

Modification of SMP conditions contained in Ofcom's Notification under section 48(1) and 79(4) of the Communications Act 2003 of 15th March 2011

BACKGROUND –

- 1.1 In a Notification under section 48(1) and 79(4) of the Communications Act 2003 made on 15 March 2011 (the “Notification”) the Office of Communications (“Ofcom”) identified for the purposes of making a market power determination, in accordance with section 79 of the Act, thirty-two separate markets.
- 1.2 These are the markets for call termination services which are provided by each of those thirty-two persons named in Column C of the tables contained in Part 1 and Part 2 of Schedule 1 to the Notification to another communications provider, for the termination of voice calls to UK mobile numbers which that person has been allocated by Ofcom -
 - 1.2.1 in the area served by that person (as identified in Column B of Part 1 and Part 2 of Schedule 1); and
 - 1.2.2 for which that person is able to set the call termination charge,
(each a “relevant market”).
- 1.3 Ofcom determined, in accordance with section 79 of the Act, that each of the persons named in Column C of the tables contained in Part 1 and Part 2 of Schedule 1 to the Notification (and in respect of each person 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), had significant market power in relation to the relevant market in which that person operates.
- 1.4 Ofcom set, pursuant to section 45 of the Act, the following SMP conditions -
 - 1.4.1 on each person named in Column C of the table in Part 1 of Schedule 1 (and in respect of each person 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), conditions M1 and M4 set out in Schedule 2 of the Notification; and
 - 1.4.2 on each person named in Column C of the table in Part 2 of Schedule 1 (and in respect of each person 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), conditions M1, M2, M3 and M4 set out in Schedule 2 of the Notification.
- 1.5 The conditions apply, in the case of each person for whom they are set, to that person's relevant market.

- 1.6 Ofcom's reasons for making the decisions above were contained in the explanatory statement accompanying the Notification.
- 1.7 Copies of the Notification and the accompanying explanatory statement were sent to the Secretary of State in accordance with section 50(1)(a) and section 81(1) of the Act and to the European Commission in accordance with sections 50(2) and 81(3) of the Act.
- 1.8 Ofcom has since become aware of a computational error in the cost model it used to determine the level of the charge ceiling. Correcting this error has the effect of increasing the level of the charge ceiling by a small amount.
- 1.9 As a result, Ofcom now considers it necessary to modify the conditions set in the Notification to adjust the charge ceiling in SMP Condition M3 accordingly. The modification is made under the powers set out in section 45(10)(e) and section 48(1) of the Act.
- 1.10 This modification affects only the persons for whom condition M3 was set. These are the persons noted at paragraph 1.4.2 above.
- 1.10 Ofcom considers that this slight modification meets the tests contained in section 47(2) of the Act in that it is objectively justifiable, non discriminatory, proportionate and transparent.
- 1.11 Ofcom considers that the small change made by this modification will not have significant impact on the relevant markets (and other markets for any of the services, facilities, apparatus or directories in relation to which Ofcom have functions) and therefore the process in section 48A of the Act does not apply.
- 1.12 Ofcom is (as required by section 86(4) of the Act) satisfied that there has not been a material change in the markets identified since the condition was set.
- 1.12 Copies of this modification have been sent to each of the persons listed in Schedule 1 to the Notification, to the Secretary of State and to the European Commission.

NOW THEREFORE -

- 1.12 With effect from 30 October 2011, Ofcom modifies SMP Conditions in Schedule 2 to the Notification as follows -
- (a) In Part 1 of Schedule 2 (Definitions and interpretation), paragraph 1, for the definition of "controlling percentage" there shall be substituted -
- "controlling percentage" means, in relation to the Third Relevant Period, the Fourth Relevant Period and the Fifth Relevant Period, the amount of change in the Retail 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 Retail Prices Index as at the beginning of that period; reduced by 36.7 per cent";
- (b) In Part 1 of Schedule 2 (Definitions and interpretation), paragraph 1, for the definition of "relevant period" there shall be substituted –

“relevant period” means any of the following –

- (i) the period from 1 June 2011 to 31 October 2011 (the “First Relevant Period”);
 - (ii) the period from 31 October 2011 to 31 March 2012 (the “Second Relevant Period”);
 - (iii) the period of twelve months beginning on 1 April 2012 and ending on 31 March 2013 (the “Third Relevant Period”);
 - (iv) the period of twelve months beginning on 1 April 2013 and ending on 31 March 2014 (the “Fourth Relevant Period”);
 - (v) the period of twelve months beginning on 1 April 2014 and ending on 31 March 2015 (the “Fifth Relevant Period”); and
- (c) In Condition M3 (Call termination charges), for the paragraph containing Condition M3.4 there shall be substituted –
- “M3.4 The charge ceiling is –
- (a) for any Call on a day in the First Relevant Period, 2.984 pence per minute;
 - (b) for any Call on a day in the Second Relevant Period, 3.015 pence per minute;
 - (c) for any Call on a day in the Third Relevant Period, Fourth Relevant Period or Fifth 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.”

Signed



David Stewart

Competition Policy Director

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

25 October 2011