



# Wholesale Mobile Voice Call Termination charge controls – request for consent Statement

**Explanatory  
Statement**

**Publication date: 30 March 2006**



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## Section 1

# Summary

- 1.1 On completion of the market review concerning wholesale mobile voice call termination services, the Office of Communications (“Ofcom”) issued a statement (the “Statement”) on 1 June 2004 that included a notification published pursuant to sections 48(1) and 79(4) of the Communications Act 2003 (the “Act”).
- 1.2 In that notification, Ofcom identified wholesale voice call termination provided by each of the mobile network operators (“MNOs”) as the relevant services markets, made market power determinations to the effect that each MNO has significant market power (“SMP”) in the respective relevant market, and set SMP conditions accordingly.
- 1.3 These SMP conditions included a requirement for each of O2, Orange, T-Mobile and Vodafone to meet controls for the charges set for 2G voice call termination for two periods (namely, 1 September 2004 to 31 March 2005 and 1 April 2005 to 31 March 2006 (the “Charge Controls”).
- 1.4 These controls include two traffic-specific sets of controls with which each MNO must comply – one each for termination of fixed to mobile calls and off-net mobile to mobile calls. However, in setting the Charge Controls, Ofcom recognised that some MNOs may, for operational reasons, find themselves unable to comply with such traffic-specific requirements. Ofcom therefore included a provision in the Charge Controls that in such circumstances and with consent in writing from Ofcom, MNOs could switch from traffic-specific to total volume controls.
- 1.5 Following publication of the Statement, and after consultation, Ofcom gave such consents to O2, Orange, T-Mobile and Vodafone on 1 September 2004; that the MNOs could switch from traffic-specific to total volume controls (the “Consents”). These Consents lapse on 31 March 2006.
- 1.6 Following a proposal to extend the Charge Controls on 2G voice call termination for a further year, Ofcom issued a statement and notification on 16 December 2005 making modifications to the charge control conditions (SMP services conditions MC3, MC4, MD3 and MD4) which extend the Charge Controls, which applied during the period 1 April 2005 to 31 March 2006, for a further year to 31 March 2007.
- 1.7 As a consequence of the December 2005 Statement, O2, Orange, T-Mobile and Vodafone have each formally requested new consents to be given, to allow for a year extension of the Consent (the “New Consents”).

## Consultation

- 1.8 Ofcom’s provisional view was that the New Consents should be given, to apply for an additional year in line with the extended Charge Controls. As part of its duties under section 49 of the Act, Ofcom consulted on the proposed draft New Consents (see *Wholesale Mobile Voice Call Termination charge controls – request for consent* published by Ofcom on 22 February 2006 (“the February 2006 consultation”).
- 1.9 Ofcom received 4 responses to the consultation, from BT, O2, Orange and H3G. None of responses disagreed with Ofcom’s proposed conclusion to grant the New Consent.

## **Summary of conclusions**

- 1.10 Having considered all responses to the consultation, and for the reasons set out below – in particular in Section 3 – Ofcom has concluded that it is appropriate to give the consents proposed in the February 2006 consultation. Consents to O2 and Vodafone are set out at Annex 1 and consents to Orange and T-Mobile are set out at Annex 2.

## Section 2

# Introduction

## Background

### Regulatory Framework

- 2.1 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is five new EU Communications Directives:
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the “Framework Directive”);
  - Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the “Access Directive”);
  - Directive 2002/20/EC on the authorisation of electronic communications networks and services (the “Authorisation Directive”);
  - Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services , (the “Universal Service Directive”) and;
  - Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (the “Privacy Directive”).
- 2.2 The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives which read across all the new directives. Article 8 of the Framework Directive sets out three key policy objectives (see as implemented in section 4 of the Communications Act 2003, the “Act”) which have been taken into account in the preparation of this consultation document; namely promotion of competition, development of the internal market and the promotion of the interests of the citizens of the European Union.
- 2.3 The Access Directive sets out the terms on which providers may access each others' networks and services with a view to providing publicly available electronic communications services.
- 2.4 The Authorisation Directive establishes a new system whereby any person will be generally authorised to provide electronic communications services and/or networks without prior approval. The general authorisation replaces the former licensing regime.
- 2.5 The Universal Service Directive defines a basic set of services that must be provided to end-users.
- 2.6 These four Directives were implemented in the UK on 25 July 2003. This was achieved via the Act. The fifth directive, the Privacy Directive, establishes users' rights with regard to the privacy of their communications. This Directive was adopted slightly later than the other four Directives and was implemented by regulations which came into force on 11 December 2003.

