORTED TO ANOTHER NETWORK

WHEREAS:

- (A) the Secretary of State for Trade and Industry granted to British Telecommunications on 22 June 1984 a licence (the “BT licence”) under section 7 of the Telecommunications Act 1984 (the “Act”) for the running of telecommunications systems specified in the BT licence;
- (B) by virtue of section 109 of, and paragraph 20 of Schedule 5 to, the Act the BT licence has effect as if granted to British Telecommunications plc (“BT”);
- (C) the Secretary of State for Trade and Industry has granted to Orange Personal Communications Services Limited (“Orange”) on 27 July 1995 a licence under Section 7 of the Act for the running of a telecommunications system as specified in that licence;
- (D) regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 (the “Interconnection Regulations”), provides that, where there is a dispute concerning interconnection between organisations, the Director General of Telecommunications (the “Director”) shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request;
- (E) Orange entered into a Standard Interconnect Agreement with BT on 13 December 1996 (the “1996 Agreement”);
- (F) Orange served a Review Notice on BT under the review provision of the 1996 Agreement on 27 June 2000 seeking amendment to its Schedule 501 to allow Orange to recover its costs incurred in transiting calls to ported Orange mobile numbers;
- (G) BT formally responded to Orange on 16 January 2001 dismissing Orange’s proposals. Orange and BT are unable to agree on this matter and are therefore in dispute;
- (H) on 20 March 2001, Orange referred, in accordance with the provisions of regulation 6(6) of the Interconnection Regulations, this dispute to the Director for his determination;
- (I) the Director has considered, *inter alia*, the information provided by the parties and the matters set out in regulation 6(8) of the Interconnection Regulations. The principal points are summarised in the Explanatory Memorandum that accompanies, and is published with, this Direction. The Explanatory Memorandum also contains a full statement of the Director’s reasons for making this Direction;

(J) a draft of this Direction and the Explanatory Memorandum was issued to interested parties on [...]. Comments were invited by [.....] and further comments on comments by [....];

NOW, THEREFORE, THE DIRECTOR, PURSUANT TO REGULATION 6(6) OF THE INTERCONNECTION REGULATIONS, AND HAVING CONSIDERED THE VIEWS OF THE PARTIES AND THOSE MATTERS SET OUT IN REGULATION 6(8) OF THOSE REGULATIONS, HEREBY MAKES THE FOLLOWING DETERMINATION TO RESOLVE THE DISPUTE BETWEEN ORANGE AND BT:

1. BT is not required to amend Schedule 501 to the 1996 Agreement to allow Orange to recover its costs incurred in transiting calls to ported Orange mobile numbers.

**VINCENT AFFLECK
COMPLIANCE PROGRAMME MANAGER**

A person duly authorised under paragraph 8 of Schedule 1 of the Telecommunications Act 1984

2 August 2001

**DRAFT DIRECTIONS UNDER THE PROVISIONS OF REGULATION 6(6) OF THE
TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 OF A
DISPUTE BETWEEN ORANGE PERSONAL COMMUNICATIONS SERVICES
LIMITED (“ORANGE”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”)
CONCERNING:**

- (iii) INTERCONNECT CHARGES FOR ORIGINATION OF CALLS TO
FREEPHONE NUMBERS; AND**
- (iv) THE RECOVERY OF DONOR OPERATOR TRANSIT CONVEYANCE
COSTS ON CALLS TO NUMBERS PORTED TO ANOTHER NETWORK**

Explanatory Memorandum

1. Summary

1.1 The Director General of Telecommunications (the “Director”) has issued two separate draft Directions in accordance with the provisions of regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 for the resolution of two disputes between Orange and BT under the terms of their Standard Interconnect Agreement dated 13 December 1996. These draft Directions set out the Director’s decisions on Orange’s requests for: (i) higher interconnect charges from BT for origination of calls to freephone numbers; and (ii) the recovery of donor operator transit conveyance costs from BT for calls to numbers ported to another network.

1.2 Orange referred the two disputes to the Director by letter of 20 March 2001, which he received on 23 March 2001. The Director has considered the submissions made by Orange on behalf of itself and by BT and has issued two draft Directions in respect of each dispute and this Explanatory Memorandum on 2 August 2001 to the industry as a whole for consultation. Comments are requested and will be taken into account in making final Directions.

