

# Hutchison

## Schedule 5

### Part 1

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The Commencement Date with respect to  
Third Generation Mobile Telephony is  
the 25<sup>th</sup> day of July 2002

Part 2

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Licensed Mobile Services

The Licensed Mobile Service is a Third Generation Mobile and wireless communications Service based on a standard within the IMT-2000 system capable of supporting innovative multimedia services beyond the capability of second generation systems such as GSM, and capable of supporting the characteristics referred to in Annex 1 of the CEPT ECC Decision ERC/DEC/(99)25 on UMTS -

- (1) Provided in the bands 1900 - 1980 MHz, 2100 - 2170 MHz and 2110 - 2170 MHz (to be known as the 1900 MHz, 2000 MHz and 2100 MHz bands respectively) in accordance with the Wireless Telegraphy Acts 1926 – 1988, as amended.
- (2) Providing the services and conforming to the standards referred to in parts 3 – 9 of this Schedule.

## Part 3

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### Access to the Emergency Services

#### 1. General

The Licensee shall provide ready access for customers through the Licensed Mobile Service to the emergency services.

#### 2. Calls to an Emergency Service

In this part “emergency services” means the Garda Síochána, the fire brigade services, the ambulance services, the boat and coastal rescue services, (including the rescue services provided by the Air Corps) or the mountain and cave rescue services.

#### 3. Directions by the Commission

The Commission may give directions in writing to the Licensee in relation to the handling of calls to and from customers relating to an emergency service (“emergency calls”), and the Licensee shall comply with any such directions.

#### 4. Acceptance of Emergency Calls

Emergency access codes, such as 999 and 112 and any other codes subsequently designated for use as emergency access codes, exclusively for calls to the emergency services shall be open to all terminal equipment equipped with a valid SIM Card (or equivalent), where technically necessary,

#### 5. Routing of Emergency Calls

The Licensee shall ensure that an emergency call is routed at the expense of the Licensee, to a collection centre for emergency calls. The Licensee shall provide not less than two routes with physical diversity between each mobile switching centre and a collection centre as described.

#### 6. Emergency Calls Free of Charge

(a) The Licensee shall not impose a charge on the customer in respect of an emergency call.

(b) The Licensee shall not list on a customer’s itemised bill any emergency call.

## 7. Identification of Emergency Calls

When an emergency call is made to an emergency service from terminal equipment of a customer, the Licensee shall, where technically possible, transmit the customer's number to a collection centre for emergency calls in the form of a calling line identification message.

1. Quality of Service, Grade of Service

In relation to Speed of Service, the Licensee shall, unless agreed otherwise with the Commission, comply with the obligations specified in the following Table:

a) Speed of Service

UDD limited mobility (outdoor) 384 kbps geographical coverage 30 June 2005	6,000 km <sup>2</sup>
UDD limited mobility (outdoor) 384 kbps geographical coverage 30 June 2007	20,000 km <sup>2</sup>
Max Speed (Applies to both Uplink and downlink) – UDD full mobility (outdoor), Rural – 2007 (year end)	384 kbps
Max Speed (Applies to both Uplink and downlink) – UDD full mobility (indoor), – 2007 (year end)	384 kbps

Note: coverage is defined for the purpose of this schedule in the following manner:

Definition of Coverage

Radio coverage is established from base station sites. Coverage around a site is accomplished using one (omni-directional) or several sectors. A sector is served by dedicated antenna/transceivers. Coverage is defined in terms of a minimum bearer data rate for UDD packet transmission of 144 kbps.

The sector coverage area is the area served by one dedicated set of antenna/transceivers.

The site coverage area is the total area covered from the base station equipment located at that site (i.e. the sum of sector coverage areas).

b) Customer Care

The licensee shall provide its customers with all the information and related services guaranteed below and shall, unless agreed otherwise with the Commission, comply with the specifications in the following Tables:

