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**NON CONFIDENTIAL VERSION**

16 February 2009

Dear Mr Marini,

**Hutchison 3G UK Limited (“H3G”) response to Ofcom consultation “Draft Annual Plan 2009/10” (the “Consultation”)**

**Introduction**

H3G is a converged operator providing a range of 3G services and is now a significant internet service provider operating in the UK. H3G is investing further in its network (including through the implementation of a radio access network sharing agreement with T-Mobile) which is further increasing the quality and coverage of service for H3G consumers. H3G expects to have the best UK 3G network covering over 98% population. H3G is the market leader in Mobile Broadband with a growing customer base [●]. Appropriate and proportionate levels of regulation are crucial for mobile markets to continue to develop and become more competitive. Regulation must not distort competition or hinder the ability of later entrants such as H3G to increase competition further. The success of mobile broadband as a sector has been, in part, due to the lack of such regulatory distortions. Appropriate regulation in relation to Mobile Termination Rates (“MTRs”) and Mobile Number Portability (“MNP”) is essential, to help further consumer and citizens interests and promote effective competition in the future. H3G believes that reform is required in regulation in both these areas to remove the distortionary effects of the current approach. As such, H3G welcomes the work Ofcom is undertaking on MTRs as part of the Mobile Sector Assessment and on MNP through its re-consultation on this issue.

H3G’s 3G network provides mobile broadband services through handsets, USB modems and data cards. H3G is currently rolling out its High Speed Downlink Packet Access (“HSDPA”)



network which currently provides download speeds of up to 3.6MBps<sup>1</sup>. We are making significant improvements to the network and offering greater capacity and improved speeds up to 7.2MBps in the near future. H3G is marketing its Turbo broadband service based on plug and play USB modems. Current pricing for this service is based on clear price points between £10 and £15 per month for 1GB and 5GB respectively<sup>2</sup>. In addition to both mobile broadband and handset based services H3G offers mobile use of major internet branded services such as Google and Yahoo search, Skype (internet telephony), Windows Live Messaging (WLM) Service and Yahoo Messenger (instant messaging), SlingBox (access to home television services through a mobile), Bebo and Facebook (social network and content sharing). Through software on handsets, such as on the innovative and recently launched INQ1, H3G is promoting ease of use of such services to increase the usability of mobile internet communications services. The result is that H3G is seeing a significant and steady increase in the usage of such services by its customers.

H3G has offered Skype services on its network since November 2006 and the number of Skype minutes carried on its network has continued to increase over the last 6 months. The INQ1 phone makes the use of such internet communications services easily accessible with a simple interface to make Skype calls, access Facebook and Windows Live Messaging Service.

As a result of changes such as these, H3G has seen significant increases in the use of internet communications services. [●]

H3G believes that the continuing evolution of mobile broadband and mobile internet communications services, the customer demand and appetite for which has been clearly demonstrated, will require regulatory policy to evolve as well.

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<sup>1</sup> [http://www.three.co.uk/Mobile\\_Broadband/Coverage\\_and\\_speed](http://www.three.co.uk/Mobile_Broadband/Coverage_and_speed)

<sup>2</sup> [http://www.three.co.uk/Mobile\\_Broadband/Pay\\_Monthly](http://www.three.co.uk/Mobile_Broadband/Pay_Monthly)



## **Spectrum**

One key area, briefly mentioned in the Draft Annual Plan for 2009/10, relates to mobile liberalisation and the availability of mobile broadband suitable spectrum in the coming years. This important work stream will need to ensure a competitively neutral outcome such that spectrum allocations do not distort the further development of mobile internet communication and broadband services. Ofcom's programme of spectrum awards for the 2.6GHz and UHF bands will also need to promote and underpin the future development of mobile broadband across Europe and achieve efficient Spectrum usage.

## **MNP and MTR**

As a new entrant in a fully saturated market, H3G faces two major barriers to competition which can be addressed in the coming year through regulatory reform.

- First, MNP: the UK is operating an outmoded solution which makes it hard for customers to port their numbers and acts as a barrier for new mobile operators to acquire customers. H3G acknowledges that Ofcom is now revisiting the subject following Vodafone's appeal on the previous amendment to General Condition 18, however it is disappointed that this important exercise is not specifically mentioned in the draft annual plan. In a similar vein, H3G expects Ofcom to re-examine the impact of MNP on price controlled MTRs and reopen the disputes H3G has with the other MNOs on the appropriate level of MTR for ported calls. H3G believes these matters need to be prioritised following the conclusion of the CAT appeal and CC determination in relation to Significant Market Power ("SMP") and the price controls with respect to Mobile Call termination.
- Second, the current high MTR regime urgently requires reform. This impacts in two major ways: the financial subsidisation of the incumbent MNOs and the distortions of retail pricing. A consistent future regulatory approach to MTRs needs to be adopted. H3G believes that the current draft Recommendation on Termination Rates of the European Commission represents one potential way forward here which would significantly improve the competitive landscape.



