7 Views of Vodafone

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Introduction

7.1. Vodafone provided us with detailed views and other evidence principally in six written submissions, in its responses to our questionnaire and at three hearings (including the joint hearing referred to in Appendix 1.1). This evidence related to the three references made by the DGT relating respectively to the termination charges levied by Vodafone and Cellnet and to BT's retention on fixed-to-mobile calls. As explained in Appendix 1.1, the investigation for all three references was conducted by the same Group of members in parallel, and evidence was not sought separately for each of them, but rather all evidence was considered in relation to each reference where relevant. In this chapter we summarize Vodafone's key arguments on the major issues relevant to this inquiry.

Competition in the mobile telecommunications industry

7.2. Vodafone considered that the present inquiry was about consumer protection and was concerned with the extent to which the market for inbound calling was or could be effectively competitive. Vodafone said it was critical that, in considering this issue, the MMC examine the nature of competition for mobile communications and, in particular, the way in which that competition was developing. The mobile industry had achieved spectacular and continuing market success both in terms of customer numbers (some 10.5 million today, growing by around 30 per cent a year) and traffic (also growing by around 30 per cent a year). This had been achieved through vigorous and relatively unfettered competition.

7.3. Vigorous competition among the four MNOs had emerged since 1995. The price of mobile services had fallen by over 50 per cent since 1992, with over 30 percentage points of this fall during the last two years. This reduction had benefited all customers, whether heavy or light users of mobile services.

7.4. New mobile phone packages had extended the appeal of mobile telephony to residential customers, with the launch of tariff packages offering low handset prices and bundled minutes and with other packages offering a richness of choice to all kinds of consumer. Over the same period, service functionality (for example, international roaming, short messaging etc), network coverage and service quality had also been improved, delivering enhanced value for money.

7.5. As Orange and One2One had succeeded in expanding their market shares, Vodafone's share of the total mobile market had declined to 38 per cent (measured by number of customers). Shares of current sales gave a better indication of current competitive dynamics: Vodafone's share of new business in 1997 declined to 28 per cent, and was not substantially different from that achieved by One2One and Orange.

7.6. As one would expect in a competitive market, the fortunes of each operator had fluctuated. It was initially Vodafone which lost share when the PCN operators entered, while Cellnet maintained its position. Since 1995, however, Cellnet had lost more share than Vodafone. Similarly, One2One entered the market before Orange and until 1995 had a higher share, but Orange overtook it in 1996.

7.7. Furthermore, the share of net new subscribers acquired monthly swung substantially: during the past two years each of the MNOs had won the title of market leader several times over (see Appendix 4.4).

7.8. Such fluctuations in market share were partly the result of the high churn rates in mobile. These showed the market to be characterized by a large proportion of customers whose switching between offerings led to effective competition for the benefit of all customers.

7.9. Vodafone emphasized that the levels of customer churn provided crucial evidence that the mobile market was highly competitive. Consumers were acutely aware that the latest deal to be had was better than the last, and that they could easily switch: from one handset to another, from one network to another, from one service provider to another, or from one tariff to another—and from all four simultaneously if that seemed advantageous. Vodafone's own figures showed that, of its average customer base in 1997/98 of approximately 3.1 million customers, some 875,000 disconnected in contemplation of some sort of change, including leaving mobile altogether, abandoning Vodafone for another network, or staying with Vodafone but in some way changing their contracts (see paragraph 4.85). For each MNO, churn was of fundamental importance: when a customer disconnected, the MNO lost all that customer's traffic, not just the outbound element. It was therefore imperative for each MNO to compete to retain customers, not merely to attract new ones.

7.10. Vodafone considered that the evidence represented by churn was reinforced by the enormous number of customers who 'migrated', ie changed handset, tariff or service provider without disconnecting. It told us that in the 12 months to May 1998, 58 per cent of the average Vodafone network subscriber base—well over 1.5 million customers—migrated. If one added the proportion of customers who churned to those who migrated, no less than 75 per cent of Vodafone's customers—over 2 million—changed some aspect of their mobile phone service each year.

7.11. Vodafone also told us that it had looked at customer willingness to desert one contract for another as soon as the opportunity arose, by analysing for how long the present customer base had been with Vodafone and for how long customers had been with Vodafone when they disconnected. It believed that, as its figures showed that over half the current GSM subscriber base had been with Vodafone for no more than one year, and almost 40 per cent of all GSM disconnections had taken place within a year, the evidence of churn as indicating consumer willingness to reconsider was hard to deny.

7.12. Vodafone said that the four MNOs had continually introduced and promoted the introduction of more competitive service packages, with competitive awareness evolving progressively over a range of different elements of the service package. Competition in the mobile market had spread out

remorselessly from a single feature to multiple features, and always incrementally, in the sense that no one feature had ever ceased to be a factor of competition once it had entered the competitive arena. The first sign of competition began with handset prices. Soon after launching their services, MNOs and service providers realized that it would be attractive—indeed imperative—to cover their high fixed costs by attracting more customers to mobile. They recognized the customer deterrent represented by the handset price (which was initially over £1,000) and, over time, took steps to bring handset prices down by huge amounts. As a factor of competition, the connection fee followed, then the monthly subscription, and then the per-minute (and subsequently per-second) call charge.

7.13. Meanwhile the MNOs continued to fund huge improvements in call coverage and call quality. Further stimulated by the arrival of Orange and One2One, they developed different tariff packages aimed at different user types, distinguishing (for instance) the emergency-only user from the more intensive small and medium business user. As Vodafone had demonstrated, most customers were actively investigating these different packages and switching between them. Without such acute customer awareness it would have been inconceivable that the number of tariff packages would have grown so markedly: the number of basic outbound retail tariffs (ie single tariff designations without their variant options, for example local call saver) had doubled between 1993 and 1996 and subsequently almost doubled again. While some objected to all this on grounds of customer confusion, Vodafone believed that such concerns were overdone, and that consumers were skilled at picking out the packages which best suited their requirements. In Vodafone's view, what could not possibly be disputed was that the market as a whole was competitive.

7.14. As to outbound call prices, Vodafone took the view that connection fees and monthly subscriptions were not properly to be included as part of what customers paid for making outbound calls because it did not accept that customers paid these other charges solely to make outbound calls. A better way of calculating the average per minute charge, in Vodafone's view, was to divide total outbound call minutes into total outbound call revenues. Calculated in this way, Vodafone said that the average calling cost (in ppm) on the Vodafone network fell by 54 per cent between April 1994 and April 1998.

