

Annex 7

Proposed SMP conditions

Draft legal instrument

PART I – NOTIFICATION OF PROPOSALS UNDER SECTION 48A(3) AND 80A(3) OF THE COMMUNICATIONS ACT 2003

Proposals for identifying markets, making market power determinations and setting SMP services conditions in relation to each of the persons named in Schedule 1 to this Notification under section 45 of the Communications Act 2003

Background

- A7.1 On 15 March 2011, Ofcom published a statement concerning the provision of wholesale mobile voice call termination (the “**2011 Statement**”)¹ which identified the relevant markets, made market power determinations and imposed certain significant market power (SMP) conditions. These SMP conditions included a charge control, which expires on 31 March 2015.
- A7.2 Together with this notification, Ofcom is today publishing a consultation document entitled *Mobile call termination 2015-18* setting out Ofcom’s proposals to identify markets, make market power determinations and set SMP conditions for the period from 1 April 2015 to 31 March 2018.

Proposals for service market identifications and market power determinations

- A7.3 Ofcom is proposing to identify 82 separate markets as described below for the purpose of making a market power determination.
- A7.4 The markets that Ofcom is proposing to identify are the markets for call termination services that are provided by each of those 82 persons named in Part 1 and Part 2 of Schedule 1 to this notification to another communications provider, for the termination of voice calls to UK mobile numbers² allocated to that person by Ofcom in the area served by that person and for which that person is able to set the call termination charge (each a “**relevant market**”).
- A7.5 Ofcom is proposing to make a market power determination that each of the persons set out in Part 1 and Part 2 of Schedule 1 to this notification has significant market power in relation to the relevant market in which that provider operates. As specified in Schedule 1, for each of the persons identified under Part 1 and Part 2 of that Schedule, the SMP designation holds with respect to the registered company

¹ The 2011 Statement is available here: <http://stakeholders.ofcom.org.uk/consultations/wmctr/>.

² These are the numbers included in the number ranges designated for “mobile services”, as defined in the National Telephone Numbering Plan (which is available at <http://stakeholders.ofcom.org.uk/telecoms/numbering/>). In the current Numbering Plan, these are numbers in the format 07xxx xxx xxx and beginning 071 to 075 and 077 to 079.

identified 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, in so far as they operate on the relevant market.

A7.6 The effect of, and Ofcom's reasons for making, the proposals for identifying the markets and making the market power determinations referred to above are set out in the consultation document accompanying this notification.

Proposals to set and revoke SMP service conditions

A7.7 Ofcom is proposing to set the following SMP conditions –

- on each person named in **Part 1** of Schedule 1 to this notification, conditions **M1**, **M2** and **M4** set out in Schedule 2; and
- on each person named in **Part 2** of Schedule 1 to this notification, conditions **M1**, **M2**, **M3** and **M4** set out in Schedule 2.

A7.8 Ofcom is proposing that those SMP conditions shall apply, in the case of each person on whom they are set, in respect of the relevant market on which that person operates.

A7.9 Unless otherwise stated in Schedule 1 to this notification, the SMP conditions that Ofcom is proposing shall take effect from the date of the notification under sections 48(1) and 79(4) of the Communications Act 2003 (the "**Act**") adopting the proposals set out in this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

A7.10 Ofcom is proposing to revoke the SMP conditions set out at Annex 1 to the 2011 Statement, as amended in 2011 and 2012, with effect from the date of publication of any subsequent notification under section 48(1) of the Act adopting these proposals to revoke those conditions. Ofcom proposes that section 16 of the Interpretation Act 1978 shall apply as if this proposed revocation were a repeal of an enactment by an Act of Parliament.

A7.11 The effect of, and Ofcom's reasons for making, the proposals referred to above are contained in the consultation statement accompanying this notification.

Ofcom's duties and legal tests

A7.12 In identifying and analysing the markets referred to in this notification, and in considering whether to make the corresponding proposals set out in this notification, Ofcom has, in accordance with section 79 of the Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of a European Union instrument, and which relate to market identification and analysis or the determination of what constitutes significant market power. In doing so, pursuant to Article 3(3) of Regulation (EC) No. 1211/2009, Ofcom has also taken utmost account of any relevant opinion, recommendation, guidance advice or regulatory practice adopted by BEREC.