## Market reviews

- 2.7 These new Directives require national regulatory authorities (“NRAs”) such as the Office of Communications (“Ofcom”) and previously the Director General of Telecommunications (referred to in this document as “the Director” or “Of tel”) to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.
- 2.8 Of tel carried out two consultations concerning the market review of wholesale mobile voice call termination. The Director’s proposals were set out in documents published on 15 May 2003 and 19 December 2003, respectively. Ofcom assumed powers under the Act on 29 December 2003 and concluded the market review of wholesale mobile voice call termination with the publication of a statement on 1 June 2004 (the “Statement”).
- 2.9 In that notification, Ofcom identified wholesale voice call termination provided by each of the mobile network operators (“MNOs”) as the relevant services markets, made market power determinations to the effect that each MNO has significant market power (“SMP”) in the respective relevant market, and set SMP conditions accordingly.
- 2.10 These SMP conditions included a requirement for each of O2, Orange, T-Mobile and Vodafone to meet controls for the charges set for 2G voice call termination for two periods (namely, 1 September 2004 to 31 March 2005 and 1 April 2005 to 31 March 2006 (the “Charge Controls”).
- 2.11 However, in setting the Charge Controls, Ofcom recognised that some MNOs may, for operational reasons, find themselves unable to comply with such traffic-specific requirements. Ofcom therefore included a provision in the Charge Controls that in such circumstances and with consent in writing from Ofcom, MNOs could switch from traffic-specific to total volume controls.
- 2.12 Following publication of the Statement, and after consultation, Ofcom gave such consents to O2, Orange, T-Mobile and Vodafone on 1 September 2004; that the MNOs could switch from traffic-specific to total volume controls (the “Consents”). These Consents lapse on 31 March 2006.
- 2.13 Subsequently, Ofcom issued a consultation on a proposal to modify the Charge Controls on 7 June 2005, with publication of a Statement of this extension on 16 December 2005 (the “December 2005 Statement”) .
- 2.14 The December 2005 Statement included:
- (a) that the charge controls should apply until 31 March 2007 and operate over three periods: in each of the first period (1 September 2004 to 31 March 2005), the second period (1 April 2005 to 31 March 2006) and the third period (1 April 2006 to 31 March 2007) the target average charge should be set as a specified figure.
- 2.15 As a consequence of the December 2005 Statement, O2, Orange, T-Mobile and Vodafone each formally requested new consents to be given, to allow for a year extension of the Consent (the “New Consents”).

## **Consultation processes**

- 2.16 Section 49(4) of the Act requires that, before giving the New Consents, Ofcom must publish notifications:
- i) stating that it is proposing to give the consents set out therein;
  - ii) setting out the effects of those consents;
  - iii) giving its reasons for making those proposals; and
  - iv) specifying the period within which representations may be made to Ofcom about its proposals.
- 2.17 As required by sections 48(3) and 49(5) of the Act, that period must not be less than one month after the day of the publication of the notification.
- 2.18 Ofcom set a period for consultation for the proposals set out in the February 2006 consultation of one month, ending on 23 March 2006.

## **Ofcom's decision on the request for consent**

- 2.19 As set out in more detail in Section 3 of this document, Ofcom has concluded that New Consents should be given to the four MNOs.

## **Outline of this document**

- 2.20 For full details of the review on wholesale mobile voice call termination completed by Ofcom, including details of the charge control, this document should be read in conjunction with the Statement.
- 2.21 This consultation document is structured as follows:
- Section 3 discusses the effects of granting consents, responds to issues raised during the consultation and sets out Ofcom's conclusions, including the legal tests it considers would be met in giving the consents;
  - Annex 1 contains the New Consents for O2 and Vodafone under section 49(4) of the Act;
  - Annex 2 contains the New Consents for Orange and T-Mobile under section 49(4) of the Act;