7.15. Vodafone also pointed out that its margins had shown a declining trend—which it attributed to intensifying price competition—particularly after the market entry of Orange and One2One: its operating margin of 42.2 per cent in 1996/97 compared with 48.2 per cent achieved in 1993/94.

7.16. Vodafone submitted that if a market was uncompetitive, and suppliers were making super-normal profits, one would expect to see market entry. It pointed out that the fact that there were no more than four MNOs was not merely the result of government licensing policy: when two licensed MNOs merged to form One2One, no new entrant came forward to take up the returned licence and the additional spectrum was awarded among the four incumbents. This suggested that, at best, no new entrant saw any prospect of making anything other than normal profits—that is, the market was believed to be effectively competitive. Current profitability in no way indicated that excess profits were being earned.

7.17. Downstream barriers to entry were very low, with new retailers and service providers emerging on a regular basis. There were currently some 35 service providers and an estimated 4,000 specialist retailers in the UK, ranging from national chains such as Dixons and The Carphone Warehouse to small-scale, single-outlet operations. The sale or resale of airtime on mobile networks was highly competitive, with many different and innovative pricing structures; the retail sector was unregulated and also highly competitive. In addition customers had a choice of handsets from such suppliers as Motorola, Ericsson and Nokia, with handsets, in broad principle, working on any network using the same type of technology. Customers ranged from corporate users, with several thousands of handsets distributed to employees, to single individuals with mobile phones for emergency use only. Any MNO could compete for any segment of the market, and all four did so.

Competitive pressures on termination charges

7.18. Vodafone argued that competition in mobile telephony was vigorous and pervasive and had worked to the overwhelming benefit of consumers, particularly over the last two to three years. In this relatively new and dynamic environment it was not surprising that product package components which displayed comparatively low price elasticities, such as calls-to-mobiles, had been the latest to respond to competitive pressures. The core of Vodafone's contention was that competitive pressure on those aspects of the service package which consumers saw very clearly—handset prices, monthly subscriptions and outbound call charges—had begun to exert pressure on less visible aspects including the cost of calls-to-mobiles.

7.19. Calls to and from mobiles were inextricably linked. It was self-evident that one operator's outbound call was another's inbound call. If charges for the two were to become seriously unbalanced, a distortion between inbound and outbound usage would arise, through excessive use of call-back (see paragraph 4.165), which both the DGT and operators were anxious to avoid. Vodafone told us that the differential required to generate call-back probably varied quite dramatically according to different customer segments. There was no evidence of artificial call-back on its network from traffic data, although its recent market research showed that mobile customers in general engaged in call-back. There was an observable volume correlation between outbound and inbound calling which had historically been remarkably stable in the UK. Since the loss of traffic in one direction was likely to result in the loss of traffic in the other, MNOs had no incentive to price inbound, or outbound, calls at excessive levels. Network competition ensured that MNOs would not want to lose either. The two could not therefore sensibly be considered in isolation from each other, whether in terms of competitive pressure or of cost.

7.20. In Vodafone's submission, the DGT's reasoning that call completion was a 'bottleneck' service that was inherently unsusceptible to competition was fundamentally flawed. MNOs did not, other than in a trivial and transient sense, enjoy a monopoly over the completion of calls to their customers' mobile phones, since customers could, and readily did, switch between MNOs when it was advantageous to do so. Because the entire capacity of a mobile network was installed for use in carrying any outbound and inbound traffic to any customer without distinction, termination rates were set such that they reflected the role of call completion as part of a composite service (all the elements of which were open to competition), and in a manner which reflected the network capacity which call completion consumed. MNOs competed with each other by offering a packaged product including both call origination and call completion.

7.21. Vodafone told us that it competed both to win and retain customers. To compete successfully it must offer a competitive package in respect of all elements of the quality and price of its service, including incoming call charges. While it was generally true that it was not the mobile customer, but the caller, who paid for calls-to-mobiles, there was one group of consumers—the closed user group—which exerted direct competitive pressure specifically on inbound call charges, to the benefit of all users.

7.22. Vodafone explained that this direct pressure was established when calls-to-mobiles were paid for by a fixed-line customer who was also a mobile customer. One example was the family group where the head of household paying for a fixed line also paid for one or more mobile phones for members of the family—and hence for calls-to-mobiles within the family group. On a larger scale, corporate customers paid for calls-to-mobiles from their offices to employees' mobiles. For closed user groups such as these, the cost of calls-to-mobiles was an important element in choosing which mobile phone package to buy.

7.23. In Vodafone's view it was the mobile subscriber, in exercising this choice, rather than the price sensitivity of the fixed-line customer in respect of calls-to-mobiles, which imposed a major competitive constraint on inbound call charges. Vodafone did not consider alternatives available to fixed-line customers, such as pagers, fax or e-mail, as, for the most part, a close substitute for calling mobile subscribers on their mobile phone. (However, it viewed such alternatives as providing a benchmark against which callers might judge the reasonableness of charges for calls-to-mobiles and noted that calls-to-mobiles volumes increased with retail price reductions.) What was important was whether a mobile subscriber would regard, say, a Cellnet package (including termination rates) as a good substitute for a Vodafone package. Since closed user groups cared about inbound call charges, it

followed that the four MNOs must compete on these charges in order to win and retain their custom. In Vodafone's view the value of traffic attributable to closed user groups was sufficiently substantial that Vodafone could not afford to ignore the sensitivity of these customers. Further, by virtue of their non-discrimination obligation both Vodafone and Cellnet must offer non-discriminatory prices to all interconnected operators (and indirectly to all callers).

7.24. Vodafone drew our attention to the findings of four surveys, two each of residential mobile users and SME users, which it had carried out during the course of our inquiry (see paragraphs 4.137 to 4.139). In summary, both surveys indicated, in Vodafone's view, that users were generally alive to the diversity of the market and took steps to explore it before buying. This was particularly true of users who were entering into a second or subsequent contract. In particular, awareness of, and sensitivity to, incoming call costs was characteristic of a substantial minority both of residential users and of business users. While outbound calling costs were undoubtedly of greater significance in the purchase decision, the cost of inbound calling was already important and becoming more so—implying that as soon as two or more MNOs had met all of a given customer's higher-priority requirements, then the incoming call charge would be decisive. Vodafone drew particular attention to what it saw as the substantial support, both from its own surveys and from the MMC's, for the widespread existence and importance of closed user groups as a direct competitive constraint on termination charges.

