

## **Proposed requirement on dominant providers to publish Key Performance Indicators**

**Ensuring transparency in relation to non-discrimination.  
A consultation document issued by the Director General of  
Telecommunications**

**11 July 2003**

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**Contents**

Summary		3
Chapter 1	Introduction	7
Chapter 2	Policy framework for proposals	10
Chapter 3	The proposed selection of KPIs to be published by BT in relation to wholesale services	12
Chapter 4	Regulatory option appraisal	19
Chapter 5	Consultation	23
Annex A	List of questions	25
Annex B	Overview of EU Market Reviews: List of Markets where Quality of Service Condition proposed	27
Annex C	Glossary	29

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## Summary

S.1 A principle, high-level objective for Oftel is to promote and sustain competition, regulating only where this is likely to bring a net benefit to consumers. Consumers benefit where there is effective competition. A further objective is to rely on competition legislation to tackle anti-competitive behaviour where appropriate.

S.2 The Director has undertaken a series of market reviews to ensure that regulation remains appropriate in the light of changing market conditions.

S.3 In the following market reviews the Director has proposed that BT should be subject to a requirement to publish data relating to the quality of service it delivers in providing wholesale services. The Director considered that these could be best achieved by requiring publication of a specified set of Key Performance Indicators (KPIs), representative of key business processes. Such an obligation was considered necessary to ensure compliance with the requirement not to unduly discriminate:

- the Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets (published 17 March 2003), condition AA7;
- the Review of the leased lines markets (published 11 April 2003), conditions G7 and H6; and
- the Review of the wholesale broadband access markets (published 28 April 2003), condition EA5, ('the Market Reviews').

S.4 However, the reviews do not generally specify the detail, manner and form that the publication of the KPIs should take, (other than the review of the leased lines market, which proposed a set of KPIs through a Direction under the above mentioned conditions). This is the purpose of this consultation.

S.5 It is proposed in the Market Reviews that the Quality of Service Condition will only apply where there is sufficient demand for the wholesale service in question such that the data provided will be statistically meaningful. The Director does not expect this to apply to Kingston Communications. The scope of this consultation is therefore confined to the publication of quality of service data by BT.

S.6 The proposed requirement to publish KPIs will be implemented through Directions. Before consulting on the detail of the Directions, the Director wishes to allow sufficient time for information gathering and discussion of the top-level options proposed in this consultation.

S.7 Recognising the potential conflict between any obligation to publish KPIs in order to provide transparency, and the need to maintain commercial confidentiality, the Director has proposed a range of options for specific indicators and for the process of publication.

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S.8 The publication of KPIs should facilitate effective competition without the need for regulatory imposition of quality standards. Once there is evidence that effective competition exists in a particular market, the Director will undertake a further review and the requirement to publish will be revoked.

S.9 It is the Director's view that without an ex ante obligation to publish the data there is no way of ensuring that there is no undue discrimination as to the quality of service provided. It is not, in general, possible to reconstruct data for operational performance retrospectively and there is no guarantee that the necessary information will be collected at the time the service is provided. Therefore ad hoc requests do not meet the need for transparency with regard to the quality of service provided.

S.10 Under the current regime, the process for the publication of an agreed set of KPIs for an agreed set of operators is set out in some detail in condition 65 of BT's licence. This covers standard services and private leased circuits, including some KPIs whose publication may need to be reviewed to take account of technological developments eg voice quality of service. Some key wholesale services are not included, notably ATM Interconnection, and the Director is proposing these should be published under new Directions which will be proposed following the outcome of this consultation.

S.11 The Director proposes that BT should publish data on the following key performance indicators:

- pre-ordering response time (in days);
- ordering response time (in days);
- percentage of orders rejected;
- percentage of orders provisioned on time;
- average provisioning time (in days);
- percentage of new provisions reported as faulty;
- percentage of installed base reported as faulty;
- average time to restore service (in hours); and
- percentage of repeat faults.

for wholesale broadband (ATM Interconnect), FRIACO, WLR and Interconnect links, respectively. All of the services proposed are wholesale remedies in markets where the Director has proposed that BT have SMP. Most reflect recent product developments where quality of service is potentially a major issue.

S.12 It will not be appropriate to apply every KPI to each wholesale service and this consultation invites views on which KPIs should apply in each case. The Director has outlined his proposals in chapter 3. Proposals are also made on the process, frequency, and form of publication. The selection of indicators is based on the Director's evaluation of the suitability of the measure to meet the desired objectives. This is a policy choice based on the Director's judgement. The Director will consider alternative options, bearing in mind the need for the obligation to be

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proportionate, objectively justifiable, non-discriminatory between different operators, and transparent.

S.13 In March 2003 the Director issued a statement setting out the proposed specification for an enhanced Wholesale Line Rental (WLR) product that BT would be required to provide. The content of the functional specification is set out in the annex to the statement ([www.oftel.gov.uk/publications/whole\\_line/2003/wlr0303.pdf](http://www.oftel.gov.uk/publications/whole_line/2003/wlr0303.pdf)). Part of that specification proposed that BT should provide transparency of its operational performance in relation to key business processes by publishing such Key Performance Indicators, to be defined by OfTel. Also that BT should publish data on its performance in relation to BT Retail as well as in relation to Service Providers (SPs), in sufficient detail to show whether they are receiving an equivalent quality of service to that provided to BT Retail. This consultation provides the opportunity to consider a whole range of options for publication, as set out in chapter 3, and on which the Director invites comments.

