

# **Requesting the Director General of Telecommunications to resolve an interconnection dispute : guidance for the telecommunications industry**

**(November 2001)**

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## **Summary**

S1. This document gives guidance on how to make a request to Oftel to resolve an interconnection dispute between telecommunications operators. It is aimed primarily at the telecomms operators themselves and complements Oftel's guidance on complaining to Oftel about possible breaches of licence conditions or anti-competitive behaviour.

S2. Efficient and fair interconnection arrangements underpin the competitive telecomms market which Oftel believes is vital to delivering its strategy of achieving the best deal for consumers in terms of choice, quality of service and value for money.

S3. Different telecomms operators can have very different market positions and it is not always possible for them to reach agreement on all the terms and conditions of interconnection. Whilst commercial agreement is preferable, the regulator has an important role in ensuring a fair balance between the interest of the parties is met in directing (or determining) the outcome of interconnection disputes.

S4. This document is designed to help those who may be experiencing difficulty in concluding interconnection agreements, or in reaching agreement on aspects under review in an existing agreement and are considering seeking the Director General's intervention to direct the outcome. It sets out

the relevant legislative background and key information that operators should provide, and gives a brief overview of Oftel's powers and procedures.

# Chapter 1

## Introduction

1.1 Oftel's goal is to provide the best possible deal for the customer in terms of quality, choice and value for money and believes that competition is the best means of achieving this. Efficient and fair interconnection arrangements underpin a successful competitive environment.

1.2. Oftel recognises that operators have different market positions and that this difference can be reflected in the willingness of operators to provide connection and interconnection services on reasonable terms. In relation to interconnection to BT, Oftel has developed an interconnection regime, Network Charge Control (NCC) which provides, inter alia, that BT has an obligation to provide other operators<sup>1</sup> full access to BT's network on the basis of long run incremental costs and on the same terms and conditions that BT applies to itself for similar services. This allows newer entrants to compete with BT on an even playing field and with the knowledge that BT will not refuse reasonable requests for access.

1.3. However, the NCC regime applies only to existing services provided by BT. It does not apply to new interconnection services provided by BT, to services provided to BT nor with interconnection arrangements between other operators. In these cases, operators are expected to negotiate and reach agreement commercially. Oftel believes that commercial agreements are nearly always preferable to a regulated outcome.

1.4. However, Oftel recognises that the telecomms industry contains a mixture of established and less established operators and that there are a number of markets in which certain operators have market power and who could potentially use that market power to refuse to agree to reasonable interconnect terms and conditions for use of, or access to, their networks and customers.

1.5 Accordingly there are a number of situations where one party to interconnection negotiations considers that it is not getting a fair deal or is unable to reach an agreement within reasonable timescales and may wish to invoke the regulator, as an informed and impartial party, to determine the outcome of the dispute.

1.6 This paper contains guidance on how Oftel deals with requests to direct/determine the outcome of interconnection disputes. It also has a general application to other disputes or issues where Oftel is either requested, or proposes to intervene of its own initiative, to direct the contents of interconnect agreements or amend a completed agreement in accordance with the Telecommunications (Interconnection) Regulations 1997 (SI 2931/1997) ("the ICD Regulations) which implement the Interconnection

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<sup>1</sup> BT's obligations relates to operators with Annex II status under the Interconnection Directive referred to at paragraph 1.6.

Directive 97/33/EC (“ICD”). It updates and replaces Oftel’s paper (*Interconnection disputes: new faster timescales*, February 2001), where Oftel announced that it was introducing faster timescales to deal with interconnection disputes.

1.7 This paper complements Oftel’s guidance on how to make a complaint to Oftel about possible breaches of licence conditions or anti-competitive behaviour (*Making a formal complaint to Oftel – guidance for the telecommunications industry*) March 2001.

## Chapter 2

### Relevant law

2.1 Where two, or more, operators have discussed the provision of an interconnection service and have been unable to reach agreement on aspects of that provision, Article 9(5) of the ICD requires the national regulatory authority, at the request of either party, to take steps to resolve the dispute within six months of this request. The resolution of the dispute must represent a fair balance between the legitimate interests of both parties and take account of a number of factors including:

- the interest of users;
- the desirability of stimulating innovative market offerings;
- the nature of the request in relation to the resources available to meet the request;
- the public interest; and
- the promotion of competition.

