WHOLESALE MOBILE VOICE CALL TERMINATION

CONSULTATION RESPONSE TO OFCOM

June 2010

1 EXECUTIVE SUMMARY

Colt welcomes Ofcom's review of Mobile Call Termination (MCT) charges.

Colt disagrees with Ofcom's proposal to adopt pure LRIC for the charge control cost modelling.

As a fixed line Communications Provider (CP) Colt is in favour of seeing MCT rates continuing to reduce on a Charge Controlled 'glide path'.

Colt is strongly in favour of an approach which is consistent and predictable. Without stability in regulatory charge control, future investment in spectrum, infrastructure and new products will be diminished.

Colt is therefore in favour of adopting LRIC+ for the charge control model.

2 MARKET DEFINITION AND SMP

Colt agrees with Ofcom's finding that all mobile number range holders have SMP in call termination.

It is appropriate that this finding is 'technology neutral' since SMP derives from the fact that only the range holding network can terminate the call. It is irrelevant whether the call is ported out to another network, whether it terminates on a voice mail system or whether it terminates on a national or international roaming network. Likewise it is also irrelevant whether the technology used is 2G, 3G, VoIP or WiFi.

Colt notes that the introduction of an ACQ central database for ported numbers would mean that SMP can no longer be expressed in terms of the 'range holder' since the SMP for a number will lie with the recipient network which will terminate the call and make the MCT charge.

3 SMP REMEDIES

3.1 Provision of Network Access on Fair and reasonable terms

Colt would agree that a Charge Control on the small technology neutral mobile operators (those other than the four incumbent MNOs) would be too onerous a remedy for SMP. If "Fair and reasonable" terms is the alternative remedy Colt agrees that Ofcom should provide guidelines on what is likely to be considered fair and reasonable (and unfair and unreasonable) in the event of a Complaint or a Dispute.

However, Colt does not agree that 'symmetry' in termination charges is always the answer to the question of whether a new entrant's MCT charges are 'fair and reasonable' – see section 3.3.1

Colt is concerned by the number of disputes that have been referred to Ofcom (not just in the mobile market) where the dispute turns on what is 'fair and reasonable', and where prior guidance could have avoided the dispute.

3.2 Undue Discrimination

Colt agrees with Ofcom's proposals for Undue Discrimination.

3.3 Charge Control

Colt disagrees with Ofcom's proposal to base the Charge Control on pure LRIC (or Long Run Marginal Cost - LRMC).

Colt fully supports a policy of reducing MCT using sound economic analysis. However, for reasons of stability, investment and cost recovery this should be achieved by using a glide path supported by a LRIC+ analysis.

3.3.1 Pure LRIC

Colt is opposed to Ofcom's proposal to use LRIC since the decrease in MCT will be too rapid and will arrive at too low a level in the fourth year. This will create instability which will affect future investment by new entrants in spectrum, infrastructure and new products and services. This would have an adverse effect on Colt and Colt's customers.

Termination Rate Recommendation. Colt notes that the ERG's September 2008 response to the European Commission's consultation on the Termination Rate Recommendation (which proposes the use of pure LRIC) stressed the importance of a "predictable regulatory environment which also supports sustainable investment and innovation in the mobile telephony sector". The ERG response also stated that: *"…We believe that there is a strong case for adhering in the short term to established principles of cost calculation. Changes in these principles may also present significant legal risks to those NRAs currently involved in litigation on these matters."* Colt strongly supports the ERG's stance on the importance of stability.

A further important factor recognised by the ERG is that operators should be able to recover their fixed costs, criticising the pure LRIC approach in stating that *"It is less whether* [the pure LRIC approach] *performs well against the cost recovery criterion"*. There is a risk that implementing a cost accounting approach which excludes all fixed and common costs would send a very bad signal to future investment in mobile infrastructures, at a time when such investment is considered to be a critical component in extending network access across all parts of the UK.

For these reasons, Colt considers that Ofcom would be justified in applying a different approach to that set out in the Termination Rate Recommendation, given the prevailing circumstances in the UK, including the comparatively low rates already in existence.

Common Costs. It is appropriate to include a proportion of common costs in the cost model for MCT. Advocates of pure LRIC argue that with an increasing proportion of revenues deriving from data traffic, the common costs attributable to voice are falling. This does not mean that the common costs attributable to voice should be removed, rather, they should remain and diminish in proportion to the relative value of voice in the revenue model.

Waterbed Effect. If the common costs attributable to voice are removed from the cost recovery mechanism they must be recovered from elsewhere. Colt accepts Ofcom's conclusion that the waterbed effect between retail and wholesale pricing is not 100% but it is clear that if MCT is reduced by nearly 90% in year 4, retail prices must increase (or not decrease so fast) to compensate.

New Entrants. Adequate cost recovery is vital for new entrants to the technology neutral mobile market place. Whilst Ofcom is not proposing that the technology neutral providers be charge controlled, their charges must be fair and reasonable. They will inevitably be forced to track the MCT charges downwards. Colt notes that in recent disputes (most recently between O2 and Stour Marine) Ofcom determined that the termination charges made by each party to the other should be reciprocal.

Investment. Failure to recover common costs through MCT could also reduce investment is increasing 3G coverage and in providing HSDPA coverage. Colt notes from Ofcom's 3G Coverage Maps (8 July 2009) that 3G coverage in January 2009 was still poor from all MNOs in the UK. On behalf of its customers, Colt is very keen to see continuing investment in greater 3G coverage in the UK.

3.3.2 LRIC+

As volumes have grown and as investment has been amortised LRIC+ has provided a continuous year on year reduction in termination rates which has been of benefit to consumers and CPs alike.

LRIC+, with a continuing glide path, will provide the consistency and predictability required for justifiable common cost recovery.

Colt is also concerned at the prospect of floods of 'spam' calling to mobile handsets. Spam callers who are outside the UK are not required to take notice of the Telephone Preference Service lists. The higher MCT deriving from the use of LRIC+ will reduce the likelihood of mobile spam calling on cost grounds, and thereby protect UK customers.

Colt therefore favours maintaining the LRIC+ approach in the new charge control period of 2011-2015.

3.4 MCT See-Sawing

'See-sawing' of time-of-day (ToD) and day-of-week (DoW) MCT charges has caused difficulties in retail pricing on fixed networks originating calls for termination on the mobile networks.

'See-sawing' is a means of the MNOs taking advantage of a loophole in the way Target Average Charges (TACs) are verified under the present regulatory scheme.

Colt does not agree that limiting the size and frequency of changes to MCT will completely eliminate the incentive to see-saw rates. Instead it will simply reduce the incentive.

The practice should be ceased by removing time-of-day and day-of-week variations and mandate that a flat charge must be made (option 4). Arguments that variations in ToD and DoW charges are to flatten peaks and fill troughs in usage patterns are clearly disproved by the fact that the practice of see-sawing takes place.