S.14 The requirements for Private Partial Circuits were set out in the *Phase II Direction to resolve a dispute concerning the provision of partial private circuits*, published on 23 December 2002. These were subsequently consolidated (and slightly reduced) into the draft reporting requirements, set out in *Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments market*, published on 11 April 2003 (see chapter 6 (paras 6.208 to 6.221) and chapter 7 (7.125 to 7.132)) under conditions G7 and H6, Quality of Service and the associated draft Directions. The proposed Direction will not apply to all markets in the leased line review, just PPCs within the low and high bandwidth symmetrical broadband origination markets. The Director does not propose to include retail leased lines within the scope as he wishes to limit the data requirement to true wholesale products.

S.15 BT currently publishes monthly performance data on CPS to the industry on a voluntary basis. As this appears to meet industry requirements, the Director is not minded to extend the ex-ante obligation to publish KPIs to cover CPS. However, were BT to withdraw from this arrangement the Director may be minded to propose similar parameters to those adopted for WLR.

S.16 The Director proposes there should be no additional KPIs on indirect access (IA) or number translation services (NTS) beyond those already included for interconnect circuits. This is because there are no ordering processes associated with these products. It would also be difficult to define a useful KPI in relation to fault management.

S.17 The Director acknowledges there may be costs associated with the provision of additional data for new products and services to new operators. This may involve the cost of setting up new systems. It is intended that by consulting only on the headline KPIs that should apply, and allowing BT some flexibility in relation to the detailed definitions, any additional costs should be minimised.

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S.18 Under the current regime the Director receives the quality of service schedule annually and removes or ensures anonymity of commercially sensitive data. The Director has proposed four high level options for the publication of data, intended to balance the need for transparency with commercial confidentiality. The Director believes that the information to be published largely relates to the performance of BT Wholesale, and does not include commercially sensitive information in relation to the retail performance of BT and other operators.

S.19 In putting forward these high level options for discussion, the Director's objective is to ensure that the requirements meet the tests for giving Directions under a condition specified in the Communications Bill (C47 (2)). Namely the Directions must:

- be objectively justifiable;
- not discriminate unduly against particular persons;
- be proportionate to what they are intended to achieve; and
- provide transparency in relation to what they are intended to achieve.

## **Consultation**

S.20 The Director is seeking comments on his proposals by 19 September 2003. Once he has considered all responses the Director will issue draft Directions for consultation. Comments should be sent to Rosalind Stevens-Strohmann, OfTel, 50 Ludgate Hill, London EC4M 7JJ, e-mail: [rosalind.stevens-strohmann@oftel.gov.uk](mailto:rosalind.stevens-strohmann@oftel.gov.uk) and tel 020 7634 5382. The Directions will be finalised by the end of 2003 and these will take effect from the end of March 2004. In the interim, the Director is consulting on the proposal that Condition 65 of BT's licence will continue to apply (see [www.oftel.gov.uk/publications/licensing/2003/cont0703.htm](http://www.oftel.gov.uk/publications/licensing/2003/cont0703.htm)). The Director intends to issue a continuation notice to that effect on or around 23 July. The target date for finalisation of Directions is dependent on the timing of the introduction of the new Quality of Service Conditions arising from the Market Reviews.

S.21 As part of this consultation the Director will hold a workshop for interested parties on Friday, 12 September. The aim of the workshop is to reach consensus on the scope of the requirement and the process for publication.

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# Chapter 1

## Introduction

### **A new regulatory regime**

1.1 A new regulatory framework for electronic communications networks and services will enter into force in the UK on 25 July 2003. The basis for the new regulatory framework is five new EU Communications Directives, which are designed to create harmonised regulation across Europe and are aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. Four of the Directives are to be implemented in the UK through a new Communications Act.

### ***Market reviews***

1.2 The new Directives include the requirement that national regulatory authorities (NRAs) such as Oftel should carry out reviews of competition in communications markets, to ensure that regulation remains proportionate in the light of changing market conditions. In the UK, the Electric Communications (Market Analysis) Regulations 2003 (SI 2003/330) (the 'Regulations') confirm the Director's ability to carry out preparatory work required for the new regime.

1.3 Pursuant to the Regulations Oftel has recently conducted a series of national market reviews under the Regulations, each of which was undertaken in three stages:

- definition of the relevant market or markets;
- an assessment of competition in each market, in particular whether any companies had Significant Market Power ('SMP') in a given market; and
- an assessment of the options for regulation and proposals for appropriate regulatory obligations where SMP is found.

### **Relationship of this consultation to the market review process**

1.4 In the following market reviews the Director has proposed that one of the options for regulation is an obligation to publish certain information about the quality of the wholesale services that a dominant provider provides to both itself and to other providers:

- the Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets (published 17 March 2003), condition AA7;
  - the Review of the leased lines markets (published 11 April 2003), conditions G7 and H6; and
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- the Review of the wholesale broadband access markets (published 28 April 2003), condition EA5 ('the Market Reviews').

The specific markets in which the conditions are proposed and how the proposals for KPIs relate to each of those markets are set out in annex B.

1.5 The quality of service obligation proposed in the Market Reviews provides for the dominant provider to publish information to secure transparency as to the quality of service provided ('the Quality of Service Condition'). The intention is to help determine whether an undue-discrimination obligation is being complied with.

1.6 The proposed Quality of Service Conditions do not generally specify the detail, manner and form which the publication of the information would take. That is the purpose of this consultation (the review of the leased lines market did propose a set of KPIs through a Direction under the above mentioned conditions).

1.7 It is proposed in the Market Reviews that the Quality of Service Condition will only apply where there is sufficient demand for the wholesale service in question such that the data provided will be statistically meaningful. The Director does not expect this to apply to Kingston Communications. The scope of this consultation is therefore confined to the publication of quality of service data by BT.

