

Wholesale Mobile Voice Call Termination

**Proposals for the identification and analysis of markets,  
determination of market power and setting of SMP  
conditions**

**Explanatory Statement and Notification**

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## Contents

### Explanatory statement

	Page Number
Summary	4
Chapter 1 Introduction	8
Chapter 2 Market definition	15
Chapter 3 Market power	27
Chapter 4 Detrimental effects arising from SMP in termination Markets	37
Chapter 5 Regulatory remedies	52
Chapter 6 Proposed charge controls	89
Chapter 7 Representations	103
Annex A Market definition	105
Annex B List of respondents and tabulated summary of responses	131
Annex C Notification under Sections 48(2) and 80 of the Communications Act 2003 of proposals for the identification of markets, the making of market power determinations and the setting of SMP services conditions	134
Annex D Alternative solutions	182
Annex E Cost of capital	197
Annex F Explanation of LRIC target charges	216
Annex G Evaluation of surcharge externality	257
Annex H Fair target charge and level of charge control	277
Annex I Charge cap mechanism	286
Annex J Treatment of ported numbers	293
Annex K Ramsey prices	297

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<b>Annex L</b>	<b>Cost benefit analysis</b>	<b>306</b>
<b>Annex M</b>	<b>Glossary</b>	<b>317</b>
<b>Annex N</b>	<b>Ex ante and ex post regulation</b>	<b>321</b>

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## EXPLANATORY STATEMENT

### Summary

#### A new regulatory regime

S.1 A new regulatory framework for electronic communications networks and services entered into force in the United Kingdom ('the UK') on 25 July 2003. The basis for the new framework is five new EU Communications Directives that are designed to create harmonised regulation across Europe. Four of these Directives have been implemented in the UK via the new Communications Act 2003 ('the Act'). The fifth Directive on personal data and privacy was implemented on 11 December 2003 by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003.

S.2 The Act provides for functions, powers and duties to be carried out by Ofcom which include, inter alia, functions, powers and duties flowing from the four EU Communications Directives referred to above. Certain existing functions are also transferred to Ofcom. However, Ofcom are not expected to assume full functions until 29 December 2003. Accordingly, transitional arrangements are in place as described below.

S.3 The new Directives require National Regulatory Authorities ("NRAs"), amongst other things, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. For a limited period, while those reviews are conducted and until the new SMP conditions are imposed, some of the regulatory regime which existed before 25 July 2003 continues in force by virtue of Continuation Notices which have been made by the Director General of Telecommunications (the "Director"). These continuation notices can be found on Oftel's website at [http://www.oftel.gov.uk/publications/eu\\_directives/cont\\_notices/index.htm](http://www.oftel.gov.uk/publications/eu_directives/cont_notices/index.htm).

#### Previous consultation

S.4 On 15 May 2003, Oftel published the consultation document entitled *Review of mobile wholesale call termination markets* (referred to throughout this document as 'the May consultation'). In that document, Oftel explained that this review was looking into competition in the provision of wholesale mobile call termination. The period of consultation closed on 24 July 2002. The Director received 14 responses (13 non-confidential) to the May consultation.

#### The present document

S.5 Having considered responses to the May consultation, the Director is setting out in the present document his draft decisions; the Notification under section 48(2) of the Act specifying his proposals is at Annex C. Those likely to be affected may make representations within the period ending on **6 February 2004**. Arrangements for making representations are explained in Chapter 7.

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S.6 As required by Article 7 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the “Framework Directive”), as implemented by sections 50 and 81 of the Act, the draft decisions are also being sent to the European Commission and to other NRAs as, in the Director’s opinion, the proposals may affect trade between members states.

### **Summary of proposals**

S.7 The Director is proposing to identify the following markets:

- a) wholesale voice call termination provided by ‘3’;
- b) wholesale voice call termination provided by Inquam;
- c) wholesale voice call termination provided by O2;
- d) wholesale voice call termination provided by Orange;
- e) wholesale voice call termination provided by T Mobile; and
- f) wholesale voice call termination provided by Vodafone.

