

MOBILE CALL TERMINATION: GUIDANCE ON DISPUTE RESOLUTION

Cable&Wireless
Worldwide

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Cable&Wireless Worldwide provides enterprise and carrier solutions to the largest users of telecoms services in the UK and around the world.

Our voice services include transit products, meaning that we purchase mobile termination on behalf of other communications providers as well as our own retail customers. We also use mobile numbers as part of our fixed-mobile convergence solution; therefore we too will be subject to the obligation to ensure our charges are fair and reasonable.

PROVIDING GUIDANCE IS A POSITIVE STEP

We think it is useful for Ofcom to set out, and consult on, its thinking on how to resolve disputes over the price of mobile termination. It will help both purchasers and providers to understand what Ofcom means by the fair and reasonable obligation and that should assist in their negotiations. It will also help set expectations for providers when considering their investment plans, or planning for new services.

We are less sure that it will reduce the number of disputes that are referred to Ofcom; it should certainly help avoid some disputes ever being referred but it is also possible that guidance will expose new differences over the nature of the way service is provided. However it should help to narrow down the issues that are in dispute and we see that as a positive step.

While it is not possible to predict all the issues that might arise when interpreting obligations where issues are known in advance it is helpful to provide some guidance.

SUPPORT FOR THE OVERALL OBJECTIVE

We think that operators who provide their service by piggy backing on an existing access infrastructure are providing a very different service to those that build their own, or pay someone to provide it for them. Such operators are likely to have a fundamentally different cost base than that of the Mobile Network Operators ("MNOs") which is used to set the level of regulated Mobile Termination Rates ("MTRs"). We agree, given the differences, that the regulated MTR is probably not an appropriate benchmark upon which to set their termination rates.

However Ofcom must take care not to discourage competition by removing the benefits to operators from finding more efficient ways to provide service. We think the differences identified by Ofcom are sufficient to justify the different approach.

CONCERNS OVER THE DEFINITION OF CATEGORY 3

We do have some concerns over the clarity and robustness of the definition of category 3 operators or 'over-the-top' ("OTT") service. This lack of clarity is likely to lead to different problems between purchasers and suppliers as in some cases it is likely they will fail to agree whether a service is OTT.

It appears clear to us that where the access connectivity (e.g. Wifi) and call termination are provided by different operators, under what would clearly be separate commercial arrangements with the end user, then the service should be considered OTT. However it is not clear how it would, or should, be treated where both are provided by the same provider even if there is a separate payment for the access connectivity.

For example a single provider may provide broadband (including wifi) for a monthly fee and mobile service under a separate fee. A proportion of the calls to the mobile may be terminated using the broadband and wifi service and if there was a separate provider of the broadband this element would certainly look like OTT service. However the single provider may argue that they allocate a fair proportion of the cost of broadband to call termination, reducing the broadband costs enabling them to be offered at a lower price than they otherwise would. In this scenario there is therefore an argument to say it is no longer OTT, but given no-one else has any visibility of what is really just a notional cost allocation it appears impractical to properly decide which category applies.

The issue is further complicated by the potential need to measure the proportion of traffic terminated using one means or another. It is one thing to measure the proportion terminated using wifi compared to GSM/UMTS but an order of magnitude more complicated if it becomes necessary to differentiate between the specific wifi hubs that are used.

We see no easy solutions to the issues identified above; but we do not believe that they prevent Ofcom adopting the approach it proposes. However they emphasise the fact that such guidance can never completely replace the dispute resolution process and within that process Ofcom will look at the specific facts and will not be bound by one party's interpretation of its guidance.

SUPPORT USE OF THE MTR BENCHMARK FOR CATEGORIES 1 AND 2

We strongly support the use of the regulated MTR benchmark for category 1. These operators provide the capability for callers to contact the end user wherever they are and in that respect what they provide is similar to call termination provided by the MNOs themselves.

The fair and reasonable obligation is not intended to be the same as a cost orientation obligation. The costs for these operators will not be the same as those for the MNOs but for small emerging operators their costs are just as likely to be higher, than lower, as differences in scale will work against other efficiency factors. In these circumstances we believe it is fair and reasonable that their price of termination is the same as the MNO's MTR as the service that they provide is similar.

We also support Ofcom's proposed use of the MTR benchmark for category 2 operators (sub national operators with no roaming) as although they do offer a different service we agree with Ofcom that they are less likely to distort competition. Ofcom may have to review this if a category 2 operator were to become large.

POTENTIAL WEAKNESSES WITH THE GRADUATED APPROACH

While Ofcom's graduated approach to termination rates appears to offer a pragmatic approach there is the potential for some problems.

The first problem is that the approach does have the potential to give an advantage to an MNO should they wish to work with an OTT operator. It is possible for a would-be OTT operator to work with an MNO and between them share the benefit of the regulated MTR whereas a fixed operator cannot do the same as they would be expected to set the termination rate at the fixed rate under this guidance. The same constraint does not apply to the mobile operator. It is of course debatable

as to whether an MNO would want to make such a commitment as they are likely to be the most worried by prospect of OTT operators taking advantage of MTRs but it remains a possibility. There remains the question of how Ofcom would deal with this situation?

The second concern is simply the difficulty in measuring the proportion of traffic that is delivered using OTT solutions compared to a dedicated radio infrastructure. We think there will be real difficulties for some operators; and also the incentive for operators to claim difficulties even if they are limited in order to justify the highest possible termination rate.

In particular this would become an issue if a category 3 operator became large in which case Ofcom may have to find an alternative approach.

In any event we believe that the graduated approach can only be a workable solution for relatively small operators where the differences in overall termination revenues that would arise from a more thorough approach are not so large as to dwarf the burdens of taking that approach. Ofcom should leave stakeholders in no doubt that this only a pragmatic approach to avoid relatively low value disputes and not something that should be expected to endure if and when the operator is large.

CONCLUSION

Cable&Wireless Worldwide is supportive of Ofcom's overall objective to provide guidance for operators over the level of MTRs, and the proposal to differentiate between operators who piggy back on an existing infrastructure compared with those that invest in, or purchase, a radio infrastructure. However guidance like this cannot cover all eventualities and therefore it is essential that Ofcom maintains the ability and intention to deal with specific issues on their merits, should they arise.