### ***Directions***

1.8 The detail of the data that should be published under the proposed Quality of Service Condition will be imposed by Directions given under the Condition in accordance with clause 47(4) of the Communications Bill. It is proposed that the Directions would be made in relation to BT where BT is found to have SMP as a result of the Market Reviews but only where the Quality of Service Condition is applied to BT. The Director considers that the data to be published under the proposed Condition should take the form of a specified set of Key Performance Indicators (KPIs). Draft Directions relating to the specific KPIs covered by conditions AA7 and EA5, will be published for consultation in the autumn.

1.9 In giving those Directions the Director will need to be satisfied, in accordance with Clause 47(2) of the Communications Bill (House of Lords version, as amended on Report, printed 2 July 2003), that they are:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what they are intended to achieve; and
  - in relation to what they are intended to achieve, transparent.
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### ***Current regulatory environment***

1.10 Oftel had planned to complete the market reviews and implement the specific conditions after 25 July 2003. However, following recent advice from the European Commission Oftel is now unable to impose the obligations arising from market analyses until the Commission or NRAs of other Member States have been notified and given at least a one month period to comment. Such notification cannot take place until after 25 July 2003.

#### *Timing*

1.11 Before consulting on the draft Directions, the Director wishes to allow sufficient time for information gathering and discussion of the top-level options proposed in this consultation. A workshop for interested parties is to be held at Oftel on 12 September 2003. There will be a further national consultation in the autumn, which will then include the draft Directions. The draft Directions will also be made accessible to the European Commission and to the regulatory authorities in other member states, in accordance with the scheme of the European Directives. Oftel proposes to publish the final Directions by the end of 2003 and to allow a period of three months for BT to implement the new procedures. In the interim, Oftel is currently consulting on the proposal that Condition 65 of BT's licence will apply (see [www.oftel.gov.uk/publications/licensing/2003/cont0703.htm](http://www.oftel.gov.uk/publications/licensing/2003/cont0703.htm)). The Director intends to issue a continuation notice to that effect on or around 23 July.

1.12 The target date for finalising the Directions is dependent on the timing of the introduction of the new Quality of Service Conditions arising from the Market Reviews (see para 1.10 above).

### **Outline of this consultation document**

1.13 Chapter two of this consultation sets out the policy framework for the proposal that the Quality of Service Condition should be met through the publication of key performance indicators. Chapter three outlines high level options for the specific KPIs, the process and frequency of publication. A regulatory appraisal of those options is provided in chapter four. Chapter five gives details of the consultation process itself.

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## Chapter 2

### Policy framework for proposals

2.1 A principle, high level objective for Oftel is to promote and sustain competition. Consumers benefit where there is effective competition. This is the key driver of the Director's proposal for the publication of Key Performance Indicators ('KPIs') by the dominant provider.

2.2 A further objective is to rely on competition legislation to tackle anti-competitive behaviour where appropriate. The Director has undertaken a series of market reviews to ensure that regulation remains appropriate in the light of changing market conditions. In relation to the Quality of Service Condition, the Director believes that ex ante regulation is a more effective way to promote competition, particularly where significant market power has been identified.

2.3 Where a vertically integrated provider has significant market power in a specific wholesale market, it has the potential to leverage this into downstream retail markets by providing a different quality of service to different wholesale customers. This could impact on competition in retail markets, ultimately to the detriment of retail customers.

2.4 It may be possible to address this concern by requiring a dominant provider to provide wholesale services to other operators using the same operational processes and interfaces as it uses to supply itself. However, the high cost of replacing legacy systems means that this will not always be practical. Instead the Director has proposed that BT (being the operator which the Director considers should be required to publish KPIs) should deliver the same operational performance to other operators as it delivers to itself and that BT should regularly publish key performance indicators to demonstrate that this is the case.

2.5 It is the Director's view that without an ex ante obligation to publish the data there is no way of ensuring that there is no undue discrimination as to quality of service. It is not, in general, possible to reconstruct data for operational performance retrospectively and there is no guarantee that the necessary information will be collected at the time the service is provided. The aim is to ensure that BT's competitors have timely and transparent information about the quality of service being provided. Unlike the position set out in the Access Guidelines ([www.oftel.gov.uk/publications/ind\\_guidelines/acce0902.htm](http://www.oftel.gov.uk/publications/ind_guidelines/acce0902.htm)), the Director believes it is not in this case possible to reconstruct data for operational performance retrospectively. Ad hoc requests for data are therefore unlikely to meet the need for transparency with regard to the quality of service provided.

2.6 The Director fully recognises the potential conflict between any obligation to publish KPIs in order to provide transparency, and the need to maintain commercial confidentiality. The high level options for publication, outlined in chapter 3, have taken into account the need to balance the two objectives.

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2.7 The Director is fully aware of the need to define a set of KPIs, which is representative of key business processes, but not disproportionate for BT to collect and publish data on. This was acknowledged in the market review consultation documents, where Oftel proposed that:

*“it would not be proportionate to require BT to publish a large number of KPIs, covering all aspects of operational performance. Instead, Oftel intends to select a small number of KPIs that are representative of key business processes and that are necessary to ensure compliance with the requirement not to unduly discriminate.” (Para 10.103 of the call origination market review).*

*“The condition is proportionate because the dominant provider will only be required to publish data on a small number of KPIs that are representative of key business processes, rather than a complete set of KPIs that cover all aspects of operational performance. “ (Para 10.105 of the call origination market review).*

2.8 The Director therefore proposes that BT should be required to publish a small number of KPIs representative of key business processes, rather than a complete set of KPIs, covering all aspects of operational performance. The options for the proposed KPIs are outlined in chapter 3, together with options for the process and frequency of publication. The objective is to ensure detection of undue discrimination in the quality of service provided. The high level options for specific KPIs set out in this document are proposed for consultation initially to ensure that the ex ante regulation proposed is proportionate to that objective.

