



Annex B Witness Statement on Zero Rating

INTRODUCTION

1. I, **TANJA REINEKE**, am the Group Commercial Head of Marketing and Wholesale for Vodafone.
2. The facts and matters set out in this statement are within my own knowledge, unless otherwise stated, and are true. Where I refer to facts and matters not within my own knowledge, I identify the source of that information and those facts and matters are true to the best of my knowledge and belief.
3. By way of background, I first worked at Vodafone as Director of Pricing & Products for Vodafone Czech Republic – I held this position from 2005 until I left the company in 2007. I returned to the company in 2011 as Principal Pricing Manager for the Vodafone Group, a position which I held until 2014. I then worked as Principal Manager of the Household Segment from 2014 – 2016. From 2016 – May 2021 I held the position of Senior Marketing Manager with a focus on Propositions, Pricing and Behavioural Economics. In May of this year, I took up my current role as the Group Commercial Head of Marketing and Wholesale.
4. As the Group Commercial Head of Marketing and Wholesale, I sit in the Group's Commercial team and report to the team's Director, [CONFIDENTIAL]. I also interact a lot with other teams such as the Customer Value Management, Digital, Brand, Products & Services, and Entertainment teams.
5. I was heavily involved in both the design and launch of Vodafone's tariffs. One such tariff is Vodafone Pass. Vodafone Pass is Vodafone's scheme of zero-rated tariff offers. A zero-rated tariff is one in which a customer has unlimited data in relation to a category of apps, while maintaining a more 'general' data allowance for all other apps/content which falls outside the scope of the particular category.
6. At Vodafone, each Pass offered by Vodafone correlates to a particular category of content and usage – for example, a Social Pass or a Music Pass. Passes could be purchased by customers only in addition to (rather than as a substitute for) the general-purpose data allowance included in their basic tariff. If a customer purchased a Pass, the data usage associated with the Pass's partner-applications would not count towards their general-purpose data allowance.
7. In this statement, I explain why Vodafone chose to introduce Vodafone Pass (and some other ad hoc zero-rating schemes for public good applications), the key features of Vodafone Pass from the points of view of both end-users and applicable regulation, and the benefits of Vodafone Pass for both consumers and service-providers. We developed the Passes so that they both met our customers' needs and were compliant with Vodafone's regulatory



obligations, and as a result, Vodafone Pass offers tariffs that are highly beneficial for end-users. While I think that the market is generally shifting away from Vodafone Pass and towards an unlimited-data tariff model (although this differs depending on the individual market), the legality of zero-rated tariffs under the Open Internet Regulation remains important to Vodafone, not only because Vodafone cares about regulatory compliance, but also in my view it would be very unfortunate if customers were forced to migrate away from Vodafone Pass sooner than they would otherwise choose.

ZERO-RATED TARIFFS

(1) History, Development and Rationale

8. When Vodafone first emerged as a network, it charged customers on a pay-per-use basis. This was the case irrespective of whether the customer's plan was pay as you go ("**PAYG**"), or pay monthly ("**PAYM**"). Therefore, when I first joined Vodafone in 2005, we thought about a customer's mobile network plan in terms of units: a customer would have, for example, 300 units to spend on minutes or SMS. At this time, mobile network operators ("**MNO**") differentiated themselves on the basis of price-per-use.
9. In around 2011 or 2012, Vodafone made the strategic decision that it needed to simplify the plans that it offered its customers. We took the view that the pay-per-use model led to a negative customer experience, because it required customers to dedicate too much mental energy to deciding which Vodafone plan was right for them. This was because the pay-per-use model meant that customers had to calculate the number of SMS and minutes that they needed, and cross-reference this with their budget. Vodafone therefore began experimenting with the concept of "bundles" (a package combining minutes, SMS and gigabytes), for the purpose of simplifying the packages that it offered its customers.
10. As a result, Vodafone designed its "Red" portfolio. The portfolio launched in 2013.¹ This portfolio was well-renowned across various markets, because it offered bundles that gave customers unlimited minutes and SMS, as well as an allowance of data gigabytes ("**GB**"). It was around this time that GB became the focal point for customers, rather than the number of minutes or SMS that they had in their plan. This was a less cumbersome system for customers – rather than having to calculate the hundreds, or thousands, of units that they needed to meet their calling and texting requirements (and their budget), the focus shifted to the number of GB.
11. However, after launching Vodafone Red, we observed that the market re-oriented itself around intense competition based on the number of GB offered in MNOs' bundles. Customer decisions were centred around choosing the appropriate GB value, and competitive movements on the market had led to an ever-increasing number of GB being offered. This

¹ https://www.vodafone.com/news/press-release/red_europe



made things difficult for customers, who consequently struggled to choose the right plan for them, or find a plan that they were comfortable with.

