



# Wholesale Mobile Voice Call Termination charge controls - request for consent

Explanatory statement and consultation

**Consultation**

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## Summary

- S.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”).
- S.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.
- S.3 These SMP conditions include 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).
- S.4 These requirements include two traffic-specific sets of controls with which each MNO has to comply – one each for termination of fixed-to-mobile calls and off-net mobile-to-mobile calls. However, in setting these two 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 these requirements that in such circumstances and with consent in writing from Ofcom, MNOs could switch from traffic-specific to total volume controls.
- S.5 Following publication of the Statement, O2, Orange, T-Mobile and Vodafone have each formally requested such consents<sup>1</sup> for both periods of the control.
- S.6 Ofcom’s provisional view is that such consents should be granted. As part of its duties under section 49 of the Act, Ofcom is now consulting on the proposed draft consents.
- S.7 In order for the relevant SMP conditions to reflect the proposed consents, Ofcom is also proposing modifications to these SMP conditions under section 48(2) of the Act.
- S.8 Ofcom seeks views from interested parties on the proposal to grant consent and on the proposed modifications to the relevant SMP conditions by no later than **9 August 2004**.

<sup>1</sup> Requests were received for a switch to total volume controls for both periods from Vodafone on 11 June, Orange on 22 June, O2 on 25 June and T-Mobile on 25 June 2004.

## Section 1

# Introduction

## Background

### Regulatory framework

- 1.1 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”).
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 The Universal Service Directive defines a basic set of services that must be provided to end-users.
- 1.6 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

- 1.7 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.
- 1.8 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<sup>2</sup>.
- 1.9 This Statement included the following conclusions:
- a. That Ofcom has identified, amongst others, the markets set out below and has concluded that each MNO has SMP in the market for the provision of wholesale voice call termination on its respective individual network(s):
    - wholesale voice call termination provided by O2 (such termination provided via O2’s 2G and 3G mobile network);
    - wholesale voice call termination provided by Orange (such termination provided via Orange’s 2G and 3G mobile network);
    - wholesale voice call termination provided by T-Mobile (such termination provided via T-Mobile’s 2G and 3G mobile network); and
    - wholesale voice call termination provided by Vodafone (such termination provided via Vodafone’s 2G and 3G mobile network).
  - b. That in relation to 2G voice termination, Vodafone, O2, Orange and T-Mobile (the “four MNOs”) should be subject to a charge control, to last until 2006.

## Charge Control requirements

- 1.10 Full details of the charge control can be found in Chapter 6 of the Statement, but in summary Ofcom concluded that:
- a. the charge controls should apply until 31 March 2006 and operate over two periods: in both the first period (1 September 2004 to 31 March 2005) and the second and final period (1 April 2005 to 31 March 2006) the target average charge should be set as a specified figure<sup>3</sup>;
  - b. there should be two separate sets of controls – one each for termination of fixed-to-mobile calls and off-net mobile-to-mobile calls;

<sup>2</sup> “Wholesale mobile voice call termination” <http://www.ofcom.org.uk/consultations/past/wmvct/>

<sup>3</sup> subject to changes in time of day weights for the final period target average charge (see paragraphs 6.36 – 6.45 of the Statement)

- c. the weights in each charge control should be based on the profile and volumes of minutes of the relevant traffic experienced by each MNO during the previous year;
- d. call minutes to ported-in mobile numbers should be excluded from the weights and therefore from the controls; and
- e. since the efficient charge levels for the combined 900/1800MHz and the 1800MHz operators are different, the controls on these two types of operators should be set at different levels.

1.11 These charge controls have been imposed on the four MNOs in the form of obligations under certain SMP services conditions, which are set out in Schedules 3 and 4 to the notification published pursuant to sections 48(1) and 79(4) of the Act (see notification at Annex A of the Statement). The relevant SMP services conditions in this context are Conditions MC3 and MC4, in relation to O2 and Vodafone, and Conditions MD3 and MD4, in relation to Orange and T-Mobile.

### **Request for consent**

1.12 In response to proposals to impose charge controls, Ofcom was advised by Orange that it may not be able to comply with two separate sets of controls described in 1.10(b) above (this is discussed in paragraphs 6.33 to 6.34 of the Statement).

1.13 In paragraph 6.35 of the Statement, Ofcom concluded that:

*“... where an MNO was unable to meet the two separate controls, consent for compliance with a charge control to change from traffic-specific to total traffic volumes would be expected to be given for the period requested where an MNO is unable to identify the origin of the calls it terminates on its network.”*

1.14 Conditions MC3, MC4, MD3 and MD4 of the notification referred to in 1.11 above, include provisions to this effect, whereby the four MNOs are not required to derive the weighting of profile and volumes from the sum of minutes of fixed-to-mobile and mobile-to-mobile calls if Ofcom has otherwise provided consent in writing.

