



Dispute between TeiNG and Three regarding TeiNG's Compliance with GC17 and the NTNP

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About this document

This document sets out for comment Ofcom's proposal for resolving a dispute between TelNG and Three regarding whether or not TelNG's UK03 service, which enables customers to call international destinations using 03 numbers, involves revenue-sharing in contravention of the requirements of the National Telephone Numbering Plan and therefore General Condition 17.

General Condition 17 places obligations on communications providers in relation to the use of telephone numbers. These include a requirement to comply with the National Telephone Numbering Plan which, in relation to the 03 number range, prohibits communications providers from directly or indirectly sharing with any end-users or calling parties any revenue obtained from providing a service on those numbers.

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Glossary of terms

AIT: Artificial inflation of traffic.

CP: Communications provider.

December 2014 Statement: 'The 03 Number Range. Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range', 11 December 2014. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/03-modification/statement/statement.pdf>.

Dispute: This regulatory dispute, opened on 1 April 2016, between TeiNG and Three concerning whether the TeiNG UK03 service is compliant with the National Telephone Numbering Plan.

February 2007 Statement: 'Raising confidence in telephone numbers. Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17', 13 February 2007. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>

NTNP: The National Telephone Numbering Plan, the most recent version of which was published by Ofcom on 1 July 2015. See: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf

OCP: Originating communications provider.

Parties: TeiNG and Three.

Provisional Conclusions: This document.

SIA: BT's Standard Interconnect Agreement (available on www.btwholesale.com).

SP: Service provider.

Submission: Dispute submission from TeiNG dated 20 February 2016 and supplemented on 1 March and 9 March.

TCP: Terminating communications provider.

TeiNG: TeiNG Limited, whose registered company number is 05503631.

The Act: The Communications Act 2003.

Three: Hutchison 3G UK Limited whose registered company number is 3885486 trading under the name of 'Three'.

TP: Transit provider.

UK03 service: The service offered by TeiNG Limited that provides customers with 03 numbers which can be routed to international destinations. See: www.uk03.co.uk.

Section 1

Summary

- 1.1 This document (the "Provisional Conclusions") sets out for comment our provisional assessment of the matters in dispute.
- 1.2 The dispute was brought by TeiNG Limited ("TeiNG") regarding a decision by Hutchison 3G UK ("Three") to treat TeiNG's UK03 service,¹ an international call through service, as involving revenue-sharing in contravention of the National Telephone Numbering Plan ("NTNP") and, as a result, of General Condition 17 ("GC17").
- 1.3 When we first opened the 03 number range, we made it clear that revenue-sharing with end users was not permitted for 03 numbers and amended the NTNP to reflect this.² In December 2014³ we published a statement (the "December 2014 Statement") to clarify that callers are end-users with respect to 03 calls and therefore that communications providers ("CPs") are prohibited from sharing with callers any revenues they receive, directly or indirectly, from calls to 03 numbers. The statement also includes a non-exhaustive list of examples of direct and indirect revenue-sharing.
- 1.4 TeiNG argues in its submission that the UK03 service does not constitute revenue-sharing as the calling party is paying for a call, and receives no benefit other than being able to complete a call.⁴ Three argues it does involve revenue-sharing, as TeiNG uses the termination charge it receives from terminating the 03 call to pay for an international call, which Three considers to be an additional service.

Scope

- 1.5 The scope of the dispute is "*whether TeiNG's UK03 service is compliant with GC17 and the National Telephone Numbering Plan*".
- 1.6 Details of the dispute and its scope can be found in Ofcom's Competition and Consumer Enforcement Bulletin, published on 1 April 2016.⁵

Provisional conclusions

- 1.7 In assessing the dispute we have obtained details from TeiNG as to how the UK03 service operates in practice and have assessed the service against the requirements of GC17 (specifically GC17.4) and the NTNP. In interpreting GC17 and the NTNP, we have been mindful of our policy intentions behind the 03 number range, as set out

¹ Further details about the UK03 service can be found in Section 3.

² National Telephone Numbering Plan – available at: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf. The restrictions on the adoption and use of 03 numbers are set out in paragraphs B3.2.1-B3.2.3.

³ 'The 03 Number Range: Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range' (the "December 2014 Statement"). See

<http://stakeholders.ofcom.org.uk/binaries/consultations/03-modification/statement/statement.pdf>.

⁴ Dispute submission dated 20 February 2016.

⁵ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01177/

and published at the time of the number range being opened in 2007, and relevant policy statements and guidance published since then.

- 1.8 Having carried out this assessment we provisionally conclude that revenue-sharing, as that term is used in the NTNP, does take place on the UK03 service. In brief summary, 03 numbers are intended to be used to provide organisations with a national, UK, presence. By using the numbers to allow callers to make an international call, TeiNG is providing an additional service. As there are no other revenue streams associated with the UK03 service, this additional service can only be funded by the revenue received by TeiNG for terminating the 03 call. The December 2014 Statement makes clear that the funding of additional services from the payments received from 03 calls constitutes revenue-sharing and is therefore prohibited by the NTNP and not compliant with GC17.
- 1.9 We therefore consider that TeiNG should cease providing the UK03 service in its current format, and propose making a formal declaration to that effect.

Structure of the remainder of this document

- 1.10 The background to and details of the dispute, including a summary of the parties' submissions, are set out in **Section 2**; and Ofcom's analysis, reasoning and provisional conclusions are set out in **Section 3**.

Next steps

- 1.11 Stakeholders have until **15 June 2016** to comment on these proposals, after which Ofcom will issue a final determination to resolve the dispute. Details of how to respond to this consultation are set out in **Annexes 1 and 2**. A draft of the proposed determination to resolve the Dispute is set out in **Annex 3**.

