

Draft Determination to
resolve a dispute between
BT and Vodafone about
geographic number
portability

Consultation document

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Draft Determination under Sections 188 and 190 of the Communications Act 2003 for resolving a dispute between British Telecommunications Plc (“BT”) and Vodafone Limited (“Vodafone”) concerning geographic number portability

WHEREAS:

(A) Section 188(2) of the Communications Act 2003 (the “Act”) provides that where there is a dispute between different communications providers, and Ofcom has decided pursuant to section 186(2) of the Act that it is appropriate for it to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes for resolving the dispute 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. Section 190 of the Act sets out the scope of Ofcom’s powers for resolving a dispute which may include, in accordance with section 190(2) of the Act, making a declaration setting out the rights and obligations of the parties to the dispute;

(B) On 1 February 2005, Vodafone wrote to Ofcom asking it to resolve a dispute between Vodafone and BT relating to whether BT was under an obligation to port geographic numbers to Vodafone in connection with Vodafone’s Wireless Office service;

(C) On 23 February 2005, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the parties of this decision;

(D) In order to resolve this dispute, Ofcom has considered, among other things, the information provided by the parties and its relevant duties set out in sections 3 and 4 of the Act;

(E) Ofcom issued a draft of this Determination and explanatory statement on 25 May 2005 and responses were invited by close of business on 9 June 2005;

(F) An explanation of the background to the dispute and Ofcom’s reasons for making this Determination are set out in the explanatory statement accompanying this Determination;

NOW, THEREFORE, PURSUANT TO SECTIONS 188 AND 190 OF THE ACT, OFCOM MAKES THE FOLLOWING DETERMINATION:

1. In accordance with General Condition 18 of the General Conditions of Entitlement in effect on the date this Determination is published, BT is not required to provide Vodafone with Portability in relation to geographic numbers in connection with Vodafone's Wireless Office service.

2. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination.

3. For the purposes of interpreting this Determination, the following definition shall apply:

- a) “Portability” means Portability as defined in General Condition 18.5 of the General Conditions of Entitlement in effect on the date this Determination is published.

4. 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.

5. This Determination shall take effect on the day it is published.

6. This Determination is binding on BT and Vodafone in accordance with section 190(8) of the Act.

David Stewart

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

[] 2005

Section 1

Summary

- 1.1 Ofcom has published a draft Determination under sections 188 and 190 of the Communications Act 2003 (“the Act”) to resolve a dispute between British Telecommunications plc (“BT”) and Vodafone Limited (“Vodafone”).
- 1.2 The dispute is about whether BT is required to provide Vodafone with portability in respect of geographic numbers (referred to in this document as geographic number portability (“GNP”)) in relation to Vodafone’s Wireless Office¹ service (“Vodafone Wireless Office”).
- 1.3 On 28 July 2004 Vodafone asked BT to enter into reciprocal arrangements for GNP between Vodafone’s network and BT’s, with the intention of enabling prospective customers of Vodafone Wireless Office to bring their existing geographic numbers with them from BT. BT refused Vodafone’s request as it did not consider that it was required to provide Vodafone with GNP in this case.
- 1.4 On 1 February 2005 Vodafone referred a dispute to Ofcom under section 185 of the Act about GNP and Vodafone Wireless Office.
- 1.5 Ofcom decided, in accordance with Section 186(4) of the Act, that it was appropriate for it to handle the dispute. On 23 February 2005 Ofcom informed the parties of this decision and published a Competition Bulletin setting out the scope of the dispute.
- 1.6 Ofcom has conducted a detailed analysis of BT’s obligation to provide GNP, and proposes to conclude that BT is not required to provide GNP to Vodafone in this case. Ofcom’s proposals for resolving the dispute are set out in section 4. Ofcom’s underlying legal analysis concerning BT’s obligations in relation to GNP is set out in more detail in Annex 3.
- 1.7 Ofcom invites comments on its proposals by close of business on 9 June 2005. The process for making comments is set out in section 5.
- 1.8 Ofcom’s decision in resolving this dispute is based on the existing regulatory framework and the obligations that apply to BT in relation to GNP.
- 1.9 In its Annual Plan for 2005/6, Ofcom set out details of its numbering related work². Two projects are particularly relevant. Ofcom’s review of numbering strategy is developing a long-term coherent strategic approach to all Ofcom’s numbering activities, while its number allocation and policy development project seeks to consider number portability policy over a shorter time frame. Given the issues raised by Vodafone’s request for GNP in this case and in light of possible increasing convergence between services that have traditionally been regarded as “fixed” and “mobile”, Ofcom intends to use the number allocation and policy development project to consider, for example, whether its current policy for number portability is consistent with:
 - the current technological and service reality;
 - Ofcom’s policy for the allocation of geographic telephone numbers; and

¹ Described in more detail in section 2.

² www.ofcom.org.uk/about/account/reports_plans/annual_plan0506/#content, pages 28-29.

