

ERG public consultation on a draft Common Position on symmetry of mobile/fixed call termination rates

Response 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 a geographic area in which over 70% of the UK population lives. The issue of termination rates is therefore of considerable importance to our company and our LLU business model.

We set out our responses to the consultation questions in the following.

General questions

QUESTION G1: Do you think that the principles outlined in the general economic introduction cover adequately the underlying economic situation of both mobile and fixed termination markets?

- **If yes, do you think they are sufficiently reflected in the two parts on "MTR symmetry" and "FTR symmetry" and that they are consistently applying the principles?**
- **If no, what do you think is missing and which reasoning should be added?**

We believe that the principles outlined in the general economic introduction adequately represent the various arguments in favour and against symmetric fixed termination rates. However we do not believe that the draft common position makes a sufficiently clear case as to why symmetric termination rates would be preferred over asymmetric termination rates. The draft common position lacks the extensive and in-depth economic analysis required to take a balanced view of which principle should underpin the setting of termination rates by OAOs. In particular there is no economic data or analysis to back up the claim that symmetric rates would be preferable from an economic efficiency point of view.

The ERG document finds that the vast majority of EU countries actually do not require OAOs to apply symmetric rates. Looking at the access market concentration index presented in the consultation document¹, it is interesting to note that virtually all EU countries that apply a symmetric termination regime have an above-average HHI figure.² This information indicates that symmetric termination rates may deter market entry and act as a constraint on the competitive process.

¹ See Figure 5 on page 20 of the consultation document.

² Using an average HHI of 0.8045.

The only exception to this trend is the UK but we would argue that the HHI index for the UK is actually slightly misleading in so far as it includes cable. For these purposes, it makes more sense in our view to treat cable akin to an incumbent because their network is more of a legacy nature and therefore their relative market penetration is not indicative of any impact (whether positive or negative) of a particular termination charge regime.

QUESTION G2: Any further comments regarding consistent regulation of both MTR and FTR with regard to symmetry is welcome.

We do not have any specific comments with regard to this question.

QUESTION G3: Finally we would like to ask you to elaborate on the question of converging MTR and FTRs and the timeframe you envisage for this.

We do not have any specific comments with regard to this question.

QUESTION F1: How do you think termination should be regulated in a converging fixed/mobile market?

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).

QUESTION F2: Do you agree on the methodology and assumptions underlying the asymmetry index calculation?

We fail to understand the purpose of the asymmetry index calculation. Obviously, countries with an asymmetric termination regime are going to achieve a high score in the calculation but it is very difficult to see how that on its own could somehow be an argument for introducing a harmonised symmetric termination charge regime. The asymmetry index calculation presents a simplistic and potentially misleading picture of the economic benefits that can stem from an asymmetric termination charge regime. For this reason, we believe the asymmetry index calculation should be disregarded for the purposes of the ERG analysis.

QUESTION F3: Do you think the list in paragraph 6.1 constitutes an exhaustive list of the possible reasons justifying the adoption of asymmetric tariffs?

No we do not believe the list of possible reasons is exhaustive. We would add the following reasons:

- New entrants need to interconnect with the incumbent's network in order to ensure its customers can call customers on the incumbent's network. As such, the new entrant has an incentive to keep its termination charge at a reasonable level.
- New entrants will have SMP in call termination on their network and as such have a special responsibility under Competition Law to refrain from abusing their dominant position. Charging excessive termination rates would constitute such an abuse and a new entrant would have a strong incentive not to be found to be contravening Competition Law.
- New entrants have an incentive to keep its termination charges at a reasonable level in case the incumbent chooses to feed through the charges to its retail prices for the incumbent's own retail customers.

QUESTION F4: Do you agree on the fact that any entry assistance policy for the future based on higher OAOs' FTRs is likely to be less effective than in the past?

No we do not agree with this proposition. 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 18 months ago that Opal Telecom entered the market as really only the third direct access voice provider of any scale (after the incumbent and cable).