Section 2

The Dispute

Background to the dispute

- 2.1 TeING and Three have previously been in dispute about matters relating to TeING's use of the 03 number range and TeING has previously sought to refer these disputes (with somewhat different scopes to the present dispute) to Ofcom.
- 2.1.1 In November 2014 Ofcom declined to handle a dispute relating to Three blocking calls to TeING 03 numbers that Three considered constituted artificial inflation of traffic ("AIT"). This decision was on the basis that the grounds on which it was brought were essentially contractual as between Three and TeING.
- 2.1.2 In March 2015 Ofcom declined to handle a dispute relating to two call through services run by TeING on the 03 number range which offered calls through to international numbers and to 0800 numbers for the price of an 03 call. Ofcom considered that there were alternative means for resolving the dispute due to imminent changes in applicable regulation for 0800 numbers and contractual AIT dispute proceedings under the Standard Interconnect Agreement ("SIA") for the international call through service.
- 2.2 The present dispute between the parties relates to the UK03 international call through service, with TeING asking Ofcom to determine whether it involves revenue-sharing in contravention of the NTNP and General Condition 17.

The parties to the dispute

- 2.3 TeING describes itself as being a "provider of inbound numbering, IVR^[6] services, SIP trunks^[7] and wholesale termination" and states that it "operates its own IP-based network in the UK to enable their provision" and interconnects with BT. It is a provider of both public electronic communications networks and services.
- 2.4 Three is a mobile network operator providing mobile telephony services in the UK. Three owns and operates its own telecommunications network, offering wholesale and retail services to both business and residential customers.

Submissions made by the parties

TeING

- 2.5 In its dispute submission dated 20 February 2016, TeING explained that it was in dispute with Three regarding whether the UK03 service involves revenue-sharing in breach of the NTNP. TeING's position was that it does not as the calling party pays for the call, and receives no benefit other than being able to complete the call.

⁶ Interactive Voice Response.

⁷ Session Initiation Protocol (SIP) - a Voice over Internet protocol (VoIP) service.

- 2.6 It explained that commercial negotiations with Three had failed and that Three was withholding revenue from TeiNG under the conditions set out in Annex E of the BT SIA, which relate to AIT.⁸
- 2.7 TeiNG therefore requested that Ofcom resolve this dispute by determining whether or not TeiNG's UK03 service involves revenue-sharing and is therefore in breach of the NTNP.
- 2.8 TeiNG has not sought a specific remedy. However, were Ofcom to make a declaration that TeiNG's UK03 service was compliant with the NTNP, this would appear to remove the basis for Three's withholding of revenue. Likewise, a declaration that TeiNG's UK03 service is not compliant with the NTNP would lead to the service stopping, at least on the 03 number range. TeiNG has stated that "*should Ofcom determine that TeiNG's UK03 service is contrary to the NTNP, TeiNG will of course cease to provide the service*".⁹
- 2.9 In its response to an information request under section 191 of the Communications Act 2003 (the "Act") on 3 May 2016, TeiNG made various observations with regards to whether or not its UK03 service involves revenue-sharing and the possible consequences of a conclusion that it does.
- 2.10 TeiNG noted the concerns about revenue-sharing that Ofcom had raised in the December 2014 Statement,¹⁰ but argued that it is relevant that: (i) UK03 is a genuine communication service, (ii) there are no circumstances where this service provides the caller with anything other than the call, and (iii) it does not artificially inflate traffic in the network as evidenced by the average call to the service being just over six minutes in duration (i.e. consistent with normal use to make international calls).
- 2.11 TeiNG also noted Ofcom's comments in the December 2014 Statement about indirect revenue-sharing. TeiNG argued that in relation to the UK03 service:
- callers are paying only for the call;
 - the B-leg (from TeiNG to the call recipient) is an integral part of the call, and its provision cannot be viewed as an "additional service";
 - none of the other statements made in the December 2014 Statement in relation to indirect revenue-sharing apply to the UK03 service; and
 - none of the examples in the statement support Three's claim that TeiNG's service provides indirect revenue-sharing with end-users within that term's intended meaning.
- 2.12 TeiNG additionally argued that, although not directly relevant to this dispute, it is worth examining the effect of expanding the scope of the meaning of "indirect revenue share" to cover the prohibition of using the termination revenue from 03 calls to provide anything other than the A-leg of the call – that from the caller to TeiNG. In doing so TeiNG identified a number of examples of what it sees as innovative and cost-saving services provided today on 03 numbers at no additional cost to the end-

⁸ Available via www.btwholesale.com.

⁹ TeiNG's dispute submission.

¹⁰ See paragraphs 1.3 and 1.4 of the December 2014 Statement.

user which, in its view, would have to cease or change business models. These included:

- Conference calling – providers have automated conference calling and driven costs down far enough that providers can now offer commercially viable conference calling on 03 with no further billing;
- Smart routing – used, for example, to route an 03 number to one of a number of locations based on the calling party's location; and
- 03 numbers – to, for example, provide a business with an 03 number mapped to a geographic number to give them a national presence at no extra cost.

2.13 Finally, TelNG noted that, although it could use a 084x number to provide the service, typical call charges for these numbers of between 10p and 45p per minute mean that the cost to the caller is such that it no longer makes sense to use the service.

Three

2.14 In its response to TelNG's dispute submission Three set out its view that the UK03 service represents revenue-sharing. In support of this view Three pointed Ofcom to the way in which the service is described on TelNG's website, noting that it explained that the UK03 service:

*"...works because we receive a small payment for calls made to our 03 numbers, and we're able to use this to pay for the international call."*¹¹

2.15 In its submission Three argued that using 03 wholesale revenues in this way to fund additional services constitutes revenue-sharing, which is prohibited by Ofcom. Three made reference to paragraph 4.37 of the December 2014 Statement and the clarification that: "[t]he funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means".