- Ofcom's policy for numbering of new voice services.
- 1.10 Ofcom will publish a separate consultation on these issues in the near future. Ofcom's review of numbering strategy will then integrate considerations on this issue with the longer-term number portability requirements in the context of Ofcom's overall numbering strategy.

Section 2

Background and history of the dispute

Background

- 2.1 Vodafone Wireless Office is a service aimed at corporate and business customers that enables the customer to manage calls to mobile handsets. Vodafone Wireless Office customers have a geographic number as well as a mobile number, but all calls are routed to the same mobile handset. When a call is made to the customer's geographic number, the call is handed over to Vodafone's network, where Vodafone translates it and routes it to terminate on the customer's mobile handset.
- 2.2 Calls to a Vodafone Wireless Office customer's geographic number are charged to the caller at the same rate as calls to geographic numbers terminating on a fixed line, even though these calls are actually terminated on a mobile handset. This means that it may be cheaper for a caller to contact the customer on his geographic number than on his mobile number.
- 2.3 Vodafone Wireless Office customers pay a monthly subscription charge for the service. Internal calls (i.e. within the customer's organisation) are included within the monthly subscription charge.
- 2.4 Ofcom allocates telephone numbers, including geographic numbers, to communications providers in accordance with the Act. These numbers must be used by communications providers in accordance with the National Telephone Numbering Plan³ ("NTNP") published by Ofcom⁴.
- 2.5 Ofcom has allocated geographic numbers to Vodafone for use with Vodafone Wireless Office. Ofcom's numbering allocation policy is discussed at paragraph 4.5 below.
- 2.6 In addition to the geographic numbers that it has been allocated by Ofcom, Vodafone wishes to enable future customers of Vodafone Wireless Office to port their existing geographic numbers from BT.
- 2.7 Vodafone has therefore attempted to establish arrangements with BT to enable the porting of geographic numbers from BT's network to Vodafone's network.

History of the dispute

- 2.8 Vodafone and BT initially discussed GNP arrangements at a meeting of 28 July 2004.
- 2.9 BT wrote to Vodafone on 11 October 2004 declining Vodafone's request to enter into arrangements to provide Vodafone with GNP in connection with Vodafone Wireless Office, expressing its view that Vodafone's request did not

³ Ofcom is under a duty (under section 56 of the Communications Act 2003) to publish the National Telephone Numbering Plan setting out numbers it has determined to be available for allocation as telephone numbers, the restrictions it considers appropriate on the adoption of numbers available for allocation in accordance with the plan, and such restrictions as it considers appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put. The National Telephone Numbering Plan, published on 28 October 2004, can be found Ofcom's website at:

www.ofcom.org.uk/telecoms/ioi/numbers/num_plan_0904.pdf

⁴ General Condition 17.4.

“align” with the relevant regulatory requirements (which are discussed in more detail in the following section).

- 2.10 Vodafone wrote to BT on 5 November 2004 asking BT to reconsider its objections to establishing GNP arrangements with Vodafone. BT replied on 19 November 2004, reiterating its earlier refusal to enter into a GNP arrangement with Vodafone. BT wrote again to Vodafone on 25 November 2004 confirming its position.
- 2.11 Vodafone wrote to BT on 30 November 2004 asking BT again to enter into a GNP arrangement with Vodafone. BT replied on 3 December 2004 refusing Vodafone’s request.
- 2.12 Vodafone wrote to BT on 6 December 2004 setting out its view that its request for GNP in connection with Vodafone Wireless Office was compliant with the relevant regulatory obligations and asking BT again to reconsider its position.
- 2.13 Vodafone wrote to BT on 27 January 2005 asking BT to provide a formal response to Vodafone’s letter of 6 December 2004. BT replied to Vodafone on 4 February 2005 refusing Vodafone’s request.
- 2.14 Vodafone therefore considers that the parties are in dispute.
- 2.15 On 1 February 2005 Vodafone wrote to Ofcom asking Ofcom to resolve a dispute between Vodafone and BT about GNP arrangements in connection with Vodafone Wireless Office.
- 2.16 Vodafone asked Ofcom to make a determination for resolving this dispute and to make a declaration that BT is required to provide GNP in connection with Vodafone Wireless Office.
- 2.17 Ofcom invited BT to comment on Vodafone’s request.
- 2.18 BT stated that it generally concurred with the account of the negotiations between BT and Vodafone supplied in Vodafone’s submission.
- 2.19 BT confirmed that it did not believe BT was required to enter into a GNP arrangement with Vodafone in this context.
- 2.20 Ofcom considered that the parties were in dispute given the failure of commercial negotiations and that it was appropriate for Ofcom to resolve the dispute. Ofcom’s process for handling disputes is set out in more detail in its published guidelines⁵.
- 2.21 On 23 February 2005 Ofcom informed the parties that it intended to resolve the dispute and published a Competition Bulletin which states that the scope of the dispute is:

“To determine whether BT is required to provide Vodafone with Geographic Number Portability in relation to Vodafone’s Wireless Office service.”

