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OFCOM CONSULTS ON WHOLESALE RATES FOR TERMINATION OF CALLS ON FIXED NETWORKS

By Peter Dickinson and Stephen Smith

On 16 September 2010, the Office of Communications ("Ofcom") issued a consultation on how to assess whether charges for call termination on fixed networks are fair and reasonable. The guidance is intended to assist communication providers to set their call termination rates going forward.

When a customer of a fixed or a mobile provider calls a UK fixed geographic telephone number, the provider pays the operator which hosts the called number a wholesale call termination charge to complete the call.

In successive market reviews, Ofcom has found that the terminating communications provider has significant market power in relation to the termination of calls on its own network. This is logical as the network originating the call has no alternative but to pay the call termination charge if its customer wishes to make a call to that number.

As a consequence, all communications providers are required to provide call termination on fair and reasonable terms, conditions and charges (other than BT - KCOM in the Kingston-upon-Hull area - which are subject to set charge controls), but the issue of what is fair and reasonable has been the subject of a number of disputes. The proposed guidance should assist communications providers by giving an indication of how Ofcom intends to determine disputes in this area going forward.

In previous market reviews, including the 2009 review, Ofcom took the view that charges are unlikely to be fair and reasonable unless they are based on BT's termination rates (given that BT's costs are likely to be close to those of an efficient network).

In the consultation document Ofcom has identified the following options:

- **Do nothing**. Not issue any guidance and leave it up to the industry to conduct negotiations on termination rates based on what each communication provider consider fair and reasonable. Ofcom would adjudicate inevitable disputes arising from this option.
- **Option 1**. Set individual termination charges for each communication provider, calculated on the basis that each communication provider receives a rate which is a mix of BT Local Exchange Segment ("LES") and Single Tandem ("ST") conveyance rates derived from how it routes outbound traffic to BT.
- **Option 2**. Set the termination charges of all networks equal to each other based on an industry averaged blend of BT's LES and ST rates. This would generally result in termination charges higher than BT's, but the charges would be equal for all communication providers.

Peter Dickinson

Partner, Corporate
pdickinson@mayerbrown.com

Stephen Smith

Senior Associate,
Antitrust & Competition
spsmith@mayerbrown.com

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- **Option 3**. Set all termination charges equal to BT's current termination rate. This would mean that the rates for wholesale fixed geographic call termination on each individual network in the UK would be the same.

Ofcom has reviewed these options under six principles (cost causation, cost minimisation, effective competition, reciprocity, practicability and distribution of benefits) and has provisionally concluded that its preferred option is Option 3. Ofcom is of the view that Option 3 would create stronger incentives for communication providers to minimise costs and is likely to be the most favourable to consumers, in particular to those who call geographic numbers.

Therefore, Ofcom is proposing that going forward termination charges will be presumed to be fair and reasonable where they are the same as BT's call termination rates. Ofcom's provisional view is that there should be a simultaneous change for all communication providers to symmetric termination rates by 1 October 2012, giving communication providers an estimated 20 month period to adjust to the new regime.

Ofcom is seeking comments on its proposed draft guidance by 26 November 2010. The final guidance is expected to be published in early 2011.