A7.13 Ofcom considers that the proposed SMP conditions set out in Schedule 2 comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition, and further that the proposed revocation of the SMP conditions set out in the 2011 Statement referred to above comply with the

requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to them.

- A7.14 In making all of the proposals referred to in this notification, Ofcom has also considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements set out in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive.

Making representations

- A7.15 Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying consultation document by no later than 13 August 2013.

Notification of the Secretary of State

- A7.16 Copies of this notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with sections 48C(1) and 81(1) of the Act.

Interpretation

- A7.17 For the purpose of interpreting this notification-
- a. except in so far as the context otherwise requires or as otherwise defined in this notification, words or expressions used shall have the same meaning as it has in the Act;
 - b. headings and titles shall be disregarded;
 - c. expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d. the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

The Schedules to this Notification shall form part of this Notification.

Signed

Brian Potterill
Competition Policy Director

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

4 June 2014

SCHEDULE 1

Part 1

For each of the persons identified below, the SMP designation holds with respect to the registered company identified 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, in so far as they operate on the relevant market.

1. **(AQ) Ltd**, whose registered company number is 3663860 and registered address is 13-15 Hunslet Road, Leeds, West Yorkshire, LS10 1JQ, United Kingdom.
2. **08Direct Ltd**, whose registered company number is 6428331 and registered address is Mazhar House, 48 Bradford Road, Stanningley, Leeds, West Yorkshire, LS28 6DD, United Kingdom.
3. **24 Seven Communications Ltd**, whose registered company number is 4468566 and registered address is c/o Novis & Co Chartered Accountants, 1 Victoria Court Bank Square, Morley, Leeds, West Yorkshire, LS27 9SE, United Kingdom.
4. **Ace Call Ltd**, whose registered company number is 6729339 and registered address is 11 Hatton Garden, Liverpool, Merseyside, L3 2HA, United Kingdom.
5. **Airwave Solutions Ltd**, whose registered company number is 3985643 and registered address is Charter Court, 50 Windsor Road, Slough, Berkshire, SL1 2EJ, United Kingdom.
6. **Alliance Technologies LLC**, whose registered entity number is 1616678 and registered address is 1932 Service Corp., 1301 East Ninth Street Suite, 3500 Cleveland, OH 44114, USA.
7. **Andrews & Arnold Ltd**, whose registered company number is 3342760 and registered address is Enterprise Court, Downmill Road, Bracknell, Berkshire, RG12 1QS, United Kingdom.
8. **Bellingham Telecommunications Ltd**, whose registered company number is 7038166 and registered address is 3rd Floor, 67-68 Jermyn Street, London, SW1Y 6NY, United Kingdom.
9. **British Telecommunications Plc**, whose registered company number is 1800000 and registered address is 81 Newgate Street, London, EC1A 7AJ, United Kingdom.
10. **BT OnePhone Ltd**, whose registered company number is 08043734 and registered address is 81 Newgate Street, London, EC1A 7AJ, United Kingdom.
11. **Callax Ltd**, whose registered company number is 4883104 and registered address is Level 7, Tower 42, 25 Old Broad Street, London, EC2N 1HN, United Kingdom.
12. **CFL Communications Ltd**, whose registered company number is 4419749 and registered address is 100 Pall Mall, London, SW1Y 5NQ, United Kingdom.

