



**Determination to resolve a dispute  
between BT and Vodafone about  
geographic number portability**

**Issued:** 21 June 2005

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**Determination under Sections 188 and 190 of the Communications Act 2003 for resolving a dispute between British Telecommunications Plc (“BT”) and Vodafone Limited (“Vodafone”) concerning geographic number portability**

**WHEREAS:**

(A) Section 188(2) of the Communications Act 2003 (the “Act”) provides that where there is a dispute between different communications providers, and Ofcom has decided pursuant to section 186(2) of the Act that it is appropriate for it to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes for resolving the dispute must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based. Section 190 of the Act sets out the scope of Ofcom’s powers for resolving a dispute which may include, in accordance with section 190(2) of the Act, making a declaration setting out the rights and obligations of the parties to the dispute;

(B) On 1 February 2005, Vodafone wrote to Ofcom asking it to resolve a dispute between Vodafone and BT relating to whether BT was under an obligation to port geographic numbers to Vodafone in connection with Vodafone’s Wireless Office service;

(C) On 23 February 2005, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the parties of this decision;

(D) In order to resolve this dispute, Ofcom has considered, among other things, the information provided by the parties and its relevant duties set out in sections 3 and 4 of the Act;

(E) Ofcom issued a draft of this Determination and explanatory statement on 25 May 2005 and responses were invited by close of business on 9 June 2005;

(F) An explanation of the background to the dispute and Ofcom’s reasons for making this Determination are set out in the explanatory statement accompanying this Determination;

**NOW, THEREFORE, PURSUANT TO SECTIONS 188 AND 190 OF THE ACT, OFCOM MAKES THE FOLLOWING DETERMINATION:**

1. In accordance with General Condition 18 of the General Conditions of Entitlement in effect on the date this Determination is published, BT is not required to provide Vodafone with Portability in relation to geographic numbers in connection with Vodafone's Wireless Office service.

2. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination.

3. For the purposes of interpreting this Determination, the following definition shall apply:

- a) “Portability” means Portability as defined in General Condition 18.5 of the General Conditions of Entitlement in effect on the date this Determination is published.

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4. For the purpose of interpreting this Determination:

- a) headings and titles shall be disregarded; and
- b) the Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.

5. This Determination shall take effect on the day it is published.

6. This Determination is binding on BT and Vodafone in accordance with section 190(8) of the Act.

**David Stewart**

**A person authorised by Ofcom under paragraph 18 of the Schedule to the  
Office of Communications Act 2002**

**21 June 2005**

## Section 1

# Summary

- 1.1 Ofcom has published a Determination under sections 188 and 190 of the Communications Act 2003 (“the Act”) to resolve a dispute between British Telecommunications plc (“BT”) and Vodafone Limited (“Vodafone”).
- 1.2 The dispute is about whether BT is required to provide Vodafone with portability in respect of geographic numbers (referred to in this document as geographic number portability (“GNP”)) in relation to Vodafone’s Wireless Office<sup>1</sup> service (“Vodafone Wireless Office”).
- 1.3 On 28 July 2004 Vodafone asked BT to enter into reciprocal arrangements for GNP between Vodafone’s network and BT’s, with the intention of enabling prospective customers of Vodafone Wireless Office to bring their existing geographic numbers with them from BT. BT refused Vodafone’s request as it did not consider that it was required to provide Vodafone with GNP in this case.
- 1.4 On 1 February 2005 Vodafone referred a dispute to Ofcom under section 185 of the Act about GNP and Vodafone Wireless Office.
- 1.5 Ofcom decided, in accordance with Section 186(4) of the Act, that it was appropriate for it to handle the dispute. On 23 February 2005 Ofcom informed the parties of this decision and published a Competition Bulletin setting out the scope of the dispute.
- 1.6 On 25 May 2005 Ofcom published its proposals for resolving the dispute (the “consultation document”) and invited stakeholders to comment by 9 June 2005.
- 1.7 After considering stakeholders’ comments, which are discussed in more detail in section 5, Ofcom concludes that BT is not required, by General Condition 18 as currently in force, to provide GNP to Vodafone in this case.
- 1.8 In its Annual Plan for 2005/6<sup>2</sup>, Ofcom set out details of its numbering related work. Two projects are particularly relevant. Ofcom’s review of numbering strategy is developing a long-term coherent strategic approach to all Ofcom’s numbering activities, while its number allocation and policy development project will consider number portability policy over a shorter time frame. Given the issues raised by Vodafone’s request for GNP in this case and in light of possible increasing convergence between services that have traditionally been regarded as “fixed” and “mobile”, Ofcom intends to use the number allocation

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<sup>1</sup> Described in more detail in section 2.

<sup>2</sup> [www.ofcom.org.uk/about/account/reports\\_plans/annual\\_plan0506/#content](http://www.ofcom.org.uk/about/account/reports_plans/annual_plan0506/#content), pages 28-29.

and policy development project to consider, for example, whether its current policy for number portability is consistent with:

- the current technological and service feasibility;
- Ofcom's policy regarding the allocation of geographic telephone numbers for use with mobile services; and
- Ofcom's policy for numbering of new voice services.

1.9 Ofcom will publish a separate consultation on these issues in the near future. Ofcom's review of numbering strategy will then integrate considerations on this issue with the longer-term number portability requirements in the context of Ofcom's overall numbering strategy.

## Section 2

# Background and history of the dispute

## Background

- 2.1 Vodafone Wireless Office is a service aimed at corporate and business customers that enables the customer to manage calls to mobile handsets. Vodafone Wireless Office customers have a geographic number as well as a mobile number, but all calls are routed to the same mobile handset. When a call is made to the customer's geographic number, the call is handed over to Vodafone's network, where Vodafone translates it and routes it to terminate on the customer's mobile handset.
- 2.2 Calls to a Vodafone Wireless Office customer's geographic number are charged to the caller at the same rate as calls to geographic numbers terminating on a fixed line, even though these calls are actually terminated on a mobile handset. This means that it may be cheaper for a caller to contact the customer on his geographic number than on his mobile number.
- 2.3 Vodafone Wireless Office customers pay a monthly subscription charge for the service. Internal calls (i.e. within the customer's organisation) are included within the monthly subscription charge.
- 2.4 Ofcom allocates telephone numbers, including geographic numbers, to communications providers in accordance with the Act. These numbers must be used by communications providers in accordance with the National Telephone Numbering Plan<sup>3</sup> ("NTNP") published by Ofcom.<sup>4</sup>
- 2.5 Ofcom has allocated geographic numbers to Vodafone for use with Vodafone Wireless Office. Ofcom's numbering allocation policy is discussed at paragraph 4.5 of the consultation.
- 2.6 In addition to the geographic numbers that it has been allocated by Ofcom, Vodafone wishes to enable future customers of Vodafone Wireless Office to port their existing geographic numbers from BT.
- 2.7 Vodafone has therefore attempted to establish arrangements with BT to enable the porting of geographic numbers from BT's network to Vodafone's network.

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<sup>3</sup> Ofcom is under a duty (under section 56 of the Communications Act 2003) to publish the National Telephone Numbering Plan setting out numbers it has determined to be available for allocation as telephone numbers, the restrictions it considers appropriate on the adoption of numbers available for allocation in accordance with the plan, and such restrictions as it considers appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put. The National Telephone Numbering Plan, published on 28 October 2004, can be found Ofcom's website at:

[www.ofcom.org.uk/telecoms/ioi/numbers/num\\_plan\\_0904.pdf](http://www.ofcom.org.uk/telecoms/ioi/numbers/num_plan_0904.pdf)

<sup>4</sup> General Condition 17.4.