Accepting the dispute

2.16 After considering the initial submissions received from TelNG and Three, Ofcom considered that the dispute meets the relevant statutory criteria and that it was appropriate for Ofcom to handle it in accordance with section 186 of the Act. Accordingly, Ofcom decided to handle the dispute for resolution on the basis of section 186(2) and (3) of the Act.

2.17 Firstly, it is a dispute regarding obligations in the form of general conditions, imposed under section 45 of the Act. Secondly, it is a dispute between CPs. Finally, it is not an excluded dispute, in particular because Ofcom did not consider alternative means were likely to offer a prompt and satisfactory resolution in accordance with section 186(3) of the Act in this case.

¹¹ Three referred to wording from https://www.telng.com/callthrough_03.html. The link no longer works and the place where TelNG currently describes its UK03 service (<http://www.uk03.co.uk>) does not include that particular wording.

- 2.18 In reaching this view, we took into account that the parties had commenced litigation with regards to withheld payments. However, we did not consider that this litigation was likely to offer prompt and satisfactory resolution due to the timescales involved and the possibility of resolution being on grounds other than those forming the subject matter of the dispute. Since opening the dispute, we understand these proceedings have been withdrawn and the parties have agreed that the outcome of this dispute will resolve the issue that gave rise to the litigation.
- 2.19 Accordingly, we opened the Dispute on 1 April 2016 and we informed the parties of our decision.

The scope of the dispute

- 2.20 We defined the scope of the dispute as determining: '*whether TeiNG's UK03 service is compliant with GC17 and the National Telephone Numbering Plan*'. The scope is published on the Competition and Consumer Enforcement Bulletin on Ofcom's website.¹²

Interested parties

- 2.21 When we published details of the Dispute on 4 April 2016, we asked interested parties to register their interest by 18 April 2016. Telefonica, [X], EE, Lexgreen and QX Telecom Ltd have all expressed an interest in the outcome of this dispute.
- 2.22 One party ([X]) sent a more detailed letter setting out its view on the effect of the wording of the NTNP on the use of 03 numbers for a range of services, and on its assessment of TeiNG's UK03 service as it understood it to operate. We note that this dispute covers the compliance of a particular service with the NTNP rather than broader issues over the use of the 03 range, and that this interested party's understanding of the particular service appeared to be incomplete. In line with our established procedure, interested parties are invited to respond to the Provisional Conclusions, and we will consider such responses prior to making a final decision.

Information relied on

- 2.23 These Provisional Conclusions draw on information provided by the parties. This includes, in particular:
- 2.23.1 TeiNG's dispute submission dated 20 February 2016, its supplementary submission of 1 March 2016 and e-mails of 1 March and 9 March 2016 ("the Submission");
 - 2.23.2 Three's submission on the dispute of 17 March 2016; and
 - 2.23.3 TeiNG's response of 3 May 2016 to Ofcom's section 191 information request of 19 April 2016.
- 2.24 Our analysis also refers to:
- 2.24.1 BT's SIA;
 - 2.24.2 Ofcom's February 2007 Statement;

¹² http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01177/.

- 2.24.3 Ofcom's December 2014 Statement; and
- 2.24.4 The requirements of GC17 and the NTNP (July 2015).

Legal framework for the consideration of disputes

- 2.25 Section 185(3) of the Act enables any party to a dispute covered by section 185(1), (1A) or (2) to refer it to Ofcom. Section 185(1) relates generally to disputes about the provision of network access, including those between different CPs. Section 185(1A) relates more specifically to disputes over entitlement to network access between CPs and persons identified, or within a class identified, in a condition imposed on the CP under section 45. Section 185(2) relates to any other disputes relating to rights or obligations in conditions imposed under section 45.
- 2.26 Section 186(2) of the Act provides that, where a dispute is referred to Ofcom in accordance with section 185(3), Ofcom must decide whether or not it is appropriate to handle it. In relation to disputes falling within section 185(1), section 186(2A) allows Ofcom to take into account its priorities and available resources. However, under section 186(3), Ofcom must decide that it is appropriate for it to handle disputes falling within section 185(1A) or (2) unless there are prompt and satisfactory alternative means available for resolving the dispute which would be consistent with the Community requirements set out in section 4 of the Act.
- 2.27 Ofcom's powers in relation to determining a dispute are limited to those set out in section 190 of the Act. Except in relation to disputes relating to the management of the radio spectrum, Ofcom's main power is to do one or more of the following:
 - 2.27.1 make a declaration setting out the rights and obligations of the parties to the dispute (section 190(2)(a));
 - 2.27.2 give a direction fixing the terms or conditions of transactions between the parties to the dispute (section 190(2)(b));
 - 2.27.3 give a direction imposing an obligation to enter into a transaction between themselves on the terms and conditions fixed by Ofcom (section 190(2)(c)); and
 - 2.27.4 give a direction requiring the payment of sums by way of adjustment of an underpayment or overpayment, in respect of charges for which amounts have been paid by one party to the dispute, to the other (section 190(2)(d)).
- 2.28 A determination made by Ofcom to resolve a dispute binds all the parties to that dispute (section 190(8)).
- 2.29 When resolving a dispute under the provisions set out in sections 185 to 191 of the Act, Ofcom is exercising one of its functions. As a result, when Ofcom resolves disputes it must do so in a manner which is consistent with both Ofcom's general duties in section 3 of the Act, and the six Community requirements set out in section 4 of the Act, which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive.¹³

¹³ Directive 2002/21/EC of 7 March 2002.