## Section 3

# Ofcom's decision on the requests for consent

## Background

- 3.1 As discussed in Section 2, each of the four MNOs has requested Ofcom to give New Consents, for them not to be required to derive weightings and volumes of minutes on a traffic-specific (i.e. separate fixed-to-mobile and mobile-to-mobile) basis, when meeting mobile call termination charge controls – for the charge control period 31 March 2006 to 31 March 2007.
- 3.2 Ofcom consulted on the possibility of granting (or not) New Consents in the February 2006 consultation. In this consultation, referred to in section 2 above, Ofcom set out the basis on which it would consider the requests for New Consent and the legal tests relevant to the giving of consents. This Section sets out the initial arguments advanced by the MNOs and sets out Ofcom's final decision.
- 3.3 Ofcom received 4 responses to the consultation, from BT, O2, Orange and H3G. The responses from O2 and Orange were in support of the proposed consent. BT understood the need for Ofcom to grant this request, but expressed concern that MNOs were having to seek "waivers from regulation". H3G did not disagree with Ofcom's proposed conclusion. BT, O2 and H3G all made reference to the separate issue of MNOs' compliance with charge controls where an MNO offers a blended charge. As those respondents noted, the proposal to grant consent, as set out in the February 2006 consultation, has no bearing on the separate matter of compliance where a regulated MNO offers a blended charge based on distinct underlying 2G and 3G charges.

## Consideration of requests for consent

- 3.4 In considering whether to give New Consents to switch from traffic-specific volumes to total traffic volumes, for the charge control period 31 March 2006 to 31 March 2007, Ofcom has taken the following factors into consideration:
- a) the ability of the MNO to meet the Charge Control without consent being granted;
  - b) the effect granting consent would have on the Charge Control itself; and
  - c) the alternatives to granting consent.

## Ability of MNOs to meet the charge control requirements without consent being granted

### Orange

- 3.5 Orange's submission in response to the Oftel notification and explanatory statement of 19th December 2003 (the "December consultation") advised that

“It is not practically possible for Orange to comply with both charge control conditions, as it does not separately record mobile voice termination services by reference to the originating network.”

- 3.6 In response, Ofcom included in the provision in the relevant conditions that MNOs are not required to derive volumes from the sum of minutes of fixed-to-mobile and mobile-to-mobile calls if Ofcom has otherwise provided consent in writing.

- 3.7 In correspondence to Ofcom dated 25 June 2004, Orange advised that whilst it should be technically possible to identify originating networks, Orange’s billing system is not designed to record and analyse such details. Further, Orange advised that it has

“...no plans, or indeed motivation, to introduce differential termination charges dependant on the technical nature of the originating network.”

- 3.8 Orange confirmed to Ofcom in correspondence dated 15 February 2006 that there has been no change in its position.

### T-Mobile

- 3.9 Whilst Orange was the only MNO to raise this issue in response to the December consultation, T-Mobile did discuss the ability to meet two separate controls in paragraphs 8.11 and 8.12 of its response to the Oftel consultation of 15 May 2003 , advising Oftel that:

“..T-Mobile is not able to differentiate between mobile-to-mobile and fixed-to-mobile traffic and would therefore charge the same price for both and would use the aggregate to satisfy the price control.

“T-Mobile would not be able to satisfy the [charge control] condition if consent was not given for this...it might be preferable in T-Mobile’s case to amalgamate these 2 conditions as the position is not likely to change over the term of the charge control.”

- 3.10 In correspondence to Ofcom dated 12 January 2006, T-Mobile reiterated that it is unable to determine separately the number of Fixed-to-Mobile and Mobile-to-Mobile minutes that it terminates.

### Vodafone

- 3.11 Following publication of the December 2005 Statement, Vodafone raised the question of consent to move from traffic-specific volumes to total traffic volumes in order to meet the charge control in correspondence dated 5 January 2006.

- 3.12 In subsequently requesting consent on 8 February 2006, Vodafone explained that

“Vodafone is not able to accurately identify the ultimate source of traffic terminating on its network to a level sufficient for billing purposes”

### O2

- 3.13 Advice from O2 dated 10 February 2006 confirmed that it was unable to comply with the letter of the charge control.

- 3.14 In previous advice dated 2 July 2004, O2 had informed Ofcom that its interconnect billing systems are unable to know the proportion of calls that come from BT but originate from mobile networks. O2 added that to change systems so that such a distinction would be made would

“..represent... investment which we [O2] believe would be significant, and, we [O2] believe wholly disproportionate.”

- 3.15 O2 added that regardless, as O2 is required to derive prices based on traffic received during the previous period, such an investment would confer no benefits.