13. **Cheers International Sales Ltd**, whose registered company number is 6288825 and registered address is Britannia House, 1-11 Glenthorne Road, London, W6 0LH, United Kingdom.
14. **Citrus Telecommunications Ltd**, whose registered company number is 3517870 and registered address is Second Floor, 99 Holdenhurst Road, Bournemouth, Dorset, BH8 8DY, United Kingdom.
15. **Cloud9 Communications Limited**, whose registered company number is 7153956 and registered address is Pinewood Crockford Lane, Chineham Business Park, Chineham, Basingstoke, Hampshire, RG24 8AL, United Kingdom.
16. **Compatel Ltd**, whose registered company number is 7456831 and registered address is 6th Floor, 94 Wigmore Street, London, W1U 3RF, United Kingdom.
17. **Confabulate Ltd**, whose registered company number is 5605939 and registered address is 9 Market Row, Saffron Walden, Essex, CB10 1HB, United Kingdom.
18. **Core Communication Services Ltd**, whose registered company number is 5467282 and registered address is 11 York Road, London, SE1 7NX, United Kingdom.
19. **Core Telecom Ltd**, whose registered company number is 5332008 and registered address is Mazhar House, 48 Bradford Road, Stanningley, Leeds, West Yorkshire, LS28 6DD, United Kingdom.
20. **Eclipse Tel Ltd**, whose registered company number is 6718575 and registered address is Avebury House, Second Floor, 55 Newhall Street, Birmingham, West Midlands, B3 3RB, United Kingdom.
21. **Edge Telecom Ltd**, whose registered company number is 3101247 and registered address is Global House, 2 Crofton Close, Lincoln, LN3 4NT, United Kingdom.
22. **Esendex Ltd**, whose registered company number is 4217280 and registered address is 15 Warwick Road, Stratford-Upon-Avon, Warwickshire, CV37 6YW, United Kingdom.
23. **Euro Thai Exchange Process Company Ltd**, whose registered company number is 10254601272 and registered address is 102/55 Floor.11, #1101 JC Tower, Soi Thonglor 25, Sukhumvit 55, Klongton NUA, Wattana, Bangkok 10110, Thailand.
24. **Flexitel Ltd**, whose registered company number is 2772380 and registered address is Griffins Court, 24-32 London Road, Newbury, Berkshire, RG14 1JX, United Kingdom.
25. **[Fogg Mobile AB**, whose registered company number is 556795-1016 and registered address is Eriksbergsgatan 10, PO Box 5126, SE-102 43 Stockholm, Sweden]³.

³ We have put this MCP in square brackets because they told us that they currently have no plans to provide mobile voice call termination services within the market review period. Therefore, we are not currently proposing to designate them as having SMP. However, if they start providing mobile voice call termination services before the publication of our final statement or if they plan to do so in the period covered by this review, we would expect to include their termination services within our market definition and therefore designate them as having SMP and impose relevant SMP conditions on them.

26. **Globecom International Ltd**, whose registered company number is 003650V and registered address is 14 Albert Street, Douglas, Isle of Man, IM1 2QA.
27. **Hay Systems Ltd**, whose registered company number is SC201362 and registered address is c/o Grant Thornton UK LLP, 7 Exchange Crescent, Conference Square, Edinburgh, EH3 7AN, United Kingdom.
28. **Icron Network Ltd**, whose registered company number is 5445235 and registered address is 58 Marsh Wall, London, E14 9TP, United Kingdom.
29. **Invomo Ltd**, whose registered company number is 6267056 and registered address is Global House, 2 Crofton Close, Lincoln, Lincolnshire, LN3 4NT, United Kingdom.
30. **IPV6 Ltd**, whose registered company number is 6711525 and registered address is Berrycentre, Chiltern Drive, Surbiton, Surrey, KT5 8LS, United Kingdom.
31. **IV Response Ltd**, whose registered company number is 4318927 and registered address is 57-61 Mortimer Street, London, W1W 8HS, United Kingdom.
32. **JSC Ingenium (UK) Ltd**, whose registered company number is 7526243 and registered address is Winter Hill House, Station Approach, Marlow, Bucks, SL7 1NT, United Kingdom.
33. **LegendTel LLC**, whose DOS ID number is 3472935 and registered address is 45 John Street, Suite 711, New York, 10038, USA.
34. **Limitless Mobile Ltd**, whose registered company number is 7323927 and registered address is 1000 Cambridge Research Park, Cambridge, CB25 9BD, United Kingdom.
35. **[Lleidanetworks Serveis Telematics Ltd**, whose UK establishment number is BR008515 and registered address is Finsgate 5-7 Cranwood Street, London, EC1V 9EE, United Kingdom]⁴.
36. **Lycamobile UK Ltd**, whose registered company number is 5903820 and registered address is 3rd Floor Walbrook Building, 195 Marsh Wall, London, E14 9SG, United Kingdom.
37. **Magrathea Telecommunications Ltd**, whose registered company number is 4260485 and registered address is Unit 5, Commerce Park, Brunel Road, Theale, Reading, RG7 4AB, United Kingdom.
38. **Manx Telecom Trading Ltd**, whose registered company number is 005629V and registered address is Isle of Man Business Park, Cooil Road, Braddan IM99 1HX.
39. **Marathon Telecom Ltd**, whose registered company number is 93007 and registered address is 28 Halkett Place, St Helier, Jersey, JE2 4WG.
40. **Mars Communications Ltd**, whose registered company number is 6478834 and registered address is Forest House, Forest Road, Ilford, Essex, IG6 3HJ, United Kingdom.