1.15 In written requests to Ofcom dated 11 June 2004, 22 June 2004, 25 June 2004 and 25 June 2004 from Vodafone, Orange, O2 and T-Mobile respectively, the four MNOs have formally requested such consents.

### **Consultation processes**

1.16 This consultation considers requests for consents from the four MNOs, in complying with the charge control, to switch from traffic-specific volumes to total traffic volumes.

1.17 The consultation also considers proposed changes to the SMP conditions setting the charge controls, in line with a granting of consent.

1.18 Sections 48(2) and 49(4) of the Act requires that, before modifying the SMP conditions and giving the consents, Ofcom must publish notifications:

- i. stating that it is proposing to modify the SMP conditions specified therein and proposing to give the consents set out therein;
- ii. setting out the effects of those conditions and 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.

1.19 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. The period of consultation for the proposals set out in this document therefore ends on 9 August 2004. Details of this consultation process can be found in chapter 3. of this document.

### Outline of this document

1.20 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<sup>4</sup>.

1.21 This consultation document is structured as follows:

- Chapter 2 discusses the effects of granting consents and sets out Ofcom's provisional conclusions and proposals, including the legal tests it considers would be met in making the modifications to the SMP conditions and in giving the consents;
- Chapter 3. sets out consultations details, including the process for interested parties to response to this document;
- Annex A contains a notification of proposals for the modification of the SMP services conditions under section 48(2) of the Act;
- Annex B contains a notification of the draft consents for O2 and Vodafone under section 49(4) of the Act;
- Annex C contains a notification of the draft consents for Orange and T-Mobile under section 49(4) of the Act;
- Annex D contains Ofcom's consultation principles;
- Annex E contains a responses cover sheet; and
- Annex F contains consultation questions.

<sup>4</sup> Wholesale mobile voice call termination" 01 June 2004  
<http://www.ofcom.org.uk/consultations/past/wmvct/>

## Chapter 2

# Proposals

## Background

- 2.1 As discussed in Chapter 1, each of the four MNOs has requested consents to not 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.
- 2.2 Granting such consents requires Ofcom to consult both on the granting (or not) of the requests, and, the requisite modification to the SMP conditions imposing charge controls themselves needed to implement the consents, should they be granted.
- 2.3 This Chapter first discusses the arguments for and against granting consents, followed by the modifications to SMP conditions required if consents are to be granted. Thereafter, this Chapter considers the legal tests to be met by Ofcom in granting consents and in modifying the SMP conditions.

## Consideration of requests for consent

- 2.4 In considering whether to grant consent to switch from traffic-specific volumes to total traffic volumes, for each period of the charge control, Ofcom has taken a provisional view on the following:
  - 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

- 2.5 Orange's submission in response to the Oftel notification and explanatory statement of 19th December 2003<sup>5</sup> (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."*

- 2.6 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.

<sup>5</sup> Wholesale mobile voice call termination: Proposals for the identification and analysis of markets, determinations of market power and setting of SMP conditions. Explanatory statement and notification, 19 December 2003  
[http://www.ofcom.org.uk/consultations/past/mobile\\_call\\_termination/mct\\_consultation/?a=87101](http://www.ofcom.org.uk/consultations/past/mobile_call_termination/mct_consultation/?a=87101)



- 2.7 In correspondence to Ofcom dated 25 June 2004, Orange advises 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 advises that it has

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

#### *T-Mobile*

- 2.8 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<sup>6</sup>, 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."*

- 2.9 In advice to Ofcom of 25 June 2004, T-Mobile states that it is unable to determine separately the number of Fixed-to-Mobile and Mobile-to-Mobile minutes that it terminates. Ofcom has considered confidential information discussing this issue.

#### *Vodafone*

- 2.10 Following publication of the Statement, Vodafone was the first to formally request consent to move from traffic-specific volumes to total traffic volumes in order to meet the charge control, issuing a letter to Ofcom on 11 June 2004.

- 2.11 In requesting consent, Vodafone explains that it does not have mechanisms in place

*"..to be able to bill operators for calls that terminate on the Vodafone network but transit another operator..."*

- 2.12 Vodafone uses this as the basis for requesting consent and Ofcom has considered confidential information discussing this issue.

- 2.13 Vodafone advises that it does not have reliable data to be able to meet the requirements of the two separate controls for the first period and might not be able to meet the requirements of the two separate controls for the second period.

