



EUROPEAN COMMISSION

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Office of Communications
(OFCOM)
Riverside House
2a Southwark Bridge Road
London
SE1 9HA
United Kingdom

For the attention of:
Mr Ed Richards
Chief Executive Officer
Fax: +44 20 7981 3504

Dear Mr Richards,

Subject: Case UK/2008/0759: Voice call termination on individual mobile networks

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

The notification concerned was received from the UK national regulatory authority, the Office of Communications (“Ofcom”), on 14 March 2008² and the procedure came into effect on the same day. It relates to draft measures previously notified to and assessed by the Commission under cases UK/2006/0498 and UK/2007/0617, in which H3G, O2, Orange, T-Mobile and Vodafone were found to have significant market power (“SMP”) on the wholesale market for voice call termination on their individual mobile networks³. A set of obligations were therefore imposed on them, including charge control obligations.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (“Framework Directive”), OJ L 108, 24.4.2002, p. 33.

² In accordance with Article 7 of Directive 2002/21/EC.

³ Market 16 in Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive (“the Recommendation”), OJ L 114, 8.5.2003, p. 45.

The national consultation⁴, which is running in parallel to the Community consultation, expires on 15 April 2008. The deadline for the Community consultation is 16 April 2008.

On 27 March 2008 a request for information was sent to Ofcom. The reply was received on 7 April 2008.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Ofcom’s previous decisions

The current notification follows up (i) the measure notified to the Commission on 27 March 2007 on the market review of the wholesale market for voice call termination on individual mobile networks, i.e. the Mobile Call Termination Statement, and (ii) a further measure adopted by Ofcom on 18 December 2007, which it omitted to notify under Article 7 of the Framework Directive, i.e. the Monitoring Charge Control Compliance Statement.

With regard to the further measure of 18 December 2007, Ofcom acknowledged that the increased number and complexity of charge controls were making it difficult to check compliance with charge control obligations. Therefore, Ofcom considered it appropriate to impose further obligations concerning monitoring of compliance with the charge controls imposed.

II.2. The current notification

In the notification, Ofcom declares that it omitted to submit to the Community for consultation, as required under Article 7 of the Framework Directive, the further obligations imposed on 18 December 2007. Having recognised the procedural non-compliance with the Framework Directive, Ofcom proposes to revoke the SMP condition of monitoring compliance with fixed-to-mobile and mobile-to-mobile charge controls on H3G, O2, Orange, T-Mobile and Vodafone.

III. COMMENTS

On the basis of the notification and the additional information provided by Ofcom, the Commission has the following comment⁵:

Monitoring of MNOs’ compliance with SMP conditions by Ofcom

The Commission notes that in the measure adopted on 18 December 2007 Ofcom stated that the necessary level of confidence in MNOs’ compliance with the charge control conditions was not achievable under the previously imposed remedies concerning monitoring of charge control compliance and concluded that it was necessary to lay down additional specific requirements.

Contrary to the above statement, Ofcom does not propose any additional requirements at this stage. Ofcom confirmed in its reply to the request for information relating to the notified draft measure that it is committed to monitor compliance with all SMP conditions imposed by it which in Ofcom's view is sufficient to achieve the objectives

⁴ In accordance with Article 6 of the Framework Directive.

⁵ In accordance with Article 7(3) of the Framework Directive.

as indicated in the measure notified to the Commission on 27 March 2007. Ofcom informed the Commission that it is currently reflecting upon how to best achieve the compliance with all SMP conditions imposed by the measure notified on 27 March 2007.

In the light of these considerations, the Commission invites Ofcom to notify it, under Article 7 of the Framework Directive, of any further remedy it intends to impose in future in order to complement its statutory powers.

Pursuant to Article 7(5) of the Framework Directive, Ofcom shall take the utmost account of the comments of other NRAs and the Commission and may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to point 12 of Recommendation 2003/561/EC⁶, the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission⁷ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,
For the Commission,
Philip Lowe
Director-General

⁶ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

⁷ Requests should be sent either by e-mail to: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax to: +32.2.298.87.82.