⁴ See footnote 3 above.

41. **Moonshado Inc**, whose registered entity number is E0392882008-9 and registered address is 500 N Rainbow Blvd STE 300A, Las Vegas, NV 89107, USA.
42. **Mundio Mobile Ltd**, whose registered company number is 4553934 and registered address is 54 Marsh Wall, London, E14 9TP, United Kingdom.
43. **Nationwide Telephone Assistance Ltd**, whose registered company number is 4315226 and registered address is Ivy Lodge Farm, 179 Shepherds Hill, Harold Wood, Romford, Essex, RM3 0NR, United Kingdom.
44. **Netfuse Telecom Ltd**, whose registered company number is 7923863 and registered address is Unit 11, Hove Business Centre, Fonthill Road, Hove, East Sussex, BN3 6HA, United Kingdom.
45. **[Nextgen Mobile Ltd**, whose registered company number is 4775987 and registered address is Saxon House - 1st Floor, John Roberts Business Park, Pean Hill, Canterbury, Kent, CT5 3BJ, United Kingdom]⁵.
46. **Nodemax Ltd**, whose registered company number is 6127089 and registered address is 75 Springfield Road, Chelmsford, Essex, CM2 6JB, United Kingdom.
47. **Orca Digital Ltd**, whose registered company number is 5836806 and registered address is The Barley Mow Centre, 10 Barley Mow Passage, Chiswick, London, W4 4PH, United Kingdom.
48. **Oxygen8 Communications UK Ltd**, whose registered company number is 3383285 and registered address is 12th Floor Lyndon House, 58-62 Hagley Road, Birmingham, B16 8PE, United Kingdom.
49. **Premium O Ltd**, whose registered company number is 6762329 and registered address is Beacon House, Ibstone Road, Stokenchurch, High Wycombe, Buckinghamshire, HP14 3FE, United Kingdom.
50. **Premium Routing GmbH**, whose registered company number is CHE-113.847.561 and registered address is Steinackerstrasse 2, CH-8302, Klotten, Switzerland.
51. **Proton Telecom Ltd**, whose registered company number is 5570915 and registered address is Barclays House, Gatehouse Way, Aylesbury, Buckinghamshire, HP19 8DB, United Kingdom.
52. **QX Telecom Ltd**, whose registered company number is 3820728 and registered address is 2 Glenmore Close, Thatcham, Berkshire, RG19 3XR, United Kingdom.
53. **Resilient Networks Plc**, whose registered company number is 1403177 and registered address is 25/27 Shaftesbury Avenue, London, W1D 7EQ, United Kingdom.
54. **Rexcom Tech Ltd**, whose registered company number is 6693961 and registered address is Basilica House, 334 Southend Road, Wickford, Essex, SS11 8QS, United Kingdom.

⁵ See footnote 3 above.