- 2.14 Ofcom has also considered confidential information further to the concerns regarding the absence of reliable data to ensure compliance with two separate controls.

#### *O2*

- 2.15 Advice from O2 dated 25 June 2004 confirmed that it seeks consent for both periods of the charge control.

<sup>6</sup> Review of mobile wholesale voice call termination markets – EU market review, 15 May 2003  
[http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/ctm/ctm0503.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/ctm/ctm0503.pdf)

- 2.16 In advice dated 2 July 2004, O2 informs Ofcom that its interconnect billing systems are unable to know the proportion of calls that come from BT but originate from mobile networks. O2 adds 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.”*

- 2.17 O2 adds 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**

- 2.18 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. Granting consents to switch from network-specific to total call volumes would enable the MNOs to meet the charge controls due to take effect from 1 September 2004 to 31 March 2006 (as set out in Chapter 6 of the Statement).
- 2.19 Granting 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.
- 2.20 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.
- 2.21 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).
- 2.22 Furthermore, in this context it is relevant to note that Ofcom has imposed certain transparency obligations placed on the four MNOs (Conditions MC5 & MC6 and MD5 & MD6 set out in the notification attached to the Statement) which require that they issue Ofcom with details of access contracts and termination charges.

### **Alternatives to granting consent**

- 2.23 The alternative to granting consent might be for Ofcom to require that MNOs adapt their billing systems to be able to meet the existing requirements of the charge controls.
- 2.24 A requirement to adapt systems in order to distinguish between mobile and fixed calls would only allow MNOs to comply with the 2005/06 period of the charge control, and only then if the systems were producing sufficiently reliable data several months in advance of the second period of the charge control.

- 2.25 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 second 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.
- 2.26 With consent granted, the four MNOs are still required to meet the two separate charge controls, and other conditions – such as transparency obligations – are in place to help ensure this.
- 2.27 Further, in its correspondence with Ofcom dated 25 June 2004, Orange argues 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.”*
- 2.28 Vodafone provides confidential information concerning this issue and highlights further problems that may exist in ensuring full compliance with the controls where consent is not granted.
- 2.29 Ofcom does not believe that systems could be in place in time for the four MNOs to be able to meet the second 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 Communications Act 2003, in particular regarding proportionality.

### **Amendment to relevant SMP conditions**

- 2.30 In granting consents, Ofcom considers it necessary to modify SMP conditions concerning the charge control obligation (relevant SMP Conditions being MC3, MC4, MD3 and MD4, as discussed in paragraph 1.11 above). In particular, Ofcom has noted that the relevant conditions of the notification have been drafted in a way which may suggest that Ofcom may give the above consent only with respect to ‘the volumes by month or part-month’ (Part (b)) and not for ‘the profile by Charging Period’ (Part (a)). However, if consents are to be granted, Ofcom’s intention is that it should be granted for the use of total traffic volume weights in both Parts (a) and (b). If an MNO is unable to comply with the charge controls due to an inability to differentiate between fixed-to-mobile and mobile-to-mobile traffic volumes, it is unlikely that granting consent for Part (b) only, without granting consent for Part (a), would mean the MNO is any more capable of satisfying compliance. For this reason Ofcom is consulting on modifications to the relevant SMP conditions which clarify this point and enables Ofcom to grant consents for the use of total traffic volume weights in place of traffic-specific weights in both Part (a) and Part (b) as intended.
- 2.31 Annex A sets out the proposed modification to the existing SMP conditions by way of publication of a notification of proposals under section 48(2) of the Act.

### **Legal tests**

- 2.32 In Chapter 5 of the 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 in modifying the SMP conditions and in granting the consents as proposed in this document. However, given the nature of the proposals and that they raise issues similar to those considered in the Statement, Ofcom suggests that this section is read in the light of relevant considerations and Ofcom's conclusions as set out in Chapter 5 of the Statement.

## Relevant tests

- 2.33 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 respect of modifying the SMP conditions, Ofcom has to be satisfied that the requirements in sections 47(2) and 86(4) of the Act have been satisfied. In addition, both in the case of granting consents and of modifying the SMP conditions, 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.
- 2.34 Furthermore, as noted in paragraph 1.18 of Chapter 1 of this consultation document, Ofcom has to publish certain notifications under sections 48(2) and 49(4) of the Act addressing matters set out therein.