2.9 The publication of KPIs should facilitate effective competition without the need for regulatory imposition of quality standards. Once there is evidence that effective competition exists in a particular market, the Director will undertake a further review and the requirement to publish will be revoked.

2.10 In this consultation the KPIs proposed are intended to ensure that the dominant provider complies with its requirement not to discriminate unduly. However, there may be other benefits, for example benchmarking with international comparators in situations where BT delivers a similar quality of service to all operators including itself, but this level of service falls short of the service generally offered in comparable countries, most notably in the EU.

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## Chapter 3

# The selection of KPIs to be published by BT in relation to wholesale services

### Introduction

3.1 Consistent with the duty under the Communications Bill (C6 (1)) not to impose unnecessary regulatory burdens or to maintain regulatory burdens which have become unnecessary, the Director has undertaken a review of the current process under which BT provides an agreed set of KPIs for an agreed set of operators. In making his proposals for the requirements under the new regime the Director has considered:

- recent product developments, particularly where quality is potentially a major issue;
- the appropriate scope for the requirement – market, technical area, and statistical significance of data;
- optimal frequency and extent of publication – (finding a balance between resources required to publish appropriate KPIs and those needed to review, against the potential detriment of delay);
- appropriate level of regulator involvement (ensuring the level of anonymity is appropriate); and
- how frequently the KPIs should be reviewed to take account of new products and service developments.

3.2 Under the current regulatory regime, Condition 65 of BT's licence sets out in some detail the process for the publication of an agreed set of KPIs. These cover a representative sample of operators, selected to ensure the data is statistically meaningful, as agreed by the Director. The KPIs are detailed in a quality schedule, which is subject to at least annual review. The schedule is used to compare BT's performance in relation to other licensed operators ('OLOs') with its performance in relation to its own retail arm. Where there is no retail analogue to the service being provided (eg voice interconnect circuits), BT compares its performance against an absolute benchmark. Under the current regime BT is required to publish data on its performance.

3.3 The Director proposes that BT should publish data on the following key performance indicators:

- pre-ordering response time (in days);
  - ordering response time (in days);
  - percentage of orders rejected;
  - percentage of orders provisioned on time;
  - average provisioning time (in days);
  - percentage of new provisions reported as faulty;
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- percentage of installed base reported as faulty;
- average time to restore service (in hours); and
- percentage of repeat faults.

for wholesale broadband (ATM Interconnect), FRIACO, WLR and other Interconnect links respectively (see annex B) (note that given the low number of new Interconnect links, there may be problems in populating the data.)

3.4 The selection of indicators is based on the Director's initial evaluation of the suitability of the measure to meet the desired objectives. This is a policy choice based on the Director's initial evaluation. By undertaking this consultation the Director is not ruling out other options and plans to hold a workshop as part of the consultation exercise to encourage consensus.

3.5 In making these proposals for specific KPIs, there are several options that need to be considered.

**1. Which indicators should be published?**

*(Ranked in descending order from 1 – 3 based on the Director's initial evaluation of key business processes.)*

<b>Proposed options</b>	<b>ATM Interconnect</b>	<b>Interconnect links</b>	<b>FRIACO</b>	<b>WLR</b>
Pre-ordering response time	3	3	2	3
Ordering response time	3	3	2	3
% of orders rejected	1	1	2	1
% of orders provisioned on time	1	1	1 (i) for new routes (ii) for route augmentation	1
Average provisioning time	2	1	2	2
% of new provisions reported as faulty	2	2	2	2
% of installed base reported as faulty	1	1	2	1
Average time to restore service	1	1	2	1
% of repeat faults	2	2	2	2

<b>2. What should be the <i>process</i> for publication?</b>	
<i>(The options are subject to there being sufficient data available per indicator for the KPIs to be statistically meaningful. The process must balance the need for transparency with that of commercial confidentiality)</i>	
Option 1	BT provides the Director with data on its own performance in relation to wholesale services provided to individual providers and where relevant data on its provision of wholesale services to its retail business
Option 2	BT publishes data on its performance in relation to wholesale services provided to all other providers. Included within this aggregated total would be BT's provision of wholesale services to its retail business. In addition BT provides data to the Director on its provision of wholesale services to its retail business separately.
Option 3	BT publish data on its performance in relation to wholesale services provided to all other providers and separately publishes data on its provision of wholesale services to its retail business.
Option 4	BT publishes data on its own performance in relation to wholesale services provided to individual providers. Removing the names of providers other than BT would however anonymise the data.

<b>3. What should be the <i>frequency</i> of publication?</b>	
<i>(balancing proportionality with transparency)</i>	
Option 1	Monthly
Option 2	Quarterly
Option 3	Annually

<b>4. What should be the criteria for selection of operators and what should be the threshold?</b> <i>(In relation to which operators should BT publish performance data? – The process must balance the need for robust data with the need to include a wide range of operators, especially new entrants)</i>	
Option 1	For each wholesale service, include all operators with an absolute volume of new provisions above a given threshold, or an installed base above a given threshold
Option 2	For each wholesale service, include all operators with a percentage of new provisions above a given threshold, or a market share above a given threshold
Option 3	For each wholesale service, include a fixed number of operators, selected on the basis of market share

3.6 The impact of each of these options is considered in chapter 4.

#### ***Which wholesale services?***

3.7 Under the current regime, condition 65 of BT's licence sets out in some detail the process for the publication of an agreed set of KPIs for an agreed set of operators, covering standard services and private leased circuits. This includes some KPIs, whose publication may be subject to review, to take account of technological developments eg voice quality of service. Moreover, some key wholesale services are not included, notably ATM interconnection and FRIACO. FRIACO is a product which BT sells to itself and discrimination in its provision would have a material effect on other providers.