12. There were two particular problems. The first was data wastage: some customers had packages with a significant number of GB, and used far fewer GB than their data allowance – this wastage made customers feel that they were paying for something that they were not using. The second was data inadequacy: some customers were unable to afford packages with the number of GB that they needed, and so felt that they needed to ration their data to avoid running out, or risk using up their allowance and being left without data when they needed it (unless they paid for an add-on). Our research showed that customers felt significant data-anxiety and had developed coping mechanisms (such as rationing data) to avoid running out of data or receiving bill-shocks from going over their allowance. The overall result of this was that there was a mismatch between, on the one hand, customer wants and needs and, on the other, the packages being sold.
13. As a result, in 2015 Vodafone developed Vodafone Pass. Vodafone Pass launched in most markets around 2017 – 2018. The Passes were a form of what we referred to as package-rated tariffs. We called them package-rated, as these tariffs offered a zero-rated element through a Pass only in addition to, and never independently of, the general-purpose data paid for by the customer as part of their basic tariff. These tariffs are structured around specific use categories. In exchange for paying for a Pass, a customer is able to access all of the applications included in the Pass without the data usage associated with those applications being deducted from the general-purpose data allowance in their basic tariff. For example, a customer who enjoys a Music Pass along with a general data allowance of 5GB, could stream music without using their 5GB of data. That 5GB of data could be used on other apps and content.
14. The Passes were therefore a middle ground between the Vodafone Red packages, which forced customers to operate within the fixed data allowance that they had purchased in their basic tariff, and packages which offered totally unlimited data. When we created Vodafone Pass, we assumed that the market would eventually develop so that competition in the market would be focussed on unlimited data. However, we also felt that the market had not reached that point yet – competition in the market was not yet focussed around unlimited data, and unlimited data packages at that time would have been extremely expensive. We wanted to create a compromise for our customers, so that they felt less constrained in their data usage, but were able to obtain that liberation at a reasonable price: this is why we invented Vodafone Pass.

(2) The design of Vodafone Pass and the types of zero-rated tariffs offered by Vodafone

(i) Design of Vodafone Pass

15. When we created the Passes, our research had shown us that there were a few specific usage categories that were particularly popular for customers: social, communication, video and



music. We wanted to create the Passes so that they reflected those usage categories. We hoped that, by creating Passes for these usage categories, we would make our network's offerings more consistent with how customers actually used their data, and that this would make customers feel less constrained in their data usage.

16. The Passes essentially gave customers unlimited access to the applications included within the Pass that they had purchased, until their general data allowance was used up and all of their data, both from the basic tariff and the Passes, was slowed down ("throttled") or cut-off. In most markets, we chose to throttle rather than cut-off the data. Crucially, however, the throttling operated both on apps/content within the Pass and outside the Pass.
17. When we designed Vodafone Pass, the aim was, as I described above, to allow customers to feel less constrained in their data usage. However, we were extremely mindful of the fact that we could only give customers what they wanted in a way that was always absolutely compliant with Vodafone's regulatory obligations. Regulatory compliance was very ingrained into my team's culture and so the Vodafone Pass scheme possesses a number of characteristics:
 - (a) Defined categories. We very clearly defined the use-categories that the Passes apply to – Chat;² Social;³ Music⁴ and Video.⁵ The definitions for these categories were intended to be broad yet precise, so that we could strike a balance between ensuring that the scope of the Pass was certain, but also sufficiently inclusive. We made sure that the categories were consistent across national markets. Any application that wants to be part of Vodafone Pass has to fall within one of these defined categories. We police this carefully, and make sure that we do not allow, and have never allowed, applications to be placed in a category that does not sincerely reflect the primary purpose of that application. Applications are only allowed to fall into one category – they cannot overlap across two categories, and therefore cannot overlap across two Passes. This is non-negotiable.
 - (b) Published criteria. The criteria that we apply to determine whether an application falls within one of the Passes has always been published on Vodafone's website and the Pass Partner Portal,⁶ in every market that Vodafone operates the Passes. These criteria require that an application (i) falls within one of the defined categories, and (ii) can provide its traffic signature, so that Vodafone can identify the traffic that is generated by usage of the application.