## Sections 48(2) and 49(4) – publication of notifications

- 2.35 Section 48(2) of the Act requires that before modifying an SMP condition, OFCOM must publish a notification:
- a. stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;*
  - b. setting out the effect of those conditions, modifications or revocations;*
  - c. giving their reasons for making the proposal; and*
  - d. specifying the period within which representations may be made to OFCOM about their proposal.*
- 2.36 Similarly, 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.*

- 2.37 The notification of Ofcom's proposals for modifications of SMP conditions under section 48(2) of the Act is set out at Annex A to this document. The SMP conditions proposed to be modified are specified in the Schedule to that notification. The effect of, and reasons for making, those proposals are set out in this Chapter, in particular at paragraph 2.30.
- 2.38 Ofcom's proposals to give the consents to the four MNOs discussed above are set out in two separate notifications published at Annex B in respect of O2 and Vodafone, and at Annex C in respect of Orange and T-Mobile, to this document. The Schedules to those respective notifications set out the draft Consents. The effect of, and reasons for making, those proposals are set out in this Chapter 2 above, in particular at paragraphs 2.1 to 2.22.
- 2.39 The period within which representations may be made to Ofcom about above-mentioned proposals, and the procedures for making such representations, can be found in Chapter 3 of this document.

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

- 2.40 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.
- 2.41 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.
- 2.42 As explained in this Chapter, and which is clear from the proposed modifications of the SMP conditions as specified in the notification at Annex A, these modifications are merely clarificatory and the broad nature of the problem that they were intended to address was addressed at the time Ofcom set the charge controls in the Statement. Therefore, for reasons set out in Chapter 5 of the Statement (in particular, paragraph 5.161), Ofcom in proposing the said modifications has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

### **Sections 47(2) and 49(2) – general tests**

- 2.43 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.*

- 2.44 Section 47(2) of the Act sets out a similarly worded test in respect of modifying SMP conditions.
- 2.45 Ofcom's provisional view is that its proposals to modify the SMP conditions and to grant consents meet the requirements of sections 47(2) and 49(2) of the Act. In respect of the modifications to the SMP conditions, Ofcom considers for reasons set out in paragraph 2.42 above that its reasoning in Chapter 5 of the Statement applies also in this regard.
- 2.46 Furthermore, in respect of the proposed draft Consents, Ofcom believes that they 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 proposes to give each of the four MNOs Consents with similar effects, the draft Consents do not discriminate between the MNOs in their application. The draft Consents are transparent in that it is clear on the face of them (as set out in the notifications at Annexes B and C, 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 as set out in paragraphs 2.4-2.29 of this Chapter 2 above.

## **Section 86 – no material change in the markets concerned**

- 2.47 Section 86(2) of the Act requires that modifications of SMP conditions cannot be made except in a case falling within subsection (3) or subsection (4). Subsection (4) states that

*(4) The second case is where Ofcom are satisfied that there has not –*

- a. in the case of an unmodified condition, since the condition was set; or*
- b. in any other case, since the condition was last modified,*

*been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.*

- 2.48 Given the very short passage of time since 1 June 2004 (when the Statement was published) and the stable nature of the relevant markets<sup>7</sup>, Ofcom considers that there has been no material change in those markets since that date. Ofcom is therefore of the provisional view that it satisfies the above-mentioned requirement of section 86(4) of the Act.

## **Conclusions**

- 2.49 Ofcom has provisionally concluded that 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

<sup>7</sup> Relevant markets in question are:

- (i) wholesale voice call termination provided by O2 (such termination provided via O2's mobile network);
- (ii) wholesale voice call termination provided by Orange (such termination provided via Orange's mobile network);
- (iii) wholesale voice call termination provided by T-Mobile (such termination provided via T-Mobile's mobile network); and
- (iv) wholesale voice call termination provided by Vodafone (such termination provided via Vodafone's mobile network).

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.

- 2.50 Accordingly, Ofcom also proposes to modify the relevant SMP conditions of the four MNOs to enable Ofcom to grant consent for the use of total traffic volume weights in place of traffic-specific weights. The proposed amendments are set out in Annex A to this document. Having modified the conditions, Ofcom proposes to grant the consents requested.
- 2.51 Ofcom is satisfied that, in proposing the granting of consents and amending the relevant SMP conditions, it has met all relevant tests.
- 2.52 Ofcom has notified interested parties of these proposals, and in accordance with section 50 of the Act, copies of the attached notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member state.
- 2.53 Details on how interested parties can respond to these proposals can be found in Chapter 3 of this document.