Contents	Sub-sections and Service Guarantees
Demand Resolution	<ul style="list-style-type: none"> <li>• Generic Resolution</li> <li>• Service operations assistance and activation</li> <li>• technical problem resolution</li> <li>• query identification</li> </ul>
Billing	<ul style="list-style-type: none"> <li>• Payment methods</li> <li>• bill structure/format – itemisation, analysis</li> <li>• frequency of bills</li> <li>• bill presentation – handset, paper internet</li> </ul>
Customer Training	<ul style="list-style-type: none"> <li>• General information</li> <li>• Directory of services</li> <li>• products</li> <li>• handset</li> <li>• applications</li> </ul>
Contact Management	<ul style="list-style-type: none"> <li>• Money back guarantee</li> <li>• Insurance warranty</li> <li>• Compensation</li> <li>• Repairs/faults/replacement</li> </ul>
Advice	<ul style="list-style-type: none"> <li>• Welcome Pack/Call</li> <li>• First Bill Call</li> <li>• Additional appropriate product suggestions</li> <li>• Credit options</li> <li>• Loyalty offers</li> <li>• After sales tariff advice</li> </ul>
Operations Assistance-	<ul style="list-style-type: none"> <li>• Change of personal information</li> <li>• Activation /disconnection of new services</li> <li>• Compensation credits</li> </ul>
Bespoke offers	<ul style="list-style-type: none"> <li>• Access to information</li> <li>• Additional reports provided</li> <li>• Fleet management</li> <li>• Technical support for applications</li> </ul>

	<ul style="list-style-type: none"><li>• On site care</li></ul>
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Paragraph Heading	Description	Obligation
Services at Registration / Order Completion	Activation of Handset	80% of services will be activated in 20 minutes
		100% of handsets will have fully charged batteries
	Number Portability	Numbers will be transferred within 2 hours of activation subject to cooperation from other networks
	Address Book Transfer	Address book information will be able to be transferred to the new handset on request from the customer
Contact Centre	Access Channels	Contact Centre will be accessible by phone, interactive voice recognition, E-mail, Fax and post
	Hours of Service	Contact Centre will be accessible 24 hours per day
	Cost of Access	Customers will be able to phone the Contact Centre free of charge when within the Republic of Ireland
	Downtime of Systems	The downtime of the contact centre will not exceed in aggregate 30 minutes in any calendar month
	Customer Satisfaction	More than 85% of customers surveyed will perceive their contact experience with the Contact Centre to be satisfactory or better
	Staff Training	All Customer Care staff will receive at least 5 weeks training in their first 6 weeks and an average of 12 hours per month thereafter
	Reviews by internal and external parties	The Contact Centre operations will be subject to ad hoc and periodic reviews to ensure compliance with control systems and best practice

Self-Care	Access to Self Care	Self Care will be accessible 24 hours per day 7 days a week by handset or internet
	Downtime	Downtime will not exceed 30 minutes in any calendar month
Handling of Complaints	Time to resolve complaints	80% of all customer complaints received will be resolved within 2 days (written)
Customer Response Speeds	Voice calls to Contact Centre	80% of calls will be answered in less than 10 seconds
		Less than 4% of calls entering a queue will be abandoned by the customer before they are answered
		75% of customer queries / complaints will be dealt with during the first call to the contact centre
		Average contact handling time for voice calls to Contact Centre will be less than 250 seconds
	Instant Messaging (Text chat)	80% of calls will be answered in less than 10 seconds
	E-mail	100% of emails will be responded to within 2 hours
	Fax and written correspondence	100% of white mail will be responded to within 2 business days.
Handsets	Money Back Guarantee	Customers will receive money back if handset returned within 14 days of activation
	Warranty	Customers will receive a new replacement handset if there is a handset fault within 28 days of purchase
	Faulty Handsets	Customers will receive a replacement handset by end of next business day
	Lost or stolen handsets	Customers will receive a replacement handset by end of next business day

Billing	Medium of billing	Customers will receive bills in their preferred medium (softcopy by e-mail or hardcopy by post)
	Timing	Softcopy bills will be e-mailed to customers within 2 days of period end
		Hardcopy bills will be posted within 5 days of period end
Invoice Accuracy	The number of invoice errors will not exceed 0.2% of the number of invoices despatched per calendar month	

## 2. Maps and Data

2.1 For the purposes of carrying out service quality surveys, the Licensee shall provide, on request, to the Commission the following:

- (a) Maps showing Coverage for 3G service. An area A shall be covered where the field strength - measured on the pilot signal (from the Common Pilot Channel/downlink) from the base station, outdoor at a height of 1.7 meters – is maintained equal to or above 58 dB $\mu$ V/m over 95% of the area A during 95% of the time;
- (b) An up to date list of the locations of the base transceiver stations;
- (c) A mechanism for identifying the base station that is handling a call at any given time;
- (d) An adequate number of test numbers.

## 3. Network Log

3.1 The Licensee shall keep a log (the “network log”) for the purposes of recording and tracking all periods of system unavailability. The Licensee shall maintain this network log in a manner that will demonstrate, to the satisfaction of the Commission, that such a network log is an adequate means of assessing whether the Licensee is complying with its system availability obligations under this licence.