## History of the dispute

- 2.8 Vodafone and BT initially discussed GNP arrangements at a meeting of 28 July 2004.
- 2.9 BT wrote to Vodafone on 11 October 2004 declining Vodafone's request to enter into arrangements to provide Vodafone with GNP in connection with Vodafone Wireless Office, expressing its view that Vodafone's request did not "align" with the relevant regulatory requirements (which are discussed in more detail in the following section).
- 2.10 Vodafone wrote to BT on 5 November 2004 asking BT to reconsider its objections to establishing GNP arrangements with Vodafone. BT replied on 19 November 2004, reiterating its earlier refusal to enter into a GNP arrangement with Vodafone. BT wrote again to Vodafone on 25 November 2004 confirming its position.
- 2.11 Vodafone wrote to BT on 30 November 2004 asking BT again to enter into a GNP arrangement with Vodafone. BT replied on 3 December 2004 refusing Vodafone's request.
- 2.12 Vodafone wrote to BT on 6 December 2004 setting out its view that its request for GNP in connection with Vodafone Wireless Office was compliant with the relevant regulatory obligations and asking BT again to reconsider its position.
- 2.13 Vodafone wrote to BT on 27 January 2005 asking BT to provide a formal response to Vodafone's letter of 6 December 2004. BT replied to Vodafone on 4 February 2005 refusing Vodafone's request.
- 2.14 Vodafone therefore considers that the parties are in dispute.
- 2.15 On 1 February 2005 Vodafone wrote to Ofcom asking Ofcom to resolve the dispute between Vodafone and BT about GNP arrangements in connection with Vodafone Wireless Office.
- 2.16 Vodafone asked Ofcom to make a determination for resolving this dispute and to make a declaration that BT is required to provide GNP in connection with Vodafone Wireless Office.
- 2.17 Ofcom invited BT to comment on Vodafone's request.
- 2.18 BT stated that it generally concurred with the account of the negotiations between BT and Vodafone supplied in Vodafone's submission.
- 2.19 BT confirmed that it did not believe BT was required to enter into a GNP arrangement with Vodafone in this context.
- 2.20 Ofcom considered that the parties were in dispute given the failure of commercial negotiations and that it was appropriate for Ofcom to resolve the



dispute. Ofcom's process for handling disputes is set out in more detail in its published guidelines.<sup>5</sup>

2.21 On 23 February 2005 Ofcom informed the parties that it intended to resolve the dispute and published a Competition Bulletin which states that the scope of the dispute is:

*“To determine whether BT is required to provide Vodafone with Geographic Number Portability in relation to Vodafone's Wireless Office service.”*

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<sup>5</sup> *Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives*, published at: [http://www.ofcom.org.uk/bulletins/eu\\_directives/guidelines.pdf](http://www.ofcom.org.uk/bulletins/eu_directives/guidelines.pdf).

### Section 3

# Regulatory framework and submissions of the parties

## Introduction

- 3.1 The dispute between Vodafone and BT concerns whether BT has an obligation under General Condition 18 of the General Conditions of Entitlement (the “General Conditions”)<sup>6</sup> to provide GNP to Vodafone in connection with Vodafone Wireless Office. This section therefore discusses the regulatory requirements that currently apply to communications providers including BT and Vodafone in respect of GNP.
- 3.2 This section goes on to set out the arguments made by the parties concerning whether BT has under an obligation to provide GNP to Vodafone in this context.

## Regulatory requirements

### General Condition 18

- 3.3 The General Conditions apply to all communications providers (as defined in the General Conditions) in the UK.
- 3.4 General Condition 18.1 says that:

*“the Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests”.*

- 3.5 General Condition 18.2 says that:

*“the Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification<sup>7</sup>”.*

- 3.6 General Condition 18 refers to two distinct concepts: “Portability” and “Number Portability”.

- 3.7 “Portability” is the arrangement between two communications providers, defined as:

*“any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided*

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<sup>6</sup> Published at:

[www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/cond\\_final0703.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf).

<sup>7</sup> The Functional Specification specifies the technical and other principles which are intended to enable the efficient implementation and utilisation of Portability and is published on Ofcom’s website at:

[http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun\\_final0703.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun_final0703.htm).

*with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service”.*

3.8 “Number Portability” is the facility that can be offered to consumers and is defined as:

*“a facility whereby Subscribers who so request can retain their Telephone Numbers on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –*

- (i) in the case of Geographic Numbers, at a specific location; or*
- (ii) in the case of Non-geographic Numbers, at any location,*

*provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan”.*

### **The Universal Service Directive**

3.9 The requirement to provide portability in General Condition 18 derives from the Universal Service Directive (“USD”)<sup>8</sup>.

3.10 Article 30(1) of the USD says that:

*“Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their number(s) independently of the undertaking providing the service:*

- (a) in the case of geographic numbers, at a specific location; and*
- (b) in the case of non-geographic numbers, at any location”.*

3.11 Article (30)1 goes on to state that:

*“This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks”.*

3.12 Recital 40 of the USD provides that:

*“The provision of this facility [number portability] between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks”.*

### **Submissions of the parties**

3.13 This section sets out the arguments made by Vodafone in its submission to Ofcom and BT’s comments on Vodafone’s submission.

### **Vodafone**

3.14 Vodafone stated that, under General Condition 18.1, current BT subscribers were entitled to request number portability from BT if they wished to change operator and adopt Vodafone Wireless Office. In addition, Vodafone argued, Vodafone and BT were both obliged by General Condition 18.2 to provide

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<sup>8</sup> Directive 2002/22/EC.

reciprocal portability to enable the other to provide number portability to any subscriber who so requests.

3.15 Vodafone submitted that:

*“...as Number Portability is a right of the Subscriber, the reference to “specific location” within that definition must refer to the location of that Subscriber when making the request and not the location of the Subscriber’s Network Termination Point when making or receiving individual calls”.*

3.16 Vodafone considered that the geographic numbers it has been allocated by Ofcom and the numbers that BT customers wished to port to Vodafone for use with Vodafone Wireless Office were “geographic numbers” within the definition of number portability. In addition, these numbers were being used in accordance with the NTNP and Ofcom’s previous statements on number portability and so-called “new voice services”.

3.17 Vodafone also submitted to Ofcom that it was asking BT to enter into reciprocal geographic number portability arrangements rather than geographic number to mobile portability. This was because, in Vodafone’s view, in the case of Vodafone Wireless Office, the geographic number complemented the use of the mobile number rather than being a substitute for it.

3.18 In Vodafone’s view, the use of geographic numbers ported from BT for Vodafone Wireless Office also complied with the number portability Functional Specification<sup>9</sup> including restrictions on number mobility for ported numbers<sup>10</sup>. This was because Vodafone said it would only permit number mobility for numbers ported from BT within BT’s “service area”.

3.19 Vodafone therefore asked Ofcom:

*“to make a declaration that Vodafone has the right to request and BT is obliged to provide GNP in connection with the [Vodafone Wireless Office] Service and that such GNP is consistent with:*

*Article 30 of the USD  
General Condition 18  
the National Telephone Numbering Plan; and  
the Number Portability Functional Specification;*

*to give a direction imposing an obligation on BT to commence Service Establishment and enter into a GNP agreement with Vodafone.”*

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<sup>9</sup> See footnote 7 above.

<sup>10</sup> Mobility is a voluntary service offered by communications providers to subscribers whereby calls to the subscriber’s number are routed to a new address.