² The Chat and Communication Pass definition is: "*Apps and services that have as their main purpose text messaging and/or voice calling and/or video calling*".

³ The Social Pass definition is: "*Apps and services that have as their main purpose the sharing of events of daily life with friends, family and colleagues via a public or private profile*".

⁴ The Music Pass definition is: "*Apps and services that have as their main purpose music streaming*".

⁵ The Video Pass definition is: "*Apps and services that have as their main purpose video streaming*".

⁶ The link to Vodafone's Pass Partner Portal: <https://www.vodafone.com/about-vodafone/how-we-operate/suppliers/pass-partner-portal#Vodafone-Passes>



- (c) An open and neutral system. Vodafone Pass is an open system – any application that meets Vodafone’s criteria is eligible to be included. In addition to publishing the criteria on the Vodafone website and Pass Partner Portal, any application could apply through the Vodafone website or Pass Partner Portal to become a partner (either on the Vodafone.com webpage or the local markets’ partner portal pages). Becoming a partner is free of charge – there is no money exchanged between Vodafone and its partners. We make sure that we enable all partners to be on-boarded onto the Pass – this comes at a substantial cost to Vodafone [CONFIDENTIAL] per partner, though the cost varies between markets, but we absorb this cost for every partner who complies with our criteria, irrespective of that partner’s size or popularity. When advertising our Passes, we inform customers about all of the applications that are included in the pass, not only the major popular applications. Overall, we designed a system based around sincere neutrality and have always been happy to invest the necessary time, money and resources into our Pass Partners no matter their size.
 - (d) Traffic signatures and high accuracy thresholds. As I mentioned above, to be made a partner of the Vodafone Pass scheme, an application needs to provide Vodafone with the technical information required to identify their traffic, i.e. the application’s traffic signature. We have strict accuracy thresholds, which means that we require the signatures to enable us to accurately identify the traffic emanating from applications. These accuracy thresholds have been kept consistent over time and have never been compromised in favour of partnering with an application, no matter how big or prestigious the application. If we could not detect a partner’s traffic with sufficient accuracy, we would not on-board that partner because it would inhibit our ability to charge our customers accurately.
 - (e) Requiring general purpose data alongside the Passes. A customer cannot obtain a Pass unless they pay for general-purpose data on a regular basis.
 - (f) Treating general purpose traffic and Pass traffic the same. The traffic generated by partner and non-partner applications is treated equally. This manifests itself in two key ways. First, we would never prioritise Pass traffic over non-Pass traffic or vice versa. Second, when a customer has exhausted their general purpose data allowance, their data usage is either stopped or throttled (depending on the market) in respect of both general and Pass data.
18. To elaborate further on the open system that I outlined above, I should note that Vodafone did approach the major service-providers such as Facebook, Whatsapp, Netflix, et cetera for certain pass categories, when developing the Passes. We contacted them solely to ask whether they would be willing to be on-boarded to the Passes from the outset – we did this because we understood that the Passes would be more attractive to customers if they reflected how the customers already used their data. If we did not have the major applications as partners for our Passes, the Passes would not reflect how the customers used their data.



19. However, we were very careful not to favour the big applications over the smaller applications when creating the Passes and have also been careful not to do so following their launch. We have never paid any partners to be part of Vodafone Pass, no matter the application's size. We have also always made sure that we operate an open system that is highly accessible through the Pass Partner Portal – we have never offered a zero-rated tariff that operates like a “Walled-Garden”, which would limit customer choice by pre-selecting and enabling access to the partnering applications only. Further, as I mentioned above, Vodafone has borne the costs associated with on-boarding a partner for any partner that met the Pass criteria irrespective of that partner's size.
20. Overall, although we were aware of the importance for customers of having the major applications as partners, we never wanted our Passes to focus solely on these major applications – we wanted customers to have the widest range of applications available to them in the Passes as possible, and have facilitated this as much as possible. This is evident, for example, in Germany where the Music Pass includes not only the larger applications like Spotify, but also a large range of local radio applications such as Handwerker Radio, Regenbogen Radio, and Star FM Berlin, to name a few.⁷ In the Czech Republic, the Video Pass includes larger applications such as Amazon Prime, Netflix, YouTube and HBO, but also smaller applications such as Lepší.TV, Televize Seznam and Zapni.TV.⁸