3.2 The network log, or as may be appropriate part thereof, shall be made available on request to the Commission.

- 3.3 The Licensee shall calculate the service unavailability for the Licensed Mobile Services for any period specified by the Commission from the information recorded in the network log, and shall upon request and within such time as may be specified by the Commission, provide the Commission with the results of the calculation.

#### 4. Billing

##### 4.1 Billing Accuracy and Fraud Detection

The Licensee shall incorporate in its billing system:

- (i) measures to ensure that each call record is an accurate record of the actual call and that the correct accumulated call records are applied to generate each customer's bill, and
- (ii) measures to detect cases of possible fraud including measures to identify rapidly abnormal calling patterns.

#### 5. Performance Standards and Objectives

5.1 The Commission may, by direction in writing given to the Licensee, specify performance standards and obligations with respect to service quality or modify existing performance standards and obligations and the Licensee shall comply with any such directions.

#### 6. Customer Service

6.1 Before the commencement of the provision of 3G Licensed Mobile Services, the Licensee shall implement a customer care system whereby the quality of service offerings are capable of being independently verified and this system shall be agreed by the Commission.

Part 5

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Roll-out and Coverage Requirements

In relation to Network Roll-Out, the Licensee shall, unless agreed otherwise with the Commission, comply with the requirements specified in the following Table:

Minimum requirements:

Time of commercial launch of service	30 September 2003
Time to reach UDD full mobility (outdoor) 144 kbps Coverage (53% demographically)	30 June 2005
Time to reach UDD full mobility (outdoor) 144 kbps Coverage (80% demographically)	30 June 2007
UDD full mobility outdoor at 144 kbps demographic coverage at 2007 (year end)	85% Demographic coverage

## SCHEDULE

### Part 6

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#### National Roaming

##### A. National Roaming

*The Commission shall nominate those who have a duty to provide National Roaming and also those who are entitled to benefit from this Part of the schedule under the proviso that they hold a Mobile Telephony Licence\* issued by the Commission and are designated New Market Entrants.*

1. (1) If and for so long as the Licensee or any member of its Group is authorised under the Postal and Telecommunications Services Act, 1983, as amended,\* and the Wireless Telegraphy Acts 1926 to 1988 to use radio spectrum within the 3G radio bands for the transmission of signals and for so long as it is authorised to use spectrum within the 900 MHz and/or 1800 MHz bands under the Postal and Telecommunications Services Act, 1983, as amended, and the Wireless Telegraphy Acts 1926 to 1988, the Licensee shall negotiate an agreement with a New market entrant or negotiate an amendment to such an agreement, as the case may be, within a reasonable period, if that New market entrant requires it to provide such National Roaming as may be reasonable. Where the authorisation to use radio spectrum is not held by the Licensee but by a member of its Group, the Licensee shall ensure that the holder of the authorisation complies with the terms of this condition. Any National Roaming Agreement negotiated under this Condition shall take effect at the latest from the date on which the New market entrant has rolled out its 3G network to cover 20% of the population of Ireland and shall have effect for a period of 5 (five) years from the date of grant of licence to the New market entrant. For the avoidance of doubt, the period of 5 years referred to above is calculated from the date of grant of licence to the New market entrant, regardless of how long the New market entrant takes to roll out its 3G network. Any such National Roaming Agreement negotiated under this Condition shall cover at least Teleservices, Bearer services and Standard Supplementary Services supported over the Licensee's or a member of its Group's GSM network.

2 (1) The Commission may, if requested by either party, make a direction in order

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\*Please see below for the status of references to Licences issued under the 1983 after the transposition of the European Communities Electronic Services Directives.

\* Under Regulation 22(1) of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 S.I. 306 of 2003 the licensee is deemed to be Authorised under Regulation 4 of those Regulations from the commencement of those Regulations. As such all references to licences issued under the Postal and Telecommunications Services Act 1983 shall now read as references to Authorisations under Regulation 4.