## **BT**

- 3.20 In its comments on Vodafone's submission, BT said it did not believe that there was a legal or regulatory requirement on BT to enter into an agreement with Vodafone as Vodafone had requested.
- 3.21 BT submitted that, under the current rules, the obligation to provide GNP only applies where the service in question delivers calls to a fixed network termination point at a specific location. BT submitted that the network termination point could not, in this case, be at a specific location, since Vodafone Wireless Office delivers calls to a mobile device which cannot, by definition, be at a specific location.
- 3.22 BT further submitted that there is currently no requirement for number portability between networks providing services at a fixed location and mobile networks.
- 3.23 BT set out its views on a number of related policy areas, and stated that it considered that the issues raised by this dispute were potentially significant not only for BT and Vodafone but for the wider industry.

## **Ofcom's draft Determination**

- 3.24 On 25 May 2005 Ofcom published a draft Determination and explanatory memorandum (the "consultation document") setting out its proposed decision that BT was not required to provide Vodafone with GNP in this case.
- 3.25 Ofcom's analysis was set out at section 4 of the consultation document (and, for completeness, is repeated at section 4 below). Ofcom's legal analysis was set out in more detail at Annex 3 of the consultation document (and, for completeness, is repeated at Annex 1 below).

## Section 4

# Ofcom's analysis and proposed decision

## Summary

- 4.1 Ofcom's proposals for resolving the dispute were based on current regulatory requirements for number portability found in the General Conditions. This is because the dispute between Vodafone and BT concerned whether BT has an obligation under General Condition 18 as it currently stands to provide GNP to Vodafone in connection with Vodafone Wireless Office.
- 4.2 Ofcom believed that there was no obligation on BT under General Condition 18.2 to port geographic numbers to Vodafone for use with Vodafone Wireless Office. This is because Ofcom considered that what Vodafone has requested from BT in this case is not "Portability" as defined in General Condition 18.5.
- 4.3 This position is consistent with Article 30 of the USD. Member States are not required to mandate the porting of numbers between networks providing services at a fixed location and mobile networks under Article 30. While it is clear, under Recital 40, that the Member States may impose that requirement (and that the entity responsible for exercising that regulatory authority in the UK is Ofcom) Ofcom has not, to date, done so.
- 4.4 Ofcom recognised that it may be appropriate to consider imposing such an obligation in the future, in light of possible increasing convergence between services which have traditionally been regarded as "fixed" services and "mobile" services.
- 4.5 Furthermore, Ofcom recognised that there may be an apparent inconsistency between its current policy in relation to geographic number allocation for mobile services and its policy in relation to portability. Ofcom allocates geographic numbers for use with mobile services as long as those numbers are used in a way that is compliant with the NTNP. Tariffing of calls to geographic numbers must be consistent with the geographic area code, which means that where geographic numbers are used with mobile services, calls to those numbers must be charged at the appropriate rate for geographic calls. However, communications providers are not currently obliged to provide facilities to enable numbers to be *ported* from a fixed network to a mobile network. If there is no regulatory objection to mobile providers being allocated geographic numbers, should they be allowed to obtain these numbers from, for example, fixed providers by way of portability?
- 4.6 In its Annual Plan for 2005/6, Ofcom set out details of its numbering related work. Two projects are particularly relevant. Ofcom's review of numbering

strategy is developing a long-term coherent strategic approach to all Ofcom's numbering activities, while its number allocation and policy development project seeks to consider number portability policy over a shorter time frame. Given the issues raised by Vodafone's request for GNP in this case and in light of possible increasing convergence between services that have traditionally been regarded as "fixed" and "mobile", Ofcom said it intends to use the number allocation and policy development project to consider, for example, whether its current policy for number portability is consistent with:

- the current technological and service feasibility;
- Ofcom's policy regarding the allocation of geographic telephone numbers for use with mobile services; and
- Ofcom's policy for numbering of new voice services.

4.7 Ofcom said it would publish a separate consultation on these issues in the near future. Ofcom's review of numbering strategy will then integrate considerations on this issue with the longer-term number portability requirements in the context of Ofcom's overall numbering strategy.

## **General Condition 18.2**

### **Portability**

4.8 For BT to be under a requirement under General Condition 18.2 to port geographic numbers to Vodafone in this case, Vodafone would have had to ask BT to provide it with what is defined as "Portability".

4.9 "Portability" is defined in General Condition 18.5 as:

*"any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service".*

4.10 Therefore, Ofcom considered whether the facility Vodafone has requested would enable a subscriber who requests "Number Portability" to continue to be provided with any "Publicly Available Telephone Service" by reference to the same telephone number irrespective of the identity of the person providing such a service.

4.11 BT and Vodafone are both "Communications Providers"<sup>11</sup> for the purposes of General Condition 18.2. This fact is not in dispute.

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<sup>11</sup> A "Communications Provider" is defined in General Condition 18.5 as someone who "provides an Electronic Communications Network or an Electronic Communications Service". An electronic communications network ("ECN") and an ("Electronic Communications Service") ("ECS") are defined in Part 1 of the General Conditions. BT and Vodafone provide an ECN or an ECS within the definitions and are therefore communications providers for the purposes of General Condition 18.2.

4.12 In assessing whether BT is required to provide GNP under General Condition 18.2, Ofcom therefore considered:

- whether the services in question are Publicly Available Telephone Services; and
- whether Vodafone's subscribers have requested Number Portability.

### **Publicly Available Telephone Service**

4.13 Taking the issue of Publicly Available Telephone Services ("PATS") first, Ofcom believed that what is being requested here would allow a subscriber to continue to be provided with PATS. This is because the service provided by BT and Vodafone Wireless Office both fall within the definition of PATS in General Condition 18.5, which is:

*"a service made available to the public for originating and receiving or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan".*

4.14 Both the service provided by BT and Vodafone Wireless Office are services made available to the public for originating and receiving or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan.

### **Number Portability**

4.15 Ofcom did not consider, however, that subscribers in this case are requesting Number Portability.

4.16 "Number Portability" is defined in General Condition 18.5 as:

*"a facility whereby Subscribers who so request can retain their Telephone Numbers on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –*

- (i) in the case of Geographic Numbers, at a specific location; or*
- (ii) in the case of Non-geographic Numbers, at any location,*

*provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan".*

4.17 Taking the last part of this definition first, Ofcom considered, in this case, that retention by a Vodafone Wireless Office customer of the geographic number it had as a BT customer would be in accordance with the NTNP. This is because the geographic numbers in question are "Geographic Numbers" as



defined in the NTNP and they comply with the restrictions on the use of geographic numbers within the NTNP.<sup>12</sup>

4.18 However, Ofcom did not consider that the rest of the definition of Number Portability applies in this case. Ofcom believed, on a literal (i.e. everyday) interpretation that the reference to “specific location” in (i) of the definition requires either:

(i) that the network termination point is at a specific location;

or alternatively:

(ii) that the telephone number is to be retained at a specific location.

4.19 In this case, Ofcom believed that because Vodafone Wireless Office is a service which is mobile, the network termination point cannot be at a specific location or, applying the alternative interpretation set out at point (ii) of the preceding paragraph, that retention of the telephone number cannot be at a specific location.<sup>13</sup>

4.20 For completeness, Ofcom accepted that the retained number would be retained on a “Public Telephone Network”.<sup>14</sup>

## Implementation

### Article 30 and General Condition 18.2

4.21 As discussed at paragraph 3.9 *et seq* above, Article 30 of the USD states:

*“This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks”.*

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<sup>12</sup> See Part A of Annex 1 for the legal analysis underpinning why Ofcom considers retention by a Vodafone Wireless Office customer of the geographic number it had as a BT customer would be in accordance with the NTNP.