Section 3

Analysis and provisional conclusions

Analytical framework

- 3.1 As set out in Section 2 above, this dispute concerns TeING's UK03 service, which enables customers to call international destinations using 03 numbers, and whether or not this service involves revenue-sharing in contravention of the NTNP.
- 3.2 The scope of the dispute therefore is "*whether TeING's UK03 service is compliant with GC17 and the National Telephone Numbering Plan*".
- 3.3 In the section below we:
 - 3.3.1 set out the provisions of GC17 and the NTNP that are relevant to the issues raised by the parties;
 - 3.3.2 explain how we interpret revenue-sharing in relation to the 03 range in the NTNP, in particular by reference to published Ofcom policy establishing those provisions; and
 - 3.3.3 summarise our understanding of how the TeING UK03 service operates and, in light of this, our provisional view of whether the UK03 service constitutes revenue-sharing within the meaning of those regulatory requirements.

Applicable regulation

- 3.4 General Condition 17 sets out the requirements with regards to the allocation, adoption and use of telephone numbers. Of relevance to the present case, GC17.4 requires that:

"In providing an Electronic Communications Network or an Electronic Communications Service, the Communications Provider shall comply with:

 - a) *all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and*
 - b) *any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of Specific Telephone Numbers to it."*
- 3.5 Part A of the NTNP sets out the numbers available for adoption in the UK, including public communications network numbers starting with the digits 030, 033, 034 and 037. Collectively, these are described as non-geographic numbers where:

"Calls charged at a geographic rate: calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 03 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and

included in any discount structures that apply to UK Geographic Numbers.”¹⁴

- 3.6 Part B of the NTNP sets out the restrictions and requirements in relation to the telephone numbers. Section B3.2 “Non-Geographic Numbers” states:

“03 numbers

B3.2.1 Those who Adopt or otherwise use Non-Geographic Numbers starting 03 shall not directly or indirectly share with any End-User or any Calling Party any revenue obtained from providing a service on those numbers...”¹⁵

- 3.7 In summary, therefore, a CP is in breach of GC17.4 if it adopts or otherwise uses 03 numbers, obtains revenue from providing a service on the 03 number and it shares that revenue with any end-user or calling party.

The concept of revenue-sharing

- 3.8 In the December 2014 Statement we confirmed that callers are end-users with respect to 03 calls and that CPs are therefore prohibited from sharing with callers any revenues they receive, directly or indirectly, from calls to 03 numbers allocated to or operated by them.

- 3.9 The purpose of the December 2014 Statement was to address the need to clarify the scope of the prohibition on revenue-sharing with end-users. This resulted in expressly referring to calling parties as well as end-users in the prohibition set out in the NTNP as “[w]e considered that this would make it clear that services funded through above-cost termination charges were not consistent with our regulations”.

- 3.10 The December 2014 Statement also expanded on what we mean by direct and indirect revenue-sharing:

“Direct revenue-sharing would include arrangements whereby a proportion of revenue received by a CP is paid out to the calling party or other end-user, either in the form of money or money’s worth, and where the value of such payment is proportionate to the duration of the call. Examples of direct revenue-sharing include where a CP pays money or provides a gift of money’s worth (such as vouchers or credits) to a calling party or end-user as a result of them making a call to an 03 number, where the value of the payment is proportionate to the duration of the call.

Indirect revenue-sharing would include arrangements whereby a CP provides a benefit-in-kind to the calling party or other end-user, where the benefit is not necessarily proportionate to the duration of the call. Examples of indirect revenue-sharing include where a CP provides a voucher or credit of a fixed value, which is not proportionate to the length of the call. It would also include the giving of a gift (or any item with an inherent value, such as a toy, an item of

¹⁴ National Telephone Numbering Plan – available at: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf

Applicable tariff principles and maximum prices are set out in Part A – A1.

¹⁵ The restrictions on the adoption and use of 03 numbers are set out in paragraphs B3.2.1-B3.2.3 of the NTNP.

clothing or a product electronically downloaded) by the CP to a calling party or end-user as a result of them making a call to an 03 number.”¹⁶

- 3.11 The statement also listed at paragraphs 4.74 and 4.75, examples of direct and indirect revenue-sharing that are not permitted on 03 numbers, which covered payments of money, vouchers, credits, or products. TeING has argued that their service does not fit in with any of the examples listed.
- 3.12 We note, however, that the December 2014 Statement made it clear that the examples listed are not exhaustive, and are therefore not designed to capture every way in which a service could involve revenue-sharing.
- 3.13 Furthermore paragraph 4.37 of the December 2014 Statement specifically referred to revenue-sharing in the following terms: *“The funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means”*.
- 3.14 In light of the above, should Ofcom consider that the service provided by TeING involves a service additional to the 03 call provided this may, to the extent the termination charge is used to fund this service, constitute revenue-sharing in contravention of the NTNP.

The UK03 service provided by TeING

- 3.15 The UK03 service is an international call forwarding service. TeING's website describes the service as follows:

“UK03 provides you with UK 03 numbers which can be routed to many destinations, including numerous countries overseas. As calls to these numbers are often included in bundled minutes, this means that you can make overseas calls using your bundled minutes. These numbers can be used from 8 a.m. to 6 p.m., Monday-Friday.”¹⁷

- 3.16 Ofcom understands that the UK03 service operates as follows:
- 3.16.1 The caller signs up to the UK03 service and is allocated an 03 number by TeING.
- 3.16.2 The caller can choose to (a) link the 03 number directly to a specific international number (“**Scenario A**”), or (b) use the number as a means of making international calls in general (“**Scenario B**”).
- 3.16.3 When the caller dials their 03 number, depending on how they have chosen to use their 03 number, (a) in the case of Scenario A, TeING performs a database lookup for the international number that the 03 number is mapped to, establishes a call leg to that number and bridges the caller to it, or (b) in the case of Scenario B, the caller is prompted to enter the international number that they wish to call, TeING establishes a call leg to that number and bridges the caller to it.

