

Communication to the European Commission, BEREC and other National Regulatory Authorities (“NRAs”) of intended measures under Article 7(3) of Directive 2002/21/EC

1. The Office of Communications (“**Ofcom**”) has carried out a review of the market for Mobile Call Termination (MCT) in the United Kingdom in accordance with Ofcom’s obligations under Article 16 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (as amended by Directive 2009/140/EC and Regulation 544/2009) (the “**Framework Directive**”).
2. Ofcom has also completed national consultations under Article 6 of the Framework Directive by means of publishing a consultation document on 4 June 2014 entitled “Mobile call termination market review 2015-18”.
3. As a result of its market analysis and consideration of the responses to the consultation, Ofcom has reached provisional conclusions on market definitions that are appropriate to national circumstances, the extent of competition in the relevant markets and whether any undertakings have SMP in them, and appropriate remedies. Ofcom hereby notifies the European Commission, BEREC and the NRAs of other Member States of its findings and intended measures in accordance with Article 7(3) of the Framework Directive.
4. Further information in relation to Ofcom’s proposed decisions are summarised in the attached Notification Form (Annex A). Full details are set out in the Draft Statement attached.
5. Specifically, Ofcom is proposing to conclude as follows:
 - (i) define 72 separate markets, each corresponding to a Mobile Communication Provider (MCP) providing termination services to another communications provider, for the termination of voice calls to UK mobile numbers allocated to that MCP by Ofcom in the area served by that MCP and for which that MCP is able to set the termination rate;
 - (ii) designate each undertaking holding UK mobile numbers as having significant market power (SMP) with respect to the (wholesale) market for terminating calls to such numbers;
 - (iii) regulate the MTRs of all MCPs with SMP by imposing a single maximum cap on MTRs;
 - (iv) impose on all MCPs an obligation to provide network access on fair and reasonable terms and conditions and an obligation of price transparency requiring all MCPs to publish their MTRs (with any proposed change to their MTRs to be made at least 28 days in advance of those changes coming into effect);
 - (v) impose an additional obligation of no undue discrimination only on the four largest MCPs in relation to the provision of network access for MCT;

- (vi) implement an adjustment towards the new LRIC rate in the first year of the control (i.e. 2015/16) with MTRs in the first year mid-way between the current nominal MTR (0.845ppm) and the new forecast nominal LRIC rate, and subsequently an MTR cap at the new LRIC rate from the start of the second year of the three year control (i.e. from 1 April 2016);
- (vii) adopt a transition period between publication of our final Statement and 1 May 2015 for the new MTR levels to take effect.

A handwritten signature in black ink, appearing to read 'Brian Potterill', with a long horizontal flourish extending to the right.

Brian Potterill

Competition Policy Director

6 February 2015

ANNEX A: STANDARD NOTIFICATION FORM**Market definition**

Please state where applicable:

<p>1.1 The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?</p>	<p>Ofcom has identified 72 separate markets, each corresponding to an MCP providing termination services to another communications provider, for the termination of voice calls to UK mobile numbers allocated to that MCP by Ofcom in the area served by that MCP and for which that MCP is able to set the termination rate.</p> <p>These markets are consistent with Market 2 “Wholesale voice call termination on individual mobile networks” of the list of relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC.</p>
<p>1.2 The relevant geographic market</p>	<p>Ofcom has identified the United Kingdom as the relevant geographic market.</p>
<p>1.3 A brief summary of the opinion of the national competition authority where provided.</p>	<p>Not applicable. Ofcom functions as the national competition authority in UK telecommunications matters.</p>
<p>1.4 A brief overview of the results of the public consultation to date on the proposed market definition (e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it)</p>	<p>12 stakeholders provided comments on our proposals on market definition. H3G, BT, a smaller MCP and the Communications Consumer Panel all agreed with Ofcom’s proposed product market definition. EE and Vodafone considered that Ofcom had not taken sufficient account of the constraint from OTT services, nor assessed that constraint in the correct way. Three respondents ([X]) argued that the termination of calls to the UK mobile numbers that they hold should be excluded from regulation because of the nature of the service that they provide. One provider based in the Channel Islands suggested that it should not be subject to regulation by Ofcom; the Communications Commission of the Isle of Man and Manx Telecom Trading Ltd (“Manx Telecom”) also argued that Manx Telecom should be excluded from Ofcom’s review.</p> <p>Further details in relation to stakeholders’ responses on market definition and how we have addressed these comments can be found in Section 3 of the attached Draft Statement.</p>
<p>1.5 Where the relevant market is different from those listed in the Recommendation on relevant</p>	<p>Not applicable. The relevant markets identified are listed in the Recommendation on relevant markets.</p>