7.25. Vodafone continued that further direct competitive pressures arose from the quest by many genuinely knowledgeable users for special bargains to cut the price of calls-to-mobiles based on the standard termination charge. For example:

(a) large-volume corporate customers often paid for a private wire connecting their PABX directly to a mobile network, thereby avoiding the standard charge altogether;

(b) a significant volume of calls-to-mobiles were 'tromboned' via an international switch, allowing customers to benefit from the anomalously low interconnection charge for an incoming international call-to-mobile; and

(c) equipment was also available to customers which effectively turned a fixed-to-mobile call into a mobile-to-mobile call, thus benefiting from the competition between MNOs on mobile-to-mobile prices (see paragraph 4.52).

7.26. Vodafone said that, in addition, there was evidence that customers in some market segments (not limited to mobiles) had an interest in eliminating or reducing the cost of telephoning them by offering either an 0800 freephone number or an 0345 local-rate number or its equivalent. Indeed One2One already offered a freephone 0800 number connecting directly to subscribers' mobiles. Furthermore, the fact that traders opting to offer 0800 numbers paid the full interconnection charge increased their incentive to demand a bargain (assuming they were not bypassing the standard rate altogether). Vodafone submitted that developments such as these were now gaining prominence in the mobile market, with customers becoming increasingly aware of incoming call charges as a factor of competition and suppliers using these charges as a differentiating factor in their offerings. These competitive pressures were gradually extending to benefit all users.

7.27. Vodafone also pointed out that competition operated at the retail end of the calls-to-mobiles market, over the total price set by the fixed-line operator, be it BT, a cable company or a reseller. Thus, overall, the caller was safeguarded in relation to the call completion element of the call price by the mobile subscriber's interest in purchasing the most competitive mobile phone package, and in relation to the remainder of the call price by the competition between retailers to offer the best deal to callers.

7.28. Vodafone therefore submitted that competition in the setting of termination charges and in the retail market for calls-to-mobiles was sufficiently effective to protect consumers as to the prices charged for interconnection and for calls-to-mobiles.

Prospective competition

7.29. Moreover, Vodafone believed such competition would become more intense in the near future. On the demand side, Vodafone submitted that the mobile network market was now developing in a way which would mean that, in the near future, the four MNOs (plus any new 'third generation' entrants—see paragraph 7.30*(a)*) would all offer a full range of competitively-priced packages to appeal to most categories of user. Once competition was fully played out in respect of the foremost elements of the package (for example, handset prices, network coverage, call origination prices and monthly subscription), consumers would choose a network on the basis of other distinguishing features—for example, inbound call charges—so that those secondary features become the principal focus of competition. This phenomenon was common in many markets, where competition was focused on a secondary feature of the product, because all competitors met customers' demands in respect of the primary features of the product.

7.30. There had also been important developments on the supply side:

(a) There were barriers to entry at the MNO level owing to the limited availability of radio spectrum, but these were being addressed by moves to market-based pricing for spectrum, introduced by the Wireless Telegraphy Act 1998. New spectrum would also become available via the UMTS auction for third-generation mobile licences in 1999 which would further lower barriers to entry and intensify network competition from about 2002. The introduction of UMTS would not simply mean that there would be more MNOs competing with each other. Qualitatively, UMTS represented a new development, which would allow fixed-mobile integration. This meant that, in addition to the MNOs, fixed-line operators would be able to compete in the market for mobile calls and to access the new technology.

(b) The introduction of digital technology had allowed almost unlimited cell splitting to add new capacity, so that the MNOs could now meet the current rapid growth in customer demand. The MNOs' capital expenditure programmes for the installation of new capacity made clear that they were building with a view to substantial customer growth, and increasing their market share, which evidenced the strength of competition. Indeed Vodafone alone planned to invest £330 million in network development in 1998/99. This represented the addition of eight cells per working day, and the addition of a new switching unit every two weeks.

(c) Initially, MNOs had been required to operate at one remove from customers, through ISPs. It had therefore taken some time for MNOs to learn about customers' demands, and to devise tariff packages and products to meet the demands of different customer groups. MNOs were now responding quickly to market developments, with new pricing packages being developed and implemented within a matter of only a few weeks to respond to competitors' offers.

(d) Traditionally, service providers had been remunerated for introducing and retaining customers by taking a commission on connection fees, periodic charges and call origination revenues. They had had no interest in stimulating (or promoting) calls-to-mobiles, as they received no share of the incoming call revenue. As MNOs became more closely involved in the retail end of the market, they would be able to promote entire packages of services, including attractive deals on calls-to-mobiles.

(e) Various developments in this regard could be expected in the immediate future, for example special packages which would allow a mobile customer to have two or more phone numbers associated with one phone. The mobile customer could disclose one number to a specific group of callers, who would be entitled, by phoning on that number, to lower incoming call charges. This would appeal to customers who wished to encourage incoming calls from certain callers and to reduce the price to those callers of making calls. Indeed Orange already offered phones with two numbers, which were suited to the introduction of such packages.

(f) Other pricing packages also showed an increasing emphasis on the price of incoming calls. For example, BT had just launched a new package known as 'One Phone Corporate', which would enable corporate customers to offer their callers the option of phoning the corporate customer on its fixed-line number (at the usual price applicable to calls to a fixed-line phone), with the

corporate customer paying to forward the call to the user's mobile handset, thereby avoiding the need for the caller to bear the mobile network component of the overall price.

(g) Vodafone also expected to see the development of further variations on the BT 'Friends and Family' theme: Friends and Family essentially allowed customers to identify a small group of persons with whom they regularly communicated by telephone and to secure discounts for calls made to those persons. Friends and Family-type products could well be extended to cover incoming as well as outgoing call charges, using some of the techniques outlined above.

7.31. In the light of these developments, Vodafone submitted that there was no ground for concluding that prices charged by Vodafone for terminating calls-to-mobiles might be expected, in the future, to operate against the public interest.

The public interest in relation to Vodafone's termination charges

7.32. Vodafone stated that a consistent pattern of reductions in its termination charges through its agreements with interconnected operators had already resulted in a 34 per cent decline in its termination charges in the two years to 1 August 1998 and that these charges would fall by at least RPI–6 per cent on 1 August 1999 and annually thereafter until 31 July 2001. In addition, it had received notification that no action was proposed to be taken by the EC in respect of Vodafone's termination charges following the first stage of the concurrent EC inquiry. In Vodafone's view this supported its contention that there was no reason for the MMC to conclude that Vodafone's termination charges operated, or might be expected to operate, against the public interest.