55. **Simwood eSMS Ltd**, whose registered company number is 3379831 and registered address is c/o HW Chartered Accountants Keepers Lane, The Wergs, Wolverhampton, WV6 8UA, United Kingdom.
56. **Sky Telecom Ltd**, whose registered company number is 6974505 and registered address is 1st Floor Holborn Gate, 330 High Holborn, London, WC1V 7QT, United Kingdom.
57. **Sound Advertising Ltd**, whose registered company number is 3218628 and registered address is Aston House, Cornwall Avenue, London, N3 1LF, United Kingdom.
58. **Spacotel UK Ltd**, whose registered company number is 3036383 and registered address is 75 Westow Hill, London, SE19 1TX, United Kingdom.
59. **SSE Energy Supply Limited**, whose registered company number is 3757502 and registered address is 55 Vastern Road, Reading, Berkshire, RG1 8BU, United Kingdom.
60. **Stour Marine Ltd**, whose registered company number is 5914603 and registered address is Good Easter House, Good Easter, Chelmsford, Essex, CM1 4RS, United Kingdom.
61. **Subhan Universal Ltd**⁶, whose registered company number is 5642502 and registered address is 1st Floor, 91-92 Charles Henry Street, Highgate, Birmingham, West Midlands, B12 0SJ, United Kingdom.
62. **Swiftnet Ltd**, whose registered company number is 2469394 and registered address is Britannia House, 958-964 High Road, London, N12 9RY, United Kingdom.
63. **Switch Services Ltd**⁷, whose registered company number is 4968578 and registered address is 30 Queen Square, Bristol, BS1 4ND, United Kingdom.
64. **Synectiv Ltd**, whose registered company number is 3706138 and registered address is 2 Spring Villa Park, Spring Villa Road, Edgware, Middlesex, HA8 7EB, United Kingdom.
65. **TalkTalk Communications Ltd**, whose registered company number is 3849133 and registered address is Stanford House, Garrett Field, Birchwood, Warrington, WA3 7BH, United Kingdom.
66. **Telecom North America Mobile Inc**, whose registered entity number is C11057-1999 and registered address is 311 West Third St., Carson City, USA, NV 89703.

⁶ According to information available from Companies House, on 1 April 2014 the Registrar of Companies gave notice that, unless cause is shown to the contrary, at the expiration of 3 months from that date, the name of Subhan Universal Ltd will be struck off the register and the company will be dissolved. For consultation purposes, we are proposing to designate this MCP as having SMP since the company has not been dissolved yet. We will check again the status of Subhan Universal Ltd before publication of the final statement.

⁷ We understand that the mobile number ranges allocated to Switch Services Ltd, which is in administration, are currently used to provide mobile services by a company belonging to the same group as Switch Services Ltd (Equinet Ltd). We also understand that Equinet Ltd. intends to apply for a transfer of the allocation of the mobile number ranges currently held by Switch Services Ltd.

67. **Telecom2 Ltd**, whose registered company number is 6926334 and registered address is 29th Floor, 1 Canada Square, London, E14 5AA, United Kingdom.
68. **Teleena UK Ltd**, whose registered company number is 7069424 and registered address is New Derwent House, 69-73 Theobalds Road, London, WC1X 8TA, United Kingdom.
69. **Telephony Services Ltd**, whose registered company number is 5134355 and registered address is 1st Floor Westpoint, James Street West, Bath, England, BA1 2DA, United Kingdom.
70. **Telesign Mobile Ltd**, whose registered company number is 4546322 and registered address is 2nd Floor Kingsgate House, 115 High Holborn, London, WC1V 6JJ, United Kingdom.
71. [**Teleware Plc**, whose registered company number is 4756742 and registered address is Teleware House, York Road, Thirsk, North Yorkshire, YO7 3BX, United Kingdom]⁸.
72. **Test2date B.V**, whose registered company number is 30194024 and registered address is Ypelobrink 150, 7544 CG, Enschede, The Netherlands.
73. **TG Support Ltd**, whose registered company number is 5370731 and registered address is 202 Linton House, 164-180 Union Street, Southwark, London, SE1 0LH, United Kingdom.
74. **Tismi BV**, whose registered company number is 32081827 and registered address is Catharijnesingel 30 G, 3511 GB, Utrecht, The Netherlands.
75. **Titanium Ltd**, whose registered company number is 6952284 and registered address is 10 Kenyon Street, Hockley, Birmingham, West Midlands, B18 6AR, United Kingdom.
76. **Truphone Ltd**, whose registered company number is 4187081 and registered address is c/o Simmons & Simmons LLP, Citypoint, 1 Ropemaker Street, London, EC2Y 9SS, United Kingdom.
77. **UK Broadband Ltd**, whose registered company number is 4713634 and registered address is 20-22 Bedford Row, London, WC1R 4JS, United Kingdom.
78. **Virgin Mobile Telecoms Ltd**, whose registered company number is 3707664 and registered address is Media House, Bartley Wood Business Park, Hook, Hampshire, RG27 9UP, United Kingdom.
79. **Voicetec Systems Ltd**, whose registered company number is 3948745 and registered address is 75 Westow Hill, London, SE19 1TX, United Kingdom.
80. **Vortex Telecom Ltd**, whose registered company number is 6107494 and registered address is The Apex, 2 Sheriffs Orchard, Coventry, CV1 3PP, United Kingdom.
81. **Voxbone SA**, whose registered company number is BE 0478.928.788 and registered address is Avenue Louise 489, 1050 Brussels, Belgium.