<p>markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services¹, and the three main criteria mentioned in recitals 5 to 13 of the Recommendation on relevant markets and Section 2.2 of the accompanying Explanatory Note.²</p>	
---	--

Designation of undertakings with significant market power

Please state where applicable:

<p>2.1 The name(s) of the undertaking(s) designated as having, individually or jointly, significant market power.</p> <p>Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power.</p>	<p>Ofcom has identified the following 72 MCPs as having SMP:</p> <ol style="list-style-type: none"> 1. (AQ) Ltd 2. AQL Wholesale Ltd (previously called Telephony Services Ltd) 3. 08Direct Ltd 4. 24 Seven Communications Ltd 5. Ace Call Ltd 6. Airwave Solutions Ltd 7. Alliance Technologies LLC 8. Andrews & Arnold Ltd 9. Bellingham Telecommunications Ltd 10. British Telecommunications Plc 11. BT OnePhone Ltd 12. CFL Communications Ltd 13. Cheers International Sales Ltd
--	---

¹ OJ C 165, 11.7.2002, p. 6.

² Explanatory Note accompanying the Commission Recommendation of 17.12.2007 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, C (2007)5406 published at: http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/sec_2007_1483_2.pdf

	<ol style="list-style-type: none">14. Citrus Telecommunications Ltd15. Cloud9 Communications Ltd16. Compatel Ltd17. Confabulate Ltd18. Core Communication Services Ltd19. Core Telecom Ltd20. Eclipse Tel Ltd21. Edge Telecom Ltd22. EE Ltd23. Esendex Ltd24. Euro Thai Exchange Process Company Ltd25. Fonix Mobile Ltd (previously called Orca Digital Ltd)26. Flextel Ltd27. Hay Systems Ltd28. Hutchison 3G UK Ltd29. Icron Network Ltd (previously called Vectone Network Ltd)30. Invomo Ltd31. IPV6 Ltd32. IV Response Ltd33. LegendTel LLC34. Limitless Mobile Ltd35. Lycamobile UK Ltd36. Magrathea Telecommunications Ltd37. Mars Communications Ltd38. Moonshado Inc39. Mundio Mobile Ltd40. Nationwide Telephone Assistance Ltd41. Netfuse Telecom Ltd42. Nodemax Ltd43. Oxygen8 Communications UK Ltd44. Premium O Ltd45. Premium Routing GmbH46. Proton Telecom Ltd47. QX Telecom Ltd48. Resilient Plc (previously called Resilient Networks Ltd)49. Rexcom Tech Ltd50. Simwood eSMS Ltd
--	---

	<p>51. Sky Telecom Ltd 52. Sound Advertising Ltd 53. Spacetel UK Ltd 54. Stour Marine Ltd 55. Swiftnet Ltd 56. Synectiv Ltd 57. TalkTalk Communications Ltd 58. Telecom North America Mobile Inc 59. Telecom2 Ltd 60. Teleena UK Ltd 61. Telefonica UK Ltd 62. TG Support Ltd 63. Tismi BV 64. Titanium Ltd 65. Truphone Ltd 66. UK Broadband Ltd 67. Virgin Mobile Telecoms Ltd 68. Vodafone Ltd 69. Voicetec Systems Ltd 70. Vortex Telecom Ltd 71. Voxbone SA 72. Wavecrest (UK) Ltd</p> <p>The following 8 MCPs were identified in 2011 as having SMP, but are no longer considered to have SMP:</p> <ol style="list-style-type: none"> 1. Cable & Wireless UK Ltd (acquired by Vodafone Ltd, listed above) 2. Callax Ltd (no longer provides MCT services) 3. Coralbridge Ltd (no longer holds UK mobile number ranges) 4. O2 (UK) Ltd (acquired by Telefonica Ltd, listed above) 5. Orange Personal Communications Ltd (merged with T-Mobile to form EE Ltd, listed above) 6. Subhan Universal Ltd (company dissolved) 7. Switch Services Ltd (company in administration, no longer provides MCT services) 8. Teledesign Ltd (no longer holds UK mobile number ranges)
2.2 The criteria used to designate an undertaking as having significant market power, individually	Ofcom's approach to assessing SMP is set out in Annex 2 of the attached Draft Statement.