- (a) to specify issues which must be covered in a National Roaming Agreement; and/or
    - (b) to lay down specific conditions to be observed by one or more parties to a National Roaming Agreement; or
    - (c) if it thinks fit, to set time limits within which negotiations of a National Roaming Agreement are to be completed. Any such direction shall also set out the steps to be taken if agreement is not reached within these time limits.
  - (2) Paragraph 2(1) shall not apply where the parties have concluded the first National Roaming Agreement under paragraph 1(1).
- 3
- (1) The Licensee shall ensure that a National Roaming Agreement entered into or an amendment made under paragraph 1(1) contains terms and conditions which are reasonable. In the event of a dispute as to the reasonableness of any term or condition under this paragraph 3, either party may refer the dispute to the Commission for determination. The provisions of paragraph 6 of this Condition shall apply to such a determination.
- 4
- (1) The Licensee shall comply with:
    - (a) the requirements of any direction made by the Commission under paragraph 2 or any determination under paragraph 3 in relation to any National Roaming Agreement, and
    - (b) the requirements of any determination made by the Commission under paragraph 6 in relation to any dispute over the terms of a National Roaming Agreement under paragraph 1(1).
- 5
- (1) For the avoidance of doubt:
    - (a) any question as to whether any term or condition (including a charge) of a National Roaming Agreement is reasonable, shall be decided by the Commission having regard to paragraph 6 and any directions or guidelines on the Application of this Condition issued from time to time by the Commission; and
    - (b) in considering whether a term or condition (including a charge) of a National Roaming Agreement is reasonable, the Commission may take into account, *inter alia*, the effective date of the term or condition and the period during which that term or condition may already have been in effect; the Commission may conclude that a reasonable charge is one which is offered or agreed, as the case

may be, on terms that it takes effect in the National Roaming Agreements made under paragraph 1(1) from the date of a complaint or the date on which the term was first offered or accepted by the Licensee or a New market entrant or from any other date which is considered by the Commission to be appropriate in the circumstances.

6 (1) Where there is a dispute concerning National Roaming the Commission shall, at the request

of either party, take steps to resolve the dispute within three months of the date of the request. The determination that the Commission makes to resolve the dispute shall represent a fair balance between the legitimate interests of both parties. In so doing, the Commission shall take into account, *inter alia*:

- (a) the interests of users;
- (b) regulatory obligations or constraints imposed on the Licensee or the New market entrant;
- (c) the desirability of stimulating innovative market offerings, and of providing users with a wider range of telecommunications services within Ireland and the European Union;
- (d) the need to maintain the integrity of the public telecommunications network and the interoperability of services;
- (e) the nature of the request in relation to the resources available to meet the request;
- (f) the relative market positions of the Licensee and the New market entrant
- (g) the need for the Licensee to maintain quality of service and for the New market entrant to provide accurate and timely information in order to facilitate network planning;
- (h) the public interest, such as the protection of the environment;
- (i) the promotion of competition; and
- (j) the provision of National Roaming to New market entrants at a price based on Retail minus avoidable costs, as defined in this condition and any guidelines issued by the Commission from time to time.

- (2) For the avoidance of doubt, the list at paragraph 6(1) is not exhaustive.
- (3) The determination shall be published in accordance with paragraph 7 and shall be binding on the parties.
- (4) The Commission shall not be required to take steps to resolve any dispute referred to it under this paragraph in respect of a New market entrant, where any other dispute has been referred to it under this paragraph or where it has previously resolved a dispute relating to a National Roaming Agreement involving that New market entrant in circumstances where that National Roaming Agreement is:

- (i) still valid and in existence; and
- (ii) remains in substantially the same form.

7 (1) Any determination made by the Commission under paragraph 6 shall automatically lapse upon the entry into force of any subsequent National Roaming Agreement to which the same New market entrant is a party.

8 (1) The Commission shall ensure that up to date and specific information in accordance with paragraph 6 is made available on request to interested parties, free of charge, during normal working hours.

9 (1) In this Condition:

“Mobile Terminal” shall mean a telecommunications terminal intended to be able to register with as well as make and receive calls with one or more public mobile communications networks.

“Visited Network” shall mean a public mobile communications network in which a Mobile Terminal can work without the Mobile Terminal or an inserted identification module (SIM card) being associated therewith via a subscription or a similar customer relationship.

“Retail minus avoidable cost” means the retail price charged by the Licensee for the provision of a service to end-users less any elements of costs that are not incurred in providing the same service to the New market entrant plus any elements of cost reasonably incurred solely to provide National Roaming services.

“Bearer services” shall mean as defined in current and future versions of the ETSI GSM Technical Specifications (and their future 3G equivalents).

“Group” means, in relation to the Licensee:

- a) any parent undertaking of the Licensee;
- b) any subsidiary undertaking of the Licensee;
- c) any subsidiary undertaking of any parent undertaking referred to in a);
- d) a shareholder or partner in the Licensee which beneficially owns (directly or indirectly) shares in the Licensee in circumstances where there is one other shareholder or partner in the Licensee which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder or partner has control;
- e) any undertaking of which the Licensee beneficially owns (directly or indirectly) shares in circumstances where there is one other shareholder or partner in that undertaking which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder nor partner has control;
- f) any undertaking in circumstances where two or more of its shareholders or partners which acting in concert together beneficially own (directly or indirectly) more than 50% of the shares or voting rights in that undertaking, acting in concert together beneficially own (directly or indirectly) more than 50% of the shares, or voting rights of the Licensee; and
- g) any undertaking of which the Licensee beneficially owns (directly or indirectly) together with one or more undertakings acting in concert more than 50% of the shares or voting rights of that undertaking.