<sup>13</sup> See Part B of Annex 1 for the legal analysis underpinning why Ofcom considers that, in this case, the network termination point cannot be at a specific location or retention of the telephone number cannot be at a specific location.

<sup>14</sup> Public Telephone Network is defined in the General Conditions as: “an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications and also other forms of communication, such as facsimile and data”. The retained number in this case will be retained on a Public Telephone Network because Vodafone’s network is an ECN which is used to provide PATS – Vodafone Wireless Office is a PATS as explained at paragraphs 4.13-4.14 above. Vodafone’s network also supports the transfer between network termination points of communications.

- 4.22 Paragraph 3.143 of the final statement on the General Conditions dated 9 July 2003 issued by the Director General of Telecommunications (referred to as “Ofcom” in this statement for ease of reference<sup>15</sup>) refers to a previous draft of the portability general condition that said:

*“21.5 For the avoidance of doubt, this Condition does not apply to the porting of Telephone Numbers between a Communications Provider providing Publicly Available Telephone Services at a fixed location and a Communications Provider providing Mobile Communications Services.”*

- 4.23 This wording was dropped from the final version of the General Conditions. Mobile operators highlighted in their response to the consultation that some mobile operators provided non-geographic services using numbers in the 08 and 09 number ranges. Their concern was that General Condition 21.5, as previously drafted, could prevent the porting of these non-geographic numbers.<sup>16</sup> Ofcom agreed with this concern and said at paragraph 3.143 of the final statement that its intention was “not to stop the porting of numbers between fixed and mobile companies...”.
- 4.24 However, this did not mean that Ofcom was requiring porting between fixed and mobile networks. Paragraph 3.143 goes on to say that the policy behind the previous drafting at General Condition 21.5 is to instead “limit the rights of subscribers to avoid service portability, i.e. a fixed line number being used for mobile services or vice versa”. In other words, Ofcom’s intention was not to require porting of numbers between networks providing services at a fixed location and mobile networks.
- 4.25 In order to clarify the policy, Ofcom added the words “provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan” in the definition of “Number Portability” in General Condition 18. It was these words that were intended to reflect the fact that Ofcom was not intending to require porting of numbers between networks providing services at a fixed location and mobile networks.
- 4.26 This is not to say, of course, that Ofcom could not require fixed-to-mobile portability if it so wished. Recital 40 makes that clear when it says: “[h]owever, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks”. While Ofcom may have been clear this was not the intention behind the portability condition as it

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<sup>15</sup> Before Ofcom took over the responsibilities and assumed the powers of the five former regulators it replaced on 29 December 2003, the regulation of telecommunications was the responsibility of the Director General of Telecommunications (“the Director”). References to Ofcom in this document are therefore to be taken as including the Director where they relate to the period before 29 December 2003.

<sup>16</sup> [www.ofcom.org.uk/static/archive/oftel/publications/responses/2003/enti0503/ops.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/responses/2003/enti0503/ops.pdf)

stands, Ofcom would not be precluded from adopting such a policy in future if it wanted to. Ofcom said that it intended to review this policy in the near future (see paragraph 4.4 *et seq* above).

#### **Vodafone's submission on fixed-to-mobile portability**

- 4.27 Turning to Vodafone's submission to Ofcom in this case on fixed-to-mobile portability, it said that it was "not seeking geographic number to mobile portability but rather reciprocal geographic number portability". Vodafone made this argument on the basis that a Vodafone Wireless Office customer's geographic number complements his mobile number, rather than being a substitute for it.
- 4.28 Ofcom believed that the facility Vodafone has asked BT for is "fixed-to-mobile" portability. Article 30 refers to the porting of numbers between "networks providing services at a fixed location" and "mobile networks". In this case, Ofcom said that its view was that to allow a Vodafone Wireless Office customer to be reached on his mobile with the geographic number he had as a BT customer demands the porting of numbers between a network providing "services at a fixed location" and a "mobile network". This is because the geographic number was used on a network providing a service at a fixed location (on BT's fixed network), but would, after porting, be used on a mobile network (Vodafone's mobile network).
- 4.29 Vodafone argued that the geographic number acts as a "complement" to the customer's mobile number, but Ofcom's view was that it is not relevant that the customer has a mobile number as well. As noted above, the issue is whether the network termination point or the number retained is at a "specific location". This is not the case here. The fact that the mobile number is used alongside the geographic number does not change this.

#### **Use of geographic numbers for new voice services**

- 4.30 Vodafone submitted that the use of geographic numbers for services with an element of mobility was supported in Ofcom's previous statements relating to new voice services.<sup>17</sup>
- 4.31 The use of geographic numbers for new voice services was considered in Ofcom's consultation *Numbering arrangements for Voice over Broadband services* of 24 February 2004 and its final statement *Numbering arrangements for new voice services*, published 6 September 2004 (the "New Voice Services final statement").<sup>18</sup>

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<sup>17</sup> In this document, "new voice services" means voice services delivered using Voice over Internet Protocol, including Voice over Broadband.

<sup>18</sup> <http://www.ofcom.org.uk/consult/condocs/vob/>

4.32 In the New Voice Services final statement at paragraph 3.97, Ofcom said that:

*“[a]s Ofcom’s decision is that geographic numbers are suitable for new voice services consumers would have the opportunity to port their existing geographic number to the new provider as long as they were both providers of PATS”.*

4.33 Ofcom considered that its position on use of geographic numbers with new voice services is consistent with its interpretation it has taken of General Condition 18.2 for the purposes of resolving this dispute. In other words, in the case of new voice services, subscribers would be requesting Number Portability as defined in General Condition 18.2 because the network termination point of the subscriber would be a specific location (or because, according to the alternative interpretation set out at point (ii) of paragraph 4.18 above, subscribers would be retaining their telephone numbers at a specific location). The reason for this is that new voice services, unlike Vodafone Wireless Office, are not fully mobile services. They may be nomadic services, which means that they are movable but are constrained in terms of where they can be used.<sup>19</sup>

4.34 Nevertheless, as noted above, (see paragraph 4.4 *et seq*) Ofcom said it intended to review several aspects of its numbering policy, including the issue of whether its current policy for number portability is consistent with its policy in respect of new voice services.

### **General Condition 18.1**

4.35 For completeness, Ofcom also considered whether BT is under an obligation in General Condition 18.1 in this case.

4.36 General Condition 18.1 says that:

*“The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests.”*

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<sup>19</sup> In its comments on Vodafone’s submission, BT stated that the “relevant provisions” relating to new voice services related to Location Independent Electronic Communications Services (“LIECS”). BT said that LIECS are defined as not being “Mobile Services”. In this way, BT’s position is that Ofcom has not required porting of geographic numbers to mobile services. Ofcom believes, however, that the issue of LIECS is irrelevant in considering whether its position on use of geographic numbers with new voice services is consistent with its interpretation it has taken of General Condition 18.2 for the purposes of resolving this dispute. That is because LIECS are non-geographic numbers. The consideration in this case relates to geographic numbers.

- 4.37 As described above, the request by the Vodafone Wireless Office customer is not for Number Portability because it would not enable the network termination point or the number being retained to be at a specific location.
- 4.38 BT therefore has no obligation to provide its customers with the facility enabling them to retain their geographic numbers for use with Vodafone Wireless Office under General Condition 18.1.