### **Effect granting consent has on the charge control**

- 3.16 As noted above and in the February 2006 consultation, the basis on which the four MNOs request consents is that they are unable to distinguish between calls originating from fixed networks and mobile networks. As such, the four MNOs are unable to determine separately the volumes of fixed-to-mobile and mobile-to-mobile minutes terminated on their respective networks in order to meet the current requirements of the charge controls. Giving New Consents to switch from network-specific to total call volumes would enable the MNOs to meet the extension to the charge controls due to take effect from 1 April 2006 to 31 March 2007 (as set out in the December 2005 Statement).
- 3.17 Giving New Consents to move to a total volumes control would maintain the two separate charge controls (fixed-to-mobile and mobile-to-mobile controls), but using total call volumes for the purposes of compliance, rather than the current requirement to use separate call volumes for fixed-to-mobile and mobile-to-mobile.
- 3.18 On the basis that MNOs are unable to distinguish between calls originating from fixed networks and mobile networks, it follows that MNOs would in practice find being able to deliberately price discriminate between the two groups (fixed networks and mobile networks) difficult, and impossible to monitor.
- 3.19 In any event, granting consents would not blend the two separate controls (resulting in the potential for MNOs to bias one over the other). MNOs could not, for example, raise fixed-to-mobile calls in order to lower mobile-to-mobile calls, as this would breach the fixed-to mobile charge control. Such behaviour might also be likely to breach the requirements of the no undue discrimination condition (Conditions MC2 and MD2 set out in the notification attached to the Statement).

### **Alternatives to granting consent**

- 3.20 The alternative to giving the New Consents might be for Ofcom to require that MNOs adapt their billing systems to be able to meet the existing requirements of the charge controls.
- 3.21 A requirement to adapt systems in order to distinguish between mobile and fixed calls would require time to implement and it is unrealistic to believe that such systems could be adapted sufficiently quickly to produce sufficiently reliable data to allow MNOs to comply with the 2006/07 period of the charge control.
- 3.22 Even if the four MNOs were able to adapt systems to produce reliable data distinguishing between fixed- and mobile-originated calls in time to be able to meet the third period of the charge control without consents, Ofcom would first need to be

satisfied that the costs incurred in meeting such a mandate would be outweighed by any benefits incurred as a result of the obligation taking effect.

- 3.23 With consent granted, the four MNOs are still required to meet the two separate charge controls, and other conditions such as transparency obligations .
- 3.24 Further, in its correspondence with Ofcom dated 25 June 2004, Orange argued that

“...Given that [Orange’s] charging practice, which is consistent with the obligation of no undue discrimination, does not discriminate between fixed and mobile originating networks, the concerns motivating Ofcom to impose two separate controls are not relevant. Consequently it would be disproportionate to require Orange to expend resource and money to re-configure its billing system for zero benefit.”

- 3.25 Ofcom does not believe that systems could be in place in time for the four MNOs to be able to meet the third period of the Charge Control. Even if they were, Ofcom does not believe that an obligation to force the four MNOs to introduce such systems (that in some cases may also be redundant after the period of the charge control) is likely to satisfy the tests set out in the Act, in particular regarding proportionality.

### **Legal tests**

- 3.26 In Section 4 of the December 2005 Statement, Ofcom explained why it considered that the imposition of Charge Controls in the form of obligations under SMP conditions have met all relevant legal tests under the Act. The section below sets out Ofcom’s reasons why it considers that the relevant legal tests under the Act are met to give New Consents as set out in this document. However, given the nature of the New Consents and that they raise issues similar to those considered in the December 2005 Statement, Ofcom suggests that this section is read in the light of relevant considerations and Ofcom’s conclusions as set out in Section 4 of the December 2005 Statement.

### **Relevant tests**

- 3.27 Ofcom is required to be satisfied that the granting of consents is in accordance with the requirements of section 49(2) of the Act. In addition, Ofcom has to consider and act in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
- 3.28 Furthermore, as noted in paragraph 2.17 above, Ofcom has to publish certain notifications under section 49(4) of the Act addressing matters set out therein.

### **Sections 49(4) – publication of notifications**

- 3.29 Section 49(4) of the Act requires that before giving a consent, OFCOM must publish a notification:
- (a) stating that there is a proposal to give, modify or withdraw it;
  - (b) identifying the person whose proposal it is;
  - (c) setting out the direction, approval or consent to which the proposal relates;

- (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
  - (e) giving reasons for the making of the proposal; and
  - (f) specifying the period within which representations may be made about the proposal to the person whose proposal it is.
- 3.30 Ofcom's published notifications of its proposals to give the New Consents to the four MNOs in two separate notifications published at Annex 5 in respect of O2 and Vodafone, and at Annex 6 in respect of Orange and T-Mobile, to the February 2006 consultation. The Schedules to those respective notifications set out the draft Consents. The effect of, and reasons for making, those proposals were set out in Section 3 of the February 2006 consultation, in particular at paragraphs 3.1 to 3.23.
- 3.31 Following the February 2006 consultation, Ofcom is now publishing the final notifications to grant New Consents to the four MNOs, in this document. The New consents to be given to the four MNOs are at Annex 1, in respect of O2 and Vodafone, and Annex 2, in respect of Orange and T-Mobile, to this document. The Schedules to those respective notifications set out the New Consents.