A Person shall be deemed to control a body corporate if –

- a) he has a controlling interest in it;
- b) he has a controlling interest in a body corporate which has a controlling interest in the body corporate; or
- c) although he does not have such an interest in the body corporate, or in any body corporate with a controlling interest in the body corporate, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body corporate are conducted in accordance with his wishes; and for this purpose a Person has a controlling interest in a body if he holds, or is beneficially entitled to, 50% or more of the equity share capital in the body corporate, or possesses 50% or more of the voting power in it and a Person shall

be deemed to control a body corporate where that Person controls another Person which controls that body corporate.

“National Roaming” shall mean a service which enables a Mobile Terminal to register with as well as make and receive calls on a Visited Network in Ireland.

“National Roaming Agreement” shall mean an agreement that provides for National Roaming.

“New market entrant” means a Person who was not licensed to provide mobile telecommunications services and networks in Ireland on March 27<sup>th</sup> 2002 and who did not have control of and was not controlled by a body corporate which was so licensed on or before that date..

“Supplementary services” shall have the meanings attached by the relevant ETSI/GSM standards (or equivalent standards).

“Standard Supplementary Services” shall mean those Supplementary services which are most widely used by mobile retail customers (subscribers).

“Teleservices” shall mean as defined in current and future versions of the ETSI GSM Technical Specifications (and their future 3G equivalents).

“2G spectrum” means, for the purposes of this Condition spectrum within the 900 MHz and/or 1800 MHz bands.

“3G spectrum” means, for the purposes of this Condition spectrum within the 1900 MHz, 2000 MHz and 2100 MHz bands.

- 10 (1) The Licensee shall not (whether in respect of the charges or other terms or conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular Persons or Persons of any class or description with respect to the provision of the service to which the Licensee is obliged by this Condition to provide. This Condition, shall cease to have effect 5 (five) years after the issue of a licence to provide 3G mobile services to any party entitled to benefit from the provisions of paragraph 1(1) of this Condition.

B. International Roaming:

1. The Licensee shall establish and maintain as part of its Mobile Service an international roaming capability for its customers that is as wide and comprehensive as is practicable.
2. Where requested to do so, the Licensee shall provide to members of the public, maps from other 2G and 3G operators with whom it has international Roaming Agreements showing the Coverage provided by them.

## SCHEDULE

### Part 7

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#### MVNO Access Condition

1. (1) If and for so long as the Licensee or any member of its Group is authorised under the Postal and Telecommunications Services Act, 1983, as amended\*, and the Wireless Telegraphy Acts 1926 to 1988 to use radio spectrum within the radio spectrum bands for the transmission of signals, it shall negotiate an agreement (hereinafter the 'MVNO Agreement') with a Mobile Virtual Network Operator ('MVNO') or negotiate an amendment to such an agreement, as the case may be, within a reasonable period, if that MVNO requires it to provide such access to the Licensee's GSM (or equivalent) and 3G network, as may be reasonable, priced at a level at least 35% below retail. Where the authorisation to use radio spectrum is not held by the Licensee but by a member of its Group, the Licensee shall ensure that the holder of the authorisation complies with the terms of this condition. Such an agreement shall cover at least Teleservices, Bearer services and Standard Supplemental Services supported over the Licensee's GSM (or equivalent) and 3G network as offered to the Licensee's own customers. In addition, the agreement shall cover a set of "wholesale" mobile features/functionality (or their 3G equivalents) required for the MVNO to produce such value added services, which the host network produces and provides to its own retail subscribers. Where the Licensee is under a duty to negotiate an agreement under paragraph 1(1) above, it shall, in addition, be obliged when requested to do so by the MVNO, to co-operate with it to ensure the MVNO is in a position to take reasonable advantage of the MVNO Agreement being or to be negotiated under paragraph 1(1).
2. (1) If, within a period of three months from the date on which the request for establishing or modifying an MVNO Agreement was made in writing to a Licensee under a duty to negotiate such an agreement under paragraph 1(1) above, the parties have not reached an agreement, one or more of the parties may request the Commission to intervene.
3. (1) Where the Commission is requested to intervene on foot of paragraph 2 above, it may make a direction in order:
  - (a) to specify issues which must be covered in an MVNO Agreement; or

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\* Under Regulation 22(1) of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 S.I. 306 of 2003 the licensee is deemed to be Authorised under Regulation 4 of those Regulations from the commencement of those Regulations. As such all references to licences issued under the Postal and Telecommunications Services Act 1983 shall now read as references to Authorisations under Regulation 4.