- 2.22 The regulatory framework and the submissions of the parties are discussed in section 3 below. Ofcom’s proposals for resolving this dispute are set out in

⁵ *Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives*, published at: http://146.101.202.226/bulletins/eu_directives/guidelines.pdf. ?a=87101

section 4 below. The legal analysis underlying Ofcom's proposed decision is set out in detail at Annex 3.

Section 3

Regulatory framework and submissions of the parties

Introduction

- 3.1 The dispute between Vodafone and BT focuses on whether BT has an obligation under General Condition 18 of the General Conditions of Entitlement (the “General Conditions”) ⁶ to provide GNP to Vodafone in connection with Wireless Office. This section therefore discusses the regulatory requirements that currently apply to communications providers including BT and Vodafone in respect of GNP.
- 3.2 This section goes on to set out the arguments made by the parties concerning whether BT has under an obligation to provide GNP to Vodafone in this context.

Regulatory requirements

General Condition 18

- 3.3 The General Conditions apply to communications providers (as defined in the General Conditions) in the UK.
- 3.4 General Condition 18.1 says that:

“the Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests”.

- 3.5 General Condition 18.2 says that:

“the Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification⁷”.

- 3.6 General Condition 18 refers to two distinct concepts: “Portability” and “Number Portability”.

- 3.7 “Portability” is the arrangement between two communications providers, defined as:

“any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service”.

- 3.8 “Number Portability” is the facility that can be offered to consumers and is defined as:

⁶ Published at:

www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf.

⁷ The Functional Specification specifies the technical and other principles which are intended to enable the efficient implementation and utilisation of Portability and is published on Ofcom’s website at:

http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun_final0703.htm.

“a facility whereby Subscribers who so request can retain their Telephone Numbers on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –

- (i) in the case of Geographic Numbers, at a specific location; or*
- (ii) in the case of Non-geographic Numbers, at any location,*

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan”.

The Universal Service Directive

3.9 The requirement to provide portability in General Condition 18 derives from the Universal Service Directive (“USD”)⁸.

3.10 Article 30(1) of the USD says that:

“Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their number(s) independently of the undertaking providing the service:

- (a) in the case of geographic numbers, at a specific location; and*
- (b) in the case of non-geographic numbers, at any location”.*

3.11 Article (30)1 goes on to state that:

“This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks”.

3.12 Recital 40 of the USD provides that:

“The provision of this facility [number portability] between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks”.

Submissions of the parties

3.13 This section sets out the arguments made by Vodafone in its submission to Ofcom and BT’s comments on Vodafone’s submission.

Vodafone

3.14 Vodafone stated that, under General Condition 18.1, current BT subscribers were entitled to request number portability from BT if they wished to change operator and adopt Vodafone Wireless Office. In addition, Vodafone argued, Vodafone and BT were both obliged by General Condition 18.2 to provide reciprocal portability to enable the other to provide number portability to any subscriber who so requests.

3.15 Vodafone submitted that:

“...as Number Portability is a right of the Subscriber, the reference to “specific location” within that definition must refer to the location of that Subscriber when making the request and not the location of the Subscriber’s Network Termination Point when making or receiving individual calls”.

⁸ Directive 2002/22/EC.

- 3.16 Vodafone considered that the geographic numbers it has been allocated by Ofcom and the numbers that BT customers wished to port to Vodafone for use with Vodafone Wireless Office were “geographic numbers” within the definition of number portability. In addition, these numbers were being used in accordance with the NTNP and Ofcom’s previous statements on number portability and so-called “new voice services”.
- 3.17 Vodafone also submitted to Ofcom that it was asking BT to enter into reciprocal geographic number portability arrangements rather than geographic number to mobile portability. This was because, in Vodafone’s view, in the case of Vodafone Wireless Office, the geographic number complemented the use of the mobile number rather than being a substitute for it.
- 3.18 In Vodafone’s view, the use of geographic numbers ported from BT for Vodafone Wireless Office also complied with the number portability Functional Specification⁹ including restrictions on number mobility for ported numbers¹⁰. This was because it said it would only permit number mobility for numbers ported from BT within BT’s “service area”.
- 3.19 Vodafone therefore asked Ofcom:

“to make a declaration that Vodafone has the right to request and BT is obliged to provide GNP in connection with the [Vodafone Wireless Office] Service and that such GNP is consistent with:

*Article 30 of the USD
General Condition 18
the National Telephone Numbering Plan; and
the Number Portability Functional Specification;*

to give a direction imposing an obligation on BT to commence Service Establishment and enter into a GNP agreement with Vodafone.”