## Chapter 3

# Consultation details

## Responding to this consultation

### How to respond

- 3.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 9 August 2004**.
- 3.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex E) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- 3.3 Please can you send your response to [Lawrence.knight@ofcom.org.uk](mailto:Lawrence.knight@ofcom.org.uk)
- 3.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation:

Lawrence Knight  
Competition and Markets  
4th floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Fax: 020 7981 3159

- 3.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- 3.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex D. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

### Further information

- 3.7 If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Lawrence Knight on 020 7783 4164.

### Confidentiality

- 3.8 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as possible after the consultation period has ended.
- 3.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any



confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

- 3.10 Please also note that copyright in responses will be assumed to be relinquished unless specifically retained.

### **Next steps**

- 3.11 Following the end of the consultation period, Ofcom intends to publish a further paper confirming the approach it will be taking on this issue.
- 3.12 Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### **Ofcom's consultation processes**

- 3.13 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex D) which it seeks to follow, including on the length of consultations.
- 3.14 This consultation is shorter than Ofcom's standard 10 week period because:
- a. Ofcom's view is that the issue is unlikely to be considered substantial by the majority of interested parties;
  - b. The request for consent should be considered with enough time to be completed ahead of the period of the first charge control; whilst
  - c. The period for consultation meets the requirements laid down by Section 49 of the Communications Act 2003.
- 3.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- 3.16 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

## Annex A

### Notification of proposals under section 48(2) of the Communications Act 2003 (the “Act”)

**Proposals for modifications of SMP services conditions MC3 and MC4 in relation to O2 (UK) Limited and Vodafone Limited, on the one hand, and SMP services conditions MD3 and MD4 in relation to Orange Personal Communications Services Limited and T-Mobile (UK) Limited, on the other hand, which Conditions are set out in Schedules 3 and 4, respectively, to the notification published by the Office of Communications on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act**

1. Ofcom hereby make, in accordance with section 48(2) of the Act, the following proposals for modifications of SMP services conditions MC3 and MC4 in relation to O2 and Vodafone, on the one hand, and SMP services conditions MD3 and MD4 in relation to Orange and T-Mobile, on the other hand, which Conditions are set out in Schedules 3 and 4, respectively, to the notification published by Ofcom on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act (the “**Notification**”) and imposed on O2, Vodafone, Orange and T-Mobile (collectively referred to as the “**MNOs**” hereafter) as a result of the market power determinations made by Ofcom that each of the MNOs has significant market power in wholesale voice call termination provided by each of them via their own respective mobile networks as set out in the Notification.
2. Ofcom are proposing to modify the SMP service conditions referred to in paragraph 1 above in the manner and form set out in the Schedule to this notification.
3. In making the above-mentioned modifications, Ofcom are satisfied that, in accordance with section 86(4)(a) of the Act, there has not, since the SMP service conditions referred to in paragraph 1 above were set, been a material change in the markets identified or otherwise used for the purposes of the above-mentioned market power determinations by reference to which the said SMP service conditions were set.
4. The effect of, and Ofcom’s reasons for making, the proposals referred to in paragraph 2 above are set out in Chapter 2 of the accompanying explanatory statement and consultation document hereto.
5. For the reasons set out in Chapter 2 of the accompanying explanatory statement and consultation document hereto, Ofcom are satisfied that, in accordance with section 47(2) of the Act, each of the proposed modifications is:
  - 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.
6. In making the proposals set out in this notification, for the reasons set out in Chapter 2 of the accompanying explanatory statement and consultation document hereto, 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.

7. Representations may be made to Ofcom about the proposals set out in this notification and the accompanying explanatory statement and consultation document by **9 August 2004**. Representations shall be addressed to the person named in, and otherwise made in the manner set out in, Chapter 3 of the accompanying consultation document hereto.
8. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member State.
9. For the purposes of this notification:
  - i. “**Act**” means the Communications Act 2003 (c. 21);
  - ii. “**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;
  - iii. “**Ofcom**” means the Office of Communications;
  - iv. “**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;
  - v. “**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; and
  - vi. “**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.
10. Except as otherwise defined in this notification, words or expressions used in this notification (excluding the Schedule hereto) shall have the meaning ascribed to them in the Act.