### **Section 3 and 4 – general duties & the six Community requirements**

- 3.32 Section 3 of the Act sets out the general duties of Ofcom in carrying out its functions, in particular that it furthers the interests of citizens in relation to communications and further the interests of consumers in relevant markets.
- 3.33 Section 4 of the Act requires that Ofcom acts in accordance with the six Community requirements concerning: the promotion of competition; the development of the European internal market; the promotion of the interests of all EU citizens; non-discrimination; promoting efficiency and sustainable competition and the maximum benefit for consumers; and facilitating service interoperability and securing freedom of choice for consumers.
- 3.34 Ofcom's view is that these duties are met, in that the New Consents reflect the practicality of the MNOs being able to comply with the Charge Controls – and Ofcom addressed these duties in respect to modifying the Charge Controls in the December 2005 Statement.

### **Section 49(2) – general tests**

- 3.35 Section 49(2) of the Act requires that Ofcom must not give a Consent unless it satisfied that to do so is:
  - (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (c) proportionate to what it is intended to achieve; and
  - (d) in relation to what it is intended to achieve, transparent.

- 3.36 Ofcom's view is that its decision to grant the New Consents meets the requirements of section 49(2) of the Act.
- 3.37 Furthermore, Ofcom believes that the New Consents are objectively justifiable and proportionate in that they meet the requests of the MNOs to be able to comply with existing charge controls without imposing any additional requirements. As Ofcom has decided to give each of the four MNOs Consents with similar effects, the New Consents do not discriminate between the MNOs in their application. The New Consents are transparent in that it is clear on the face of them (as set out in the notifications at Annexes 1 and 2, respectively) what is required from the MNOs in terms of complying with the Charge Controls. Moreover, the reasons for the requests and Ofcom's view of these were set out in paragraphs 3.4 -3.24 above..

## Conclusions

- 3.38 For the reasons set out in this document, Ofcom has concluded that New Consents should be granted to each of the four MNOs (O2, Orange, T-Mobile and Vodafone) to calculate its compliance with the charge control on fixed-to-mobile termination (Conditions MC3 and MD3) on the basis of total traffic volume weights in place of fixed-to-mobile traffic volume weights, and similarly, with regards to the charge control on mobile-to-mobile termination (Conditions MC4 and MD4), to calculate compliance on the basis of total traffic volume weights in place of mobile-to-mobile traffic volume weights
- 3.39 Ofcom is satisfied that, in the granting of the New Consents, it has met all relevant tests

## Annex 1

# Vodafone and O2

**Consents to Vodafone Limited and O2 (UK) Limited under section 49 of the Act and paragraphs MC3.2, MC3.3, MC3.5(b) and MC3.6 of Conditions MC3, on the one hand, and paragraphs MC4.2, MC4.3, MC4.5(b) and MC4.6 of Condition MC4, on the other hand, both Conditions of which are set out in Schedule 3 to the notification published by the Office of Communications (“Ofcom”) on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, as modified by Ofcom in Schedule 1 to the notification published on 16 December 2005 pursuant to sections 48(1) and 86 of the Act**

