

Notification

Notification under sections 48(2) and 86 of the Communications Act 2003

Proposals for the revocation of SMP services conditions MA6 for the purposes of monitoring price controls in relation to the provision of wholesale mobile call termination provided to other Communications Providers in the United Kingdom by H3G, O2, Orange, T-Mobile and Vodafone

1. OFCOM hereby make in accordance with sections 48(2) and 86(2) of the Act the following proposals to revoke SMP services conditions MA6 set by reference to market power determinations made in relation to those markets in which OFCOM are satisfied there has been no material change since those determinations were made.
2. The proposals contained in this notification are further to the market power determinations made in notifications under section 79 of the Act by OFCOM on 27 March 2007 whereby H3G, O2, Orange, T-Mobile and Vodafone were determined to have significant market power in product markets in effect as a result of those notifications.
3. As a result of, amongst other things, the market power determinations referred to in paragraph 2 above, H3G, O2, Orange, T-Mobile and Vodafone have been subjected to a number of SMP services conditions, including SMP services conditions MA3 and MA4 imposing price controls as set by the Notification.
4. On the 18 December 2007, in the notification at Annex 2 of Ofcom's *Monitoring Compliance with Charge Controls* statement, Ofcom set SMP services conditions MA6 on H3G, O2, Orange, T-Mobile and Vodafone. It is these SMP services conditions Ofcom is now proposing to revoke as set out in the Schedule to this Notification.
5. The effect of revoking SMP services conditions MA6 will be to remove the requirement on H3G, O2, Orange, T-Mobile and Vodafone to carry out various procedures regarding compliance with SMP services conditions MA3 and MA4. These procedures include requirements for those operators to: submit information to Ofcom according to the Charge Control Compliance Standard, to have an independent assurance report prepared on certain compliance information and to publish some of the information and the assurance report.
6. OFCOM consider that the proposals referred to in paragraph 4 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to each of the proposals.
7. In making the proposals set out in this Notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

8. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying explanatory statement by 15 April 2008, in the manner set out in the accompanying explanatory statement.

9. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission and the regulatory authorities of every other Member State in accordance with section 50(3) of the Act.

10. In this Notification:

“Act” means the Communications Act 2003;

“H3G” means Hutchison 3G (UK) Limited (registered company number 3885486) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“the Notification” means the notification referred to in paragraph 2 of this Notification;

“O2” means O2 Limited (registered company number 1743099) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“Orange” means Orange Personal Communications Services Ltd (registered company number 2178917) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“T-Mobile” means T Mobile Limited (registered company number 2382161) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“United Kingdom” has the meaning given to it in the Interpretation Act 1978 (c. 30); and

“Vodafone” means Vodafone Limited (registered company number 1471587) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act).

11. Save for the purposes of paragraph 2 of this Notification and except as otherwise defined in this Notification, any word or expression shall have the same meaning as it has in the Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

12. For the purpose of interpreting this Notification:

(a) headings and titles shall be disregarded; and

(b) the Interpretation Act 1878 (c. 30) shall apply as if this Notification were an Act of Parliament.

13. The Schedule to this Notification shall form part of this Notification.

A handwritten signature in black ink, appearing to read 'Craig Lonie'.

Craig Lonie

DIRECTOR OF COMPETITION FINANCE

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

13 March 2008

SCHEDULE

[Proposed] The following SMP services condition set in relation to H3G, O2, Orange, T-Mobile and Vodafone shall be revoked:

Condition MA6 – Monitoring compliance with Conditions MA3 and MA4

MA6.1 The Dominant Provider shall at all times ensure that its procedures, systems and processes for recording and analysing terminated traffic volumes covered by Conditions MA3 and MA4 are compliant with the Charge Control Compliance Standard.

MA6.2 The Dominant Provider shall prepare and maintain documentation (the “Statement of Methodology”) containing a detailed and complete description of the procedures, systems and processes for preparing the information contained in the Published Information Summary and the Ofcom Data Submission in accordance with the Charge Control Compliance Standard.

MA6.3 The Dominant Provider shall, in respect of each Relevant Year:

- (a) maintain the Statement of Methodology in accordance with this Condition and the Charge Control Compliance Standard;
- (b) prepare the Published Information Summary in accordance with this Condition, the Charge Control Compliance Standard and the Statement of Methodology;
- (c) prepare a Directors’ Statement of Responsibilities in accordance with the Charge Control Compliance Standard;
- (d) except in the first Relevant Year, procure an Independent Assurance Report with an Assurance Conclusion stating whether the Published Information Summary demonstrates compliance with the Charge Control Compliance Standard and the Statement of Methodology in all material respects; and
- (e) prepare the Ofcom Data Submission in accordance with this Condition, the Charge Control Compliance Standard and the Statement of Methodology.

The outputs of steps (a) to (d) above shall be contained in one document, termed the Charge Control Compliance Report.

MA6.4 The Dominant Provider shall:

- (a) deliver to Ofcom within 90 days of the end of each Relevant Year copies of the Published Information Summary, Ofcom Data Submission, Statement of Methodology, Independent Assurance Report (except for the first Relevant Year) and Directors’ Statement of Responsibilities;
- (b) publish the Published Information Summary, Statement of Methodology, Independent Assurance Report (except for the first Relevant Year) and Directors’ Statement of Responsibilities within 120 days of the end of each Relevant Year, together

with any written statement made by Ofcom and provided to the Dominant Provider commenting on the Published Information Summary and Statement of Methodology.

