

Draft Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

Comments submitted by the Carphone Warehouse Group PLC

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The Carphone Warehouse Group PLC operates the largest full local loop unbundling network in the UK having entered the direct access market only in April 2006. We have already fully unbundled over 1,500 exchanges in the incumbent's (BT's) network, which means our direct access network covers over 70% of the UK population. The issue of termination rates is therefore of considerable importance to our company and our LLU business model.

We believe there are solid and sound policy reasons as to why new entrants (whenever that entry may take place) should be allowed to set their own individual termination rate as an incentive and reward for making the decision to enter voice telephony market. We agree that those policy reasons may become weaker over time once the new entrant is firmly established in the market and can derive the full benefits from economies of scale (and possibly scope).

We believe that a policy to provide entry assistance would continue to be just as relevant as it would have been in the past. With the specific example of the UK in mind, despite being having one of the most competitive voice telephony markets in the EU, it was only two years ago that Carphone Warehouse entered the market as really only the third direct access voice provider of any scale (after the incumbent and the sole cable operator). In addition, Carphone Warehouse has built a state-of-the-art next generation network (NGN) rather than relying on conventional and outdated TDM technology. We have built our network on time and within budget to be as efficient as possible. It is today the UK's largest NGN when calculated by the number of end-customers.

In other words, despite years of telecommunications liberalisation in the UK, it is incorrect to assume that competition between direct access telephony providers would be particularly well-developed. It should be borne in mind that the UK chose to require the incumbent to offer WLR¹ in an efficient manner before it took effective action to encourage LLU entry. It is therefore only recently that the need for asymmetric charging to aid new entrants using direct access technology (i.e. full LLU) has become a relevant consideration from a policy point of view.

We agree that there are good policy reasons for requiring that operators should be as efficient as the incumbent but only in the longer term. We believe there is strong evidence of objective cost differences in the UK fixed-line market resulting from the substantial difference in time of entry between the incumbent and LLU operators like Carphone Warehouse. We note that the Explanatory Note to the Draft Commission Recommendation makes reference to the various cases in which the Commission has

¹ Where call termination is not relevant because the WLR provider does not port the telephone number from the incumbent

noted that differences in time of market entry into mobile markets could constitute an objective cost difference justifying asymmetric termination rates (at least for an interim period). Whilst we accept that such objective cost differences may gradually disappear as the new entrant achieves economies of scale and becomes more efficient, we believe that such objective cost differences are just as relevant in the fixed telephony market in the UK and elsewhere.

The UK regulator, Ofcom, has suggested in the past that the current regime of setting termination rates for a new fixed entrant on a reciprocal basis with the incumbent is a way of ensuring efficient market entry. Whether one regards reciprocity as a method of setting symmetric termination rates, we do not believe that reciprocity is an appropriate mechanism for capping termination rates for new entrants. Notably reciprocity fails to consider the cost of a new entrant (like Carphone Warehouse) building an NGN whilst having to continue running its old TDM network in parallel while the incumbent (slowly) builds out its own NGN.

In conclusion, we believe that NRAs should be able to adopt a regime which allows fixed operators to charge an individual termination rate initially but over time be required to align the rate with that of the incumbent. That objective may be achieved through a regime of delayed reciprocity. Such a policy sets a clear legal framework on the basis of which a fixed operator can make efficient investment decisions as to whether they want to enter the market. A policy whereby NRAs effectively phase out an asymmetric charging model across the industry would risk raising a deterrent to further market entry. Such a policy would be inconsistent with the overriding duty of NRAs to further competition in communications markets by encouraging efficient market entry.

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