¹⁶ December 2014 Statement, paragraphs 4.34 and 4.35.

¹⁷ <http://www.uk03.co.uk/>. TeING also offer 0845, 0870 and 0871/2 numbers that allow its customers to call more destinations and, depending on the number called, earn cashback for the minutes called.

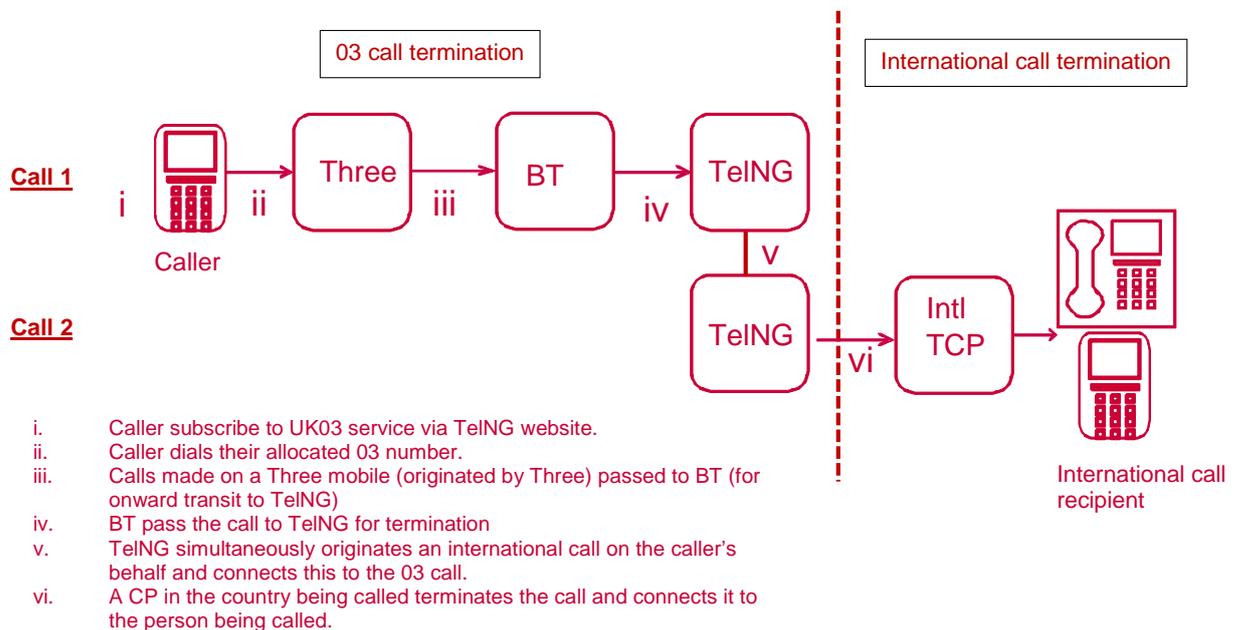
3.17 Three and TeING do not have a direct contractual relationship with each other. Both parties have a contractual relationship with BT under the SIA. TeING invoices BT for the termination of the 03 call, BT invoices the originator (in this case Three).

3.18 TeING has informed us¹⁸ that the revenue flow involved in the service is as follows:

3.18.1 TeING bills BT at the appropriate termination rate for the 03 call that TeING terminates.

3.18.2 TeING pays an international wholesale provider for the international part of the call.

3.19 The diagram below sets out how the service operates.



3.20 As can be seen from the above, the UK03 service is effectively comprised of two calls. The first is made to the 03 number, which TeING terminates. The second is concurrently generated by TeING to the international destination number that the caller selects and is terminated by a CP in the country where the called party is.

3.21 TeING has confirmed to Ofcom that it does not charge customers anything for providing them with 03 numbers. Customers simply pay their telephone (fixed or mobile) provider the standard call rate for 03 numbers. This means that, to the extent that callers have remaining inclusive minutes in their fixed or mobile call packages, they can make calls to international destinations without incurring any additional charges using the UK03 service.

3.22 The second call to the international number, which comprises the service being provided to users, is funded solely from the revenue received from terminating the call to the 03 number – TeING have confirmed that they have no other revenue

¹⁸ On 3 May 2016 Ofcom received a response to a section 191 information request issued to TeING relating to how the TeING's service operates.

streams from operating the service and it follows that the second call is funded from the termination charge for the first.

- 3.23 In light of our above assessment of how the second call involved in the UK03 service (to the international destination) is funded, the assessment of whether or not the way the service is provided is consistent with the requirements of the NTNP rests on whether or not it is an additional service to the 03 call.

Additional services

- 3.24 The NTNP places various restrictions on the allocation and use of numbers in different number ranges. These restrictions are considered appropriate by Ofcom in light of its duties, and have been arrived at following consultation on the underlying policy, including on the purpose of each number range. It is appropriate, therefore, to interpret the restrictions in light of the purpose of the respective number range set out in Ofcom's published policy documents.