7.33. Vodafone said that the public interest test to be applied by the MMC was set out in the 1984 Act and in relevant instruments of EC law. Essentially, this regulatory regime envisaged that the regulatory authorities (including the MMC) should exercise their functions so as to secure certain public interest objectives and to reflect certain principles as set out below:

(a) First, the 1984 Act and the Interconnection Directive recognized that there was a public interest in ensuring that reasonable demands for telecommunications services were satisfied. This included the promotion of 'any-to-any' connectivity, so that a caller connected to one network could communicate with a person connected to another network (including a mobile network).

(b) The attainment of this public interest objective might require some form of regulation with a light touch—for example, obligations on network operators with SMP to offer interconnection to other network operators on non-discriminatory terms and some mechanism for regulatory intervention in the event of dispute. These obligations and mechanisms were already in place.

(c) However, the 1984 Act and the Interconnection Directive also recognized that, where possible, the same public interest objective might be secured through the promotion of competition: thus, where competition was sufficient to ensure that services of a particular kind were offered at reasonable prices, then there should be no need for further regulatory intervention via systematically-applied price controls.

(d) In contrast, where services had traditionally been offered only by a monopoly provider, or by a company which occupied a dominant market position, more intrusive regulation (for example, price controls) might be justified, until such time as sufficient competition had been introduced into the provision of such services to allow the regulatory reins to be relaxed.

(e) This last-mentioned principle—namely that competition was the first objective, and price control a last resort—was also clearly reflected in relevant EC legislation. The Interconnection Directive made clear that, where a network operator had already concluded an interconnection

agreement, national authorities should intervene only in 'exceptional cases' (see Appendix 2.1).

7.34. In the view of Vodafone, the MMC's approach to the public interest, namely examining whether Vodafone's termination charges, in the absence of less than effective competition, were cost-reflective (with the implication that, if they were not, they operated against the public interest), was not that which the MMC were required to apply under the 1984 Act and relevant EC law. In particular, it placed too much emphasis on cost and not enough on efficiency and competition.

7.35. The public interest duties imposed under section 3 of the 1984 Act required the MMC to examine whether termination charges were being set in a way that reflected considerations of efficiency, and in a manner which one would expect to see in a competitive market. In considering how one would expect prices to be structured in order to promote efficiency and to reflect competitive forces, there were two fundamental features of mobile networks which must be taken into account:

(a) the market was characterized by the presence of various externalities (see paragraph 5.81); and

(b) the market was characterized by the fact that a high proportion of each MNO's costs were fixed and/or common. In Vodafone's case, some 45 per cent of costs were fixed. Where costs were fixed and/or common, the MNO had to decide how to recover those costs from the various services which it provided. Where fixed costs were to be allocated across different services, externalities must again be taken into account. This meant that buyers who were most price-sensitive should bear less of the fixed costs, while buyers who were less price-sensitive should bear more.

7.36. These two considerations, in Vodafone's view, suggested that:

(a) In order to achieve maximum economic efficiency, prices for mobile telephony products should be demand-led. Prices might not be related to any particular allocation of costs based on cost drivers, but they could still be the best means of serving the public interest, because they stimulated the efficient take-up of mobile telephony services.

(b) Seeking to examine whether prices were cost-reflective was very difficult: with such high fixed costs, everything turned on how fixed costs were allocated among different services.

7.37. Vodafone argued that, whether one approached the matter as a question of demand-led pricing, or whether one looked for a cost-reflective price based on an efficient allocation of fixed and common costs, its charges were well within the bounds of what one would expect to see in an efficient (ie competitive) market. It said that efficiency could be expected to exhibit the following features:

(a) Because handset subsidies contributed to the take-up of more mobile phones, one would expect to see handset subsidies: there was a value to users generally (including users of fixed phones who called mobile phones) to be able to call extra people on mobile phones; they could be expected to be willing to contribute something, through the prices they paid, towards the cost of providing a new user with a mobile phone, and it was economically efficient for them to do so. This explained why handset subsidies were common in almost all mobile network markets: other things being equal, the MNO would not wish to subsidize handsets, but it was generally found to be efficient to do so to stimulate take-up.

(b) Because Vodafone's other marketing and incentive costs contributed to the take-up of more mobile phones, they should also be borne, in part, by those who benefited from being able to call mobile phones (and that would include users of fixed phones who called mobile phones). This was not to say that, in all circumstances, it would be efficient to pass on all marketing costs to those who called mobile phones, but rather that, in the present state of market development, it was efficient to pass on some marketing costs to incoming callers (see paragraphs 5.80 to 5.82). This appeared to be borne out by the generally accepted view (to which the DGT subscribed) that fixed-phone users regarded calls-to-mobiles as meeting a need not met by calling the mobile user on his fixed phone: callers were willing to pay extra to call the mobile phone.

(c) Recovery of fixed costs was inherently problematic: if fixed costs were recovered only from call charges, then fewer calls would be made than would be fully efficient; if fixed costs were recovered from handset prices, or periodic fees, fewer consumers would subscribe than would be fully efficient. In practice, one would expect to see a combination of elements being used to recover fixed costs.

(d) While it would be a formidable task to calculate the prices which best approximated to the most efficient method of charging, one could identify certain characteristics of such prices: in particular, one would expect incoming call prices to be higher than outgoing call prices because low outgoing call charges encouraged the consumer to subscribe, and hence to increase output; subscribers paid a monthly fee, but since it was not practicable to recover a monthly fee from callers to mobile phones one would expect the incoming call price to compensate for that; and incoming callers were likely to be less sensitive to price than outgoing callers because they derived a significant benefit from being able to contact someone who was on the move.

7.38. This was not to suggest the creation of yet another bottom-up cost allocation model based on a different set of cost drivers. Rather it pointed to more of a top-down process—examining whether the interactive demand-based process in the competitive market place had resulted in reasonable-looking prices, and beginning to establish benchmarks for assessing whether inbound and outbound prices were wildly out of step with one another or, on the contrary, appeared reasonable. In Vodafone's submission the relative levels of its inbound and outbound prices looked broadly logical and reasonable.

7.39. In summary Vodafone believed that:

(a) its charges exhibited the structural features which one would expect to see in an efficient market; and call origination charges would be expected to be lower than interconnection charges;

(b) in the absence of precise information as to relative price elasticities, it was possible only to identify efficient prices within broad bands; and

(c) given the large amount of fixed and common costs involved, there would appear to be no basis on which the MMC could conclude that Vodafone's charges lay outside the bounds of potentially efficient prices.