3.8 In March 2003 the Director issued a statement setting out the proposed specification for an enhanced Wholesale Line Rental (WLR) product that BT would be required to provide. The content of the functional specification is set out in the annex to the statement ([www.oftel.gov.uk/publications/whole\\_line/2003/wlr0303.pdf](http://www.oftel.gov.uk/publications/whole_line/2003/wlr0303.pdf)). Part of that specification proposed that BT should provide transparency of its operational performance in relation to key business processes by publishing such Key Performance Indicators, to be defined by Of tel. Also that BT should publish data on its performance in relation to BT Retail as well as in relation to service providers (SPs) , in sufficient detail to show whether SPs are receiving an equivalent quality of service to that provided to BT Retail. This consultation provides the opportunity to consider a whole range of options for publication on which the Director invites comments.

3.9 The requirements for Private Partial Circuits were set out in the *Phase II Direction to resolve a dispute concerning the provision of partial private circuits*, published on 23 December 2002. These were subsequently consolidated (and slightly reduced) into the draft reporting requirements, set out in *Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments market*, published on 11 April 2003 (see chapter 6 (paras 6.208 to 6.221) and chapter 7 (7.125 to 7.132)) under conditions G7 and H6, Quality of Service, and the associated draft Directions. The proposed Directions will not apply to all markets in the leased line review, just PPCs within the low and high bandwidth symmetrical broadband origination markets. The Director does not propose to include retail leased lines within the scope as he wishes to limit the data requirement to true wholesale products.

3.10 Quality of service data for LLU is not currently provided due to there being insufficient data. The Director will continue to monitor the situation and will consult further should he wish to include it as part of the KPI publication requirement in future.

3.11 BT currently publishes monthly performance data on CPS to the industry on a voluntary basis. The data covers total forecast and actual order volumes, order reject rates, cumulative lines with CPS, total churn and performance statistics relating to speed of electronic order processing and switchover dates. As this arrangement appears to meet industry requirements, the Director is not minded to extend the ex-ante obligation to publish KPIs to cover CPS. However, were BT to withdraw from this arrangement, the Director may be so minded. Similarly, if other new products provide for adequate publication meeting the needs of demonstrating non-discrimination, it may not be necessary to impose the ex-ante data collection requirement through formal regulation.

3.12 Indirect Access (IA) and Number translation services (NTS) are not included in these proposals. This is because there is no ordering process for these services, and it is difficult to define a KPI in relation to fault management. The main concerns in relation to IA and NTS relate to the provision and maintenance of interconnect links, which are covered.

### ***Which KPIs ?***

#### *Pre-ordering*

3.13 The pre-ordering process typically involves an exchange of information between BT and its wholesale customers, with the aim of ensuring that the order that is finally submitted is valid. Only a subset of wholesale services involves a pre-ordering process, but where this process exists, it is clearly important that any information requested from BT is provided promptly. This is not likely to be an issue for an automated pre-qualification process, where the response is essentially immediate, but could be an issue where the manual exchange of information is

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required before an order can be submitted. Under such circumstances it might be appropriate to define the ***pre-ordering response time*** as a KPI.

### *Ordering*

3.14 When an order is submitted to BT, it is undoubtedly important that BT respond as quickly as possible to this order, either with an acceptance or a rejection. It may therefore be appropriate to define the ***ordering response time*** as a KPI. When measuring this KPI, the time taken to provide an acceptance should include the time required to agree a firm date for provisioning the service, whilst the time taken to provide a rejection should include any time necessary to establish the reasons for the rejection.

3.15 The volume of orders rejected has historically been one of the major concerns associated with wholesale services provided by BT. It may therefore be appropriate to define the ***percentage of orders rejected*** as a KPI. The Director acknowledges that the reason(s) why an order is rejected will not always be under BT's control (the cause may simply be an incorrectly formatted order). However, a high level of order rejections is likely to be a reliable indicator that there is a problem at some stage in the ordering process.

### *Provisioning*

3.16 Once BT has accepted an order, and agreed a provisioning date, it is evidently important that the service is provisioned by that date. It may therefore be appropriate to define the ***percentage of orders provisioned on time*** as a KPI.

3.17 The actual time taken to provision a service may also be of interest, in which case it may be appropriate to define the ***average provisioning time*** as a KPI.

3.18 The quality of each new provision is significant, since there is no value in a service that is provided quickly but is faulty. Where practical, it may therefore be appropriate to define the ***percentage of new provisions reported as faulty*** as a KPI. This KPI would include all new provisions on which a fault report was submitted within 30 days of the installation date.

### *Maintenance and repair*

3.19 The level of faults associated with a service evidently has a major impact on customer satisfaction. It may therefore be appropriate to define the ***percentage of installed base reported as faulty*** as a KPI. Views are sought concerning the suitable point for collection eg should the first 30 days after installation be excluded to avoid double counting?

3.20 Once a fault has been reported, the main concern of a customer will be that the service is rapidly restored. It may therefore be appropriate to define the ***average time to restore service*** as a KPI.

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3.21 As with new provisions, the quality of fault repair is also important. Where practical, it may therefore be appropriate to define the **percentage of repeat faults** as a KPI. This KPI would include all faults that are repaired but where a further fault report is submitted within 30 days. Alternatively, the number of times repeat faults are recorded within a year could be the more suitable measure.

#### *Call accounting accuracy*

3.22 BT's wholesale customers require the timely provision of accurate call accounting data. Whilst the Director is not proposing there be a specific KPI for call accounting, comments on this issue are invited.

#### **Selection of KPIs**

3.23 The foregoing discussion leads to proposals for a set of KPIs that might be applied to the wholesale services listed. It will not however be appropriate to apply every KPI to each wholesale service, for the following reasons:

- a particular process (eg manual pre-ordering) may not exist for every service;
- a particular process may be sufficiently efficient (due to a high degree of automation, for example), such that it is unlikely there will be much difference in the KPI; and
- a particular KPI may prove impractical to collect.