1.3 The details of the Director’s consideration of the submissions made by Orange and BT together with the reasons for making his draft Directions are set out in Sections 3 and 4. In summary, the Director proposes to determine that:

- (i) Interconnect charges for calls to Freephone numbers

The proposal made by Orange represents an inequitable solution to the recovery of its costs in that it requires BT to recover Orange’s costs from other terminating operators. In the absence of evidence that service providers are actively interested in attracting and paying for calls from mobiles, the principles of cost causation, cost minimisation and the distribution of benefits weigh heavily towards current practice. Accordingly, the request made by Orange is rejected and BT is not required to amend schedule 110 of its Interconnect Agreement with Orange; and

- (ii) Calls to mobile ported numbers

The proposal made by Orange would shift cost burdens onto BT which would then be forced to levy charges for costs of Mobile Number Portability (“MNP”)

across all calls, fixed and mobile. Previous determinations by the Director have supported the principle that costs should be borne by mobile operators and their customers. The Director has found no reason to depart from that principle in the absence of evidence of a material change in circumstances. Accordingly, the request made by Orange is rejected and BT is not required to amend Schedule 501 of its Interconnect Agreement with Orange.

1.4 Having considered the facts specific to these two disputes and the matters set out in regulation 6(8) of the Telecommunications (Interconnection) Regulations 1997, these draft Directions, in the opinion of the Director, represent a fair balance between the interests of the parties in each of these cases, having regard to the Director's wider duties to the development of the telecommunications industry in the UK and to encourage and secure adequate interconnection in the interests of all users in a way that provides maximum economic efficiency and gives the maximum benefit to end-users.

2. Background

Timetable of Events

2.1 On 27 June 2000, Orange served a Review Notice on BT under the review provision of its Interconnect Agreement with BT. In the Notice Orange sought to:

- (i) review the charging arrangements for calls made by Orange customers to freephone numbers as per Schedule 110 of the Interconnect Agreement, and request that a similar approach as per the Payphone Access Levy arrangements be adopted for freephone calls originated on the Orange network; and
- (ii) amend Schedule 501 of the Interconnect Agreement to allow Orange to recover its costs incurred in transiting calls to ported Orange mobile numbers.

2.2 Both issues were discussed in a number of regular commercial meetings held between BT and Orange. These meetings took place on 19 July, 17 August, 26 September, 1 November and 15 December 2000, although the issues did not form key discussion items at these meetings.

2.3 On 16 January 2001, BT formally responded to Orange. BT dismissed Orange's proposals for the reasons set out in BT's responses below. Orange referred both issues to Oftel for determination by letter of 20 March 2001, received in Oftel on 23 March 2001.

3. The Draft Direction – (i) Mobile Origination of Freephone Calls

Orange Submission

3.1 In its letter to Oftel of 20 March 2001, Orange states that, at present, it recovers interconnect revenue for originating calls to freephone numbers determined by the Number Translation Service (“NTS”) formula. Orange argues that this pricing formula, however, was set mainly with fixed line operators in mind and does not reflect higher network routing costs of mobile operators. As a consequence, Orange does not sufficiently recover its costs for originating this type of call. In seeking to review the interconnect rate it currently receives from BT, Orange point to the precedent set of BT recovering the higher origination costs for freephone calls via the Payphone Access Charge (“PAC”), where terminating operators pay BT a higher pence per minute rate for termination of calls to freephone services where the call has originated from a payphone. Orange therefore requests consideration of a similar arrangement for its mobile originated freephone calls.

3.2 In its letter of 19 April 2001, Orange developed its argument further. Orange states that it considers there to be strong parallels with the PAC in respect of the principle of its request. Orange states that it believes that a charge in alignment with the PAC would be the simplest and most practical solution to the issue and would cause the least amount of disruption for terminating operators. Orange also state that such a solution would not enable it to fully recover its costs, but would be an acceptable compromise for mobile originating operators.

BT response

3.3 In its response to Orange of 16 January 2001, BT stated it did not consider it appropriate or practicable to apply such a charge without considering a whole range of NTS issues and without involving the rest of the industry. BT noted that the NTS pricing formula applies both to freephone calls terminating on BT’s network and those transited via BT and terminated on another operator’s network. BT considered that the best way forward would be for Orange to pursue the issue within the NTS focus group.