- (b) to lay down specific conditions to be observed by one or more parties to an MVNO Agreement; or
  - (c) if it thinks fit, to set time limits within which negotiations of an MVNO Agreement are to be completed. Any such direction shall also set out the steps to be taken if agreement is not reached within these time limits.
- (2) Paragraph 3(1) shall not apply where the parties have concluded an MVNO Agreement under paragraph 1(1).
- 4. The Licensee shall ensure that an MVNO Agreement entered into or an amendment made under paragraph 1(1) contains terms and conditions which are reasonable. To the extent that all or any of the terms and conditions of an MVNO Agreement made under paragraph 1(1) (whether on or after the coming into force of this condition) cease to be reasonable, the Licensee shall, within a reasonable period, negotiate an amendment to the MVNO Agreement so that the terms and conditions of the MVNO Agreement are reasonable. In the event of a dispute as to the reasonableness of any term or condition under this paragraph 4, either party may refer the dispute to the Commission for determination. The provisions of paragraph 8 of this Condition shall apply to such a determination.
- 5. An MVNO Agreement may contain differing elements. Where the Commission is requested to intervene on foot of paragraph 2 or paragraph 8 of this Condition it may divide such a request into sub-questions that may be dealt with separately as independent requests for intervention.
- 6. The Licensee shall comply with:
  - (a) the requirements of any direction made by the Commission under paragraph 3 or any determination under paragraph 4 in relation to any MVNO Agreement, or any negotiation of an MVNO Agreement to which it is or is intended to be a party; and
  - (b) the requirements of any determination made by the Commission under paragraph 8 in relation to any dispute over the terms of an MVNO Agreement under paragraph 1(1).
- 7. For the avoidance of doubt:
  - (a) any question as to whether any term or condition (including a charge) of an MVNO Agreement is reasonable, shall be decided by the Commission having regard to paragraph 8 and any directions or guidelines on the Application of this Condition issued from time to time by the Commission; and
  - (b) in considering whether a term or condition (including a charge) of an MVNO Agreement is reasonable, the Commission may take into account, *inter alia*, the

effective date of the term or condition and the period during which that term or condition may already have been in effect; the Commission may conclude that a reasonable charge is one which is offered or agreed, as the case may be, on terms that it takes effect in MVNO Agreements made under paragraph 1(1) from the date of a complaint or the date on which the term was first offered or accepted by the Licensee or an MVNO or from any other date which is considered by the Commission to be appropriate in the circumstances.

8. (1) Where there is a dispute concerning an MVNO Agreement or the negotiation thereof, the Commission shall, at the request of either party, take steps to resolve the dispute within three months of the date of the request. The determination that the Commission makes to resolve the dispute shall represent a fair balance between the legitimate interests of both parties. In so doing, the Commission shall take into account, *inter alia*:
  - (a) the interests of users;
  - (b) regulatory obligations or constraints imposed on the Licensee or the MVNO;
  - (c) the desirability of stimulating innovative market offerings, and of providing users with a wider range of telecommunications services in the State and in the European Union;
  - (d) the need to maintain the integrity of the public telecommunications network and the interoperability of services;
  - (e) the nature of the request in relation to the resources available to meet the request;
  - (f) the need for the Licensee to maintain quality of service and for the MVNO to provide accurate and timely information in order to facilitate network planning;
  - (g) the public interest, including but not restricted to the protection of the environment;
  - (h) the promotion of competition;
  - (i) the promotion of innovative services and applications;
  - (j) lower tariffs.
- (2) For the avoidance of doubt, the list at paragraph 8(1) above is not exhaustive.
- (3) The determination shall be published in accordance with paragraph 10 and shall be binding on the parties.
- (4) The Commission shall not be required to take steps to resolve any dispute referred to it under this paragraph in respect of an MVNO, where any other dispute has been referred to it under this paragraph or where he has previously resolved a dispute relating to an MVNO involving that MVNO in circumstances where that MVNO Agreement is:

- (i) still valid and in existence; and
- (ii) remains in substantially the same form.