S.8 The Director is also proposing that each public electronic communications provider (‘PECN’) identified in Schedules 1, 2, 3 and 4 to the notification have SMP in the provision in a separate market for voice call termination on its individual network. The key factors informing this view are:

- the existence of the calling party pays (“CPP”) arrangements and mobile users’ low sensitivity to the price of incoming calls;
- each MNO has a 100% share of the relevant market and is thus a monopolist;
- the purchasers of mobile termination lack sufficient countervailing buyer power to constrain charges to the competitive level; and
- termination charges on 2G networks having been persistently and significantly above costs, which demonstrates the ability and incentive of MNOs to set prices above the competitive level.

S.9 As a result of the Director’s provisional conclusions, he has set out proposed SMP conditions to be imposed in Schedules 1, 2, 3 and 4 to the said Notification at Annex C. The proposed SMP conditions to be imposed vary between different sets of PECNs to reflect their different positions as mobile operators.

### **Identification of markets**

S.10 The services under consideration in this explanatory statement are mobile voice call termination services. The Director therefore proposes to identify wholesale call termination provided by each individual mobile network operator as the economic markets in accordance with competition law principles, for the purpose of assessing competition and imposing appropriate ex ante regulatory remedies.

S.11 In the light of information presented to the Director following publication of the May consultation, the market definition in respect of ‘3’ has been brought into line with those applied to the other PECNs.

S.12 The detail of the analysis of these markets, and the approach taken by the Director when identifying these markets, is outlined in Chapter 2 and explained in

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greater detail in Annex A. Chapter 2 also explains the differences between the market definitions identified by the Director and those included in the Commission Recommendation on Relevant Product and Service Markets in accordance with the Framework Directive (2002/21/EC).

### ***Assessment of market power***

S.13 Based on evidence presently available to the Director and having analysed the operation of these markets, and taken due account of the *Commission's Guidelines on market analysis and the assessment of SMP* (the "SMP Guidelines"), the Director proposes that all mobile networks that offer call termination services have significant market power ('SMP') in the provision of such call termination services.

S.14 This view is consistent with the Director's view as set out in the May consultation.

S.15 Full details of the Director's draft decision on SMP and his reasoning are contained in Chapter 3.

### ***Regulatory remedies***

S.16 Given the position of dominance held by all providers of mobile voice call termination services – i.e. their ability, to varying degrees, to behave to an appreciable extent independently of competitors, customers and ultimately consumers – the Director proposes to impose SMP conditions as follows:

S.17 In respect of Vodafone, O2, T-mobile and Orange for their 2G call termination services, to require that they:

- a) provide network access for the purposes of 2G call termination;
- b) do not unduly discriminate in the provision of such access;
- c) supply to the Director copies of any new or amended access contracts;
- d) give prior notification of price changes; and
- e) reduce termination charges in line with proposed charge controls.

S.18 In respect of Inquam, to require that it gives prior notification of price changes.

S.19 In respect of 2G voice call termination services provided by '3', a requirement that it gives prior notification of price changes and supplies to the Director details of call volumes.

S.20 The Director also proposes that there should be no ex-ante regulation of 3G voice call termination services.

S.21 In respect of the charge control proposed by the Director, 2G voice termination provided by Vodafone, O2, Orange and T-Mobile ("the four MNOs") should be subject to an RPI-X charge control, to last until 2006 (details of the proposed control can be found in Chapter 6 and Annex H). This should not be unfamiliar to any network providers as it broadly follows proposals already set out by the Director in his statement *Review of the charge controls on calls to mobiles* in September 2001. It

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also follows the findings and recommendations of the Competition Commission, *Report on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O2, Orange and T-Mobile for terminating calls from fixed and mobile networks*, of January 2003.

S.22 The Director believes that his proposals are consistent with the new regulatory framework and are a proportionate response to all MNOs' SMP in the provision of wholesale mobile voice call termination.

S.23 Full details of these new remedies, including their effect and the reasons for proposing to set these conditions, are contained in Chapters 4, 5 and 6.

### **Final steps**

S.24 When the Director has considered any representations made within the period to **6 February 2004**, including any made by the Commission, he may give effect to the proposals, with or without modifications, by identifying markets, making market power determinations and setting conditions, if the Commission does not exercise its veto powers under Article 7(4) of the Framework Directive. He will do this by publishing a further Notification accompanied by a further and final explanatory statement. The Director will, at that time, also give consideration to the discontinuation of current regulation contained in Continuation Notices as referred to in paragraph S.3 above.

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