3.24 All of the services proposed relate to markets in which the Director has proposed that BT have been identified as having SMP. They reflect recent product developments where quality of service may be a major issue.

3.25 The options proposed for the process of publication are intended to balance the need for transparency, with the need to maintain commercial confidentiality.

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## Chapter 4

### Regulatory option appraisal

#### Appropriate level of regulation

4.1 In proposing the options for specific KPIs, the Director has taken into account the European Community requirements set out in Article 8 of the Framework Directive, including the requirement to promote competition (given effect through Clause 4(3) of the Bill). The Director also seeks to ensure that the proposals constitute an appropriate level of regulation (see *Regulatory option appraisal guidelines: assessing the impact of policy proposals*, published in June 2002, [www.oftel.gov.uk/publications/about\\_oftel/2002/roa0602.htm](http://www.oftel.gov.uk/publications/about_oftel/2002/roa0602.htm)).

#### Relevant stakeholders

4.2 The stakeholders affected by this requirement are:

- BT – proposed as dominant provider in the market reviews (para 1.4);
- BT's wholesale customers; and
- retail customers and consumers, who will benefit indirectly through the promotion of effective competition.

#### Specific KPIs

4.3 Chapter 3 (para 3.5, table 1) lists for discussion the proposed KPIs per product, ranked in descending order from 1-3. Those selected are intended to represent the minimum required to represent key business processes whilst ensuring compliance with the requirement not to unduly discriminate, such that the requirement satisfies the criteria outlined in C47 (2) of the Communications Bill.

4.4 In ranking the specific indicators the Director has consider the following points:

- The most important KPIs are those that have a significant impact on the 'customer experience' of the end-user. Delays in provisioning a service, for example, could result in the end-user switching to another provider.
  - Slightly less important, but still very significant, are those KPIs which do not affect the 'customer experience', but do result in increased transaction costs for a provider. An example would be poor pre-order or order response time.
  - In ranking the KPIs the Director has also taken into account which KPIs have tended to be the focus of most concern in industry discussions
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4.5 The Director invites comments on these proposals and will consider alternatives. Ideally these proposals should be substantiated and ranked in order of preference.

### ***Process for publication***

4.6 Chapter 3 proposed four options for publication. In each case these relate to BT's performance provided to others. It is not the intention that other providers would be required to publish KPIs in relation to their own performance.

4.7 Option 1 provides the greatest degree of commercial confidentiality, since the data is only published to the Director. However, although this would provide some degree of confidence about whether BT was engaging in undue-discrimination, it would not provide any transparency of the data to other operators. It would not therefore meet one of the key requirements.

4.8 Option 2 provides a substantial degree of commercial confidentiality, since no data is provided on the performance in relation to individual providers. Individual providers would be able to determine whether the quality of service that they were receiving was worse than the average performance provided to all providers. Although they would not be able to determine whether the quality of service that they were receiving was worse than that provided by BT to itself, the Director would have access to this information.

4.9 Option 3 provides the same degree of commercial confidentiality as Option 2 to all providers other than BT's retail business. This would allow operators to determine whether the quality of service that they were receiving was worse than that provided by BT to itself.

4.10 Option 4 provides the same degree of commercial confidentiality as Option 3, except that it may be possible to work out the identity of individual providers from the published data, despite the data being anonymised. The major advantage of Option 4 is that it makes it possible to distinguish between cases where the performance simply varies from one provider to another, and those cases where BT consistently provides a worse service to other providers than to itself. This is of particular value for those KPIs (eg order rejection rates) which depend on the other provider as well as BT.

4.11 Not all options would apply to each service. Comments are invited on the applicability of the proposed options.

### ***Frequency of publication***

4.12 Chapter 3 proposed the following options for publication:

- monthly;
  - quarterly; and
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- annually.

4.13 Under the current regime, BT is required to publish results of target performance measures for standard services and private leased circuits no less than once in each financial year. Two of the proposed options are for more frequent publication. This is because experience with newer products has shown that to give confidence that there is no undue-discrimination requires more frequent publication than on an annual basis.

4.14 Whether or not the requirement for more frequent publication is onerous may depend on the service provided and how the data is collected and collated. The Director is therefore consulting on all three options.

4.15 There may be some cases where volumes are too low for data to be statistically significant on a monthly or quarterly basis. The Director's initial view is that this is not a valid reason for infrequent publication. Where appropriate, data may be aggregated for the purpose of statistical analysis, facilitating more frequent publication.

#### ***Criteria for selection***

4.16 Chapter 3 proposed three options for selecting those providers included in the publication requirement. The selection criteria must balance the need to ensure that data is statistically significant, with the need to ensure adequate coverage of smaller providers, especially new entrants.

4.17 One theoretically attractive option would be to publish only that data which is statistically significant according to an agreed statistical test, and within an agreed confidence interval (eg 95 per cent). This would however be complex to administer, and require industry agreement on, for example, the appropriate statistical test to use. The Director instead proposes that providers be selected based on volume of the relevant wholesale service, on the assumption that volume is a good proxy for statistical significance.

4.18 Three options for selection by volume are proposed, and the Director invites comment as to which of these would be most appropriate. It may be that a combination of these options is preferred. The Director also invites comment on the threshold to be used under each option.

4.19 Note that in addition to publishing the data for the selected individual operators, BT will also publish the aggregate data for all operators. The selection criteria do not determine which operators are included in this aggregate total, only those operators for which dis-aggregated data is provided.