### WHEREAS:

- (A) as a result of a market review carried out by the Director, he proposed on 15 May 2003 and on 19 December 2003 in accordance with section 80 of the Act that each of O2 and Vodafone has significant market power in wholesale voice call termination provided by each of them via their own respective mobile networks;
- (B) the Director was able to exercise powers under the Act pursuant to section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 until Ofcom assumed those powers on 29 December 2003;
- (C) Ofcom having considered every representation duly made, and thereafter on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act by way of publication of a notification identified the relevant services markets, made market power determinations to the effect referred to in recital (A) above and set certain SMP conditions on O2 and Vodafone to take effect on 1 June 2004, unless otherwise is stated in Schedule 3 thereto, such as Conditions MC3 and MC4 concerning charge controls of Fixed-to-Mobile and Mobile-to-Mobile Interconnection Charges, respectively;
- (D) on 7 June 2005, Ofcom proposed to modify Conditions MC3 and MC4 by way of publication of a notification pursuant to section 48 (2) of the Act to extend these conditions to apply for a further third year from 1 April 2006 to 31 March 2007;
- (E) Ofcom having considered every representation duly made, and thereafter on 16 December 2005 pursuant to section 48 (1) of the Act by way of publication of a further notification modified Conditions MC3 and MC4 in the manner and form proposed by Ofcom;
- (F) these Consents concern matters to which Conditions MC3 and MC4, as modified by the Amending Notification, relate and, in particular, the manner in which the Average Interconnection Charge and the Average Revenue shall be weighted;
- (G) on 8 February 2006 and 10 February 2006, Vodafone and O2, respectively, requested such consents under Conditions MC3 and MC4 to cover the extended charge control period, that is to say for the purposes of the Third Relevant Year;
- (H) for the reasons set out in the explanatory statement accompanying these Consents, Ofcom are satisfied that, in accordance with section 49(2) of the Act, these Consents are:

- (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (iii) proportionate to what they are intended to achieve; and
  - (iv) in relation to what it is intended to achieve, transparent;
- (I) for the reasons set out in the explanatory statement accompanying these Consents, 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;
- (J) on 22 February 2006 Ofcom published a notification of the proposed Consents in accordance with section 49(4) of the Act;
- (K) Ofcom have considered every representation about the proposed Consents duly made to them; and

**NOW, therefore, pursuant to paragraphs MC3.2, MC3.3, MC3.5(b) and MC3.6 of Condition MC3, on the one hand, and paragraphs MC4.2, MC4.3, MC4.5(b) and MC4.6 of Condition MC4, on the other hand, both Conditions of which are set out in Schedule 3 to the Notification, as modified by the Amending Notification, Ofcom give the following Consents:**

*Condition MC3 – Average Interconnection Charge*

1. For the purposes of complying with their respective obligations under Condition MC3 in the Third Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC3.2 and MC3.3 of that Condition that, the average of their respective Fixed-to-Mobile Interconnection Charges during the Relevant Year in question shall be weighted according to:
  - (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
  - (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the Base Year and, where any Fixed-to-Mobile Interconnection Charges are in force during a part only of the Relevant Year (commencing or ending at a date in the course of the Relevant Year), in the corresponding part of the Base Year, and the term "Average Interconnection Charge" shall, where references are made in Condition MC3 to the meaning given to it in paragraphs MC3.2 and/or MC3.3, be interpreted and read accordingly.

*Condition MC3 – Average Revenue*

2. For the purposes of complying with their respective obligations under Condition MC3 in the Third Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC3.5(b) and MC3.6 of that Condition that the average of their respective Fixed-to-Mobile Interconnection Charges during the First Relevant Year shall be weighted according to:



- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the First Relevant Year and, where any Fixed-to-Mobile Interconnection Charges are in force during a part only of the First Relevant Year (commencing or ending at a date in the course of the First Relevant Year), in that part of the First Relevant Year, and the term "Average Revenue" shall, where references are made in Condition MC3 to the meaning given to it in paragraphs MC3.5 and/or MC3.6, be interpreted and read accordingly.

*Condition MC4 – Average Interconnection Charge*

3. For the purposes of complying with their respective obligations under Condition MC4 in the Third Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC4.2 and MC4.3 of that Condition that the average of their respective Mobile-to-Mobile Interconnection Charges during the Relevant Year in question shall be weighted according to:

- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the Base Year and, where any Mobile-to-Mobile Interconnection Charges are in force during a part only of the Relevant Year (commencing or ending at a date in the course of the Relevant Year), in the corresponding part of the Base Year, and the term "Average Interconnection Charge" shall, where references are made in Condition MC4 to the meaning given to it in paragraphs MC4.2 and/or MC4.3, be interpreted and read accordingly.

*Condition MC4 – Average Revenue*

4. For the purposes of complying with their respective obligations under Condition MC4 in the Third Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC4.5(b) and MC4.6 of that Condition that the average of their respective Mobile-to-Mobile Interconnection Charges during the First Relevant Year shall be weighted according to:

- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the First Relevant Year and, where any Mobile-to-Mobile Interconnection Charges are in force during a part only of the First Relevant Year (commencing or ending at a date in the course of the First Relevant Year), in that part of the First Relevant Year, and the term "Average Revenue" shall, where references are made in Condition MC4 to the meaning given to it in paragraphs MC4.5 and/or MC4.6, be interpreted and read accordingly.