(ii) Types of Vodafone Pass

21. As I have mentioned above, the Passes were constructed around particular use-categories that our research had shown to be particularly popular with customers: social, chat, video, music and more recently in some markets, gaming. Each category had a correlating Pass.
22. We also introduced zero-rating initiatives to facilitate public access to public good applications or content. For example, a public good pass was introduced by Vodafone in the Czech Republic, called “Pass for Good”.⁹ There are also many instances of zero-rating being applied by Vodafone to particular public good applications. For example, DreamLab is an application that helps support cancer and coronavirus research while a customer's phone is charging overnight, by using the processing power of smartphones to help analyse complex data while the owners sleep¹⁰ – this application was zero-rated by Vodafone. In addition, Vodafone zero-rated a number of websites, applications and services for the public good during the pandemic – for example, in Ireland we zero-rated certain Government-identified health and education

⁷ A full list can be found at: <https://www.vodafone.de/privat/service/vodafone-pass.html#text-only-609940>.

⁸ <https://www.vodafone.cz/en/internet/vodafone-pass2/>

⁹ <https://www.vodafone.cz/pass-prehled-aplikaci/>

¹⁰ DreamLab is available in 9 EU countries.



resources,¹¹ and in Greece we zero-rated various education websites to facilitate the Government's online-learning policy during the pandemic.¹²

23. However, not all use-categories were found to be appropriate for the Pass system. One such example is news applications. We found that customer use of news applications and sites was too fragmented for a News Pass to be viable. Customer preferences for news websites and applications varied enormously, which contrasts preferences for e.g. social applications, where customers focussed on a handful of popular applications. A News Pass would have required hundreds of applications to be on-boarded from the outset for it to be relevant and attractive to our customers. As I explained above, the costs of on-boarding an application to a Pass is high, and it was not viable to absorb these costs without being certain that the Pass would be relevant to customers.

(3) The impact of Vodafone Pass on end-users and competitors

(i) Consumers

24. The Passes are beneficial for customers, because they allow customers to purchase data packages that suit their individual data needs in a cost-efficient way. Customers are able to use as much data as they like on the things that matter most to them, without worrying about their data consumption, and do not have to pay for services that they do not want – a customer can choose the Pass that fit best with their priorities and would not have to pay e.g. for the cost of data volumes associated with streaming a lot of videos if that was not how they preferred to use their data.
25. It is clear that customers have responded well to the Passes, as our research showed that customer satisfaction scores increased after their introduction. Overall, our feedback from the customers was extremely positive. [CONFIDENTIAL].

(ii) Distributors

26. The general benefit for distributors is that customers happily consume their products in greater volumes. Our data revealed that Vodafone Pass customers used more data both within the Passes and outside of the Passes because they felt a sense of data liberation. This data liberation has resulted in customers using more data overall, because customers previously tended to be overly cautious when they only had a general-purpose data allowance – this was largely because customers did not actually understand how much data they used when they, for example, sent a Whatsapp message or streamed a video on YouTube.

¹¹ <https://www.comreg.ie/advice-information/covid-19-information/consumer-commitments/>

¹² <https://www.minedu.gov.gr/rss/47058-19-11-20-simera-pragmatopoiise-tilekpaidefsi-to-synolo-tis-sxolikis-koinotitas-tis-xoras-2>



27. This data liberation had positive effects on both partner and non-partner applications. In particular:
- (a) In respect of partner applications, customers were able to use these applications, which were their priority, as much as they pleased without worrying about depleting their data. They therefore used the partner applications more than they otherwise would have.
 - (b) In respect of non-partner applications, customers' general purpose data usage also increased because they did not have to save their general-purpose data for usage on the applications that they prioritised, as these were included within the Pass. Therefore, customers also used non-partner applications more than they otherwise would have. For example, Vodafone's data suggests that usage per customer in Italy increased [CONFIDENTIAL] in Q4 of 2017.
28. We were particularly aware of the benefit that the Passes had for smaller partners. The data liberation experienced by Vodafone's customers created a window of opportunity for smaller applications to obtain new users. In addition, smaller Pass Partners were very keen to use their involvement in Vodafone Pass as part of their marketing and PR strategy – they felt that they benefitted from this association with Vodafone.