BT

- 3.20 In its comments on Vodafone’s submission, BT said it did not believe that there was a legal or regulatory requirement on BT to enter into an agreement with Vodafone as Vodafone had requested.
- 3.21 BT submitted that, under the current rules, the obligation to provide GNP only applies where the service in question delivers calls to a fixed network termination point at a specific location. BT submitted that the network termination point could not, in this case, be at a specific location, since Vodafone Wireless Office delivers calls to a mobile device which cannot, by definition, be at a specific location.
- 3.22 BT further submitted that there is currently no requirement for number portability between networks providing services at a fixed location and mobile networks.

⁹ See footnote 7 above.

¹⁰ Mobility is a voluntary service offered by communications providers to subscribers whereby calls to the subscriber’s number are routed to a new address.

- 3.23 BT set out its views on a number of related policy areas, and stated that it considered that the issues raised by this dispute were potentially significant not only for BT and Vodafone but for the wider industry.

Section 4

Ofcom's proposals

Summary

- 4.1 Ofcom's proposals for resolving the dispute are based on current regulatory requirements for number portability found in the General Conditions. This is because the dispute between Vodafone and BT focuses on whether BT has an obligation under General Condition 18 to provide GNP to Vodafone in connection with Wireless Office.
- 4.2 Ofcom considers that there is currently no obligation on BT under General Condition 18.2 to port geographic numbers to Vodafone for use with Vodafone Wireless Office. This is because Ofcom considers that what Vodafone has requested from BT in this case is not "Portability" as defined in General Condition 18.5.
- 4.3 This position is consistent with Article 30 of the USD. Member States are not required to mandate the porting of numbers between networks providing services at a fixed location and mobile networks under Article 30. While it is clear, under Recital 40, that the Member States may impose that requirement (and that the entity responsible for exercising that regulatory authority in the UK is Ofcom) Ofcom has not, to date, done so.
- 4.4 Ofcom recognises that it may be appropriate to consider imposing such an obligation in the future, in light of possible increasing convergence between services which have traditionally been regarded as "fixed" services and "mobile" services.
- 4.5 Furthermore, Ofcom recognises that there may be an apparent inconsistency between its current policy in relation to number allocation and its policy in relation to portability. Ofcom allocates geographic numbers for use with mobile services as long as those numbers are used in a way that is compliant with the NTNP. Tariffing of calls to geographic numbers must be consistent with the geographic area code, which means that where geographic numbers are used with mobile services, calls to those numbers must be charged at the appropriate rate for geographic calls. However, communications providers are not currently obliged to provide facilities to enable numbers to be *ported* from a fixed network to a mobile network. If there is no regulatory objection to mobile providers being allocated geographic numbers, should they be allowed to obtain these numbers from, for example, fixed providers by way of portability?
- 4.6 In its Annual Plan for 2005/6, Ofcom set out details of its numbering related work. Two projects are particularly relevant. Ofcom's review of numbering strategy is developing a long-term coherent strategic approach to all Ofcom's numbering activities, while its number allocation and policy development project seeks to consider number portability policy over a shorter time frame. Given the issues raised by Vodafone's request for GNP in this case and in light of possible increasing convergence between services that have traditionally been regarded as "fixed" and "mobile", Ofcom intends to use the number allocation and policy development project to consider, for example, whether its current policy for number portability is consistent with:
 - the current technological and service reality;

- Ofcom’s policy for the allocation of geographic telephone numbers; and
 - Ofcom’s policy for numbering of new voice services.
- 4.7 Ofcom will publish a separate consultation on these issues in the near future. Ofcom’s review of numbering strategy will then integrate considerations on this issue with the longer-term number portability requirements in the context of Ofcom’s overall numbering strategy.

General Condition 18.2

Portability

4.8 For BT to be under a requirement under General Condition 18.2 to port geographic numbers to Vodafone in this case, Vodafone would have had to ask BT to provide it with what is defined as “Portability”.

4.9 “Portability” is defined in General Condition 18.5 as:

“any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service”.

4.10 Therefore, Ofcom has considered whether the facility Vodafone has requested would enable a subscriber who requests “Number Portability” to continue to be provided with any “Publicly Available Telephone Service” by reference to the same telephone number irrespective of the identity of the person providing such a service.

4.11 BT and Vodafone are both “Communications Providers”¹¹ for the purposes of General Condition 18.2. This fact is not in dispute.

4.12 In assessing whether BT is required to provide GNP under General Condition 18.2, Ofcom has therefore considered:

- whether the services in question are Publicly Available Telephone Services; and
- whether Vodafone’s subscribers have requested Number Portability.

Publicly Available Telephone Service

4.13 Taking the issue of Publicly Available Telephone Services (“PATS”) first, Ofcom believes that what is being requested here would allow a subscriber to continue to be provided with PATS. This is because the service provided by BT and Vodafone Wireless Office both fall within the definition of PATS in General Condition 18.5, which is:

“a service made available to the public for originating and receiving or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan”.