## Section 5

# Responses to the consultation

5.1 Ofcom received responses from :

- BT
- The Internet Telephony Services Providers' Association (“ITSPA”)
- Telewest
- Vodafone
- One confidential response.

5.2 Ofcom has published non-confidential responses on its website.

## Vodafone

5.3 Vodafone’s comments in response to the consultation document and Ofcom’s response are set out below.

### “Specific location”

#### *Number portability but not number mobility*

5.4 Vodafone submits that Ofcom does not address Vodafone’s interpretation, which is that “specific location” refers to “the location of the customer at the time of the request and to the service area of the donor operator”.

5.5 Vodafone then submits that the inclusion of “specific location” is intended “to avoid creating an unqualified customer right to number mobility”, since otherwise a customer “could simultaneously port his geographic number and move anywhere in the country”.

### *Ofcom’s view*

5.6 Ofcom does not agree that “specific location” refers to “the location of the customer at the time of the request and to the service area of the donor operator”. There is no evidence in support of Vodafone’s interpretation, either on the face of the definition of Number Portability, in the Universal Service Directive, or otherwise. Ofcom also does not accept that the reference to the “contractually agreed location” in the context of its consultation and interim guidance on New Voice Services dated 6 September 2004 is relevant in this context, as discussed further at paragraph 5.26 *et seq* below.

5.7 As explained at paragraph 5.18 below, if there is no “real doubt” about the meaning of an enactment, the court will apply the plain meaning of that enactment. Real doubt will exist if the plain ordinary meaning leads to some result which cannot reasonably be supposed to have been the intention of the

legislature so that it is proper to look for some other possible meaning of the word or the phrase.

- 5.8 Therefore, even if there was evidence for Vodafone's proposition as to the meaning of "specific location", Ofcom does not consider that it would cast real doubt on the plain meaning of the words such that it is proper to look for another interpretation. To cast real doubt, Vodafone would have to show that a "plain meaning" interpretation would lead to a result that could not reasonably be supposed to have been Ofcom's intention in setting the definition of number portability in General Condition 18. Ofcom believes that the plain meaning of "specific location" – that either the network termination point or number being retained is at a specific location – is consistent with its intention not to require fixed-to-mobile porting.
- 5.9 Turning to Vodafone's submission on mobility, as noted at footnote 10 of the consultation document, "mobility" is a service offered at the discretion of communications providers whereby calls to the subscriber's number can be routed to a new address. Ofcom agrees with Vodafone that the reference to specific location in the definition of number portability in General Condition 18 is to avoid creating "an unqualified customer right to number mobility". However, Ofcom does not see how this supports Vodafone's argument that "specific location" refers to "the location of the customer at the time of the request and to the service area of the donor operator".

### ***Literal interpretation***

- 5.10 Vodafone submits that Ofcom relies solely on the literal interpretation of the term "specific location" in reaching its proposed decision. Vodafone says that Ofcom's approach is insufficient to discharge its duties in this case. Vodafone bases its view on Halsbury's Laws<sup>20</sup>, which states that a court must infer that a legislator intends the wording of an enactment to be given its fully informed interpretation rather than a purely literal one.
- 5.11 Vodafone submits that, even if Ofcom were correct in taking a literal approach (which Vodafone does not accept in any event), Ofcom's approach would only be relevant "in cases where all other things are equal [i.e. where] there is no evidence either way, or equally persuasive evidence supporting two or more opposing constructions of the legislation".
- 5.12 Vodafone submits that, in this case, all other things are not equal, since Vodafone has put forward a different view, i.e. that the reference to "specific location" relates to the location of the customer at the time of the request and to the service area of the donor operator".

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<sup>20</sup> Halsbury's Laws 44(1) at paragraph 1414.

- 5.13 Vodafone submits, in addition, that “there is no credible policy rationale for why the interpretation Ofcom appears to favour is correct”.
- 5.14 Vodafone notes that Ofcom has itself acknowledged an inconsistency of policy in this area and that for Ofcom to arrive at this interpretation constitutes “arbitrary discrimination” against mobile operators and mobile services.
- 5.15 Vodafone also notes Ofcom’s alternative interpretation of General Condition 18.2 that, for geographic numbers, the telephone number of the subscriber is to be retained at a specific location. Vodafone states that Ofcom proceeds to dismiss this interpretation on the basis that Vodafone Wireless Office is a mobile service. Vodafone submits that Ofcom’s analysis “does not shed any light on why Ofcom considers that a requirement to retain a telephone number at a specific location precludes mobile services”.

### **Ofcom’s view**

- 5.16 When interpreting an enactment, a court will first consider whether there is any real doubt as to its meaning. An “enactment” includes instruments which are legislative in character<sup>21</sup> and would include conditions set by Ofcom under an Act of Parliament, such as the General Conditions of Entitlement.
- 5.17 Real doubt will exist if the plain ordinary meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, so that it is proper to look for some other possible meaning of the word or the phrase.
- 5.18 If there is no real doubt, the court will apply the plain meaning. Where there is real doubt, a court will consider a number of different rules laid down in case law as to how an enactment should be interpreted. These are known as “rules of interpretation”. It will balance these rules and then decide in favour of which construction they point.<sup>22</sup>
- 5.19 By way of example, this was the approach taken by the Competition Appeal Tribunal (“CAT”) in the *CPS Save* judgment in interpretation of General Condition 1.2. The CAT considered the ordinary and natural meaning of the condition and concluded that “*we have not been persuaded that any other meaning should be given to the ordinary and natural meaning of the wording in General Condition 1.2*”.<sup>23</sup>
- 5.20 As described at paragraph 5.16 above, real doubt only exists if the plain ordinary meaning leads to some result which cannot reasonably be supposed

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<sup>21</sup> See Bennion, *Statutory Interpretation*, Third Edition, Butterworths 1997, Part III.

<sup>22</sup> *Ibid*, Part X.

<sup>23</sup> Case 1025/3/3/04, [2004] CAT 23, 9 December 2004.



to have been the intention of the legislature. Ofcom does not consider, however, that Vodafone's arguments suggest there is "real doubt" as to the correct meaning of the term "specific location" in this context. The plain meaning as understood by Ofcom (see paragraph 19 at Annex 1 below) does not lead to a result that cannot reasonably be supposed to have been Ofcom's intention in setting the condition. Rather, it does lead to a result that was Ofcom's intention. In other words, Ofcom did not intend to mandate fixed-to-mobile portability (as discussed at paragraph 5.35 *et seq* below), and the plain meaning of the definition of Number Portability supports that.

- 5.21 Turning to Vodafone's comment on Ofcom's policy on number portability requirements and its policy for allocating numbers, Ofcom acknowledges that there may be an inconsistency between its policy for allocating numbers and number portability requirements as regards services such as Vodafone Wireless Office. Ofcom intends to review requirements in this area, as discussed at paragraph 1.8 *et seq* above.
- 5.22 As to Ofcom's alternative interpretation of General Condition 18.2 (i.e. that, for geographic numbers, the telephone number of the subscriber is to be retained at a specific location), Ofcom believes in this case that the customer's telephone number would not be retained at a specific location. This is because Vodafone Wireless Office is a mobile service and as such, the number retained would not be at a "specific location". This is based on the meaning of "specific" as it is generally understood and as defined in the New Shorter Oxford English Dictionary as "clearly or explicitly defined; precise, exact, definite". Ofcom does not consider that a number is retained at a location that is explicitly defined where the service is mobile or in other words, is a service which is designed to be used on the move.