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***Costs and benefits of implementation of the new regime***

4.20 The high level options proposed as to the method of publication are not intended to be exclusive. There may be others. Further detailed information is required regarding the comparative costs and benefits of existing compliance monitoring requirements and the proposed new regime. Thereafter directions setting out the detail of the KPI to be published under the Quality of Service Condition, in accordance with the Communications Bill (C47 (2)), may be proposed. Such Directions must:

- be objectively justifiable in relation to the options for KPIs proposed;
- not discriminate unduly against particular persons;
- be proportionate to what they are intended to achieve; and
- ensure that the KPIs published provide transparency in relation to what they are intended to achieve.

4.21 The Director acknowledges there may be costs associated with the collection of the data needed to publish KPIs, particularly where these relate to new and/or different services. In choosing the balance of options and making proposals for the detailed specification of the KPIs, the Director seeks to choose KPIs that will have the minimum impact to achieve the objective. For example if an existing KPI were fit for purpose then this would be preferable to introducing a new requirement. The Director would welcome recommendations on this issue.

4.22 A key benefit for BT's wholesale customers will be to have quality of service metrics that are up to date with current key products and services and reflect what is important for the promotion of competition. The comparison of BT's wholesale provision of services to its own retail arm, compared with that provided to competitors, will enable BT's competitors to detect where discrimination may exist.

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## Chapter 5

### Consultation

5.1 The Director seeks the views of interested parties on the analysis and proposals contained in this consultation document. The Director will then publish draft Directions for further consultation.

5.2 The consultation period lasts for ten weeks and representations must arrive at Oftel no later than close of business on 19 September. Representations received after this date will not be taken into account, and no extensions of the deadline will be permitted.

5.3 Where possible, comments should be made in writing and sent by e-mail to [rosalind.stevens-strohmann@oftel.gov.uk](mailto:rosalind.stevens-strohmann@oftel.gov.uk). Copies may also be posted or faxed to the address below. If any stakeholders are unable to supply their comments in one of these ways, please use the contact details below to discuss alternatives.

Rosalind Stevens-Strohmann  
Oftel  
50 Ludgate Hill  
London EC4M 7JJ

tel 020 7634 5382  
fax 020 7634 8847

5.4 Confidential responses should not be sent via the Internet. Responses will be published on Oftel's website in the Publications section under Responses to Oftel consultations, except where respondents indicate that the response, or part of it, is confidential. Appointments to view written comments in Oftel's Research and Information Unit must be made in advance (see contact details below). Respondents are therefore asked to separate out any confidential material into a clearly marked annex. In the interests of transparency, respondents are requested to avoid confidential markings wherever possible.

5.5 This document can be viewed on Oftel's website [www.oftel.gov.uk](http://www.oftel.gov.uk). Paper copies and more accessible formats such as large print, Braille, disc and audio cassette can be made available on request. Please contact Oftel's Research and Information Unit by telephoning 020 7634 8761 or by sending an e-mail to [infocent@oftel.gov.uk](mailto:infocent@oftel.gov.uk)

#### **e-mail notifications**

5.6 Oftel has a free e-mail based mailing list to help people stay informed about the work that Oftel is doing. Each time an Oftel document is published and placed on Oftel's website at [www.oftel.gov.uk](http://www.oftel.gov.uk) subscribers to the list receive an e-mail

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alert. To register, please go to the *What's New* section of the website and access the electronic form.

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## **Annex A**

### **List of questions**

#### **1. Specific KPIs**

**Q.1.1 Do you agree with the list of proposed KPIs, and their rankings, as outlined in table 1? Alternative options will be considered. Ideally the proposals should be substantiated and ranked in order of preference.**

**Q. 1.2 which option do you prefer?**

#### **2. Specific Wholesale Services**

**Q.2.1 Do you agree that LLU, CPS, IA and NTS should not be included within the scope of the proposed Directions?**

**Q.2.3 Do you agree that FRIACO, WLR etc should be included?**

#### **3. Process of publication**

**Q.3.1 Do you agree with the proposed options for the process of publication as outlined in table 2?**

**Q.3.2 Are there other options we should consider?**

**Q.3.3. What do you perceive would be the costs and benefits of your preferred option?**

#### **4. Frequency of publication**

**Q.4.1 How frequently should the KPIs be published to ensure undue discrimination is detected and responded to in a timely manner?**

**Q.4.2 Is there a case for applying different frequency criteria to different indicators?**

#### **5. Criteria for selection**

**Q. 5.1 Which of the options for the selection of operators to be included do you prefer?**

**Q.5.2 What should be the threshold for your preferred option?**

#### **6. Call accounting accuracy**

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**Q.6.1 Are you aware of a KPI that would provide useful additional information on call accounting accuracy?**

**7. Confidentiality**

**Q.7.1 Do you have any concerns regarding confidentiality with regard to any of the proposed indicators or the proposed process for publication?**

**8. Costs of implementation**

**Q.8.1 Do you believe there will be disproportionate costs involved in the collection of the proposed KPIs? If so, please quantify where possible and indicate how you would modify the proposals to reduce the costs of implementation and minimise the number of changes needed to existing systems.**