**Philip Rutnam**  
**Partner, Competition & Strategic Resources**

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

8 July 2004

## Schedule

**Proposals for modifications of SMP services conditions MC3 and MC4 in relation to O2 (UK) Limited and Vodafone Limited, on the one hand, and SMP services conditions MD3 and MD4 in relation to Orange Personal Communications Services Limited and T-Mobile (UK) Limited, on the other hand, which Conditions are set out in Schedules 3 and 4, respectively, to the notification published by the Office of Communications on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act**

1. In this Schedule, the term “**Notification**” means the notification published by the Office of Communications (“Ofcom”) on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, which imposed SMP services conditions MC3 and MC4 in relation to O2 (UK) Limited and Vodafone Limited, on the one hand, and SMP services conditions MD3 and MD4 in relation to Orange Personal Communications Services Limited and T-Mobile (UK) Limited, on the other hand, as a result of the market power determinations made by Ofcom that each of them has significant market power in wholesale voice call termination provided by each of them via their own respective mobile networks as set out therein.
2. Paragraph MC3.2 of Condition MC3 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following **new paragraph MC3.2**:  
  
*‘MC3.2 In this Condition, the Average Interconnection Charge means the average of the Fixed-to-Mobile Interconnection Charges during the Relevant Year in question, which shall be weighted according to:*
  - a. *the profile by Charging Period of the Dominant Provider’s minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.’*
3. Paragraph MC3.3 of Condition MC3 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following new paragraph MC3.3:  
  
*‘MC3.3 For the purposes of calculating the Average Interconnection Charge 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), the weighting shall be derived from:*
  - a. *the profile by Charging Period of the Dominant Provider’s minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 corresponding part of the Base Year.'*

- 4. Paragraph MC3.5 of Condition MC3 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following **new paragraph MC3.5**:

*'MC3.5 In paragraph MC3.4:*

- a. the Weights Adjustment Factor means the Average Revenue divided by the Average Interconnection Charge in the First Relevant Year; and*
- b. the Average Revenue means the average of the Fixed-to-Mobile Interconnection Charges during the First Relevant Year, weighted according to:*
  - i. the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls); and*
  - ii. the volumes by month or part-month of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

- 5. Paragraph MC3.6 of Condition MC3 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following new paragraph MC3.6:

*'MC3.6 For the purposes of calculating the Average Revenue 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), the weighting shall be derived from:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from*

*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 that part of the First Relevant Year.'

6. Paragraph MC4.2 of Condition MC4 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following **new paragraph MC4.2**:

*'MC4.2 In this Condition, the Average Interconnection Charge means the average of the Mobile-to-Mobile Interconnection Charges during the Relevant Year in question, which shall be weighted according to:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'

7. Paragraph MC4.3 of Condition MC4 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following new paragraph MC4.3:

*'MC4.3 For the purposes of calculating the Average Interconnection Charge 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), the weighting shall be derived from:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 corresponding part of the Base Year.'

8. Paragraph MC4.5 of Condition MC4 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following new paragraph MC4.5:

*'MC4.5 In paragraph MC4.4:*

- a. *the Weights Adjustment Factor means the Average Revenue divided by the Average Interconnection Charge in the First Relevant Year; and*
- b. *the Average Revenue means the average of the Mobile-to-Mobile Interconnection Charges during the First Relevant Year, weighted according to:*
  - i. *the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls); and*
  - ii. *the volumes by month or part-month of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

9. Paragraph MC4.6 of Condition MC4 as set out in Part 2 of Schedule 3 to the Notification shall be substituted by the following new paragraph MC4.6:

*'MC4.6 For the purposes of calculating the Average Revenue 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), the weighting shall be derived from:*

- a. *the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 that part of the First Relevant Year.'*

10. Paragraph MD3.2 of Condition MD3 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD3.2:

*'MD3.2 In this Condition, the Average Interconnection Charge means the average of the Fixed-to-Mobile Interconnection Charges during the Relevant Year in question, which shall be weighted according to:*

- a. *the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent*

*in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

11. Paragraph MD3.3 of Condition MD3 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD3.3:

*'MD3.3 For the purposes of calculating the Average Interconnection Charge 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), the weighting shall be derived from:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 corresponding part of the Base Year.'*

12. Paragraph MD3.5 of Condition MD3 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD3.5:

*'MD3.5 In paragraph MD3.4:*

- a. the Weights Adjustment Factor means the Average Revenue divided by the Average Interconnection Charge in the First Relevant Year; and*
- b. the Average Revenue means the average of the Fixed-to-Mobile Interconnection Charges during the First Relevant Year, weighted according to:*
  - (i) the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls); and*



- (ii) *the volumes by month or part-month of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

13. Paragraph MD3.6 of Condition MD3 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD3.6:

*'MD3.6 For the purposes of calculating the Average Revenue 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), the weighting shall be derived from:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Fixed-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 that part of the First Relevant Year.'*

14. Paragraph MD4.2 of Condition MD4 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD4.2:

*'MD4.2 In this Condition, the Average Interconnection Charge means the average of the Mobile-to-Mobile Interconnection Charges during the Relevant Year in question, which shall be weighted according to:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