### **BT service area**

- 5.23 Vodafone notes, referring to paragraph 3.18 of the consultation document, that Ofcom "appears to accept" that Vodafone would permit number mobility for Vodafone Wireless Office customers only within BT's "service area".<sup>24</sup>
- 5.24 Vodafone argues that Ofcom has expressly acknowledged<sup>25</sup> that "a contractually agreed location may constitute a "fixed location" even if a user

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<sup>24</sup> Service Area is defined as follows in the Functional Specification: "**Service Area (applies to Portability in relation to Geographic Numbers only):** That part of the geographic area in which a Donor Provider provides Publicly Available Telephone Services within which, at the time that any request for Simultaneous Geographic Mobility or Subsequent Geographic Mobility is made by another Communications Provider in respect of a Subscriber Number, the Donor Provider would provide such Geographic Mobility in respect of that Subscriber Number as part of its standard provisioning practice".

(and his NTP) accesses services from another location”. Vodafone states that if an identifiable contractually agreed location is fixed, it must also be specific.

- 5.25 Vodafone submits that “there is nothing in the definition of Telephone Number in the General Conditions which would prevent it from being associated with and retained at a contractually identified location in this way”.

### **Ofcom's view**

- 5.26 Ofcom acknowledges that in the context of its *New Voice Services: consultation and interim guidance*, it stated that if a service was provided at a contractually agreed location then it would appear to be a service that is provided at a fixed location.
- 5.27 However, the comment quoted by Vodafone must be read in the context in which it was made. The discussion referred to by Vodafone was part of a consultation and, specifically, was dealing with issues around network integrity issues for new voice services. In this context, Ofcom considered the requirements in General Condition 3 as regards network integrity for providers of public telephone networks at a fixed location and providers of publicly available telephone services at a fixed location. It proposed that, where a new voice service was not used at a contractually agreed location, then network integrity requirements would not be relevant, and asked whether it was reasonable to have different network integrity requirements for nomadic services compared to those at a fixed location.
- 5.28 Ofcom was therefore proposing that a contractually agreed location may constitute a fixed location *for the purposes of network integrity*. This cannot be read to support Vodafone's position that the place at which a subscriber makes his request to port is a “specific location” for the purposes of number portability.
- 5.29 In any event, Vodafone's use of *New Voice Services: consultation and interim guidance* as regards a contractually agreed location, in support of its position that a specific location is the place a subscriber makes his request to port, implies that Vodafone would be subject to the network integrity requirements in General Condition 3 in respect of Vodafone Wireless Office. In other words, if Vodafone Wireless Office were to be regarded as being provided at a contractually agreed location which is fixed, General Condition 3 would apply. This is not Ofcom's intention. As noted at paragraph 6.9 of the same document, while, in general, the General Conditions that apply to fixed services are also relevant to mobile services, the network integrity

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<sup>25</sup> At section 6 of Ofcom's *New Voice Services: consultation and interim guidance*, 6 September 2004, published at:  
[http://www.ofcom.org.uk/consult/condocs/new\\_voice/aneu\\_voice/nvs.pdf](http://www.ofcom.org.uk/consult/condocs/new_voice/aneu_voice/nvs.pdf).

requirements of General Condition 3 are an exception to this, as “they apply only to communications providers offering services and networks at fixed locations, and therefore exclude mobile services”. Ofcom said in *New Voice Services: consultation and interim guidance* that it was not proposing to introduce new network integrity requirements on mobile providers as it considered, based on consumer research, that “most consumers expect mobile phones to be less reliable than fixed lines”.<sup>26</sup> In other words, Vodafone’s use of *New Voice Services: consultation and interim guidance* as regards a contractually agreed location to support its interpretation of “specific location” results in a position which is contrary to Ofcom’s intention as regards General Condition 3.

- 5.30 Ofcom notes Vodafone’s comments about the definition of “Telephone Number” in the General Conditions, which Vodafone suggests would not prevent them from being associated with a contractually agreed location. Ofcom’s view is that this line of argument is irrelevant because, as discussed in the preceding paragraphs, the concept of a “contractually agreed location” is not relevant to number portability requirements.
- 5.31 Nevertheless, Ofcom recognises that the distinction between fixed, nomadic and mobile services is becoming less clear over time, and may to continue to do so. This is one of the reasons that led Ofcom to undertake to reconsider related numbering issues, as discussed at paragraph 1.8 *et seq* above.

### **Fixed-to-mobile portability**

- 5.32 Vodafone submits that it was Ofcom’s intention to mandate portability between fixed and mobile networks in limited circumstances. Vodafone cites, in support of this position, the fact that Ofcom replaced the wording at its draft General Condition 21.5 with the reference to the NTNP at paragraph 3.143 of its final statement on the General Conditions dated 9 July 2003<sup>27</sup>. According to Vodafone, this was a “more limited proviso”.
- 5.33 Vodafone submits that while the final statement<sup>28</sup> may be ambiguous on this point when it said that the concern was to “limit the rights of subscribers to avoid service portability i.e. a fixed line number being used for a mobile service and vice versa”, it cannot trump the much clearer statement in the same passage that is reflected in General Condition 18.2 that “the key criterion is compliance with NTNP”.

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<sup>26</sup> Paragraphs 6.10 and 6.11 of the *New Voice Services consultation and interim guidance* of 6 September 2004.

<sup>27</sup> As discussed at paragraph 4.22 of the consultation document.

<sup>28</sup> *The General Conditions of entitlement*, 22 July 2003, published at: [http://www.ofcom.org.uk/telecoms/ioi/g\\_a\\_regime/gce/gcoe/#content](http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/gcoe/#content).

- 5.34 Vodafone also submits that “service portability” referred to in the final statement is a different concept to number portability.

### ***Ofcom’s view***

- 5.35 Ofcom notes Vodafone’s comments on Ofcom’s intention in this context, but confirms that Ofcom’s intention was not to mandate portability between fixed and mobile networks in accordance with Article 30 of the USD (see paragraph 4.24 of the consultation document, which is reproduced at paragraph 4.24 above).
- 5.36 Ofcom agrees that “service portability” (i.e. the ability of a subscriber to carry services with him when he changes provider) is not the same as number portability. However, in the final statement on the General Conditions dated 9 July 2003, the reference to “service portability” is followed and qualified by “i.e. a fixed line number being used for mobile services or vice versa”. These words show that Ofcom’s intention was to not require fixed-to-mobile porting.

### **Impact of the draft Determination on VoB and VOIP**

- 5.37 Vodafone submits that new voice services can be fully mobile. Using a 3G data card and VOIP software such as Skype, for example, the network termination point of a subscriber would not be at a specific location. Vodafone’s states that the implication of Ofcom’s analysis is that number portability obligations would depend on the method that a subscriber uses to access the internet on a particular call.
- 5.38 Vodafone also states that a nomadic service cannot be said to have a network termination point at a specific location. This is because it is “impossible to identify a list of world wide access points to the internet” at any point in time. According to Vodafone, it is incorrect, in the alternative, to try and assess where the network termination point on a call-by-call basis. This is because “the subscriber is in a location unknown (and unknowable) to all but him”.
- 5.39 Vodafone submits that Ofcom “equates “specific location” with “fixed location” without recognising that the two are not the same”, and that in fact the NTP of a mobile handset is “as much a specific location as the NTP of (say) a nomadic VOIP provider offering service in a coffee shop.”