⁸ See footnote 3 above.

82. **Wavecrest (UK) Ltd**, whose registered company number is 3042254 and registered address is 1st Floor Bishopsgate Court, 4-12 Norton Folgate, London, E1 6DB, United Kingdom.

Part 2

For each of the persons identified below, the SMP designation holds with respect to the registered company identified 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, in so far as they operate on the relevant market.

1. **EE Ltd**, whose registered company number is 2382161 and registered address is Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9BW, United Kingdom.
2. **Hutchison 3G UK Ltd**, whose registered company number is 3885486 and registered address is Star House, 20 Grenfill Road, Maidenhead, Berkshire, SL6 1EH, United Kingdom.
3. **Telefonica UK Ltd**, whose registered company number is 1743099 and registered address is 260 Bath Road, Slough, Berkshire, SL1 4DX, United Kingdom.
4. **Vodafone Ltd**, whose registered company number is 1471587 and registered address is Vodafone House, The Connection, Newbury, Berkshire, RG12 2FN, United Kingdom.

SCHEDULE 2

The SMP Conditions

Part 1: Definitions and interpretation

1. In this Schedule -

“Call” means a voice call which originates on a public electronic communications network (whether fixed or mobile) and is terminated to a mobile number within a number range allocated to the dominant provider by Ofcom, for which the dominant provider is able to set the call termination charge;

“call termination charge” means either a fixed-to-mobile call termination charge or a mobile-to-mobile call termination charge.

“controlling percentage” means-

(i) in relation to the Second Relevant Period, the amount of change in the Consumer Prices Index in the period of 12 months ending on the 31 December immediately before the beginning of that relevant period, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the beginning of that period; reduced by 3.4%; and

(ii) in relation to the Third Relevant Period, the amount of change in the Consumer Prices Index in the period of 12 months ending on the 31 December immediately before the beginning of that relevant period, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the beginning of that period; reduced by 4.3%.

“Consumer Prices Index” means the index of consumer prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this Notification) from time to time in respect of all items;

“fixed-to-mobile call” means a Call originating on a fixed public electronic communications network;

“fixed-to-mobile call termination charge” means the charge made by the dominant provider to terminate a fixed-to-mobile call;

“mobile number” means a UK telephone number that is: (a) adopted or otherwise used to identify apparatus designed or adapted to be capable of being used while in motion; and, (b) designated under the National Telephone Numbering Plan (NTNP) for use in connection with Mobile Services (as that term is defined in the NTNP);

“mobile-to-mobile call” means a Call originating on a mobile public electronic communications network of another mobile communications provider;

“mobile-to-mobile call termination charge” means the charge made by the dominant provider to terminate a mobile-to-mobile call;

“network access” means the provision of interconnection to the public electronic communications network provided by the dominant provider, together with any services, facilities or arrangements which are necessary for the provision of electronic communications services over that interconnection;

“Ofcom” means the Office of Communications;

“pence per minute” means the sum in pence charged for a minute of a Call;

“relevant period” means any of the following -

(i) the period of twelve months beginning on 1 April 2015 and ending on 31 March 2016 (the “First Relevant Period”);

(ii) the period of twelve months beginning on 1 April 2016 and ending on 31 March 2017 (the “Second Relevant Period”);

(iii) the period of twelve months beginning on 1 April 2017 and ending on 31 March 2018 (the “Third Relevant Period”);

and

“third party” means a person operating a public electronic communications network.