¹¹ A “Communications Provider” is defined in General Condition 18.5 as someone who “provides an Electronic Communications Network or an Electronic Communications Service”. An electronic communications network (“ECN”) and an (“Electronic Communications Service”) (“ECS”) are defined in Part 1 of the General Conditions. BT and Vodafone provide an ECN or an ECS within the definitions and are therefore communications providers for the purposes of General Condition 18.2.

- 4.14 Both the service provided by BT and Vodafone Wireless Office are services made available to the public for originating and receiving or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan.

Number Portability

- 4.15 Ofcom does not consider, however, that subscribers in this case are requesting Number Portability.

- 4.16 “Number Portability” is defined in General Condition 18.5 as:

“a facility whereby Subscribers who so request can retain their Telephone Numbers on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –

- (i) in the case of Geographic Numbers, at a specific location; or
(ii) in the case of Non-geographic Numbers, at any location,*

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan”.

- 4.17 Taking the last part of this definition first, Ofcom considers, in this case, that retention by a Vodafone Wireless Office customer of the geographic number it had as a BT customer would be in accordance with the NTNP. This is because the geographic numbers in question are “Geographic Numbers” as defined in the NTNP and they comply with the restrictions on the use of geographic numbers within the NTNP.¹²

- 4.18 However, Ofcom does not consider that the rest of the definition of Number Portability applies in this case. Ofcom believes, on a literal (i.e. everyday) interpretation that the reference to “specific location” in (i) of the definition requires either:

- (i) that the network termination point is at a specific location; or alternatively
- (ii) that the telephone number is to be retained at a specific location.

- 4.19 In this case, Ofcom believes that because Vodafone Wireless Office is a mobile service, the network termination point cannot be at a specific location or, applying the alternative interpretation set out at point (ii) of the preceding paragraph, that retention of the telephone number cannot be at a specific location¹³.

- 4.20 For completeness, Ofcom accepts that the retained number would be retained on a “Public Telephone Network”¹⁴.

¹² See Part A of Annex 3 for the legal analysis underpinning why Ofcom considers retention by a Vodafone Wireless Office customer of the geographic number it had as a BT customer would be in accordance with the NTNP.

¹³ See Part B of Annex 3 for the legal analysis underpinning why Ofcom considers that, in this case, the network termination point cannot be at a specific location or retention of the telephone number cannot be at a specific location.

¹⁴ Public Telephone Network is defined in the General Conditions as: “an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications and also other forms of communication, such as facsimile and data”. The retained number in this

Implementation

Article 30 and General Condition 18.2

4.21 As discussed at paragraph 3.9 *et seq* above, Article 30 of the USD states:

“This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks”.

4.22 Paragraph 3.143 of the final statement on the General Conditions dated 9 July 2003 issued by the Director General of Telecommunications (“the Director”) refers to a previous draft of the portability general condition that said:

“21.5 For the avoidance of doubt, this Condition does not apply to the porting of Telephone Numbers between a Communications Provider providing Publicly Available Telephone Services at a fixed location and a Communications Provider providing Mobile Communications Services.”

4.23 This wording was dropped from the final version of the General Conditions. Mobile operators highlighted in their response to the consultation that some mobile operators provided non-geographic services using numbers in the 08 and 09 number ranges. Their concern was that General Condition 21.5, as previously drafted, could prevent the porting of these non-geographic numbers¹⁵. The Director agreed with this concern and said at paragraph 3.143 of the final statement that his intention was “not to stop the porting of numbers between fixed and mobile companies...”.

4.24 However, this did not mean that he was requiring porting between fixed and mobile networks. Paragraph 3.143 goes on to say that the policy behind the previous drafting at General Condition 21.5 is to instead “limit the rights of subscribers to avoid service portability, i.e. a fixed line number being used for mobile services or vice versa”. In other words, the Director’s intention was not to require porting of numbers between networks providing services at a fixed location and mobile networks.

4.25 In order to clarify the policy, the Director added the words “provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan” in the definition of “Number Portability” in General Condition 18. It was these words that were intended to reflect the fact that the Director was not intending to require porting of numbers between networks providing services at a fixed location and mobile networks.

4.26 This is not to say, of course, that Ofcom could not require fixed-to-mobile portability if it so wished. Recital 40 makes that clear when it says “However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks”. While the Director may have been clear this was not the intention behind the portability condition as it stands, Ofcom would not be precluded from adopting such a policy in future if it wanted to. Ofcom intends to review this policy in the near future (see paragraph 4.4 *et seq* above).

case will be retained on a Public Telephone Network because Vodafone’s network is an ECN which is used to provide PATS – Vodafone Wireless Office is a PATS as explained at paragraphs 4.13-4.14 above. Vodafone’s network also supports the transfer between network termination points of communications.