15. Paragraph MD4.3 of Condition MD4 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD4.3:

*'MD4.3 For the purposes of calculating the Average Interconnection Charge 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), the weighting shall be derived from:*

- a. the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 corresponding part of the Base Year.'*

16. Paragraph MD4.5 of Condition MD4 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD4.5:

*'MD4.5 In paragraph MD4.4:*

- a. the Weights Adjustment Factor means the Average Revenue divided by the Average Interconnection Charge in the First Relevant Year; and*
- b. the Average Revenue means the average of the Mobile-to-Mobile Interconnection Charges during the First Relevant Year, weighted according to:*
  - (i) the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from the profile by Charging Period of the Dominant Provider's sum of minutes of Fixed-to-Mobile Calls and Mobile-to-Mobile Calls); and*
  - (ii) the volumes by month or part-month of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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.'*

17. Paragraph MD4.6 of Condition MD4 as set out in Part 2 of Schedule 4 to the Notification shall be substituted by the following new paragraph MD4.6:

*'MD4.6 For the purposes of calculating the Average Revenue 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), the weighting shall be derived from:*

- a. *the profile by Charging Period of the Dominant Provider's minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 minutes of Mobile-to-Mobile Calls (except in so far as Ofcom otherwise consent in writing that the weighting shall be derived from 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 that part of the First Relevant Year.'

## Annex B

# O2 & Vodafone

### Notification of proposals under section 49(4) of the Communications Act 2003 (the “Act”)

**Proposals for giving Consents to Vodafone Limited and O2 (UK) Limited under 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 published by the Office of Communications (“Ofcom”) on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, but as proposed to be modified by Ofcom in the Schedule to the notification at Annex A to the accompanying consultation document hereto**

1. The Office of Communications (“**Ofcom**”) hereby make, in accordance with section 49 of the Communications Act 2003 (c. 21) (the “**Act**”), the following proposals for Consents to be given to Vodafone and O2 under 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 published by Ofcom on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, but as proposed to be modified by Ofcom in the Schedule to the notification at Annex A to the accompanying explanatory statement and consultation document hereto.
2. The draft Consents are set out in the Schedule to this notification.
3. The effect of the draft Consents, and the reasons for making the proposals, are set out in Chapter 2 of the accompanying explanatory statement and consultation document hereto.
4. Representations may be made to Ofcom about the draft Consents by **9 August 2004**. Representations shall be addressed to the person named in, and otherwise made in the manner set out in, Chapter 3 of the accompanying explanatory statement and consultation document hereto.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member State.
6. For the purposes of this notification:
  - a. “**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; and
  - b. “**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.

7. Except as otherwise defined in this notification, words or expressions used shall have the meaning ascribed to them in the Act.

**Philip Rutnam**  
**Partner, Competition & Strategic Resources**

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

8 July 2004

## Schedule

**[Draft] Consents to Vodafone Limited and O2 (UK) Limited under 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 by way of publication of a further notification pursuant to section 48(1) of the Act on [insert date]**

### 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 8 July 2004, Ofcom proposed to modify Conditions MC3 and MC4 by way of publication of a notification pursuant to section 48(2) of the Act to make it clear the extent to which Ofcom have power to give Consents thereunder;
- E. Ofcom having considered every representation duly made, and thereafter on [date to be inserted] 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. at paragraph 6.35 of the explanatory statement accompanying the Notification, Ofcom state that: “In terms of an inability to meet two separate controls, as set out in paragraph 6.24 of the December consultation, consent for compliance with a charge control to change from traffic-specific to total traffic volumes would be expected to be given for the period requested where an MNO is unable to identify the origin of the calls it terminates on its network. This would avoid the potential problem identified by Orange.”;

- H. on 11 and 25 June 2004, Vodafone and O2, respectively, requested such consents under Conditions MC3 and MC4 to cover both respective charge control periods, that is to say for the purposes of the First Relevant Year and the Second Relevant Year;
- I. 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;
- J. 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;
- K. on 8 July 2004 Ofcom published a notification of the proposed Consents in accordance with section 49(4) of the Act;
- L. 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 First Relevant Year and the Second Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC3.2 and MC3.3 of that Condition that, until these consents have been withdrawn, 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 Second Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC3.5(b) and MC3.6 of that Condition that, until these consents have been withdrawn, 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 First Relevant Year and the Second Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC4.2 and MC4.3 of that Condition that, until these consents have been withdrawn, 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 Second Relevant Year, Ofcom consent to Vodafone and O2 under paragraphs MC4.5(b) and MC4.6 of that Condition that, until these consents have been withdrawn, 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.
- 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.