2. For the purpose of interpreting the conditions in Part 2 of this Schedule -

(a) Except in so far as the context otherwise requires, words or expressions shall have the meaning ascribed to them in paragraph 1 of this Part above and otherwise any word or expression shall have the same meaning as it has in the Communications Act 2003;

(b) the Interpretation Act 1978 shall apply as if each of the SMP conditions were an Act of Parliament (c. 30); and

(c) headings and titles shall be disregarded.

Part 2: SMP conditions

Condition M1 – Requirement to provide network access on reasonable request

M1.1 Where a third party reasonably requests in writing network access, the dominant provider shall provide that network access.

M1.2 The dominant provider shall provide network access in accordance with condition M1.1 as soon as reasonably practicable and on fair and reasonable terms and conditions and on such terms and conditions as Ofcom may from time to time direct.

M1.3 In relation to charges, the dominant provider shall comply with condition M3 below.

M1.4 The dominant provider shall comply with any direction Ofcom may make from time to time under this condition.

M1.5 This condition M1 applies to the persons named in Part 1 and Part 2 of Schedule 1. The term “dominant provider” means each of those persons.

Condition M2 – Requirement not to unduly discriminate

M2.1 The dominant provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with network access.

M2.2 This condition M2 applies to the persons named in Part 2 of Schedule 1. The term “dominant provider” means each of those persons.

Condition M3 – Call termination charges

M3.1 The dominant provider shall ensure that for each Call on any day, during any relevant period, the call termination charge (which shall be expressed in pence per minute) does not exceed the charge ceiling.

M3.2 The charge ceiling is⁹ -

- (a) for any Call on a day in the First Relevant Period, 0.545 pence per minute;
- (b) for any Call on a day in the Second Relevant Period and Third Relevant Period-
 - a. an amount equal to -
 - i. the charge ceiling, expressed in pence per minute (rounded to three decimal places), in the relevant period preceding the relevant period in which the Call was made; multiplied by,
 - ii. the sum of 100 per cent and the controlling percentage for the relevant period in which the Call was made, and is
 - b. expressed as being pence per minute and rounded to three decimal places.

M3.3 Without prejudice to Ofcom’s statutory information gathering powers, the dominant provider shall provide to Ofcom in writing any information reasonably required by Ofcom for the dominant provider to demonstrate compliance with this condition at any time upon reasonable notice.

M3.4 The dominant provider shall comply with any direction Ofcom may make from time to time under this condition.

M3.5 This condition M3 applies to the persons named in Part 1 and Part 2 of Schedule 1. The term “dominant provider” means each of those persons.

Condition M4 – Requirement to publish charges

M4.1 Unless Ofcom otherwise consents in writing, the dominant provider shall publish its call termination charges, and do so separately from any of its other interconnection charges (including other termination charges).

M4.2 The dominant provider shall publish the call termination charges which will apply after 1 April 2015, before that date.

M4.3 The dominant provider shall publish any proposed amendment to the call termination charges (a “change notice”) not less than twenty eight days before the date that any such amendment comes into effect.

M4.4 Publication shall be effected by -

- (a) sending a copy of such information or any appropriate parts of it to any person who may reasonably request such a copy; and
- (b) placing a readily accessible copy of such information on a relevant and publicly accessible website operated or controlled by the dominant provider, or on behalf of the dominant provider.

⁹ These are the base case values expressed in nominal terms (using our estimate of inflation) for the range on which we are consulting.

M4.5 The dominant provider shall ensure that a change notice includes -

- (a) a description of the proposed new charge for the network access in question;
- (b) where applicable, the current charge for the network access in question; and
- (c) the date that the amendment(s) come into effect.

M4.6 This condition M4 applies to the persons named in Part 1 and Part 2 of Schedule 1. The term “dominant provider” means each of those persons.