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## Annex B

### Overview of EU Market Reviews List of Markets where Quality of Service Condition proposed

Market Review condoc	Markets where condition proposed	Cond. No.	Product under which KPI proposed	Wholesale remedy
Review of the Wholesale Broadband Access Market (28 April 2003)	<ul style="list-style-type: none"> <li>Asymmetric broadband origination in the UK, except Hull</li> <li>Broadband conveyance in the UK</li> </ul>	EA5	<ul style="list-style-type: none"> <li>Asymmetric broadband origination in the UK, except Hull</li> <li>Broadband conveyance in the UK</li> </ul>	ATM Interconnect
Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets	<ul style="list-style-type: none"> <li>Wholesale residential analogue exchange line services</li> <li>Wholesale business analogue exchange line services</li> <li>Wholesale business ISDN2 exchange line services</li> <li>Wholesale ISDN30 exchange line services</li> <li>Call origination on fixed public narrowband networks</li> <li>Local-tandem conveyance and transit on fixed public narrowband networks</li> <li>Inter-tandem conveyance and transit on fixed public narrowband networks</li> <li>Single transit on fixed public narrowband networks</li> <li>Call origination on fixed public narrowband networks</li> <li>Local-tandem conveyance and transit on fixed public narrowband networks</li> </ul>	AA7	<ul style="list-style-type: none"> <li>Wholesale residential analogue exchange line services</li> <li>Wholesale business analogue exchange line services</li> <li>Wholesale business ISDN2 exchange line services</li> <li>Wholesale ISDN30 exchange line services</li> <li>Call origination on fixed public narrowband networks</li> <li>Local-tandem conveyance and transit on fixed public narrowband networks</li> <li>Inter-tandem conveyance and transit on fixed public narrowband networks</li> <li>Single transit on fixed public narrowband networks</li> <li>Call origination on fixed public narrowband networks</li> <li>Local-tandem conveyance and transit on fixed public narrowband networks</li> </ul>	<p>WLR</p> <p>Interconnection circuits</p> <p>FRIACO</p>
Review of the retail leased	<ul style="list-style-type: none"> <li>Symmetric broadband origination with</li> </ul>	G7 (*)	<ul style="list-style-type: none"> <li>Symmetric broadband origination with a</li> </ul>	PPCs

lines symmetric broadband origination and wholesale trunk segments markets (11 April 2003)	<p>a bandwidth capacity up to and including 8Mbit/s within the UK, except Hull (and Interconnection Services)</p> <ul style="list-style-type: none"> <li>• Symmetric broadband origination with a bandwidth capacity above 8Mbit/s and up to and including 155Mbit/s within the UK, except Hull (and Interconnection Services)</li> <li>• Wholesale trunk segments within the UK (and Interconnection Services)</li> </ul>	<p>G7 (*)</p> <p>H6 (**)</p>	<p>bandwidth capacity up to and including 8Mbit/s within the UK, except Hull (and Interconnection services)</p> <ul style="list-style-type: none"> <li>• Symmetric broadband origination with a bandwidth capacity above 8Mbit/s and up to and including 155Mbit/s within the UK, except Hull (and Interconnection services)</li> <li>• Wholesale trunk segments within the UK (and Interconnection Services)</li> </ul>	
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\* Note: a draft Direction was made under **Condition G7** entitled *Draft Direction under Condition G7 imposed on British Telecommunications plc as a result of the analysis of the symmetric broadband origination market in which British Telecommunications plc has been found to have significant market power*. This can be found at pages 407- 409 of the 'Leased Lines' market review.

\*\* Note: a draft Direction was made under **Condition H6** entitled *Draft Direction under Condition H6 imposed on British Telecommunications plc as a result of the analysis of the wholesale trunk segments market in which British Telecommunications plc has been found to have significant market power*. This can be found at pages 441- 443 of the 'Leased Lines' market review.

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## Annex C

### Glossary

**Analogue:** the direct representation of a waveform, as opposed to digital, which is a binary coded representation

**BT:** British Telecommunications plc.

**CPS (Carrier pre-selection):** A mechanism which allows users to select, in advance, alternative communications providers to carry their calls without having to dial additional codes (while keeping their existing phone line).

**DSL (digital subscriber line):** a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as 'twisted copper pairs') into high-speed digital lines, capable of supporting advanced services such as fast Internet access and video-on-demand. ADSL (Asymmetric Digital Subscriber Line), HDSL (High data rate Digital Subscriber Line) and VDSL (Very high data rate Digital Subscriber Line) are all variants of xDSL.

**FRIACO (Flat Rate Internet Access Call Origination):** the provision of Flat Rate Internet Access Call Origination via wholesale unmetered Internet access product from BT.

**Indirect access:** where a customer establishes a connection with a particular operator's network by dialling a short code to switch through the network on which his exchange line terminates. Such calls are usually billed by the Indirect Access operator.

**Interconnection:** the linking (whether directly or indirectly by physical or logical means, or by a combination of physical or logical means) of one Public Electronic Communications Network to another for the purpose of enabling the persons using one of them to be able:

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that Network or by another person);

**Kingston:** Kingston Communications (Hull) PLC – communications company which operates in the Hull area.

**Leased lines (also known as private circuits)** a permanently connected communications link between two premises dedicated to the customers' exclusive use.

**NRAs (National Regulatory Authorities):** the body or bodies, legally distinct and functionally independent of the telecommunications organisations, charged by a Member State with the elaboration of, and supervision of compliance with, telecoms authorisations.

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**NTS (Number Translation Services):** telephone services using non-geographic numbers, where that number is translated to a geographic or mobile number for final delivery to the called party.

**PPCs (Partial Private Circuits):** a generic term used to describe a category of private circuits that terminate at a point of connection between two operators networks. It is therefore the provision of transparent transmission capacity between a customer's premises and a point of connection between the two operators' networks. It may also be termed a part leased line. It includes terminating segments.

**SMP:** The Significant Market Power test is set out in European case law, the new Directives and the Commission's SMP Guidelines. It is used by the National Regulatory Authorities (NRA) such as Ofcom to identify those operators who must meet additional obligations under the new EU package of Directives.

**Wholesale line rental (WLR):** Wholesale Line Rental (WLR) is a facility offered to Service Providers (SPs) that allows them to rent an exchange line from BT on wholesale terms, and resell it to an end-user. The SP can also rent those Supplementary Services normally made available by BT over an exchange line.

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