Cost-reflective pricing models

7.40. For all these reasons Vodafone contended that the MMC's cost-based approach to identifying the price for call termination which best promoted the public interest was not well-founded. It believed that in any event it would be impracticable, if not impossible, for a regulatory authority to build a cost-reflective pricing model identifying all the costs that might be recoverable in a competitive market. The difficulties ranged from identifying and quantifying the relevant costs to the need to give due recognition to product differentiation and the dynamism of a market in which companies were constantly innovating and investing at their own risk. Any attempt to calculate a cost-reflective price was unlikely to mimic accurately or for long the workings of so complex a market.

7.41. Furthermore, it appeared to Vodafone that the DGT attached no weight to the variety of tariffs and interconnection rates or quality of service which the MNOs currently offered, or to the different stages in their development. In particular, the imposition of a uniform termination charge (with uniform retail rates) would lead to a loss of choice for consumers, and the DGT seemed to assume in his submission to the MMC that if different MNOs incurred different call completion costs, then that must be because one or more of them was inefficient.

7.42. In addition, Vodafone considered that the DGT's assessment of MNOs' costs was based on a very simplistic model which drew heavily on analysis, over a number of years, of fixed-network costs, principally BT's. The DGT's assessment was consequently based, in Vodafone's view, on a false

premise that, for cost allocation purposes, MNOs were to be regarded as offering three separate services: 'access', inbound calls and outbound calls.

Access

7.43. Vodafone did not consider that the concept of access was a relevant one: it disputed the view that it offered a separate access service and submitted that, even if it did, there was no reason why it should charge separately for access, nor would any access service be defined as the DGT had proposed to define it. Vodafone disputed the DGT's definition of such a service—which it noted had widened, from the provision of a minimal geographic network needed to allow a customer to make and receive calls, to include, in addition, mobility management, inevitably encompassing variable costs of operating the network's location registers and switches—and the costs associated with that service. In a mobile network, costs were general to all customers making or receiving calls. There was no equivalent to the local loop connection for a fixed telephone. Virtually no assets or costs in a mobile network were specific to an individual customer. The entire network was therefore relevant in determining access and the entire costs of the network could properly be recovered through charges for call origination and completion.

The Vodafone model

7.44. As to the status and validity of the Vodafone model (see paragraph 5.36), which treated access separately, Vodafone emphasized that this model had its origins in the CWC determinations made by the DGT in 1991. Essentially it was produced as a correction to the OFTEL model. Although Vodafone had disagreed profoundly with the DGT's methodology at the time, and had continued to do so, it had not then considered a formal challenge to the DGT's determination worth the expense and trouble compared with the potential gains. The situation had subsequently been resolved satisfactorily with a new interconnection agreement with CWC reached in January 1998. Vodafone added that its model was created solely for regulatory purposes and did not drive any of Vodafone's business decision-making whatsoever.

Detailed cost allocations

7.45. Vodafone's detailed comments on individual line items of cost in the three FAC models put to it are described in Chapter 5. Its views on the appropriate cost of capital are set out in Appendix 5.6.

Long-run incremental costs

7.46. Vodafone told us that it saw no realistic prospect of a robust LRIC model being developed during the timetable of the present inquiry and that any attempt to achieve this would risk producing a result which was seriously flawed. As to the relative merits of FAC- and LRIC-based models, either of these (as apparently envisaged by the DGT) would involve the calculation of appropriate mark-ups for fixed and common costs. The real issue was how this should be done.

Interconnection Directive

7.47. Further views of Vodafone regarding the implications of the Interconnection Directive for this inquiry are summarized in Appendix 2.1.

Unanswered and diverted calls

7.48. Vodafone told us that its charging arrangements for certain recorded announcements that were intended to provide useful information to callers in the event of unsuccessful incoming calls (see

paragraphs 3.49 to 3.51) were established as part of the original interconnect agreements with BT, at a time when cellular technology was very new. Operators were concerned that a large number of calls to mobile customers might go unanswered for prolonged periods, either because the technology was unreliable or because the mobile network coverage was such that mobile users would be out of coverage more often than not. Over the years, these problems had lessened to a negligible extent. The use of recorded announcements and call diversion was increasingly the exception rather than the rule: over 2 million of the 3.5 million Vodafone customers already used Vodafone's messenger service. This obviously minimized the use of network recorded announcements.

7.49. Vodafone did not accept the DGT's argument that it was 'unfair' to charge for 'unsuccessful' calls because such charging arrangements were different from those applied by FNOs and would therefore be confusing to customers. There were many instances of service features being charged for differently by different operators. For example, unlike BT, Vodafone did not charge for calling line identity, call waiting or call diversion services yet the DGT did not argue that this was confusing to customers. The argument not to charge for unsuccessful calls in order simply to harmonize with BT's practice was an argument against the diversity which came with competition and choice.

7.50. Vodafone also commented that the DGT accepted that unanswered inbound calls imposed a cost on Vodafone (in common with other MNOs). It said that in mobile (unlike fixed) networks, an unanswered inbound call involved a high opportunity cost for the operator, as the unanswered call consumed scarce frequency capacity which could be used to convey another call (whether incoming or outgoing). It was therefore right, in principle, that the MNO should be able to recover the costs incurred in conveying an unanswered inbound call, as the DGT appeared to accept. Whether the MNO chose to recover this cost from the originating party (or from some other person) was, Vodafone submitted, a choice which the MNO should be free to make in a competitive market.

7.51. That said, Vodafone expressed surprise that questions in respect of these matters had been referred to the MMC, as it had already agreed, prior to the reference, to alter the relevant charging arrangements in line with the DGT's intentions. The DGT was aware of Vodafone's proposals (though he had passed no comment on them) and there was therefore no longer any difference between the positions of the DGT and Vodafone. It was understood that Vodafone would agree with BT and other interconnected operators that charges for calls to network recorded announcements would be discontinued once the DGT's investigation into mobile phones was complete. Vodafone would then recover the costs incurred in carrying 'unsuccessful' inbound calls from 'successful' inbound calls. Any price control remedy (such as those discussed below) would need to be adjusted accordingly.

7.52. Vodafone stated that it had made its offer to alter its charging arrangements in writing. It said that it would not be Vodafone's practice to go back on such an assurance unless the DGT chose to change his intended policy—and Vodafone had no foreknowledge of that. If it were necessary to introduce a licence modification to give effect to Vodafone's agreement to operate the DGT's policy for unanswered and diverted calls, Vodafone would be content with that.