## **Number Allocation**

H3G in 2009/10 would also appreciate greater clarity around Mobile Call Termination charges with respect to other “07” mobile number ranges<sup>3</sup>. Considerable commercial uncertainty exists in relation to Ofcom’s policy with respect to the call termination charges of operators other than the five currently designated with SMP to which “07” number ranges have been allocated and who are currently charging “unregulated” termination rates. H3G urges Ofcom to provide further clarity on its approach to the termination rates of such operators and state when it plans to undertake a market review in this area (as suggested in its decision on the Mobile Call Termination market review published on 27 March 2007)<sup>4</sup>.

## **Consumer empowerment and protection**

H3G welcomes Ofcom’s focus on media literacy and looks forward to working with Ofcom to develop their work in this area. Key to the success of media literacy is understanding what forms of communication, messaging, mechanisms and campaigns have been successful previously in increasing awareness and understanding. H3G strongly urges Ofcom to focus as carefully on this area as on recommending or encouraging specific activities aimed at increasing media literacy.

The annual plan proposes that Ofcom will develop a strategic approach to consumer empowerment, and H3G looks forward to engaging with Ofcom as this is developed. We trust that a strategic approach will enable Ofcom to independently assess issues where it is suggested consumer harm has or may arise, and determine from that assessment what intervention may be required. H3G believes such an approach would better equip Ofcom to withstand external, often knee jerk, reactions to issues that arise, but which might be subsequently addressed by the providers in a competitive market like the mobile sector.

An example of this in the past year has been mobile cashback payments. Rather than see how the self regulatory code agreed by all the UK mobile networks might work, Ofcom announced that the code had failed and that a review would take place with the intention of bringing in formal regulation. A great deal of time and effort has been expended by both industry and Ofcom on determining what the formal regulation should be, and yet some

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<sup>3</sup> H3G recognises that Ofcom is in the process of formulating policy on other 07 number ranges, in particular personal numbering (070).

<sup>4</sup> H3G notes there are currently two outstanding disputes relating to mobile termination rates set by new mobile entrants: between T-Mobile and Mapesbury Communications and T-Mobile and Cable and Wireless.



eighteen months Ofcom has yet to publish a final statement. In the meantime complaints about cashback have all but disappeared as a result of a response by the market.

We would also urge Ofcom to better understand the underlying reasons why consumer harm might arise in the mobile market. It is commonly accepted that the mobile market is currently competitive and that therefore providers in this market are incentivised to address issues as they arise. However it would seem that Ofcom has to increasingly intervene in the mobile market in response to consumer issues. As suggested above H3G believes that MNP and MTRs are major barriers to competition. If competition is not optimal, then the incentive to address problems as they arise will also be less than optimal. H3G would therefore urge Ofcom to consider as part of its strategic approach, whether removing the barriers to competition might be a more effective means of improving consumer protection than individual projects targeted as specific instances of harm.

### **Access and inclusion**

H3G supports Ofcom in its work to ensure maximum access and take up of digital communications services, and believes that mobile has fewer barriers to take up than almost all other communication services. Pay as you go mobiles provide telephony to those consumers who are unable to obtain credit or move too regularly for fixed line telephony to be a viable option. In the last year H3G has introduced pay as you go mobile broadband thereby widening access to broadband to consumers, who, for the same reasons fixed line telephony is not viable, were previously unable to obtain a contract for fixed broadband.

H3G believes the market has effectively delivered increased access to mobile telephony and broadband without recourse to regulatory intervention. Indeed where intervention has occurred – in relation to the provision of services for disabled customers – take-up has been very low. As Ofcom examines the use of communications services by disabled people in 2009/10, H3G would urge Ofcom to review not just those services that do not exist to prevent disabled people from participating equally in society, but also observe those mainstream products and services that do exist and are being used by disabled people now. H3G believes that there are a range of services available on mobile that currently facilitate communications, and that regulatory intervention to require specific service provision risks duplicating the facilities that are already available and will only increase the costs that arise from the provision of bespoke services, costs that will have to be recouped from consumers who, in the current economic climate, are already experiencing financial pressures.



H3G would be happy to discuss any of the above issues and further proposals with Ofcom.

Yours sincerely,

A handwritten signature in black ink on a light yellow background. The signature reads 'Matthew Cherry' in a cursive, flowing script.

Matthew Cherry  
Economist