3.4 By letter of 12 April 2001, BT submitted that the proposal by Orange raised significant financial consequences on call termination operators that host freephone numbers. Terminating operators pay the originating operators for originating the call and the proposed mobile origination charges are higher than those of fixed operators. Terminating operators would have to either categorise calls based on origination network type, or spread the higher cost over all calls. The consequence would be to raise terminating operators’ costs and charges, including charges to charitable organisations. BT states that it is only one of a number of players in the market for the hosting of freephone numbers. As significant proportions of freephone calls are currently terminated by operators other than BT, it believes it has acted responsibly in advising Orange to address its request to the industry. The inability of customers to access freephone numbers from mobile phones is not an issue in this dispute as two mobile operators already charge for 0800 services to recover costs rather than blocking such calls. In relation to use of the PAC, BT states this charge was instigated to cover the regulatory obligation to support non-profit making payphones as required under the Universal Service Obligation.

The draft Direction

3.5 Having duly considered the submissions of Orange and BT in response to the request for determination and the matters in Regulation 6(8) of the Telecommunications (Interconnection) Regulations 1997, the Director is minded to determine that the request made by Orange should be dismissed and current contractual arrangements maintained.

Costs of service

3.6 The central issue raised by this determination request by Orange is whether mobile operators are entitled to the full cost of call origination for freephone calls. If so, this raises the further question of whether service providers would want or be willing to pay for such freephone calls originating on mobile networks, given the higher cost of such calls.

3.7 Consumers (in most instances) have access to a fixed line phone (either private residential line or via a public payphone) that offers a satisfactory substitute in this instance to using a mobile. The option is therefore available to the consumer to make a 'freephone' call free from a fixed line phone, or be charged for the extra convenience of using a mobile. Arguably therefore, the service provider should not be liable to pay for the consumer choosing to make their call by the more expensive mobile route.

3.8 Alternatively, however, it may be that service providers do have an interest in attracting calls to freephone numbers from mobile phone users and would therefore be willing to pay increased call origination costs to capture such calls. For instance, marketing of freephone numbers for services may be directed at consumer groups with little or no access to fixed line phones at the point of exposure, such as commuters and other travelling consumers. Service providers may therefore have legitimate incentive to encourage free mobile freephone calls to capture potential customers. No evidence of this has been provided, however.

Payphone Access Charge and Universal Service Obligation

3.9 The proposal made by Orange is based upon its opinion that a precedent has been set in the application of the PAC to freephone calls originating from payphones. The principle reason for the PAC, however, is to enable BT to recover the costs of its provision of payphone services. More specifically, it is to cover the cost of providing the line and payphone equipment which BT has a responsibility under the Universal Service Obligation to provide. In the case of a standard call from a payphone, BT is able to recover contributions to such costs from the higher call charge. For a freephone call, however, it is unable to do this. The PAC therefore covers the additional cost to BT of supplying and maintaining the payphone equipment and connection. The actual interconnection charge for conveyance of a freephone call from a payphone is the same as from any other fixed line. The costs of conveyance of 0800 are covered in the call origination charge of circa 1ppm payable to all originating operators of freephone calls, including Orange and other mobile networks. The PAC, paid in addition to the conveyance charge, therefore plays no part in covering the costs of call conveyance.

3.10 The application of the PAC to cover the higher cost of call origination on mobile networks is therefore flawed. The PAC covers equipment and access network costs, whereas the issue of the cost of call origination via mobile relates to the conveyance cost of the call.

Orange and other mobile networks have alternative sources of recovering the higher conveyance cost of originating a freephone call, ie by charging their customers. More crucially, Orange also recovers costs of access through line rental charges. In its determination of August 1998, Oftel considered the following as relevant costs in the calculation of the PAC: maintenance, depreciation, return on capital, redundancy, systems support, directory enquiry and operator services and other operating costs. None of these costs are relevant to those that Orange is seeking to recover in the ability to charge for call origination of freephone numbers. Orange is seeking costs solely relating to the incremental conveyance cost of such calls.

Mobile origination and competition

3.11 Orange and One2One (in the case of contract customers only) do not currently charge customers for dialling freephone numbers. This strategy is distinct from that of Vodafone and Cellnet which do charge. If the proposal made by Orange is accepted and the costs of mobile origination are covered in the charge paid by BT, this may impact on the wider market and how other mobile operators recover the costs of freephone origination. A decision to allow Orange to recover the costs from BT may encourage other mobile network operators to recover charges in the same way, further impacting on the cost ultimately transferred to service providers. Undoubtedly other fixed line operators that terminate freephone calls will also be affected by such a decision.