Hypothetical remedies

7.53. Vodafone contended that the market for the provision of mobile network services was now sufficiently competitive to ensure that termination charges were set at a reasonable level and to obviate the need for the MMC to recommend any form of systematic regulation of calls-to-mobiles charges. Such an outcome would be wholly consistent with the regulatory framework of EC and UK law which favoured competition as the foremost means of promoting the public interest and envisaged systematic price controls only as a last resort. The market was in a state of rapid evolution, in which competition would intensify further. There was a serious risk that regulation of termination charges would significantly restrict competition in respect of other network services, including call origination, and would stifle investment and innovation at a time when major investment and technological change were set to continue. Regulated prices for calls-to-mobiles would pre-emptively determine the nature of market outcomes and destroy the potential for the development of further competition.

7.54. In responding to the hypothetical licence modifications we put to it, Vodafone stressed its view that imposition of a price control should be seen as a last resort. It expressed concern that only

one of the modifications proposed might stimulate competition in the setting of termination charges (see paragraph 7.57) and suggested that the MMC's approach was perhaps unduly influenced by the fact that the present investigation was initiated as a licence modification reference under the 1984 Act. It pointed out that it was only because Vodafone's activity happened to entail the running of a telecommunications system that it fell to be regulated under the 1984 Act at all, and, in other circumstances, if these questions had arisen, they would have been referred to the MMC under the monopoly provisions of the Fair Trading Act 1973.

7.55. Indeed, the way in which the inquiry had developed (with the emphasis—quite correctly in Vodafone's view—on the competitiveness of the market) demonstrated that, if it raised issues at all, it raised monopoly-type issues. In such a case, Vodafone observed that the MMC would generally think first, in terms of remedies, of measures directed at making the market more competitive; only if these could not be made to work would the MMC consider price controls. Vodafone contended that this should also be the MMC's approach in the present case: it was neither right in principle, nor an appropriate use of the DGT's regulatory powers, for the MMC to propose price controls to regulate Vodafone's termination charges unless that was the only means of protecting the public interest and the proposed price controls did not inhibit the development of competition in the setting of termination charges. In other words, the price controls should leave open the possibility of their removal once they were no longer necessary.

7.56. Vodafone stated that in commenting further on the MMC's hypothetical licence modifications it would concentrate on whether those remedies would be successful in remedying the relevant adverse effects; whether they would go beyond what was necessary or appropriate for that purpose; and whether they would produce undesirable effects such that, on balance, it would not serve the public interest to adopt them. Reflecting the objections it had raised to any form of price control, it would comment first on the single hypothetical licence modification which might stimulate competition in the setting of termination charges.

Pro-competitive measures

7.57. Vodafone considered it unlikely that any single step which the MMC might recommend would be sufficient on its own quickly to stimulate more intense competition in respect of call termination charges. However, it said that it could envisage a package of measures which, taken together, it would expect to be sufficient to stimulate fully effective competition. For example, a combination might be considered of:

(a) an obligation on MNOs to publicize the prices of calls-to-mobiles. If MNOs were to be subject to such an obligation, they could quote the BT retail price, or a range of retail prices offered by different retailers of calls-to-mobiles. A general obligation to present the information fairly could be included to prevent an MNO from presenting, say, details of an unusually low retail rate offered by only one retailer which did not serve the entire market. In any event, in a market where there was no artificial incentive to harmonize rates, MNOs would voluntarily choose to publicize this kind of information as competition developed, in order to differentiate their own package from competing packages;

(b) an obligation on BT (and other FNOs/retailers) to publicize more effectively their prices for calls-to-mobiles. Alternatively, OFTEL could publicize such prices for the benefit of all users;

(c) a postponement of the introduction of MNP until it could be introduced on terms which did not necessitate the charging of uniform call termination charges by all MNOs. For example, MNP could be deferred until a technical solution was developed which would allow for a caller to a mobile phone which had ported to hear a message announcing that the mobile phone being called was now connected to a particular network. This would tell the caller everything that could presently be learned from the mobile number prefix. The MMC might consider recommending the establishment of an industry working group to devise an appropriate technical solution. The imminent requirement for uniform call termination charges as a means of introducing MNP was already acting as a brake on the development of competition in the setting of call termination charges and would continue to frustrate the development of such

competition. As an alternative to postponement, MNP could be introduced as planned on 1 January 1999 with harmonized termination charges, but on the basis that the industry would, as soon as practicable, adopt a better solution, to allow renewed competition in respect of termination charges;

(d) regulation, if necessary, of retail margins for calls-to-mobiles: for competition among MNOs to be effective, that competition must have an impact on end-users—in other words, end-users must be able to see, in the retail price, a difference which reflected the underlying difference in interconnection charges. If there was inadequate competition at the retail level, then a dominant fixed-line operator might set a uniform retail price for calls to all mobiles, and simply benefit from higher margins on calls terminating on a mobile network with a lower interconnection charge. Vodafone believed that retail competition was developing successfully and it would therefore expect the benefit of competition in the setting of termination charges to feed through to retail charges. However, if the MMC concluded that competition in the setting of termination charges needed some regulatory stimulus, there would be a relatively stronger case for subjecting the retail market to a similar stimulus;

(e) an obligation on MNOs (and indirectly on service providers) to allow consumers to terminate their contracts after a specified term (being shorter than the 12-month term presently required under the Unfair Terms in Consumer Contracts Regulations 1995), should the MMC not accept that churn among mobile customers showed that the contracts used in the market were not inhibiting competition;

(f) measures to encourage packages which required the mobile user to pay all or some of the mobile termination charge for incoming calls, should the MMC reject Vodafone's view that a significant proportion of mobile customers already cared about incoming call charges (and conclude therefore that termination charges were not a factor of competition because the mobile customer did not pay for the incoming call at all). For example, the MMC could recommend a licence modification designed to encourage or require MNOs to offer 'price re-distribution products' such as Orange's 0171 service, or the One2One freephone service, or personal numbering services. As yet, these products were relatively new. However, if they were to become more widespread, then they would incentivize buyers to look at incoming call prices as a factor of competition, and the benefit of such buyers' sensitivity would (through the non-discrimination obligation) accrue to the benefit of all buyers; and

(g) as a more radical step to encourage mobile customers to internalize the externality, an obligation on each MNO to recover, say, 85 per cent of the interconnection charge for each incoming call from the originating operator and 15 per cent of the charge from the called party (ie the mobile customer). This would mean that (other things being equal) the presently agreed termination charges to OLOs would need to be reduced by 15 per cent and the extra 15 per cent recovered from the called party. This would be a way of causing the mobile customer to take more account of incoming call charges in choosing a mobile package, but it would not have all the usual disadvantages cited against a full 'called-party-pays' system—for example, mobile customers would not end up paying the whole termination charge for calls which they did not want to receive at all and the efficiency benefits of having incoming callers paying some of the costs would be retained. However, such a system would be difficult and costly to adopt and there would inevitably be a delay before the technical aspects could be put in place. For this reason Vodafone regarded it as a last resort.