(iii) Vodafone's competitors

29. I remember that our competitors generally viewed Vodafone Pass as a scheme that was interesting for customers and had the potential to drive customers to Vodafone. However, our competitors' responses to this were mixed.
30. I believe that some of our competitors followed our lead and offered zero-rated tariff packages, for example, TIM launched an offer called TIM Social&Chat as their own version of a Pass type offer, although I do not have the detail on the exact date of launch.
31. However, I do remember that the primary response of other competitors was simply to offer more GB. This was because constructing a scheme like Vodafone Pass requires a lot of commitment – a lot of resources and time need to be dedicated to on-boarding, compliance and design. Therefore, our competitors were not always willing to dedicate the time and resources necessary to creating a scheme that was end-user friendly and compliance-focused in the way that Vodafone's was. Instead, they preferred to increase their customers' GB allowances in order to compete.

(4) The future of Vodafone Pass

32. Vodafone Pass is gradually becoming less important in the portfolio of packages that Vodafone offers its customers, although this differs by market, depending on local market conditions and market segments. This is because, as we expected, the market has developed so that competition is centred around unlimited mobile data. Vodafone Pass, as I explained



above, is a comfortable middle ground between Vodafone Red and unlimited mobile data – it allows customers to have de facto unlimited access to certain categories of applications (until they used up their general data allowance), without having to pay the price of unlimited mobile data. Now, unlimited mobile data has, in some markets and for some customers, become more affordable. Now, many of our customers on a post-pay plan are on an unlimited data package (although the numbers differ depending on the market), and we recognise that it is likely that all customers will ultimately migrate to an unlimited data package at some point.

33. However, even though we recognise that we are moving to a system based around unlimited mobile data, it is still important to Vodafone that we are able to offer Vodafone Pass and other ad hoc zero-rated applications or packages in the interim period, for three reasons:

- (a) First, we see no reason to abandon the social initiatives that we have implemented and are reliant on zero-rating, such as the Pass for Good or our ad hoc zero-rating schemes (outlined above at paragraph 22).
- (b) Whilst unlimited offers are gradually becoming more affordable, Pass is still seen as beneficial to price sensitive groups. Many of our customers rely on Pass to get unhindered access to the applications they need, but where an unlimited offer may not be affordable to them.
- (c) Second, it would be difficult for Vodafone to move customers away from the Passes before they actually wanted to make that change to their data plan. If BEREC were to change its guidelines to advise that zero-rated tariffs such as Vodafone Pass are incompatible with the Open Internet Regulation, then Vodafone will have to undertake a forced migration of customers to new mobile plans. This would negatively impact a significant number of customers, who rely on Pass as a form of ‘hybrid’ plan, where customers get a more generous allowance for the applications they use the most, without the price tag for unlimited (which may be unnecessary for some customers; or, as noted, not attractive to customers who are price sensitive).

The desirability of Pass for customers, and the possible scale of the disadvantage to customers that could result from a forced migration, can be seen by fact that there are markets in which Vodafone customers still heavily relies on Passes – for example, in Germany we still have a significant number of customers [CONFIDENTIAL] on Vodafone’s post-pay base using Passes.

- (d) Third, if we have to force our customers to move to a different plan, then this would pose an unnecessary cost and challenge for Vodafone and our customers. This is because we would be required to incentivise customers to change their plan, and be pushed to quickly develop a new line of customer offers that meet their needs, without there being a customer demand for it.



34. Overall, whilst the market landscape is changing and Vodafone accepts that its Passes are becoming less relevant in light of the slow move to unlimited, in my view they are beneficial to end-users and to those who are impacted by our social initiatives. Whilst it would also be commercially difficult for Vodafone, I think a forced migration away from zero-rated tariffs would be particularly inconvenient and detrimental difficult for the beneficiaries of those tariffs.

A. STATEMENT OF TRUTH

35. I believe that the facts stated in this witness statement are true.

Signed:

A handwritten signature in blue ink, which appears to read 'Tanja Reineke', is written over a light-colored rectangular background.

TANJA REINEKE

Date: 20 October 2021