

Non-confidential version

## Telefónica UK's follow-on response to Ofcom's Consultation on Wholesale Voice Markets 2021 - 26

## **Introduction**

- 1.1 We appreciate that Ofcom are giving stakeholders an opportunity to take account of the proposals relevant to third countries as per the EC's draft Delegated Act (hereafter: draft DA) in their Consultation response. This document sets out Telefónica UK's observations in relation to these proposals and explains how this affects our views regarding the appropriate approach for Ofcom to take in regulating international calls.
- 1.2 Our Consultation response explained our strong preference for an outcome involving mutually low termination rates. This outcome is best for UK consumers and providers. We explained that reciprocity offers the best opportunity for such outcome to be delivered as UK providers are empowered to negotiate mutually low termination rates with third country providers. The current approach (Ofcom rates applied to calls independent of their origin) would not give UK providers leverage in negotiating rates, whilst pricing freedom introduces the risk that UK providers increase the rates they charge beyond what is necessary to negotiate low rates.
- 1.3 Whilst we continue to prefer the outcome of mutually low termination rates, our view on which option for regulating international calls delivers best against this objective has changed. If maintaining the current approach, but not reciprocity, ensures that EC termination regulation (and thus Eurorates) applies to calls that UK providers terminate to EEA countries, we favour this approach. The significant advantage is that calls from the UK to EEA, and *vice versa*, are terminated at low rates. This advantage, in our view, outweighs potential gains associated with UK providers having greater leverage to negotiate lower charges with providers from other (i.e. non-EEA) third countries.

## **EC termination regulation can apply to EEA calls originating in third countries**

- 1.4 The draft DA states that EC termination regulation applies to calls from third countries to EEA countries when one of the two conditions (as per Article 1.4 of this draft DA) is met. In turn, we discuss our understanding of these conditions, and how they influence our view on how Ofcom should assess and most appropriately regulate international calls.

## **First condition: third-country providers can ensure that EC termination regulation applies to 'their' EEA calls**

- 1.5 The first condition is that a third-country provider applies termination rates equal to or below the maximum Eurorates.
- 1.6 Meeting this first condition thus depends on what a third-country provider charges EEA providers to terminate calls to this country. When terminating all calls from EEA providers at or below maximum

Eurorates, EC regulation applies, and the third-country provider cannot be charged more than Eurorates to terminate calls to EEA countries that originate on its network. Whilst Ofcom do not have a bearing on the EC regulation, it would be helpful if they confirm or correct our understanding of this regulation. That would benefit UK providers and other stakeholders.

- 1.7 We note that the maximum proposed Eurorates are above the rates that Ofcom proposed for 2021 and 2022, roughly at the level of Ofcom rates in 2023, and well below the rates proposed by Ofcom in 2024 and onward.
- 1.8 [CONFIDENTIAL ✕ ] The only long-term option for us, and other UK providers, to benefit from EC regulation applying to EEA calls that originate on their network on the longer run is for the second condition to be met.

**Second condition: a third country can secure for EC regulation to apply to termination of all its EEA calls**

- 1.9 The second condition is met for a third country when i) the EC determines that this country regulates voice termination rates for calls originating in the EEA and terminating in that country in accordance with principles equivalent to those set out in Article 75 of Directive (EU) 2018/1972 and Annex III thereto, and ii) that country is listed in the annex of the DA. In other words, all providers from a third country can benefit from EC regulation applying to EEA-bound calls made by their customers subject to that country meeting i) and ii).
- 1.10 We anticipate that ii) is met when Ofcom can demonstrate that i) is satisfied *and* ask for the UK to be added to this annex. The more important matter is whether Ofcom can satisfy i) (likely depends on their approach to regulating international calls) and want the UK to be added to this annex. It is not clear to us if Ofcom can decide this or take actions that have this effect on their own or whether the UK Government needs to approve this. We welcome Ofcom to provide clarity on this.
- 1.11 Ofcom's termination regulation is based on the same principles that underpin the EC regulation. Hence, we expect that i) is met if Ofcom oblige UK providers to terminate calls from both the UK and EEA countries subject to the same maximum rates. It seems to us that maintaining the current approach of applying Ofcom's termination rates to calls independent of where they originate from, enables Ofcom to ensure that i), and by extension the second condition, is met. That is how we interpret how the second condition can be met by the UK.

### **Concluding comments**

- 1.12 We would find it helpful if Ofcom were to explain their understanding of both conditions, including how UK providers can meet the first, and Ofcom the second condition. This will be beneficial for UK providers and consumers
- 1.13 Also, Ofcom should review if and how each of the three options it identified for regulating international calls allow meeting the second condition. They should then update their comparative assessment of the three options accounting for whether the second condition is or can be met, or not). If our interpretation as that maintaining the current approach (but not the other two options) allow to meet the second condition, this will materially change the comparative assessment of options. More particularly, this will improve the case for maintaining the current approach, and in our view, to the extent that maintaining the current approach performs better for UK consumers than either reciprocity or commercial freedom.
- 1.14 In light of the complexity of this matter, its importance, and the EC having to publish its DA before the end of 2020, we want to encourage Ofcom to update their assessment of regulating international calls and consulting on this before publishing its Statement for this Wholesale Voice Market Review. We believe this can be done without delaying Ofcom's Statement for this market review.