In summary, Vodafone considered that a combination of some of the above measures would be sufficient to stimulate effective competition.

Price controls

7.58. Vodafone prefaced its detailed comments on the individual price control remedies by reiterating that in its view there was no real prospect that the MMC (or the DGT) would be able successfully to devise a cost-reflective initial price, for inclusion in a price control, which would be calculated to serve the public interest better than present prices. It believed there was no evidence to suggest that Vodafone's prices were presently set at inefficient levels and that none of the three FAC

models put to it was suitable to determine whether they were. The worst possible outcome would be for the MMC to recommend a supposedly cost-reflective price, based on an unrepresentative model. If there was to be a price control, the MMC should therefore be looking to set the initial price by reference to a benchmark—ie a price charged for a similar or equivalent service in a market where prices were competitively determined. The best benchmark would be based on Vodafone's present private wires charge, or its call origination charge (see paragraph 7.62).

7.59. Turning first to the hypothetical remedies designed to control the level of its termination charges, Vodafone said that it saw real difficulties in principle in subjecting call termination either to a simple time-of-day/day-of-week price control or to a maximum weighted average termination charge. There was no uniform call termination service for the MMC to price: call termination was capable of being a differentiated product and of being offered on contract terms which caused the service offered to different interconnected operators to be different in value and quality. Any 'simple' price control failed to take account of the fact that call termination was a differentiated product, and that different products within the range should be capable of being priced differently.

7.60. Without knowing the levels at which the maximum allowable charges would be set, Vodafone said that it could not comment comprehensively on the likely effects of these remedies. However, it offered the following comments:

(a) it would be important that remedies intended to prevent exploitative or abusive pricing pending the development of full competition should not frustrate, or impede, the development of such competition;

(b) the price control should therefore act as a back-stop whilst allowing companies to compete by setting prices below the price cap if they could afford (and chose) to do so;

(c) if all four MNOs were subjected to the same price control, and it was set at too low a level (for example, the estimated costs of the lowest-cost operator), then they would, in practice, be obliged to set their termination prices at the maximum permitted level and would not be able to afford to compete below the cap;

(d) in contrast, if separate price caps were set for each MNO, with each being capped at its own estimated costs, then the price control would, in practice, weigh more heavily on the MNO subjected to the lowest price cap, as it would not be allowed the pricing flexibility which the other MNOs enjoyed to set their termination charges below the price cap level and that would give those MNOs a competitive advantage; and

(e) over time, each MNO would be incentivized to model its network on the notional network by reference to which its price control was set (for example, as to capacity, traffic pattern etc). This meant that regulation of termination charges would 'infect' competition in outbound charges and would frustrate the policy of network competition which was intended to enable qualitatively different networks to offer differentiated services.

7.61. In addition, the time-of-day/day-of-week price control remedy (but not the capped weighted average termination charge) could produce further effects, which Vodafone considered would operate against the public interest. In particular:

(a) If the price control set separate price caps for specified different periods of the day/times of the week, then it would constrain the way in which any MNO could manage its traffic load. This might lead to a misallocation of resources (ever more traffic at peak times necessitating installation of extra capacity), and might expose the MNO to risk that its peak would shift, with the MNO unable to reflect that in a newly balanced pricing package.

(b) If all four MNOs were required to set their prices based on the same division of the day/week into different pricing bands, then the price control would have the effect of eliminating one element of flexibility in meeting different consumer demands: different MNOs would not be able to offer differently-specified packages of peak and off-peak pricing.

(c) Moreover, it would be difficult to know whose diurnal traffic pattern to use to identify the peak and off-peak periods to be embodied in such a price control. If Vodafone's diurnal traffic pattern were to be used, then the price control would not be, in any real sense, cost-reflective as regards the other MNOs' costs. If a weighted average derived from all four MNOs' diurnal traffic patterns were to be used, then the result would not be cost-reflective of any MNO's costs.

(d) Finally, if all four MNOs were subjected to a single price control, based on a single diurnal traffic pattern, that would, over time, be likely to cause all four networks to converge on the notional model, thereby diminishing network differentiation and choice (not only in respect of interconnection, but also in respect of outgoing call products).

7.62. Moving on to the proposal for a capped weighted average termination charge adjusted annually according to the indexed trend of average charges for outgoing calls, Vodafone said that it envisaged two basic ways of setting the initial price. First, the MMC could seek to calculate, on a theoretical basis, the 'right' price for call termination, based on the OFTEL model, its own model, Vodafone's model or some totally different model. For reasons already explained, however, Vodafone considered that it was not practicable for the MMC (or the DGT) to identify with any precision the price at which Vodafone's termination charges should be set so as best to serve the public interest, and there was an unacceptable risk that the MMC (or the DGT) would settle on a figure which was not well suited to achieve that. Alternatively, the MMC could seek to identify a service which was equivalent or similar to the Vodafone termination service, being a service whose price was competitively determined at present. The MMC could then set the initial price at a level equal or corresponding to the competitively-determined price of that service, and then apply either a 'linkage factor' with outgoing call prices or a simple RPI–X factor for future years. Vodafone believed that the best potential benchmarks would be:

(a) Vodafone's implied termination charge to private wire customers, equating to a weighted average of between 16 and 17 ppm (see paragraph 4.48); or

(b) Vodafone's present charge for call origination (calculated—in broad terms—by summing the estimated marginal price of a non-bundled minute with an allocated amount of subscription revenue reflecting the value of bundled minutes). This worked out at a very similar level of charge, about 17.5 ppm (see paragraph 4.271).

7.63. For the reasons it had already given, Vodafone said that it would expect an efficient call termination price to be higher than the corresponding outgoing call price.

7.64. As regards annual adjustments after year one, Vodafone considered that, unless more than one or two years were envisaged, it would be preferable to apply a simple RPI–X adjustment: this would be more straightforward than a continuing linkage with outbound call prices, and would avoid the risk that the linkage could be distorted where MNOs offered discounts on a total price package without overtly reducing outbound prices. In deciding on an appropriate X factor, the MMC should look at trends in total costs, not merely costs attributed to incoming calls.