3.12 Distinction should also be noted between telesales/ marketing freephone calls on 0800 numbers and indirect access calls using authorisation access codes. Orange only offer free calls to freephone numbers on telesales/ marketing numbers, not on indirect access numbers. On such numbers Orange are already recovering the costs of mobile origination, as indeed they are in respect of all freephone calls made by their pre-pay customers. In terms of the principle, however, the distinction makes little practical difference as both types of call will be routed via BT as the only fixed line interconnection with Orange. Although the relative costs of the calls may be slightly different, the principle of recovery of cost for the mobile operator from either customer or BT (or other TNO) remains the same. Orange has not raised any distinction itself in its request for determination.

Practical consequences of recovering call origination from BT

3.13 BT's share of the total NTS terminating market is approximately 30%. A significant proportion of freephone calls are therefore likely where BT is a transit operator only and passes calls on to another operator to act as TNO. In such cases where the TNO is not BT, the TNO does not have the ability to distinguish the originating source of the call as all calls are passed to it from the BT network. Therefore it cannot distinguish between a higher cost mobile origination call or lower cost fixed line call and apply charges to a service provider as appropriate. The result is likely to be higher charges to service providers overall.

3.14 As BT is in effect acting only as transit operator in this scenario, it is also unreasonable to place in its hands the burden of having to recover Orange's costs from other TNOs for this significant amount of freephone traffic without an industry agreement in place. Under the proposal, Orange will charge BT a higher cost for originating a freephone call. BT will then be placed in the position of having to recover this cost from whichever operator is acting as TNO for that service provider. The alternative is BT covering the increased call origination

charges itself, even though it is only acting as transit operator. This would not appear to be an equitable solution to enable Orange to recover its costs. Orange may wish to consider whether its objectives would be better achieved in approaching service providers direct and seeking to charge for the increased cost of mobile origination in this way.

Conclusions

3.15 Higher mobile origination costs for freephone calls are currently covered by mobile operators in either policies of charging customers for dialling freephone numbers, recovery of aggregated call use in line rental charges, or by accepting losses on such calls. Lacking evidence that consumers are disadvantaged by charges levied on mobile freephone calls, or that service providers are willing to pay higher charges to cover the cost of mobile originated calls, there is little justification for the Director to make a decision to shift the cost burden onto BT, thereafter to be recovered from other TNOs and ultimately service providers.

3.16 As the issue has arisen, however, it is possible for Oftel to consider the principle of whether mobile operators should recover full costs of call origination from TNOs and ultimately service providers.

3.17 In considering the principle of the way in which the costs of call origination of freephone calls from mobiles should be recovered the Director has applied five of the six principles of cost recovery that the Monopolies and Mergers Commission (“MMC”) adopted in its 1995 enquiry ‘Telephone number portability: a report on a reference under section 13 of the Telecommunications Act 1984’. As the service of mobile origination of calls to freephone numbers is not a reciprocal service, the MMC’s sixth principle does not apply in this case.

3.18 *Cost causation.* The costs should be recovered from those who cause them to be incurred. This gives the right price signals to encourage economically efficient behaviour. The increased cost of originating a call to a freephone number from a mobile as opposed to a fixed line is caused by the calling party who initiates the call by mobile, rather than choosing to call via a fixed line substitute. The principle of cost causation therefore holds that costs should be borne by mobile customers who choose to call freephone numbers on mobile phones.

3.19 *Cost minimisation.* The costs should be recovered so as to give operators an incentive to minimise the costs. Current mobile call origination costs are higher than those of fixed line. Passing the full additional cost of mobile origination on freephone numbers to service providers reduces the incentive to decrease the cost of mobile call origination on the part of mobile operators. The principle of cost minimisation therefore holds that the additional costs of mobile origination to freephone numbers should be borne by the mobile operators and their customers.

3.20 *Distribution of benefits.* Costs should be recovered from those who benefit. The beneficiaries of calling freephone numbers from mobiles as opposed to fixed lines are those mobile customers who enjoy the added convenience of mobiles. Also, mobile operators gain added volume in the use of their services (which they have the option to charge for and increase their revenue). The principle of distribution of benefits therefore holds that the additional costs should be borne by mobile operators and their customers.

3.21 *Effective competition.* Costs should be recovered in a way that promotes effective competition. The application of a higher standard mobile origination charge will not promote competition among TNOs providing freephone access to service providers as they will all face the same charge via BT. It is doubtful whether there is much competition among mobile operators on the basis of freephone policies (unlikely to be a priority for most mobile customers), but what competition does exist between the different arrangements currently offered will likely be lost if all operators move to pass on the costs to service providers via BT. The principle of effective competition therefore holds that the costs should be borne by mobile operators.