- 3.25 In 2006 Ofcom carried out a strategic review of how telephone numbers should be managed in the future. We identified that revenue-sharing on non-geographic numbers was eroding consumer trust in use of these numbers due to poor price transparency and took action to remedy this. One of these actions was to introduce the 03 number range.¹⁹

- 3.26 Ofcom first opened up the 03 number range for use in February 2007. We stated at the time that:

*"We therefore are creating a new type of number – starting with 03 – for those organisations who require a national presence, but who do not wish to make an additional charge to consumers for contacting them. We expect the new range to become trusted by consumers as covering clearly-understood services and price ranges."*²⁰

*"In the July document we confirmed that we would allocate a new non-geographic range of numbers, beginning with 03 (to be known as 'UK-wide' numbers), as an alternative option for consumers to call those public services and businesses who want a national presence and identity."*²¹

*"The 03 range was conceived to provide numbers that are like geographic number from consumers' perspective, whilst providing numbers with a national presence (and without revenue-sharing) to meet SPs' service requirements."*²²

- 3.27 In order to engender consumer trust in the 03 numbers, we imposed requirements on the charges that could be made for calls to 03 numbers and prohibited revenue-sharing on the 03 number range:

¹⁹ Raising confidence in telephone numbers. Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17, 13 February 2007 (the "February 2007 Statement"):

<http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>.

²⁰ February 2007 Statement, paragraph 1.13.

²¹ February 2007 Statement, paragraph 3.1.

²² February 2007 Statement, paragraph 3.48.

“• call tariffs would be required to be the same as if the consumer was calling a geographic (01 or 02) number from the same OCP, up to national rate. This would include treating 03 numbers the same in terms of being part of any inclusive minutes and being eligible for the same call discounts; and

• they would not involve end user revenue-sharing - the micro-payment mechanism whereby the SP being called can take a share of the charges paid by the caller.”²³

- 3.28 The NTNP was amended at the time to reflect the opening up of the 03 range, the pricing requirements and the restrictions on revenue-sharing.
- 3.29 Therefore, as set out above, the reason for opening up the 03 range was to provide organisations with a national presence and identity that could be called at geographic rates.
- 3.30 This is underpinned by the fact that calls to 03 numbers have a distinctive combination of charging features which are reflected in Part A of the NTNP, which sets out that calls to 03 numbers must be *“charged at up to the same rate the customer would pay to call a UK geographic Number, with calls to 03 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers”* (emphasis added).²⁴
- 3.31 In its February 2007 Statement Ofcom recognised that calls to some geographic numbers (e.g. some calls to the Channel Islands) were not included in inclusive bundles. Ofcom therefore, in order to meet its aim to ensure that charges for 03 calls are the same as those for the generality of 01 and 02 calls, amended its 03 definition (as set out in Part A of the NTNP) to reflect this intention, by adding ‘UK’ before ‘Geographic Number’ in the NTNP definitions.²⁵ This was a reflection of Ofcom’s stated intention to ensure that the 03 number range is aligned with the geographic 01 and 02 number ranges and that its charges are related to UK-wide use.
- 3.32 It is clear, therefore, that 03 numbers are intended to be used to provide organisations with a national, UK, presence. By using the numbers to allow callers to make an international call, which although a useful service in and of itself as an alternative way to access cheap international calls, it is clearly distinct from the stated intention of the 03 number range. TeING’s UK03 service is therefore appropriately characterised as providing an additional service to its customers.

Provisional conclusions

- 3.33 In light of the above analysis we therefore consider that the way in which TeING provides its UK03 service involves revenue-sharing.²⁶ The service of connecting to an international number goes beyond the provision of a call to a UK national number

²³ February 2007 Statement, paragraph 3.1.

²⁴ National Telephone Numbering Plan – available at:

http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_July2015.pdf

Applicable tariff principles and maximum prices are set out in Part A – A1.

²⁵ February 2007 Statement, paragraph 3.51.

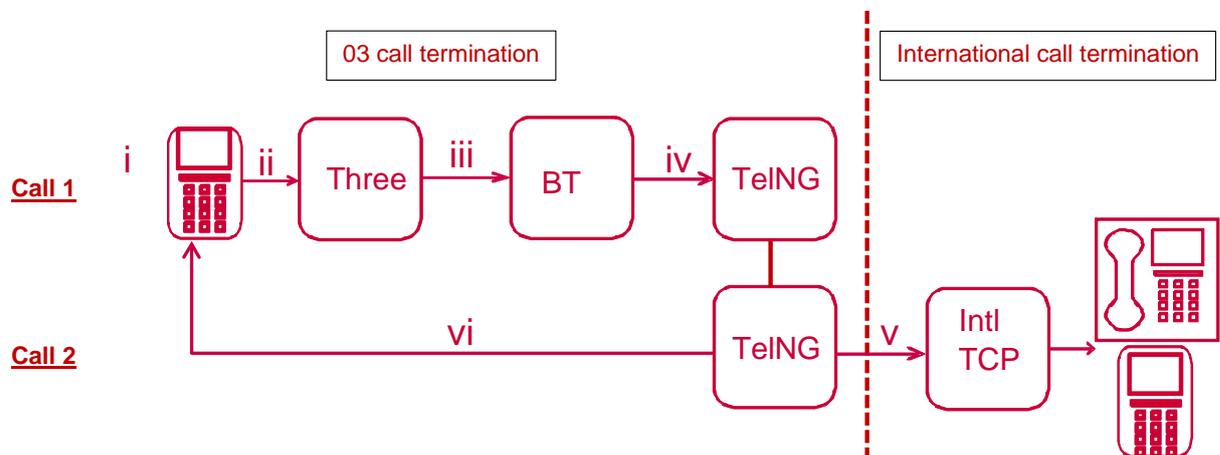
²⁶ It should be noted that these provisional conclusions are made with reference to TeING’s UK03 service and the specific circumstances under which this service is offered. Any other service offered on the 03 number range would need to be considered on its own merits on a case by case basis.

and is therefore an additional service where the benefit to the caller is above the value a caller would normally expect when calling an 03 number to connect through to an organisation or service provider located in the UK.