**[SIGNATORY]**

**[TITLE]**

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

**[DATE]**

## Annex C

# Orange & T-Mobile

### Notification of proposals under section 49(4) of the Communications Act 2003 (the “Act”)

**Proposals for giving Consents to Orange Personal Communications Services Limited and T-Mobile (UK) Limited under 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 published by the Office of Communications (“Ofcom”) on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, but as proposed to be modified by Ofcom in the Schedule to the notification at Annex A to the accompanying consultation document hereto**

1. The Office of Communications (“**Ofcom**”) hereby make, in accordance with section 49 of the Communications Act 2003 (c. 21) (the “**Act**”), the following proposals for Consents to be given to Orange and T-Mobile under 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 published by Ofcom on 1 June 2004 pursuant to sections 48(1) and 79(4) of the Act, but as proposed to be modified by Ofcom in the Schedule to the notification at Annex A to the accompanying consultation document hereto.
2. The draft Consents are set out in the Schedule to this notification.
3. The effect of the draft Consents, and the reasons for making the proposals, are set out in Chapter 2 of the accompanying explanatory statement and consultation document hereto.
4. Representations may be made to Ofcom about the draft Consents by **9 August 2004**. Representations shall be addressed to the person named in, and otherwise made in the manner set out in, Chapter 3 of the accompanying explanatory statement and consultation document hereto.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member State.
6. For the purposes of this notification:
  - a. “**Orange**” means 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
  - b. “**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.

7. Except as otherwise defined in this notification, words or expressions used shall have the meaning ascribed to them in the Act.

**Philip Rutnam**  
**Partner, Competition & Strategic Resources**

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

8 July 2004

## Schedule

**[Draft] Consents to Orange Personal Communications Services Limited and T-Mobile (UK) Limited under 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 by way of publication of a further notification pursuant to section 48(1) of the Act on [insert date]**

### 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 8 July 2004, Ofcom proposed to modify Conditions MD3 and MD4 by way of publication of a notification pursuant to section 48(2) of the Act to make it clear the extent to which Ofcom have power to give Consents thereunder;
- E. Ofcom having considered every representation duly made, and thereafter on [date to be inserted] 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. at paragraph 6.35 of the explanatory statement accompanying the Notification, Ofcom state that: "In terms of an inability to meet two separate controls, as set out in paragraph 6.24 of the December consultation, consent for compliance with a charge control to change from traffic-specific to total traffic volumes would be expected to be given for the period requested where an MNO is unable to identify the origin of the calls it terminates on its network. This would avoid the potential problem identified by Orange.";
- H. on 22 and 25 June 2004, Orange and T-Mobile, respectively, requested such consents under Conditions MD3 and MD4 to cover both respective charge control periods, that is to say for the purposes of the First Relevant Year and the Second Relevant Year;

- I. 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;
- J. 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;
- K. on 8 July 2004, Ofcom published a notification of the proposed Consents in accordance with section 49(4) of the Act;
- L. 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*

1. For the purposes of complying with their respective obligations under Condition MD3 in the First Relevant Year and the Second Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD3.2 and MD3.3 of that Condition that, until these consents have been withdrawn, 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*

2. For the purposes of complying with their respective obligations under Condition MD3 in the Second Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD3.5(b) and MD3.6 of that Condition that, until these consents have been withdrawn, 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*

3. For the purposes of complying with their respective obligations under Condition MD4 in the First Relevant Year and the Second Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD4.2 and MD4.3 of that Condition that, until these consents have been withdrawn, 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*

4. For the purposes of complying with their respective obligations under Condition MD4 in the Second Relevant Year, Ofcom consent to Orange and T-Mobile under paragraphs MD4.5(b) and MD4.6 of that Condition that, until these consents have been withdrawn, 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*

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. “**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.
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 4 thereto, as modified by the Amending Notification, as appropriate.
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.



**[SIGNATORY]**

**[TITLE]**

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

**[DATE]**

## Annex D

# Responding to this consultation

There are seven principles which we will follow for each written consultation.

### **Before the consultation**

Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### **During the consultation**

We will be clear about who we are consulting, why, on what questions and for how long.

We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

We will normally allow 10 weeks for responses.

There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### **After the consultation**

We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex E

# Consultation response cover sheet

In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.

We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.

The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.

Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Annex F

# Consultation questions

*a) Do you agree that the granting of consent is necessary and proportionate in order for the four MNOs to meet the charge control set out in the Statement of 1 June 2004?*  
*b) Why?*

*a) In granting consent and amending SMP conditions do you agree that Ofcom has met all relevant tests?*  
*b) Why?*