¹⁵ www.ofcom.org.uk/static/archive/oftel/publications/responses/2003/enti0503/ops.pdf

Vodafone's submission on fixed to mobile portability

- 4.27 Turning to Vodafone's submission to Ofcom in this case on fixed to mobile portability, it said that it was "not seeking geographic number to mobile portability but rather reciprocal geographic number portability". Vodafone made this argument on the basis that a Vodafone Wireless Office customer's geographic number complements his mobile number, rather than being a substitute for it.
- 4.28 Ofcom believes that the facility Vodafone has asked BT for is "fixed-to-mobile" portability. Article 30 refers to the porting of numbers between "networks providing services at a fixed location" and "mobile networks". In this case, it is Ofcom's view that to allow a Vodafone Wireless Office customer to be reached on his mobile with the geographic number he had as a BT customer demands the porting of numbers between a network providing "services at a fixed location" and a "mobile network". This is because the geographic number was used on a network providing a service at a fixed location (on BT's fixed network), but would, after porting, be used on a mobile network (Vodafone's mobile network).
- 4.29 Vodafone argued that the geographic number acts as a "complement" to the customer's mobile number, but in Ofcom's view it is not relevant that the customer has a mobile number as well. As noted above, the issue is whether the network termination point or the number retained is at a "specific location". This is not the case here. The fact that the mobile number exists alongside the geographic number does not change this.

Use of geographic numbers for new voice services

- 4.30 Vodafone submitted that the use of geographic numbers for services with an element of mobility was supported in Ofcom's previous statements relating to new voice services.¹⁶
- 4.31 The use of geographic numbers for new voice services was considered in Ofcom's consultation *Numbering arrangements for Voice over Broadband services* of 24 February 2004 and its final statement *Numbering arrangements for new voice services*, published 6 September 2004 (the "New Voice Services final statement").¹⁷
- 4.32 In the New Voice Services final statement at paragraph 3.97, Ofcom said that:
- "[a]s Ofcom's decision is that geographic numbers are suitable for new voice services consumers would have the opportunity to port their existing geographic number to the new provider as long as they were both providers of PATS".*
- 4.33 Ofcom considers that its position on use of geographic numbers with new voice services is consistent with its interpretation it has taken of General Condition 18.2 for the purposes of resolving this dispute. In other words, in the case of new voice services, subscribers would be requesting Number Portability as defined in General Condition 18.2 because the network termination point of the subscriber would be a specific location (or because, according to the alternative interpretation set out at point (ii) of paragraph

¹⁶ In this document, "new voice services" means voice services delivered using Voice over Internet Protocol, including Voice over Broadband.

¹⁷ <http://www.ofcom.org.uk/consult/condocs/vob/>

4.18 above, subscribers would be retaining their telephone numbers at a specific location). The reason for this is that new voice services, unlike Vodafone Wireless Office, are not fully mobile services. They may be nomadic services, which means that they are movable but are constrained in terms of where they can be used (e.g. wireless “hotspots” or fixed connections to the internet).¹⁸

- 4.34 Nevertheless, as noted above, (see paragraph 4.4 *et seq*) Ofcom intends to review several aspects of its numbering policy, including the issue of whether its current policy for number portability is consistent with its policy in respect of new voice services.

General Condition 18.1

- 4.35 For completeness, Ofcom has also considered whether BT is under an obligation in General Condition 18.1 in this case.

- 4.36 General Condition 18.1 says that:

“The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests.”

- 4.37 As described above, the request by the Vodafone Wireless Office customer is not for Number Portability because it would not enable the network termination point or the number being retained to be at a specific location.

- 4.38 BT therefore has no obligation to provide its customers with the facility enabling them to retain their geographic numbers for use with Vodafone Wireless Office under General Condition 18.1.

Ofcom’s duties under section 3 and section 4 of the Act

- 4.39 In making its proposals for resolving this dispute, and in its draft Determination, Ofcom has had regard to its duty under section 3 of the Act to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom considers that its proposals for resolving this dispute is in the interests of consumers, as it reinforces existing regulation underlying the transfer of geographic numbers which gives certainty for consumers.

- 4.40 In making its proposals for resolving this dispute, and in its draft Determination, Ofcom has had regard to its Community duties set out at section 4 of the Act. Ofcom considers that its proposals, by reinforcing the concept of geographic numbers in the minds of consumers, promotes the

¹⁸ In its comments on Vodafone’s submission, BT stated that the “relevant provisions” relating to new voice services related to Location Independent Electronic Communications Services (“LIECS”). BT said that LIECS are defined as not being “Mobile Services”. In this way, BT’s position is that Ofcom has not required porting of geographic numbers to mobile services. Ofcom believes, however, that the issue of LIECS is irrelevant in considering whether its position on use of geographic numbers with new voice services is consistent with its interpretation it has taken of General Condition 18.2 for the purposes of resolving this dispute. That is because LIECS are non-geographic numbers. The consideration in this case relates to geographic numbers.

interests of all persons who are citizens of the European Union, in line with the third Community requirement.