3.34 In paragraph 4.37 of the December 2014 Statement we make it clear that “[t]he funding of additional services through above-cost termination charges would be an example of revenue-sharing. In other words, additional services must be funded by other means”.

3.35 The only revenue TeING obtains for providing the international call through is the 03 termination charge. TeING receives no other revenue, for example, from callers or call recipients that could be used to fund the cost of the service. Consequently TeING is using the termination charge to fund the international call made on the customer's behalf.

3.36 The diagram below illustrates how the revenue is shared with the caller.



- i. Caller makes no payment for subscribing to the service.
- ii. Caller pays for the 03 call, either individually or from inclusive geographic call minutes in a call package or bundle.
- iii. Three pays BT for transit and termination of the call.
- iv. BT retains the transit element of the payment and passes the termination payment to TeING.
- v. TeING pays the international CP for terminating the call.
- vi. TeING provides the caller with the benefit of making an international call for the price of a call to a UK03 number.

3.37 As set out in the chart above, the revenue received by TeING by way of terminating the 03 call leg is instantly shared with the caller when they open up the call to the international destination. The caller receives the benefit of this revenue share in that they get the international call (directly commensurate to the amount of minutes on the call) at the price of a call to a UK non-geographic number.²⁷

²⁷ In the event of the customer having free minutes left within their call bundle, the customer then gets the international call without incurring any additional charges.

- 3.38 The NTNP refers to revenue-sharing as being direct or indirect to confirm that the concept of revenue-sharing is not limited to the narrow case of payments of money or money's worth from a CP to an end-user in proportion with the length of the call. However, nothing hangs on the distinction between the two forms of revenue-sharing in that the prohibition is on revenue-sharing in the 03 range whether it is direct or indirect. It is therefore not necessary to determine whether the UK03 service constitutes direct revenue sharing on the one hand or indirect revenue sharing on the other. We would note, referring to the December 2014 Statement, that the UK03 service has features in common with the examples given of both direct revenue-sharing (in that the benefit is proportionate to call duration) and indirect (in that it is not a direct payment to the end-user).
- 3.39 Consequently our provisional conclusions are that:
- 3.39.1 TeiNG's UK03 service is providing an additional service, in the form of an international call;
 - 3.39.2 funding this through the revenue it receives for terminating the 03 call is revenue-sharing contrary to the requirements of the NTNP and GC17.4; and
 - 3.39.3 TeiNG should take immediate steps to ensure that it brings itself into compliance with the NTNP and GC17.

Proposed Resolution

- 3.40 In light of the provisional conclusions set out above we consider that it would be appropriate and proportionate for Ofcom to exercise its powers under section 190(2)(a) of the Act to make a declaration setting out the rights and obligations of the parties to the dispute.
- 3.41 We note that in their dispute submission TeiNG informed us that in the event Ofcom consider the UK03 service as involving an element of revenue-sharing they would cease to provide the service.
- 3.42 Ofcom proposes to make a declaration to the effect that:
- 3.42.1 TeiNG is obliged to ensure that its UK03 service complies with the NTNP and GC17;
 - 3.42.2 the UK03 service in its current form does not comply with that obligation; and
 - 3.42.3 in light of our determination that the UK03 service as described in this Provisional Conclusions contravenes GC17, Three is not required to originate calls to this service.
- 3.43 Our proposed declaration for resolving this dispute is set out in **Annex 3**.

Assessment of consistency of Ofcom's provisional conclusions with our statutory duties and Community obligations

- 3.44 We consider that our proposed resolution of this dispute is consistent with our duties and Community obligations under sections 3 and 4 of the Act. We consider that our decision helps promote the interests of consumers and facilitates competition in that

it is consistent with the policy objectives set out by Ofcom previously, and specifically it:

- 3.44.1 helps protect against risk to the ongoing viability of call allowances resulting in CPs reducing the size of call allowances or increasing the cost of their bundles, as set out in the December 2014 Statement;²⁸
 - 3.44.2 is consistent with the 03 number range as a national range for use to call public services, voluntary organisations and companies who want a national presence; and
 - 3.44.3 is consistent with the charging principles for the 03 number range as a national number range that is charged up to geographic call charges set for 01 and 02 numbers.²⁹
- 3.45 In reaching our provisional conclusions we have kept in mind our duty to ensure that our regulatory activities are, among other things, transparent, accountable, proportionate and targeted only at cases where action is needed. This document sets out the parties' arguments and reasoning that we have considered as part of arriving at our provisional conclusions. It enables the parties, and interested third parties, to comment on our provisional conclusions in advance of our final determination.

Next Steps

- 3.46 The parties and other interested parties have until **15 June 2016** to comment on these Provisional Conclusions, after which Ofcom will issue a final determination to resolve the dispute. Details of how to respond to this consultation are set out in **Annexes 1 and 2** below.

²⁸ The risk of harm to consumers was one of Ofcom's main reasons for prohibiting revenue-sharing on 03 numbers. We have previously identified how consumer harm might arise from revenue-sharing. See "*The 03 Number Range. Decision to clarify that revenue-sharing with callers is prohibited on the 03 number range*". 11 December 2014. TeiNG's UK03 service does provide benefits to some consumers as it enables them to make international calls at no additional cost (i.e. within bundled call allowances). However, the statement made it clear that the potential harm to consumers as a whole from allowing revenue-sharing on 03 outweighs the benefits that it provides for the limited set of users of such services.