*Interpretation*

5. For the purpose of interpreting these Consents (including their recitals above), the following definitions shall apply:
- (a) “**Act**” means the Communications Act 2003 (c. 21);
  - (b) “**Amending Notification**” means the notification referred to in recital (E) of these Consents above;
  - (c) “**Director**” means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
  - (d) “**Notification**” means the notification referred to in recital (C) of these Consents above;
  - (e) “**O2**” means O2 (UK) Limited, whose registered company number is 1743099, and any O2 (UK) Limited subsidiary or holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
  - (f) “**Ofcom**” means the Office of Communications; and
  - (g) “**Vodafone**” means Vodafone Limited, whose registered company number is 1471587, and any Vodafone Limited subsidiary or holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989.
6. Except insofar as the context otherwise requires, words or expressions used in these Consents (including their recitals above) shall have the meaning ascribed to them in paragraph 5 above and otherwise any word or expression shall have the same meaning as it has in the Notification or, if the context so permits, in Schedule 3 thereto, as modified by the Amending Notification, as appropriate, and otherwise any word or expression shall have the same meaning as it has in the Act.
7. For the purpose of interpreting these Consents:
- (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 (c. 30) shall apply as if this direction were an Act of Parliament.

*Effective date*

8. Each and every Consent set out above shall take effect on the day it is published.

**Neil Buckley**

**Competition Policy Director**

**30 March 2006**

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

## Annex 2

# Orange & T-Mobile

**Consents to Orange Personal Communications Services Limited and T-Mobile (UK) Limited under section 49 of the Act and paragraphs MD3.2, MD3.3, MD3.5(b) and MD3.6 of Conditions MD3, on the one hand, and paragraphs MD4.2, MD4.3, MD4.5(b) and MD4.6 of Condition MD4, on the other hand, both Conditions of which are set out in Schedule 4 to the notification published by the Office of Communications (“Ofcom”) on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, as modified by Ofcom in Schedule 1 to the notification published on 16 December 2005 pursuant to sections 48(1) and 86 of the Act**

### WHEREAS:

- (A) as a result of a market review carried out by the Director, he proposed on 15 May 2003 and on 19 December 2003 in accordance with section 80 of the Act that each of Orange and T-Mobile has significant market power in wholesale voice call termination provided by each of them via their own respective mobile networks;
- (B) the Director was able to exercise powers under the Act pursuant to section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 until Ofcom assumed those powers on 29 December 2003;
- (C) Ofcom having considered every representation duly made, and thereafter on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act by way of publication of a notification identified the relevant services markets, made market power determinations to the effect referred to in recital (A) above and set certain SMP conditions on Orange and T-Mobile to take effect on 1 June 2004, unless otherwise is stated in Schedule 4 thereto, such as Conditions MD3 and MD4 concerning charge controls of Fixed-to-Mobile and Mobile-to-Mobile Interconnection Charges, respectively;
- (D) on 7 June 2005, Ofcom proposed to modify Conditions MD3 and MD4 by way of publication of a notification pursuant to section 48(2) of the Act to extend these conditions to apply for a further third year from 1 April 2006 to 31 March 2007;
- (E) Ofcom having considered every representation duly made, and thereafter on 16 December 2005 pursuant to section 48(1) of the Act by way of publication of a further notification modified Conditions MD3 and MD4 in the manner and form proposed by Ofcom;
- (F) these Consents concern matters to which Conditions MD3 and MD4, as modified by the Amending Notification, relate and, in particular, the manner in which the Average Interconnection Charge and the Average Revenue shall be weighted;
- (G) on 18 and 12 January 2006, Orange and T-Mobile, respectively, requested such consents under Conditions MD3 and MD4 to cover the extended charge control period, that is to say for the purposes of the Third Relevant Year;
- (H) for the reasons set out in the explanatory statement accompanying these Consents, Ofcom are satisfied that, in accordance with section 49(2) of the Act, these Consents are:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what they are intended to achieve; and
  - in relation to what it is intended to achieve, transparent;
- (L) for the reasons set out in the explanatory statement accompanying these Consents, 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;
- (M) on 22 February 2006, Ofcom published a notification of the proposed Consents in accordance with section 49(4) of the Act;
- (N) Ofcom have considered every representation about the proposed Consents duly made to them; and