3.22 *Practicality.* The outcome should be easy to implement as a general principle. The principle of the costs of higher mobile origination being paid by the mobile user already applies. The alternative of service providers meeting the cost would be more complex but possible to implement following a review of the billing process. This would either have to distinguish between origin of call from either fixed or mobile network, or implement a general rise in the cost of all calls to freephone numbers payable by the service provider.

3.23 The objectives of the principles highlighted above are best served in the higher costs of mobile call origination being borne by the mobile operators, or more specifically, those customers that call freephone numbers from their mobiles.

3.24 A recovery of costs based on the principles of the PAC is not appropriate as the PAC applies to recover costs of equipment and access. Orange does not incur directly equivalent costs in providing its service. The PAC does not cover conveyance costs from payphones, therefore it does not follow that an equivalent levy should cover conveyance costs from mobiles.

3.25 For the reasons outlined above, the Director proposes to conclude that the proposal made by Orange represents an inequitable solution to the recovery of its costs in that it requires BT to recover Orange's costs from other terminating operators. In the absence of evidence that service providers are actively interested in attracting and paying for calls from mobiles, the principles of cost causation, cost minimisation and the distribution of benefits weigh heavily towards maintaining current practice.

4. The Draft Direction – (ii) Donor Transit Charge - Mobile Number Portability

Orange submission

4.1 In its letter of 20 March 2001, Orange states that with the advent of Mobile Number Portability, calls to Orange number ranges may now either be terminated on the Orange network if that number is associated with a current Orange network customer, or terminated on another mobile network if the Orange number has been ported from its system. Under current arrangements, when a call to an exported number is received by Orange, it is required to be routed on to the relevant mobile operator which is providing network services to the customer associated with the ported Orange number. In undertaking this onward routing, Orange has stated that it effectively acts as transit operator on behalf of the originating operator of the call. Orange currently receives a time of day weighted charge for all calls passed from the BT system to the Orange system. This is irrespective, however, of whether the call is destined for an exported Orange number. As such, Orange states that it is unable to fully recover its costs incurred in transiting calls to ported Orange numbers.

4.2 By way of letter of 19 April 2001, Orange further developed its argument. Orange stated that the relevant charge under consideration is the Donor Conveyance Charge (DCC). Under current arrangements determined by Oftel in November 1999, the charge is borne 50:50 between the donor network operator and recipient network operator. Orange has consistently argued, however, that the donor can do little to minimise the cost it is forced to bear and that as such 50% of the DCC should be payable by BT in recognition of the transit function being performed on its behalf by Orange.

BT response

4.3 In its response to Orange of 16 January 2001, BT stated it understood Orange's proposal as surcharging the originating operator via BT for additional costs of calls to Orange numbers ported to a third party recipient network. BT's understanding of the industry porting regime was that there was to be no recovery of excess porting costs from the originating caller or operator, or indeed the (non-porting) transit operator. Additional costs to the donor operator are to the account of the recipient operator and a matter for those two mobile operators alone. It would therefore be inappropriate to address these costs at all in the contracts between the originator and BT, or between BT and the donor.

4.4 By letter of 12 April 2001, BT submitted that Orange's proposal has the effect of introducing a surcharge for calls to ported numbers. BT states Orange are not entitled to apply a surcharge for Additional Conveyance Costs as determined in an Oftel statement of January 2000 (Numbering Directive: Numbering Portability Requirements). BT assumes therefore that Orange's proposal relates to the Average Porting Conveyance Cost. BT believes that it would be more appropriate for Orange to subsume any costs into its overall network charges for calls. BT states that the UK has not yet migrated to a dynamic central numbering database and therefore that operators other than those involved in a specific port will not have information regarding whether or not a number has been ported. In many cases, BT states it may be acting as transit operator between originating operator and Orange and that therefore the issue is for industry and/ or Oftel to resolve and not BT. Originating operators will be required to set differential retail call rates, but as the originating operator will not know whether the number has been ported by Orange, they will not be able to inform

the retail customer of call charges until retrospectively through interconnect billing. BT believes Orange's request would lead to significant confusion and complaints from the retail community and poor publicity towards the wider UK mobile industry.

The draft Direction

4.5 Having duly considered the submissions of Orange and BT in response to the request for determination and the matters in regulation 6(8) of the Telecommunications (Interconnection) Regulations 1997, the Director proposes to conclude that the request made by Orange should be dismissed and current contractual arrangements be maintained.