9. Any determination made by the Commission under paragraph 8 shall automatically lapse upon the entry into force of any subsequent MVNO Agreement to which the same MVNO is a party.
10. The Commission shall ensure that up to date and specific information in accordance with paragraph 8 is made available on request to interested parties, free of charge, during normal working hours.
11. The Licensee shall not (whether in respect of the charges or other terms or conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular Persons or Persons of any class or description with respect to the provision of the service to which the Licensee is obliged by this Condition to provide.
12. The operation of this Condition and the duties imposed hereby are subject to the legal and regulatory constraints otherwise imposed on the parties to whom this Condition applies.
13. This Part 7 is subject to the following commercial principles of the Licensee.

The Licensee shall give a discount of at least 35% on its retail prices to MVNOs.

The Obligation above is on the understanding of the definition, technical solution and conditions of MVNO access as described in the tender document Appendix 9A. For the purposes of clarity, the Obligation is also on the understanding of the following commercial principles:

- The MVNO will efficiently utilise the radio network's capacity (geographically and by time of day).
- For the purposes of planning and investing in more capacity in the radio network, the MVNO will need to commit to certain minimum levels of usage.
- Depending on the complexity of the agreed technical solution, the MVNO will be required to pay an upfront fee to cover the Licensee's costs of implementation.
- The MVNO will be responsible for acquiring/developing its own 3G content (e.g. information, news, etc) and IT platforms and systems, and will bear the related costs. (It is understood that the Licensee will provide the network functionality, for example data on the customer's geographic location, required by the MVNO to offer such value added services, provided such network functionality is used by the Licensee for its own customers).
- On the assumption that 'X' is equivalent across all services, the MVNO will deliver a range of services to its customers equal to the services delivered by the Licensee to its customers (this is to avoid the situation whereby, for example, the MVNO decides to offer only one service (e.g. SMS) which the Licensee offers for free to its customers, and thereby pays nothing for utilising the radio network). Alternatively, the Licensee would be willing to offer a range of discounts across different services which would average at 'X' based on the services delivered by the Licensee to its customers.
- The Licensee shall route all outgoing calls made by the MVNO's subscribers to the MSC of the MVNO, and the MVNO will be responsible for further call handling.

14. In this Condition:

“Bearer services” shall mean as defined in current and future versions of the ETSI GSM Technical Specifications (and their future 3G equivalents).

“Group” means for the purposes of this schedule, in relation to the Applicant/Licensee:

- a) any parent undertaking of the Applicant/Licensee;
- b) any subsidiary undertaking of the Applicant/Licensee;
- c) any subsidiary undertaking of any parent undertaking referred to in a);
- d) a shareholder or partner in the Applicant/Licensee which beneficially owns (directly or indirectly) shares in the Applicant/Licensee in circumstances where there is one other shareholder or partner in the Applicant/Licensee which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder or partner has control;
- e) any undertaking of which the Applicant/Licensee beneficially owns (directly or indirectly) shares in circumstances where there is one other shareholder or partner in that undertaking which beneficially owns (directly or indirectly) the remaining shares in circumstances where neither shareholder nor partner has control;
- f) any undertaking in circumstances where two or more of its shareholders or partners which acting in concert together beneficially own (directly or indirectly) more than 50% of the shares or voting rights in that undertaking, acting in concert together beneficially own (directly or indirectly) more than 50% of the shares, or voting rights of the Applicant/Licensee; and
- g) any undertaking of which the Applicant/Licensee beneficially owns (directly or indirectly) together with one or more undertakings acting in concert more than 50% of the shares or voting rights of that undertaking.

“Mobile Virtual Network Operator - MVNO” means an organisation operating a physical network infrastructure comprising as a minimum a mobile switching centre, home location register and authentication centre (or 3G mobile equivalents), having its own unique mobile network code with distinct IMSI and E.164 number series (where applicable), and issuing its own branded SIM cards (or 3G mobile equivalent), but without a mobile radio access network.

“MVNO Agreement” shall mean an agreement between an MVNO and a host operator that provides for MVNO Access.

“Retail minus X” means the retail price charged by the Licensee for the provision of a service, or a set of services, to end-users less a factor “X” which is the discount on the retail price proposed by the host operator.

“Supplementary services” shall have the meanings attached by the relevant ETSI/GSM standards (or equivalent standards).

“Standard Supplementary Services” shall mean those Supplementary services which are most widely used by mobile retail customers (subscribers).

“Teleservices” shall mean as defined in current and future versions of the ETSI GSM Technical Specifications (and their future 3G equivalents).

“Tender documents” shall mean the documents published by the Commission in December 2001 as ODTR document nos. 01/99 and 01/100.