Conclusion

- 4.41 Ofcom proposes to conclude that BT is not required to provide GNP to Vodafone in relation to Vodafone Wireless Office. Ofcom's proposed conclusion is set out in its draft Determination above.

Section 5

Responding to this consultation

How to respond

Ofcom invites written views and comments on the issues raised in this document by 5pm on 9 June 2005.

Ofcom prefers to receive responses by e-mail as Microsoft Word documents, as this helps us to process responses quickly and efficiently. We would also be grateful if you could complete a response cover sheet (see Annex 2), among other things to indicate whether any element of your response is confidential. The cover sheet can be downloaded from the Consultations section of our website.

Please send your response to louise.marriage@ofcom.org.uk.

Responses may alternatively be posted to the address below, marked with the title of the consultation.

Louise Marriage
Competition and Markets
Third floor
Ofcom
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

We do not need a hard copy in addition to an electronic version. We do not routinely acknowledge receipt of responses.

Further information

If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Louise Marriage on 020 7783 4333.

Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We therefore usually publish all responses on our website, www.ofcom.org.uk. We do this on receipt of responses, unless respondents request otherwise on their response cover sheet.

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.

Please note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

Following the end of the consultation period, Ofcom intends to publish a final Determination by 22 June 2005.

You can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Tony Stoller, External Relations Director, who is Ofcom's consultation champion:

Tony Stoller
Ofcom
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

Tel: 020 7981 3550
Fax: 020 7981 3630

e-mail: tony.stoller@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- 1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

- 2 We will be clear about who we are consulting, why, on what questions and for how long.
- 3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- 4 We will normally allow ten weeks for responses to consultations on issues of general interest.
- 5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- 6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

- 7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.

A2.2 We have produced a cover sheet 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 by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.

A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A2.4 We strongly prefer to receive responses by e-mail as Microsoft Word documents. Our website includes an electronic copy of this cover sheet, which you can download from the Consultations section of our website.

A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. 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

What do you want Ofcom to keep confidential?

Nothing

Name/address/contact
details/job title

Whole response

Organisation

Part of the response
parts?

If there is no separate annex, which

Note that Ofcom may still refer to the contents of responses in general terms, without disclosing specific information that is confidential. Ofcom also reserves its powers to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to 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

Legal analysis

(A) Retention in accordance with the National Telephone Numbering Plan

1. As noted at paragraph 4.19 above, Ofcom does not consider that the definition of Number Portability is made out in this case because the network termination point or the retention of the telephone number is not at a specific location. However, for the sake of completeness, Ofcom has considered whether the final part of the definition of Number Portability is satisfied in this case, in other words, whether retention of the telephone number is in accordance with the NTNP.

2. The NTNP defines geographic numbers as:

“a Telephone Number, from a range of numbers in Part A of this document, where part of the digit structure contains a Geographic Area Code, consistent with Appendix A of this document, that is Adopted or otherwise used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned or where the Network Termination Point does not relate to the Geographic Area Code but where the tariffing remains consistent with that Geographic Area Code”.

3. In this case, Ofcom believes that the network termination point does not relate to the geographic area code, but considers that the tariffing is consistent with that code. The numbers Ofcom is considering in this case are therefore geographic numbers for the purposes of the NTNP.

4. “Network Termination Point” is defined as:

“the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber. A Network Termination Point provided at a fixed position on Served Premises shall be within an item of a Network Termination and Testing Apparatus”.

5. The relevant definition of Public Electronic Communications Network (“PECN”) is found in paragraph 1 of Part 1 of the General Conditions, which defines PECN as:

“an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public”.

6. Ofcom considers that the point at which a mobile subscriber gets access to the PECN is either the mobile handset or a point on or in it.

7. This is because in the case of a mobile service, the point at which a subscriber is provided with access to the PECN may be the Subscriber Identity Module (“SIM”) card. It is the SIM card that allows access to a PECN for the purpose of making an ECS available to the public. As the ECN involves switching or routing, that physical point is further described in the definition of “Network Termination Point” as being identified “by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber”. The network address that is linked to the telephone number is the International Mobile Subscriber Identity

("IMSI"). This is a number on the SIM card which is linked to the telephone number of the mobile subscriber.