MA6.5 The Dominant Provider shall

(a) ensure that a bi-partite written engagement contract is made with the Independent Accountant including provisions acknowledging the acceptance by the Independent Accountant that, in forming and/or expressing any Assurance Conclusion pursuant to this Condition, the Independent Accountant shall owe a duty of care to Ofcom (but not directly or indirectly to any other third party) in respect of its assurance work, Independent Assurance Report and Assurance Conclusion, consistent with the Institute of Chartered Accountants in England and Wales guidance, as further described in the Charge Control Compliance Standard.

(b) use its best endeavours to obtain from the Independent Accountant any further explanation and clarification of any Assurance Conclusion and any other information in respect of the matters which are the subject of that Assurance Conclusion as Ofcom shall require.

MA6.6 The Independent Accountant that the Dominant Provider from time to time appoints shall at all times be satisfactory to Ofcom having regard to such reasonable matters as Ofcom considers appropriate. The Dominant Provider shall notify Ofcom in writing of the Independent Accountant appointed to secure compliance with this Condition before the Independent Accountant carries out any work for that purpose. The Dominant Provider shall notify Ofcom of any proposed change of Independent Accountant at least 28 days before effect is given to that change.

MA6.7 In the event that the Independent Accountant is in the opinion of Ofcom unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Independent Accountant that is at all times satisfactory to Ofcom having regard to such reasonable matters as Ofcom considers appropriate. The Dominant Provider shall ensure that the Alternative Independent Accountant:

(a) carries out such on going duties as are required to secure compliance with this Condition;

(b) carries out work or further work, in addition to that performed by the former Independent Accountant, in relation to such matters connected to compliance with this Condition as are of concern to Ofcom; and/or

(c) re-performs work previously performed by the former Independent Accountant in relation to such matters connected to compliance with this Condition as are of concern to Ofcom.

MA6.8 Where Ofcom have reasonable grounds to believe that any or all of the Independent Assurance Report, Published Information Summary, Ofcom Data Submission or Statement of Methodology are deficient, the Dominant Provider shall, where directed by Ofcom:

(a) amend and restate the relevant document in order to remedy the deficiencies identified by Ofcom;

(b) secure in accordance with any relevant direction of Ofcom under this Condition the expression of an Assurance Conclusion on the restated documents;

(c) deliver to Ofcom the restated documents and corresponding Independent Assurance Report; and

(e) publish the restated documents and corresponding Independent Assurance Report as directed by Ofcom.

MA6.9 The Dominant Provider shall preserve records sufficient to provide an adequate explanation of each Published Information Summary and Ofcom Data Submission for a period of six years from the date on which such submissions are delivered to Ofcom.

MA6.10 Publication of information in Condition MA6.4 shall be effected by

(a) placing a copy of the relevant information on any relevant website operated or controlled by the Dominant Provider; and

(b) sending a copy of the relevant information to any person at that person's written request.

MA6.11 In this Condition:

"Alternative Independent Accountant" means any Independent Accountant not for the time being appointed as the Dominant Provider's Independent Accountant;

"Assurance Conclusion" means the reasonable assurance conclusion section of an Independent Assurance Report as set out in International Standard on Assurance Engagements 3000;

"Charge Control Compliance Report" means the single document containing the Directors' Statement of Responsibilities, the Independent Assurance Report, the Published Information Summary and the Statement of Methodology;

"Charge Control Compliance Standard" means the document issued from time to time by Ofcom which describes:

(a) the minimum requirements of the Dominant Provider's procedures, systems and processes for recording and analysing terminated traffic volumes covered by Conditions MA3 and MA4

(b) the minimum requirements for the documentation describing the procedures, systems and processes used for preparing the information contained in the Published Information Summary and the Ofcom Data Submission;

(c) the minimum requirements for the preparation of the Published Information Summaries and Ofcom Data Submissions

(d) the Directors' Statement of Responsibilities

(e) the minimum requirements for the Independent Assurance Report

(f) any other relevant requirements, including definitions of terms and proforma documents for the Published Information Summaries, Ofcom Data Submissions and Independent Assurance Reports;

“Directors’ Statement of Responsibilities” means a written statement, approved by the Dominant Provider’s main Board and signed on their behalf by an Executive Director who sits on the main Board, that states the responsibilities of the directors who sit on the main Board in relation to ensuring compliance with condition MA3 and MA4 and preparing the Published Information Summary and Statement of Methodology in accordance with this Condition;

“Independent Accountant” means any Independent Accountant eligible for appointment as the Dominant Provider’s auditor under the Companies Act 1985 as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act) for the time being appointed by the Dominant Provider;

“Independent Assurance Report” means a report providing a reasonable assurance conclusion made by an Independent Accountant in accordance with International Standard on Assurance Engagements 3000;

“Ofcom Data Submission” means a submission containing, in addition to the information in the Published Information Summary, prices and volumes by Charging Period on a monthly basis in the form described in the Charge Control Compliance Standard;

“Published Information Summary” means a submission demonstrating compliance in respect of Condition MA3.1 and MA4.1 in the form described in the Charge Control Compliance Standard;

“Statement of Methodology” has the meaning described in Condition MA 6.2.