**NOW, therefore, pursuant to paragraphs MD3.2, MD3.3, MD3.5(b) and MD3.6 of Condition MD3, on the one hand, and paragraphs MD4.2, MD4.3, MD4.5(b) and MD4.6 of Condition MD4, on the other hand, both Conditions of which are set out in Schedule 4 to the Notification, as modified by the Amending Notification, Ofcom give the following Consents:**

*Condition MD3 – Average Interconnection Charge*

9. For the purposes of complying with their respective obligations under Condition MD3 in the Third Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD3.2 and MD3.3 of that Condition that the average of their respective Fixed-to-Mobile Interconnection Charges during the Relevant Year in question shall be weighted according to:
- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
  - (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the Base Year and, where any Fixed-to-Mobile Interconnection Charges are in force during a part only of the Relevant Year (commencing or ending at a date in the course of the Relevant Year), in the corresponding part of the Base Year, and the term "Average Interconnection Charge" shall, where references are made in Condition MD3 to the meaning given to it in paragraphs MD3.2 and/or MD3.3, be interpreted and read accordingly.

*Condition MD3 – Average Revenue*

10. For the purposes of complying with their respective obligations under Condition MD3 in the Third Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD3.5(b) and MD3.6 of that Condition that the average of their respective Fixed-to-Mobile Interconnection Charges during the First Relevant Year shall be weighted according to:

- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the First Relevant Year and, where any Fixed-to-Mobile Interconnection Charges are in force during a part only of the First Relevant Year (commencing or ending at a date in the course of the First Relevant Year), in that part of the First Relevant Year, and the term "Average Revenue" shall, where references are made in Condition MD3 to the meaning given to it in paragraphs MD3.5 and/or MD3.6, be interpreted and read accordingly.

*Condition MD4 – Average Interconnection Charge*

11. For the purposes of complying with their respective obligations under Condition MD4 in the Third Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD4.2 and MD4.3 of that Condition that the average of their respective Mobile-to-Mobile Interconnection Charges during the Relevant Year in question shall be weighted according to:

- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the Base Year and, where any Mobile-to-Mobile Interconnection Charges are in force during a part only of the Relevant Year (commencing or ending at a date in the course of the Relevant Year), in the corresponding part of the Base Year, and the term "Average Interconnection Charge" shall, where references are made in Condition MD4 to the meaning given to it in paragraphs MD4.2 and/or MD4.3, be interpreted and read accordingly.

*Condition MD4 – Average Revenue*

12. For the purposes of complying with their respective obligations under Condition MD4 in the Third Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD4.5(b) and MD4.6 of that Condition that the average of their respective Mobile-to-Mobile Interconnection Charges during the First Relevant Year shall be weighted according to:

- (a) the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls; and
- (b) the volumes by month or part-month of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls,

in the First Relevant Year and, where any Mobile-to-Mobile Interconnection Charges are in force during a part only of the First Relevant Year (commencing or ending at a date in the course of the First Relevant Year), in that part of the First Relevant Year, and the term "Average Revenue" shall, where references are made in Condition MD4 to the meaning given to it in paragraphs MD4.5 and/or MD4.6, be interpreted and read accordingly.

*Interpretation*

13. For the purpose of interpreting these Consents (including their recitals above), the following definitions shall apply:
- (a) “**Act**” means the Communications Act 2003 (c. 21);
  - (b) “**Amending Notification**” means the notification referred to in recital (E) of these Consents above;
  - (c) “**Director**” means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
  - (d) “**Notification**” means the notification referred to in recital (C) of these Consents above;
  - (e) “**Ofcom**” means the Office of Communications;
  - (f) “**Orange**” Orange Personal Communications Services Limited, whose registered company number is 2178917, and any Orange Personal Communications Services Limited subsidiary or holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989; and
  - (g) “**T-Mobile**” means T-Mobile (UK) Limited, whose registered company number is 2382161, and any T-Mobile (UK) Limited subsidiary or holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989.
14. Except insofar as the context otherwise requires, words or expressions used in these Consents (including their recitals above) shall have the meaning ascribed to them in paragraph 5 above and otherwise any word or expression shall have the same meaning as it has in the Notification or, if the context so permits, in Schedule 4 thereto, as modified by the Amending Notification, as appropriate and otherwise any word or expression shall have the same meaning as it has in the Act..
15. For the purpose of interpreting these Consents:
- (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 (c. 30) shall apply as if this direction were an Act of Parliament.

*Effective date*

16. Each and every Consent set out above shall take effect on the day it is published.

**Neil Buckley**

**Competition Policy Director**

**30 March 2006**

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