### ***Ofcom’s view***

- 5.40 As discussed at paragraph 4.33 of the consultation document (which is reproduced at paragraph 4.33 above), Ofcom considers that nomadic services can be distinguished from mobile services in the context of number portability. This is because the network termination point or number retained in the context of a nomadic service is at a specific location. This is not the

case for mobile services. The distinction is based on the fact that new voice services, unlike Vodafone Wireless Office, are not fully mobile services.

- 5.41 Ofcom considers that the scenario described by Vodafone (the combination of a 3G card and VOIP software) is not a nomadic service. It is a new voice service that is a mobile service. Ofcom agrees that in this example, the network termination point or the number retained would not be at a specific location. This means that there is no requirement for GNP from a fixed service.
- 5.42 Ofcom recognises that this means that porting requirements for new voice services would depend on how the call is made and recognises that this is unsatisfactory. Ofcom appreciates that the lines between fixed, nomadic and mobile services are becoming less clear over time. This is one of the reasons it has undertaken to reconsider related numbering issues, as set out at paragraph 1.8 *et seq* above.

### **Inconsistency of current portability obligations**

- 5.43 Vodafone notes that Ofcom has itself acknowledged an inconsistency between its numbering allocation policy and its policy on number portability, and urges Ofcom to resolve this inconsistency as a matter of urgency.
- 5.44 Vodafone submits that the current position “has the effect of creating an “island” of non-portable geographic numbers”, as Vodafone has been allocated geographic numbers but is not under any obligation to port those numbers to other networks. In other words, “Vodafone may allocate geographic numbers to its customers, but those customers can never switch to another operator and take their number with them”. Vodafone submits that VOIP providers would face the same restriction.

### **Ofcom’s view**

- 5.45 Ofcom acknowledges that there may be an inconsistency between its policy for allocating numbers and number portability requirements as regards services such as Vodafone Wireless Office. Ofcom intends to review requirements in this area, as discussed at paragraph 1.8 *et seq* above.

### **Ofcom’s proposals to reconsider its current policy on number portability**

- 5.46 Vodafone states that, although it believes that BT is already required to provide Vodafone with number portability in respect of Vodafone Wireless Office, “if greater regulatory transparency can be achieved efficiently and expeditiously by more clearly aligning the provisions of the General Conditions with the NTNP and Ofcom’s policy statements in respect of VOIP, Vodafone would welcome such a move.”
- 5.47 Vodafone notes however that “[a]ll that is in issue in this case is the alignment of the General Conditions with the NTNP and Ofcom’s policy on VOIP”, and

that this issue should be consulted on separately rather than following any consultation on Ofcom's longer term numbering strategy.

### **Ofcom's view**

- 5.48 Ofcom acknowledges the need to consider consistency between its policy in relation to geographic number allocation and number portability as regards mobile services, as well as the need to consider whether its current policy for number portability is consistent with current technological and service feasibility and Ofcom's policy for numbering of new voice services.
- 5.49 As set out at paragraph 1.8 *et seq* above, Ofcom will publish a separate consultation on these issues in the near future before its review of numbering strategy in the longer term.

### **BT**

- 5.50 BT welcomes Ofcom's proposed decision.
- 5.51 BT makes some comments on the scope of Ofcom's strategic review of numbering strategy, saying that it is important that it was "comprehensive and thoroughly thought through". It strongly discourages Ofcom from undertaking a quick review simply to gain consistency between numbering allocation policy and number portability policy, saying that the two policies have never been aligned and that Ofcom and industry have always recognised that they are separate. It also states that it does not wish Ofcom's review of numbering strategy to delay the narrower review of geographic numbering.
- 5.52 While BT generally agreed with Ofcom's proposed decision, it disagreed with Ofcom's analysis in relation to new voice services at paragraph 4.33 and footnote 18 of the consultation document, although it noted that "this point does not affect Ofcom's decision".
- 5.53 BT noted that Ofcom appeared to "distinguish nomadic services (such as LIECS) from mobile services such as [Vodafone Wireless Office]". BT's view was that "since nomadic services are accessible from many different locations, they are not accessible from a specific location and therefore are not current eligible for GNP. They are, however, if PATS, potentially eligible for non-geographic number portability if they use non-geographic numbers".

### **Ofcom's view**

- 5.54 Ofcom's determination in this case is based on current regulatory obligations on BT. Ofcom acknowledges BT's comments on Ofcom's proposed review of its numbering strategy and separate consultation on conservation of geographic numbers, and invites BT to comment in full on its proposals for future arrangements as and when Ofcom publishes its proposals for developments in numbering policy.

- 5.55 Ofcom has considered the distinction between nomadic services and mobile services such as Vodafone Wireless Office in its response to Vodafone's submission, as discussed at paragraph 5.40 *et seq* above.

### Other responses

- 5.56 Telewest fully supported Ofcom's proposed decision.
- 5.57 ITSPA submitted that the inclusion of the phrase "at a specific location" in the current definition of Number Portability was inappropriate in the context of convergence of fixed and mobile services, and that it should be removed were Ofcom to revise this definition in future.
- 5.58 ITSPA submitted that communications providers are not prevented from offering a greater degree of number portability, on a voluntary basis, than that mandated under the General Condition.
- 5.59 ITSPA submitted that "it is Number Portability (i.e. the Subscriber's right) that is derived from Article 30 of the USD, not Portability (i.e. the obligation of the Communications Provider".
- 5.60 Ofcom does not agree with this point. A Communications Provider can only provide number portability if it has been provided with portability by another Communications Provider. In this way Article 30 is relevant to both General Condition 18.1 and 18.2.
- 5.61 A respondent commented that Ofcom's proposed decision was not consistent with Ofcom's statutory obligation under section 3 of the Communications Act to further the interests of consumers, where appropriate by promoting competition.
- 5.62 Ofcom's decision in this case is based on current regulatory requirements, which reflect Ofcom's statutory duty to further the interests of consumers, where appropriate by promoting competition.
- 5.63 Ofcom considers that its decision is in the interests of consumers, as it reinforces existing regulation underlying the transfer of geographic numbers which gives certainty for consumers. Nevertheless, Ofcom intends to review its policy in this area going forward to ensure that it continues to meet its statutory duties in an evolving market.



## Section 6

# Ofcom's decision

- 6.1 Following its consideration of stakeholders' responses, Ofcom's decision is that BT is not required to provide Vodafone with GNP in relation to geographic numbers in connection with Vodafone's Wireless Office service.
- 6.2 In reaching its decision, Ofcom has had regard to its duty under section 3 of the Act to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom considers that its decision is in the interests of consumers, as it reinforces existing regulation underlying the transfer of geographic numbers which provides certainty for consumers.
- 6.3 Ofcom recognises that current number portability requirements may not be consistent with Ofcom's policy for allocating geographic numbers in the context of mobile services, and intends to review requirements in this area, as discussed at paragraph 1.8 *et seq* above. Ofcom considers that it is in consumers' interests for this review to be conducted in an open and transparent manner, and will therefore consult separately on this issue in the near future.
- 6.4 In making its decision for resolving this dispute, Ofcom has had regard to its Community duties set out at section 4 of the Act. Ofcom considers that its proposals, by reinforcing the concept of geographic numbers in the minds of consumers, promotes the interests of all persons who are citizens of the European Union, in line with the third Community requirement.
- 6.5 Nevertheless, Ofcom intends, as discussed at paragraph 1.8 *et seq* above, Ofcom is conducting a review of its numbering strategy and aims to develop a long-term coherent strategic approach to all Ofcom's numbering activities, which will take in to account consumers' needs.