“2G spectrum” means for the purposes of this Condition spectrum within the 900 MHz and/or 1800 MHz bands.

“3G spectrum” means frequencies within the 1900 MHz, 2000 MHz and 2100 MHz frequency bands.

SCHEDULE

Part 8

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Performance and Financial Guarantees (1)

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been deleted**

## SCHEDULE

### Part 8

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#### Performance and Financial Guarantees (2)

1. Performance Guarantees on Part 5 and Part 9: Coverage, Roll-out and Site sharing targets

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- (b) The Performance target inserted into Part 9 of this schedule relating to site sharing shall be monitored and measured in the following manner –

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SCHEDULE

Part 8

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Performance and Financial Guarantees (3)

1. Performance Guarantees on Part 7: MVNO Access

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## SCHEDULE

### Part 9

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#### Site Sharing

1. If and for so long as the Licensee or any member of its Group is authorised to use radio spectrum within the radio spectrum bands for the transmission of signals, it shall, within a reasonable period, negotiate in good faith and conclude a framework contract (hereinafter the 'Site Sharing Agreement') with any other licensed 3G mobile network operator or negotiate and conclude an amendment to such an agreement, as the case may be, upon reasonable request from any such operator for access to radio transmission sites under the Licensee's control (3G or otherwise).
2. The Licensee shall ensure that the Site Sharing Agreement concluded pursuant to this Condition provides other mobile network operators with access to 100% of the radio transmission sites (3G or otherwise) under the control of the Licensee for site sharing purposes at t1 (30 September 2003), t2 (30 June 2005) and t3 (30 June 2007) excluding those sites to which access cannot be offered because of capacity constraints. Where the authorisation to use radio spectrum is not held by the Licensee but by a member of its Group, the Licensee shall ensure that the holder of the authorisation complies with the terms of this Condition.
3. The Licensee shall grant access to sites under its control on a reasonable, transparent and non-discriminatory basis in the form of a framework agreement which will cover the following points
  - i) Requests for access and reaction: once a request for access for a specific site has been made, the agreement must set a reasonable time within which the operator controlling the site must formally respond to the request.
  - ii) Non-exclusivity: an operator controlling a site shared or offered for sharing to any 3G licensee must agree to offer access to the same site to any other 3G licensee on a non-discriminatory basis, subject to capacity constraints.
  - iii) Price: the Site Sharing Agreement must include a method of determining a reasonable level of compensation for use of the site. The Licensee shall charge other operators for access to its sites based on the following: 50% of the Licensee's costs relating to establishing the site + any additional costs incurred by the Licensee as a result of the other operator sharing the site.
  - iv) Access: the Site Sharing Agreement must set out the rights of both operators to enter the site and to carry out work on it, in particular any charges associated with site entry

and any constraints relating to when the site may be accessed. The licensee offering site sharing should endeavour to provide or ensure the party in control of the site provides unescorted access options that meet reasonable demand.

- v) Repairs and maintenance: the Site Sharing Agreement must set out the responsibilities of both parties;
  - vi) Liability for accidents etc. on the site: the Site Sharing Agreement must set out the responsibilities of both parties
  - vii) Technical standards for site sharing must be set in terms of a minimum requirement acceptable to all sharers and conforming to appropriate legislation, such as health and safety and planning regulations.
  - viii) Obtaining permission etc.: the Site Sharing Agreement must set out whose responsibility it is to obtain any permission necessary to use the site for 3G mobile telecommunications.
  - ix) The Site Sharing Agreement should require the burden of proof of the unavailability of access to a particular site should fall on the licensee offering site sharing
  - x) Disputes: the Site Sharing Agreement must define a method of settling disputes by involving the nomination of a neutral third party (e.g. an arbitrator.)
  - xi) Oversight by ODTR: the Site Sharing Agreement must provide a right for the ODTR to inspect any correspondence or documents covered by the agreement.
4. The provisions of this Condition are without prejudice to the rights and obligations relating to facility sharing granted or imposed by the European Communities (Interconnection in Telecommunications) Regulations, 1998, as amended, or otherwise.
5. The Licensee shall participate in any future code of practice concerning the sharing of radio transmission sites, and shall support the Commission in the development of a code of practice relating to the sharing of radio transmission sites, bearing in mind the considerations which are contained in Appendix A12 of the tender documents, and shall comply with any decision of the Commission in that regard.
6. The Licensee shall provide at the Commission's request a list of the locations of the sites covered by this Part. In response to a request by the Commission, the Licensee shall identify the locations of the Radio transmission sites under its control in respect of which it will provide access to other 3G licensees.