Oftel Determination On Mobile Number Portability

4.6 In November 1999, following requests from both Orange and One2One to set the appropriate level of the DCC, the Director considered the principle of cost recovery of MNP. The Director concluded in these determinations that it was appropriate that costs should be recovered from *mobile* customers, based on the principles of cost causation and the distribution of benefits. This conclusion also supported the principle of cost minimisation in providing an incentive on mobile networks to keep the cost of porting as low as possible. Furthermore, the Director concluded that the costs of the DCC should be split equally between Donor and Recipient to ensure effective competition between mobile operators, also to provide equal incentive upon both networks to keep costs as low as possible. The determinations were effective until 31 March 2000 after which the mobile operators were required to negotiate a commercial settlement between themselves.

Draft Conclusions

4.7 The Director stated his view that the costs of MNP should be borne by mobile customers in his previous determination on the issue with reference to the MMC's six principles of cost recovery (from the MMC's 1995 enquiry 'Telephone number portability: a report on a reference under section 13 of the Telecommunications Act 1984'). Although this determination was effective only until 31 March 2000, the Director considers that the principles established therein remain current and valid.

4.8 *Cost causation.* The costs of MNP should be recovered from those that cause them to be incurred. This gives the right price signals to encourage economically efficient behaviour. In the case of MNP, two parties could be considered to cause costs to be incurred. First, the call recipient, by porting to another network, makes it necessary for calls to be ported when other operators' customers wish to contact them. Secondly, the calling party, by initiating the call, causes the relevant parts of the network to be used. However, the calling party is unable to engage in any behaviour, other than not making the call, which would enable costs to be avoided, while the recipient has the choice of whether or not to port his number, and hence whether or not the cost of porting should be incurred. The principle of cost causation therefore implies that costs should be borne by *mobile* customers who port their numbers to a greater extent than call originators.

4.9 *Cost Minimisation.* The costs of MNP should be recovered so as to give operators an incentive to minimise the costs of providing MNP. This suggests that it would be appropriate

to limit the costs which the donor network operator, who has a degree of control over the level of the costs, can recover from the recipient network.

4.10 *Distribution of benefits.* Costs of MNP should be recovered from those who benefit from it. Benefits from MNP accrue both to customers porting their numbers and also to mobile customers in general through increased competition in the mobile market. Customers calling from a fixed line would only benefit indirectly from MNP, if the mobile operator would compete more fiercely on call charges to mobiles. This suggests that, on the Distribution of Benefits principle, costs should be recovered from mobile customers generally, with possibly some costs being recovered from *mobile* customers who port their numbers.

4.11 *Effective Competition.* The costs of MNP should be recovered in a way that promotes effective competition. This means that the charging structure should not distort competition, or deter operators from introducing mobile number portability.

4.12 *Reciprocity.* Reciprocal charging implies that the charges relating to a customer porting from one operator to another should apply to a customer porting in the opposite direction.

4.13 *Practicality.* The outcome should be easy to implement as a general principle.

4.14 It is therefore the Director's initial view that Orange has provided no evidence of a material change in circumstances that might lead him to believe a departure from the established principles is justified in making this direction.

4.15 For the reasons outlined above, it is the Director's initial view that the proposal made by Orange would shift cost burdens onto BT which would then be forced to levy charges for costs of MNP across all calls, fixed and mobile. Previous determinations by the Director have supported the principle that costs should be borne by mobile operators and their customers. The Director has found no reason to depart from that principle in this case in the absence of evidence of a material change in circumstances.

5. Consultation and Timetable for Responses

5.1 This draft Direction has been made in response to the submissions made by Orange and BT and applies only to these operators. Oftel seeks comments from all interested parties on the proposed decisions detailed in the two draft Directions.

5.2 Please e-mail or send comments in writing to:

Richard Thompson
Oftel
50 Ludgate Hill
London
EC4M 7JJ

Telephone: (020) 7634 8983
E-mail: richard.thompson@oftel.gsi.gov.uk

5.3 Comments on this initial consultation must be sent to Oftel by **Thursday 30 August 2001**. Comments-on-comments must then be sent to Oftel by **Thursday 13 September 2001**. Confidential responses should not be sent via the internet. Written comments will be made publicly available in Oftel's Research and Intelligence Unit, except where a respondent indicates that a response, or part of it, is confidential. Respondents are therefore asked to separate any confidential material into a clearly marked annex. In the interests of transparency, respondents are asked to avoid confidential markings wherever possible.

5.4 The final direction will be made as soon as possible after the end of the above-mentioned consultation period.

Oftel
August 2001