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 WLR³ 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.

QUESTION F5: Could you please provide a definition of the "efficient operator" NRAs should refer to in fixing FTRs? What are the costs an efficient operator would incur to provide termination services?

We do not agree that NRAs should be fixing FTRs because we believe that OAOs should be allowed to set individual termination rates. That said, we do see some merit in having as a benchmark the costs of a reasonably efficient operator against which OAOs' termination rates can be assessed to detect any sign of excessive pricing. Such an operator should have a substantial scale in its operations either already or envisaged to reach such a stage in the near future. In terms of the costs an efficient operator would incur in providing termination services, we believe the following cost items are relevant:

Traffic-related Costs: Costs that support voice traffic (excluding data traffic) on the network, rather than access costs which should be

³ Where call termination is not relevant because the WLR provider does not port the telephone number from the incumbent

excluded. Examples of traffic-related costs include: backhaul, switches, routers, core transmission and billing systems.

Network common costs: There are many network costs (e.g. staff and buildings) that are caused by demand for both access and traffic. These costs can normally be considered to be common to both access and traffic increments, and should be allocated to both access and traffic increments.

Wholesale common costs: A wide range of costs are incurred in the management of wholesale customers on the network. Because these costs relate partly to the management of interconnect customers, it is necessary to allocate some of them to voice termination services as well as to access services and other traffic-related services.

To be clear, access and retail costs should not be included in the pot of relevant voice termination costs.

QUESTION F6: Do you agree on the fact that OAOs should be as efficient as the incumbent?

We agree that there are good policy reasons for requiring that OAOs should be as efficient as the incumbent but only in the longer term. It is important to encourage new direct access entry into the voice telephony market by allowing OAOs to set their own termination rate during an interim period before being required to align their termination rate with that of the incumbent.

QUESTION F7: Do you agree on the fact that there are fewer reasons for fixed operators compared to mobile operators that justify the adoption of asymmetric tariffs?

There may be fewer reasons but, as explained elsewhere in this response, there remain strong policy reasons for allowing fixed operators to charge individual termination rates which are not tied to those of the incumbent.

QUESTION F8: Do you agree on the fact that if all call termination charges were based strictly on incurred costs there would be a distortion of competition?

No we do not believe that this would be the case. Allowing OAOs to charge an asymmetric termination rate during an interim period of time prior to achieving economies of scale would only have a limited effect on competition and would in any event not amount to any distortion. Artificially capping what an OAO can charge for termination by imposing a symmetric charging model will act as a harmful disincentive

to investment and risks harming the competitive process envisaged by the EU Communications Regulatory Framework.

QUESTION F9: Do you agree on the fact that symmetric tariffs would allow to avoid transaction and regulatory costs?

Quite possibly but we do not agree that these costs would be particularly high provided the NRAs can set out in a clear framework the principles they would expect OAOs to follow when setting individual termination rates.

QUESTION F10: Do you agree on the fact that NRAs should reach symmetry in fixed termination tariffs within a reasonable period of time?

No we do not agree with this proposition. We believe that NRAs should adopt a regime which allows OAOs to charge an individual termination rate initially but over time be required to align the rate with that of the incumbent. Such a policy sets a clear legal framework on the basis of which an OAO 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.

QUESTION F11: Do you agree that it would be reasonable for NRAs to allow a transition period to move to symmetric FTRs? How long should this transition period be?

Please refer to our response to Question F10 above.

QUESTION F12: In your opinion what criterion should NRAs adopt to set the glide path?

Please refer to our response to Question F10 above.

QUESTION F13: As the length of the glide path is a controversial point, in your opinion, should the time period to reach symmetry be the same for all NRAs or should each NRA determine it according to national circumstances?

Please refer to our response to Question F10 above.

QUESTIONS M1 TO M9

We do not feel these questions are relevant to our company.