## Annex 1

# Legal analysis

## (A) Retention in accordance with the National Telephone Numbering Plan

1. As noted at paragraph 4.19 above, Ofcom does not consider that the definition of Number Portability is made out in this case because the network termination point or the retention of the telephone number is not at a specific location. However, for the sake of completeness, Ofcom has considered whether the final part of the definition of Number Portability is satisfied in this case, in other words, whether retention of the telephone number is in accordance with the NTNP.

2. The NTNP defines geographic numbers as:

*“a Telephone Number, from a range of numbers in Part A of this document, where part of the digit structure contains a Geographic Area Code, consistent with Appendix A of this document, that is Adopted or otherwise used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned or where the Network Termination Point does not relate to the Geographic Area Code but where the tariffing remains consistent with that Geographic Area Code”.*

3. In this case, Ofcom believes that the network termination point does not relate to the geographic area code, but considers that the tariffing is consistent with that code. The numbers Ofcom is considering in this case are therefore geographic numbers for the purposes of the NTNP.

4. “Network Termination Point” is defined as:

*“the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber. A Network Termination Point provided at a fixed position on Served Premises shall be within an item of a Network Termination and Testing Apparatus”.*

5. The relevant definition of Public Electronic Communications Network (“PECN”) is found in paragraph 1 of Part 1 of the General Conditions, which defines PECN as:

*“an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public”.*

6. Ofcom considers that the point at which a mobile subscriber gets access to the PECN is either the mobile handset or a point on or in it.

7. This is because in the case of a mobile service, the point at which a subscriber is provided with access to the PECN may be the Subscriber Identity Module (“SIM”) card. It is the SIM card that allows access to a PECN for the purpose of making an ECS available to the public. As the ECN involves switching or routing, that

physical point is further described in the definition of “Network Termination Point” as being identified “by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber”. The network address that is linked to the telephone number is the International Mobile Subscriber Identity (“IMSI”). This is a number on the SIM card which is linked to the telephone number of the mobile subscriber.

8. However, a SIM card does not, on its own, provide access to the PECN. The network termination point may, alternatively, be the antenna in the handset, since it may be this that allows access to an ECN for the purpose of making an ECS available to the public. Even in the absence of a SIM card, calls can still be made to the emergency services, so in that case, the antenna gives access to an ECN for the purpose of making an ECS available to the public. The network address is the serial number of the handset, which (in accordance with the definition of Network Termination Point) is not linked to the telephone number of the subscriber, but to his name. Indeed, it is that serial number that the emergency services see when a call is made from a mobile without a SIM card. However, again, the antenna on its own does not provide access to the PECN: for non-emergency calls, a SIM card is also required.
9. Ofcom therefore considers that the network termination point for a mobile in this context is either the handset or somewhere in or on it.
10. In this case, the geographic area code<sup>29</sup> is not used for routing calls to the physical location of the network termination point, because it is Vodafone, and not the code itself, that maps the calls to that point.
11. However, as Vodafone has stated in its submission, where a caller contacts a Vodafone Wireless Office customer by dialling his geographic number, he is charged the same as he would be for a call to a geographic number terminating on a fixed line. The tariffing is therefore “consistent with that Geographic Area Code”, and the number is therefore a geographic number for the purposes of the NTNP.
12. Given that the retained number is a geographic number for the purposes of the NTNP, Ofcom also considers that retention in accordance with the NTNP. This is because it complies with the specific restrictions on telephone numbers at Part B of the NTNP. It complies with B.3.1.1 in that the number has a digit structure that contains a relevant geographic code. It complies with B.3.1.2 which says that the number cannot be used outside the relevant geographic area except where the customer has asked for it. In this case, the customer has so requested it.

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<sup>29</sup> This is defined as a telephone number identifying a particular geographic area. This must be consistent with Appendix A of the NTNP.

## **(B) Specific location**

13. Vodafone suggested in its submission that the reference to “specific location” in the definition of Number Portability (see paragraph 4.16 above) refers to the specific location of the Subscriber when he makes his request to retain his telephone number (i.e. before porting has taken place). Vodafone also submits that “specific location” relates to the service area of the original operator where the new operator offers “mobility” in accordance with the Functional Specification.
14. A second interpretation, put forward by BT and acknowledged by Vodafone, is that it is the network termination point that must be at the “specific location”. In other words, number portability is something that allows a subscriber to retain his number independently of the person who provides the service at the network termination point<sup>30</sup> which is at a specific location for geographic numbers.
15. The first issue to consider is whether the numbers here are geographic numbers for the purposes of the General Conditions. This is because the definition of geographic numbers in the General Conditions is different from the definition of geographic numbers in the NTNP. If the numbers are not geographic numbers, then part (i) of the definition contained in the General Conditions (see paragraph 4.16 above) is not relevant, although part (ii), which relates to non-geographic numbers, may be.
16. Under the General Conditions, geographic numbers are defined as:

*“a Telephone Number from a range of numbers in the National Telephone Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned”.*
17. Ofcom considers that the issue here is not the same as the question of whether the retained number is in accordance with the NTNP (i.e. the situation after porting) which is the situation to which the final part of the definition of number portability relates. Ofcom’s concern here is the obligation to port a number generally. In other words, part (i) of the definition contained in the General Conditions relates<sup>30</sup> to a number before porting, not after.
18. The number before porting in this case is a geographic number within the definition of the General Conditions because the numbers are from a range in the NTNP and part of the digit structure contains geographic significance used for routing the call. This means that the applicable part of the definition is part (i) and not part (ii).
19. Ofcom’s view is that the literal (i.e. everyday) meaning of the definition is that the network termination point must be at the “specific location”. Ofcom considers that in the case of porting of geographic numbers to Vodafone Wireless Office, the

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<sup>30</sup> The definition of “Network Termination Point” in the General Conditions is identical to the definition of “Network Termination Point” in the NTNP.

service being provided by Vodafone would not be one where the network termination point would be at a specific location. "Specific" is not defined in the USD or the General Conditions so Ofcom has interpreted this term it is as generally understood<sup>31</sup>, and considers that because if the network termination point is, as discussed above, in or on a mobile handset, it will be mobile, and will not therefore be at a specific location. As the network termination point would not be at a specific location the obligation does not apply to BT in this case.

20. Ofcom considers that there may be third possible interpretation of "specific location" (in addition to that put forward by Vodafone as described at paragraph 13 above and the alternative described at paragraph 14 above), which is that it allows the subscriber to *retain* his geographic number on a public telephone network at a specific location. Using this interpretation, the argument would be that portability means there is an obligation to port where a subscriber wants to retain his number (in the case of a geographic number) at a specific location. In the case of Vodafone Wireless Office, the customer wants to retain his number at a location which is mobile and is not, therefore, a specific location. The obligation would not therefore apply in this case.
21. Given the above, Ofcom does not believe there is anything to suggest, on the face of the definition or indeed in Article 30 of the USD, that the reference to "specific location" relates to the subscriber's location when he makes a request to port, or to the area within which number mobility may be offered according to the Functional Specification. Even if it was the case that "specific location" relates to the subscriber's location when he makes a request to port, or to the area within which number mobility may be offered according to the Functional Specification, it is unclear to Ofcom how these areas are relevant to the definition of Number Portability. Neither the network termination point nor the number retained would be in these areas because Vodafone Wireless Office is a service that is mobile, as described above.

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<sup>31</sup> Defined in the New Shorter Oxford English Dictionary as "clearly or explicitly defined; precise, exact; definite".

Determination to resolve a dispute between BT and Vodafone about geographic number portability