8. However, a SIM card does not, on its own, provide access to the PECN. The network termination point may, alternatively, be the antenna in the handset, since it may be this that allows access to an ECN for the purpose of making an ECS available to the public. Even in the absence of a SIM card, calls can still be made to the emergency services, so in that case, the antenna gives access to an ECN for the purpose of making an ECS available to the public. The network address is the serial number of the handset, which (in accordance with the definition of Network Termination Point) is not linked to the telephone number of the subscriber, but to his name. Indeed, it is that serial number that the emergency services see when a call is made from a mobile without a SIM card. However, again, the antenna on its own does not provide access to the PECN: for non-emergency calls, a SIM card is also required.
9. Ofcom therefore considers that the network termination point for a mobile in this context is either the handset or somewhere in or on it.
10. In this case, the geographic area code¹⁹ is not used for routing calls to the physical location of the network termination point, because it is Vodafone, and not the code itself, that maps the calls to that point.
11. However, as Vodafone has stated in its submission, where a caller contacts a Vodafone Wireless Office customer by dialling his geographic number, he is charged the same as he would be for a call to a geographic number terminating on a fixed line. The tariffing is therefore "consistent with that Geographic Area Code", and the number is therefore a geographic number for the purposes of the NTNP.
12. Given that the retained number is a geographic number for the purposes of the NTNP, Ofcom also considers that retention in accordance with the NTNP. This is because it complies with the specific restrictions on telephone numbers at Part B of the NTNP. It complies with B.3.1.1 in that the number has a digit structure that contains a relevant geographic code. It complies with B.3.1.2 which says that the number cannot be used outside the relevant geographic area except where the customer has asked for it. In this case, the customer has so requested it.

(B) Specific location

13. Vodafone suggested in its submission that the reference to "specific location" in the definition of Number Portability (see paragraph 4.16 above) refers to the specific location of the Subscriber when he makes his request to retain his telephone number (i.e. before porting has taken place). Vodafone also submits that "specific location" relates to the service area of the original operator where the new operator offers "mobility" in accordance with the Functional Specification.
14. A second interpretation, put forward by BT and acknowledged by Vodafone, is that it is the network termination point that must be at the "specific location". In other words, number portability is something that allows a subscriber to retain his number independently of the person who provides the service at the network termination point²⁰ which is at a specific location for geographic numbers.

¹⁹ This is defined as a telephone number identifying a particular geographic area. This must be consistent with Appendix A of the NTNP.

²⁰ The definition of "Network Termination Point" in the General Conditions is identical to the definition of "Network Termination Point" in the NTNP.

15. The first issue to consider is whether the numbers here are geographic numbers for the purposes of the General Conditions. This is because the definition of geographic numbers in the General Conditions is different from the definition of geographic numbers in the NTNP. If the numbers are not geographic numbers, then part (i) of the definition contained in the General Conditions (see paragraph 4.16 above) is not relevant, although part (ii), which relates to non-geographic numbers, may be.

16. Under the General Conditions, geographic numbers are defined as:

“a Telephone Number from a range of numbers in the National Telephone Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned”.

17. Ofcom considers that the issue here is not the same as the question of whether the retained number is in accordance with the NTNP (i.e. the situation after porting) which is the situation to which the final part of the definition of number portability relates. Ofcom’s concern here is the obligation to port a number generally. In other words, part (i) of the definition contained in the General Conditions relates to a number before porting, not after.

18. The number before porting in this case is a geographic number within the definition of the General Conditions because the numbers are from a range in the NTNP and part of the digit structure contains geographic significance used for routing the call. This means that the applicable part of the definition is part (i) and not part (ii).

19. Ofcom’s view is that the literal (i.e. everyday) meaning of the definition is that the network termination point must be at the “specific location”. Ofcom considers that in the case of porting of geographic numbers to Vodafone’ Wireless Office, the service being provided by Vodafone would not be one where the network termination point would be at a specific location. “Specific” is not defined in the USD or the General Conditions so Ofcom has interpreted this term it is as generally understood²¹, and considers that because if the network termination point is, as discussed above, in or on a mobile handset, it will be mobile, and will not therefore be at a specific location. As the network termination point would not be at a specific location the obligation does not apply to BT in this case.

20. Ofcom considers that there may be third possible interpretation of “specific location” (in addition to that put forward by Vodafone as described at paragraph 13 above and the alternative described at paragraph 14 above), which is that it allows the subscriber to *retain* his geographic number on a public telephone network at a specific location. Using this interpretation, the argument would be that portability means there is an obligation to port where a subscriber wants to retain his number (in the case of a geographic number) at a specific location. In the case of Vodafone Wireless Office, the customer wants to retain his number at a location which is mobile and is not, therefore, a specific location. The obligation would not therefore apply in this case.

21. Given the above, Ofcom does not believe there is anything to suggest, on the face of the definition or indeed in Article 30 of the USD, that the reference to “specific location” relates to the subscriber’s location when he makes a request to port, or to the area within which number mobility may be offered according to the Functional Specification. Even if it was the case that “specific location” relates to

²¹ Defined in the New Shorter Oxford English Dictionary as “clearly or explicitly defined; precise, exact; definite”.

the subscriber's location when he makes a request to port, or to the area within which number mobility may be offered according to the Functional Specification, it is unclear to Ofcom how these areas are relevant to the definition of Number Portability. Neither the network termination point nor the number retained would be in these areas because Vodafone Wireless Office is a service that is mobile, as described above.