

Mobile call termination: proposed guidance on dispute resolution

*BT's response to Ofcom's consultation of
7th January*

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BT welcomes comments, which should be sent by e-mail to
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1. Guidance is welcome

When *ex ante* price regulation based on a measure of 'fair and reasonable' is imposed on any communication provider, it is preferable that both the operator and its customers can refer to an authoritative source for what the term means in practice. For that reason alone, BT will welcome the publication of Ofcom's proposed guidance.

On the guidance itself, BT has no substantive comment to make. BT has long argued that voice call termination should be priced at cost and not be used to subsidise other services, and we are pleased to see this principle being applied here. In any case, once the benchmark, regulated mobile termination rate reaches appropriately cost-based levels (as we expect from Ofcom's current proposals in the market review), mobile voice call termination will cease to be a potential source of such subsidy.

However, we would like to draw attention to two areas for which, we believe, the guidance will have implications.

2. Implications for Ofcom's mobile network cost model

Ofcom's rationale for dividing smaller Mobile Communication Providers (MCPs) into three categories relies in large part on a recognition of the evolution of technology and business models in the mobile sector. Some of the smaller players, in taking advantage of new technologies, incur lower costs, which in turn are to be reflected in a termination rate accordingly lower than the MNO-benchmark MTR. However, as Ofcom's Figure 4 (on page 28 of the consultation) shows, some of the incumbent network operators also incur lower costs by choosing to deploy some of these alternative technologies.

As we understand it, Ofcom's current modelling of the MNOs' termination costs presupposes that they will continue to terminate all their traffic over their existing Radio Access Network (RAN). However, they too have the option of using low-cost technologies (such as femtocells) to terminate a proportion of the calls they receive¹. There is therefore every possibility that, unless controlled, the use of low-cost technologies to terminate calls could become the "flip-flopping" of the next control period – with the MNOs exploiting a loophole to continue to earn excess profits from a controlled price. One way to control this would be to subject the incumbent MNOs to the same regime as the entrants and reduce their MTR price ceilings on a quarterly basis to reflect any use of low-cost technologies to terminate calls.

We would also observe that the use of 25% and 75% as break points creates sharp discontinuities that could distort competition and incentives to invest and grow. It would be

¹ This perhaps applies particularly to *EverythingEverywhere* and *O₂* which have significant installed bases of fixed-line customers.

better to base termination rates on the actual mix of traditional RAN and innovative new low cost technologies in the previous quarter.

3. Implications for competition in the mobile sector

We would hope the proposed guidance, even though it is limited to the context of dispute resolution, will have a positive influence on the relevant parties in their negotiation processes. However, we would suggest that Ofcom maintains a watching brief to ensure it results in outcomes that promote competition rather than creating unforeseen difficulties for smaller operators and prospective new entrants.

Those smaller players will strive to achieve a reasonable balance between innovation to keep their cost bases low and generating appropriate termination returns to justify their investment. The boundary between Category 2 and Category 3 will therefore be one that all parties will seek to exploit to their advantage. It might also be observed that there will remain a difference in negotiating power between the larger and smaller players. It would therefore be helpful if Ofcom kept the guidance under review and committed to revisit it in the light of representations.

