A Response from the Communications Management Association to Ofcom's preliminary consultation on the future regulation of Wholesale Mobile Voice Call Termination

About CMA

CMA is an association of ICT professionals from the business community who have a professional interest in communications, in both private and public sectors. It is a registered charity 50 years old, totally independent and without supplier bias. It is run by the members, for the members and aims to influence regulation and legislation, provide education and training and disseminate knowledge and information, for the public good. CMA's contribution to public consultations is generated via the process described in the Footnote to this response. (www.thecma.com)

Business Impact Statement

Any Business User prefers fixed costs wherever possible. It is accepted that variable costs are inevitable in their businesses, but there is one variable cost that impacts hugely on the monthly budget; the mobile call bill. This cost element is rising inexorably due to more employees using their mobile number as the primary contact point. The roaming charge is a secondary variable (despite recent imposed reductions).

With excessively high Mobile Termination Rates (MTRs) being out of balance with voice services from other networks, the cost of mobile communicating can result in a 'pot luck' price depending on which network is used, but with prices several times higher than an equivalent fixed-to-fixed line call. Essentially, the caller pays for the cost of mobile operators conducting their day to day business in the telecoms market but at an inflated rate.

The true extent of price competition within the mobile industry is debatable and is certainly not greatly influenced by the needs of business consumers. Without a reduction in MTRs there will be little opportunity for offering businesses price packages and service options that meet their needs. Fair pricing for good service quality is what the customer demands but the industry is not delivering. Service led pricing should differentiate between the mobile offerings of the future; an approach that business customers will most certainly be willing to pay for.

Based on call pattern data from businesses the average percentage of the total bill represented by calling mobiles from fixed lines is 75% of the total calling cost. That cost represents only 46% on average of minutes used. The broad conclusion is that calls to mobiles make up the biggest call volume and form by far the most expensive element. Thus reducing the MTR would make a significant impact on the costs of calling for businesses.

Based on data from Ofcom's Communications Market Report, the overall cost of landline to mobile MTRs for UK business is estimated at £332M pa.

(The average weekly outbound business landline calls to mobile (per landline) is 13.2 minutes, while the total number of business fixed lines is 10.3 million. Using a conservative MTR figure of 4.7p per minute:
- 13.2 minutes x 4.7p = 62p = cost per business landline per week of MTRs
- 62p x 10.3 million = £6,386,000 = cost of MTRs per week to UK businesses
- £6,386,000 x 52 weeks = £332,072,000 = annual cost of MTR to businesses)

The artificially high levels of MTRs are nothing more than a tax on trade. At the international level there are wider issues that are closely associated with MTRs. Addressing MTRs alone cannot achieve the goals of this consultation. A range of competition considerations arise, including matters concerning joint dominance. Particularly important is the need for improvements in competition in the provision of services across all networks, and across national boundaries, which in the mobile market is not happening to anything like an adequate degree.

<u>Summary</u>

The Commission's Recommendation suggests revising the current approach to calculating the underlying cost of delivering a call. This change would be likely to reduce the MTRs currently in place across the European Union, potentially by a significant amount.
Ofcom's review considers, among other things, a range of approaches to this question, and whether Ofcom should adopt a similar approach to that recommended by the EC. In arriving at the best approach, Ofcom is required to take "utmost account" of the Commission's Recommendation.

We note that the preliminary consultation is on whether to regulate prices and, if so, how. It does not, at this stage, consider what the regulated prices might be, or attempt to decide the best approach. It is also noted that the issue of cost allocation is central to the debate and that Ofcom has identified six possible options for the future regulation of MTRs. Ofcom wants comments on all these options and on the broader question of strategy on the future regulation of MTRs.

- Deregulation – removal of all termination regulation from mobile operators.
- Long Run Incremental Cost + (LRIC+) – charge control set broadly on the basis of the same cost standard as it is today.
- Long Run Marginal Cost (LRMC) – revised charge control methodology with no allowance for recovery of common costs, broadly the approach recommended by the EC.
- Capacity Based Charges (CBC) – a different approach to setting the structure of termination charges based on the capacity required for termination.
- Mandated Reciprocity – set mobile charges to match the rates set for fixed operators.
- Mandated "bill and keep" (B&K) – termination charges effectively set at zero.

With the possible exception of deregulation, all of the options identified by Ofcom would lead to a reduction in MTRs. CMA proposes that Ofcom should adopt a policy, within the UK, of reducing termination rates to zero and as fast as is reasonably possible. Moreover, CMA requests that Ofcom urges the EC to adopt this bill-and-keep policy throughout the EU. This approach would not only reduce the bill to UKplc, but would also facilitate a single market within which greater flexibility at the retail level would facilitate innovation in quality and services.

<u>Discussion</u>

CMA lacks the specialist resources that would enable it to comment in depth on each of Ofcom's six options. However:

- We do not see the mobile sector as being sufficiently competitive, either now or in the foreseeable future, to permit deregulation. Recent developments at EU level have shown this to be the case, where concerted lobbying based on a mix of threats (called-party pays, as per the US approach) and special pleading (the need to invest to support universal broadband) failed to convince legislators of the need to maintain high roaming charges.

- Existing LRIC or some variation such as LRIC+ does not offer any improvement over the status quo.

- LRMC is the approach favoured by the EC. It is nevertheless a compromise solution, difficult to calculate and open to abuse. It has in its favour only the prospect of harmonising termination rates across the EU and thus promoting the single market. LRMC would reduce the current imbalances between the regimes of Member States, and the overall level would reduce as a direct consequence of limiting allowable cost allocation. But it would still retain a significant differential between fixed and mobile, it would perpetuate the distortion that gave rise to the opportunities for arbitrage in mobile "gateways" and it would not deliver the sort of overall reduction in termination rates that consumers seek.

- CMA has no comment on the CBC option.

- Mandated reciprocity would remove the fixed-mobile imbalance but it would require continued regulatory oversight and would legitimise a system that penalises the smaller operator. From the consumer viewpoint it would retain a cost element that would inevitably be reflected in prices.

- The only option that is acceptable to business consumers is one that removes the cost element attributable to the artificiality of termination rates. Supporting arguments for this view include:

    - MTRs might reasonably compared with the situation of the duopoly, where the "Access Deficit Contribution" levied on Mercury as compensation for BT's previous investment in networks was described (and eventually accepted) as an "accounting fiction" that was detrimental to competition.
    - MTRs are also similar in effect to the Accounting Rate/Settlement Charge for delivering international calls which kept the cost of these inflated for years and gave the US a massive US$5Bn pa deficit until addressed by the ITU.
    - MTRs provide a very real barrier to entry to smaller operators as they will by definition have to pay more than they receive unless there is a steeply asymmetric Rate (which would be difficult to calculate and apply consistently).

CMA strongly supports the rapid elimination of MTRs and the introduction of a bill-and-keep regime, not only within the UK market, but throughout the EU.

29 Jul 09

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (condoc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman is also a member of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc. Note: if the condoc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

Time permitting, the draft response is sent to all members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board). The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chairman.