²⁹ Raising confidence in telephone numbers. Including new 'UK-wide' 03 numbers and a consultation to amend General Condition 17', 13 February 2007. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/numbering03/summary/03.pdf>

Annex 1

Responding to this consultation

How to respond

- A1.1. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 15 June 2016**.
- A1.2. We would be grateful if you could assist us by completing a response cover sheet (see Annex 2), to indicate whether or not there are confidentiality issues.
- A1.3. For larger consultation responses - particularly those with supporting charts, tables or other data - please email tor.ahjem@ofcom.org.uk attaching your response in Microsoft Word format, together with a response coversheet.
- A1.4. Responses may alternatively be posted to the address below:

Tor Ahjem
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

Note that we do not need a hard copy in addition to an electronic version.

- A1.5. It would be helpful if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6. If you want to discuss the issues raised in this document, or need advice on the appropriate form of response, please contact Tor Ahjem on 020 7783 4158.

Confidentiality

- A1.7. In line with our Dispute Resolution Guidelines³⁰, as part of publishing a final determination, Ofcom may publish non-confidential versions of responses. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8. If someone asks us to keep part or all of a response confidential³¹, we will treat this request seriously and will try to respect this. For the avoidance of doubt, Ofcom

³¹ *Dispute Resolution Guidelines - Ofcom's guidelines for the handling of regulatory disputes*. June 2011. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf>

does not regards submissions on legal or regulatory policy to be confidential and any such submissions will normally be disclosed publicly. Further, Ofcom will sometimes be required to publish/disclose information marked as confidential in order to meet legal obligations.

- A1.9. Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/website/terms-of-use/>.

Next steps

- A1.10. Ofcom intends to publish a determination by 29 July 2016.
- A1.11. Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Annex 2

Consultation response cover sheet

We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom may publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 3

[Provisional] Determination to resolve a dispute between TeING and Three

[Provisional] Determination under sections 188 and 190 of the Communications Act 2003 (“the Act”) for resolving a dispute between TeING Limited (“TeING”) and Hutchison 3G UK Limited (“Three”) concerning the compliance of TeING’s UK03 service with the National Telephone Numbering Plan (“NTNP”) and General Condition 17 (“GC17”).

WHEREAS -

(A) Section 188(2) of the Act provides that, where a dispute has been referred to Ofcom in accordance with section 185 of the Act, and Ofcom has decided it is appropriate for it to handle the dispute pursuant to section 186(2) of the Act, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom is required to make must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based, and Ofcom must publish so much of its determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider appropriate for bringing it to the attention of the members of the public. This includes consideration pursuant to section 393(2)(a) of the Act of the extent to which any such disclosure is made for the purpose of facilitating the carrying out by Ofcom of any of its functions.

(B) Section 190 of the Act sets out the scope of Ofcom’s powers in resolving a dispute which may, in accordance with section 190(2) of the Act, include—

- making a declaration setting out the rights and obligations of the parties to the dispute;
- giving a direction fixing the terms or conditions of transactions between the parties to the dispute;
- giving a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by Ofcom; and
- for the purpose of giving effect to a determination by Ofcom of the proper amount of a charge in respect of which amounts have been paid by one of the parties to the dispute to the other, giving a direction, enforceable by the party to whom sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

(C) On 20 February 2016, TeING submitted a dispute with Three to Ofcom for resolution in relation to TeING’s UK03 service, which is an international call forwarding service enabling customers to be connected to international numbers by calling a number in the 03 number range.

(D) On 1 April 2016, Ofcom decided that it was appropriate for it to handle the dispute, and informed the parties of this decision noting the scope of the dispute as being, ‘*whether TeING’s UK03 service is compliant with GC17 and the National Telephone Numbering Plan.*’

(E) On 4 April 2016, Ofcom published details of the dispute on its website and invited stakeholders with an interest in the outcome to contact them by 18 April 2016.

(F) On 1 June 2016 Ofcom issued a Provisional Determination to TeING and Three and interested parties with a deadline for comments of 15 June 2016.

(G) In order to resolve this dispute, Ofcom has considered (among other things) the information provided by the parties and Ofcom has further acted in accordance with its general duties set out in section 3 and the Community requirements set out in section 4 of the Act.

(H) A fuller explanation of the background to the dispute and Ofcom's reasons for making this [Provisional] Determination is set out in the explanatory statement accompanying this [Provisional] Determination.

NOW, therefore, Ofcom makes, for the reasons set out in the accompanying explanatory statement, this [Provisional] Determination for resolving this dispute—

Declaration of rights and obligations, etc.

1. It is hereby declared that:
 - a. TeING is obliged, in providing its UK03 service, to comply with General Condition 17, including (pursuant to GC17.4) complying with all restrictions and requirements set out in the National Telephone Numbering Plan.
 - b. TeING's UK03 service as described in the Conclusions is not compliant with the National Telephone Numbering Plan, and consequently is not compliant with General Condition 17. Therefore, continuation of the service using the 03 number range may be considered as a breach of General Condition 17.
 - c. In light of the fact that Ofcom has determined that the UK03 service as described in the Conclusions is not compliant with General Condition 17, Three is not obliged to originate calls to that service.

Binding nature and effective date

2. This Determination is binding on TeING and Three in accordance with section 190(8) of the Act, and shall take effect on the day it is published.

Interpretation

3. For the purpose of interpreting this Determination—
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.
4. In this Determination—
 - (a) "Act" means the Communications Act 2003 (c.21);
 - (b) "TeING" means TeING Limited whose registered company number is 05503631, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;

- (c) "Ofcom" means the Office of Communications;
- (d) "Three" means Hutchison 3G UK Limited whose registered company number is 3885486, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006.

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

[X] July 2016