Modification of BT's licence

7.65. Vodafone expressed the view that, if each MNO could set excessive termination charges because it was not constrained by competition, the regulation of BT's retention would not by itself provide an adequate remedy to deal with the excessive termination charges. On the other hand, it was difficult to imagine a situation where it could be necessary to regulate termination charges, but unnecessary to regulate retail charges, since, in Vodafone's view, the development of competition in the termination market was more advanced than competition in the retail market. Since the MMC's hypothetical remedies were apparently predicated on the conclusion that there was insufficient competition in the setting of termination charges, it must follow that, on that assumption, the MMC would also conclude that it would be necessary to regulate retail prices/margins. Vodafone said that it would therefore expect any control of termination charges to be accompanied by a control on retail prices/margins. In this connection Vodafone also noted that the EC had concluded provisionally, following the first stage of its concurrent inquiry, that BT's retention was too high, and might

therefore need to be regulated. Vodafone submitted that, under the Interconnection Directive, there was no objection to the regulation of BT's retail margins.

Duration of remedies

7.66. Vodafone emphasized that, in line with general regulatory policy in the telecommunications sector, the MMC should be looking to the DGT to regulate the mobile termination market only for a limited period, and to withdraw from regulation when competition was sufficiently effective to protect the public interest. Consequently Vodafone favoured either a package of pro-competitive measures such as those described in paragraph 7.57 or, failing that, a price control which would be imposed for a specified period, after which the relevant licence condition would automatically lapse. If competition was effective, there would be no need for further regulatory intervention. However, if the DGT considered that some form of regulation would continue to be required after the scheduled expiry date, he could seek to agree the continuation (possibly with some relaxation) of the relevant regulatory controls or, failing that, could refer the matter to the MMC for re-examination in the context of the then-prevailing market conditions.

7.67. In contrast, Vodafone would not favour a regulatory remedy which, in effect, was to be adopted indefinitely, at the DGT's discretion, since this would provide Vodafone with little (if any) effective means of ensuring that the need for the continuance of the remedy was genuinely reviewed after an appropriate period. Vodafone believed that the MMC should be vigilant in framing their conclusions, any findings of adverse effect and recommendations with precision, so as not to confer on the DGT a wider discretion than was appropriate. A halfway solution would be a licence modification of indefinite duration but with provision for Vodafone to give notice of disapplication after a specified period. If the parties could not then reach agreement on the continuance of the licence condition, the DGT would need to refer the matter for re-examination by the MMC in order to prevent disapplication.

Initial specified levels

7.68. Vodafone said that at first sight it might be tempting to suggest that Vodafone and Cellnet should each be subjected to a cost-reflective price control, based on a bottom-up calculation of its own costs, by reference to the actual state of its network (taking account of differences in technologies, system architecture etc). However, on further consideration various weighty factors pointed against that approach. Differences might reflect different levels of efficiency. In a competitive market where the most efficient firm could not meet total demand, such differences would lead to the setting of prices at a level which reflected the costs of the marginal operator, based on its technology, system architecture etc. If the object of a price control was to mimic the outcome in a competitive market, that alternative approach should be adopted here. However, it was immediately apparent that it would be extremely difficult to identify, or specify the network characteristics of, a marginal MNO, and this prompted Vodafone to conclude that it would be wrong for the MMC to seek to specify a price control predicated on a single notional or actual network. This suggested that there were real difficulties in either of these approaches.

7.69. Furthermore, in a competitive market, differences in network technology, network architecture etc could be reflected in different prices if those underlying differences resulted in differentiated outputs. Customers would not be willing to pay more for one mobile service than another merely because it used comparatively more expensive technology, but they might expect to pay more if, because of that technology, they obtained a superior service (for example, superior sound quality, better functionality, a less congested network). As Vodafone had already explained, mobile telephony was not a utility service for which there was a single right price. Different termination services could legitimately carry different prices. Alternatively, MNOs could choose to offer, as Vodafone did, superior quality at the same price.

7.70. Vodafone also said that it could see no reason per se why Cellnet and Vodafone should be subject to one termination charge, and Orange and One2One to another. Moreover, it believed that if, ultimately, two such sets of regulated prices were to be imposed, this could have damaging consequences for competition. If the price cap for Vodafone and Cellnet were set at so low a level as to make it impossible for Orange and One2One to justify setting their charges as high as they would wish (because the differentiation of their product was not so great as to sustain so much higher a price), then such a cap could effectively constrain Orange and One2One as well, to their potentially severe financial detriment. Either or both of them might be required to exit the market. Alternatively, if they could realistically do so in the face of competition from Vodafone and Cellnet, Orange and One2One could choose whether to compete by pricing below their own cap, but Cellnet and Vodafone would have no choice but to price within their price cap.

7.71. In this context Vodafone reiterated that the imposition of different price caps for different MNOs would fail to mimic the outcome in a competitive market. Four operators offering the same product in a competitive market were constrained to charge a price which reflected the costs of the marginal operator: it was not the case that a more efficient operator charged less. The more efficient operator might choose to charge less (and thereby to win market share) but it might choose instead to charge the same price as the marginal operator and to make extra profits.

7.72. Vodafone also expressed concern that the adoption of two different price controls, in a manner which disadvantaged some MNOs, would be unfair and incompatible with the non-discrimination provisions of the EC Licensing Directive.[1]

7.73. In Vodafone's view, for so long as different MNOs continued to provide qualitatively different termination services (whether generally or to particular customer groups), one would expect to see different termination charges. However, competitive forces would mean that there would be a single, competitively-determined, quality-adjusted price. In contrast, the DGT did not appear to recognize the importance of allowing continued differentiation of termination charges. Indeed he required harmonized termination charges as a means of securing MNP. In contrast, the Australian Communications Authority had decided to defer MNP (albeit for a short period) until a technical solution was available which would allow this to be implemented in a way that preserved MNOs' ability to price their termination services at different rates.

7.74. Vodafone believed that if there was to be a price control to protect consumers from excessive pricing, then it need set only a ceiling. There was no need for it to set a floor. A floor price was not an apt remedy to deal with excessive pricing, and might well go beyond what was permissible under the 1984 Act as a response to a finding of excessive pricing. A harmonized price control for all four MNOs would have the effect of setting back indefinitely the prospect of effective competition in the setting of termination charges. It would fail to promote the public interest and, indeed, would operate against the public interest by frustrating the development of competition. The MMC and the DGT would be taking on themselves the task of regulating prices for ever.

[1]97/13/EC.