or jointly, or not.	<p>Ofcom considers the following criteria to be of particular relevance:</p> <ol style="list-style-type: none"> 1. Market shares; 2. Barriers to entry and expansion; 3. Countervailing buyer power; and 4. Evidence of pricing behaviour. <p>Please see Section 4 of the Draft Statement for further detail on how the above criteria apply to the relevant MCT markets.</p>
2.3 The name of the main undertakings (competitors) active in the relevant market	<p>The list of MCPs active in the relevant markets is provided in response to question 2.1 above. We find that each undertaking providing (or planning to provide in the future) MCT services has SMP in their relevant market.</p>
2.4 The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g., turnover, number of subscribers)	<p>Each MCP has a 100% share in their relevant market, because only the terminating MCP has the ability to provide MCT to the numbers allocated to that MCP. This means that each MCP is, in effect, a monopolist in the supply of MCT to its customers.</p>

Please provide a brief summary of:

2.5 The opinion of the national competition authority, where provided.	<p>Not applicable. Ofcom functions as the national competition authority in UK telecommunication matters.</p>
2.6 The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing)	<p>A few stakeholders provided comments in relation to our proposals on SMP either directly or indirectly:</p> <ol style="list-style-type: none"> 1. H3G agreed with our SMP assessment and BT's comments suggested that it also agreed with our conclusions on SMP. Furthermore, BT highlighted that the complete removal of the call termination bottleneck in the mobile sector in the near to medium term seems unlikely. 2. EE argued our market power assessment should take into account the sum total of all competitive constraints, including those which arise from outside the relevant market and in particular OTT. We address this point in paragraph 4.58 of the attached Draft Statement. 3. Two smaller MCPs argued that they do not have SMP. CFL Communications Ltd ("CFL") stated that it had a different business model to the four largest MCPs. This is

	<p>addressed in paragraph 4.25 of the attached Draft Statement.</p> <ol style="list-style-type: none"> 4. CFL Ltd, [X] argued that their ranges were banned from many of the big four suppliers and/or placed outside retail call bundles. We address these points in paragraphs 4.42 to 4.44 of the attached Draft Statement. 5. Several respondents, including Telefonica, EE, [X], Verizon and Virgin Media, commented on the pricing behaviour of smaller MCPs, pointing out that many smaller MCPs have been charging MTRs above the 2011 benchmark MTR.
--	---

Regulatory obligations

Please state where applicable:

<p>3.1 The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC)</p>	<p>Annex 3 of the attached Draft Statement sets out the conditions to be imposed on the undertakings designated as having SMP.</p> <p>The following conditions are imposed on each of the 72 MCPs provided in response to question 2.1 above:</p> <ol style="list-style-type: none"> 1. Network access on reasonable request (Article 12); 2. Control of call termination charges (Article 13) 3. Publication of charges (Article 9) <p>The following additional condition is imposed on EE Ltd, Hutchison 3G UK Ltd, Telefonica UK Ltd, and Vodafone Ltd:</p> <ol style="list-style-type: none"> 4. No undue discrimination (Article 10);
<p>3.2 The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.</p>	<p>The reasons for the imposition of the obligations are discussed in Section 5 of the Draft Statement. Paragraphs 5.9 – 5.40 set out our assessment of the harm that would arise in the absence of regulation. The reasons for the four remedies provided in relation to question 3.1 above are set out as follows:</p> <ul style="list-style-type: none"> • network access obligation: paragraphs 5.56-5.73; • no undue discrimination obligation: paragraphs 5.74-5.93; • charge control obligation: paragraphs 5.94-5.145; • price transparency obligation: 5.146-5.162.

3.3 Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate what «exceptional circumstances» within the meaning of Article 8 (3) of that directive justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.	Not applicable.
--	-----------------

Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8 (3) of Directive 2002/19/EC (Access Directive), please state where applicable:

4.1 Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC.	Not applicable.
4.2 The name(s) of the undertaking(s) concerned	Not applicable.
4.3 What international commitments entered into by the Community and the Member States are to be met.	Not applicable.