2.2 These obligations have been transposed into UK law by Regulation 6(6) of the ICD Regulations. The dispute resolution procedures also extend to disputes relating to collocation or facility sharing under Regulation 10 of those Regulations.

2.3 In addition, an operator may, in accordance with Condition 9.2 of its licence (Condition 45.2 in respect of operators such as BT who have been determined as having Significant Market Power (SMP) under the Interconnection Directive) request the Director General to make a direction to:

- specify issues which must be covered in interconnect agreements;
- lay down specific conditions to be observed by one or more parties to the agreement; or
- if the Director General thinks fit, set time limits within which negotiations are to be completed.

2.4 Operators are required to comply with the decisions (often called “determinations” or “directions”) of the Director General to resolve interconnection disputes or to specify requirements or conditions in interconnection agreements accordance with Condition 9.3 (Condition 45.5 for SMP operators) of their licence.

2.5 Regulations 6(3) and 6(4) of the ICD Regulations also provide that the Director General may intervene, on its own initiative, to make a direction covering the above issues. The Director may in exceptional circumstances make a direction that changes be made to interconnection agreements already concluded where it is justified to ensure effective competition or interoperability of services for users, or both.

2.6 The Director General also has a responsibility to resolve disputes relating to interconnection across the UK border to another EU Member State. The processes and timescales are the same as for wholly national disputes. As such these disputes can involve other EU Regulators, the Independent Regulators Group are agreeing a code of practice between themselves (Principles of Implementation and Best Practice) for handling such disputes. This is expected to be finalised in early 2002.

## Chapter 3

### Making a Request

3.1 Operators may fail to reach agreement on an interconnection matter at a number of different points in time. These may include, for example, the initial request to connect networks, the time of a periodic review under a Review Clause of an existing agreement, when an operator wishes to launch a new service or gain access to different parts of another operator's network, or when major change occurs (such as a change in law or a party's licence is modified) which an operator considers is sufficient to warrant a review of existing agreed terms and conditions.

3.2 Some interconnect agreements specify that the right to refer a disputed matter to the Director General may only occur at a specified time. However, an operator's right to seek the Regulator's intervention as set out in the ICD Regulations is absolute and cannot be limited or overridden by details agreed in commercial contracts.

3.3 When a party refers a dispute refer to the Director General for resolution, Oftel would expect to receive :

- a full explanation of the dispute;
- a clear list of all the issues which are in dispute;
- proposed remedies ie: state exactly what it is you want the Director General to do;
- a short chronology of events;
- details of the parties concerned and copies of the relevant parts of an existing agreement, where applicable;
- the views of the parties;
- reasons why a settlement cannot be reached commercially;
- copies of all relevant correspondence, notes of meetings etc between the parties; and
- any other relevant data (cost and technical information) or supporting evidence.

3.3 The request for resolution should be made in writing to :

The Director General of Telecommunications  
50 Ludgate Hill  
London EC4M 7JJ

Attention : V Affleck

e-mail : [vincent.affleck@oftel.gov.uk](mailto:vincent.affleck@oftel.gov.uk)  
fax : 020 7634 8949

3.4 Please ensure that is clear whom Oftel should contact to discuss the details of the dispute.

3.5 Oftel will need to disclose to the other party to the dispute that it has been asked to intervene in the dispute and, in order to settle the matter effectively, to disclose the representations and views put forward. Accordingly, the request for a direction should be accompanied by a non confidential version of the request which Oftel can send straight away, with any additional evidence, to the other party for comment and their views. Also, unless otherwise indicated, Oftel will also publish a summary of the dispute in its Quarterly Competition Bulletin, both on receipt and following resolution.

## Chapter 4

### Of tel procedures

4.1 Of tel aims to record all interconnection direction requests on the day of receipt and to acknowledge them within five working days. Of tel will set a deadline for resolution of the dispute that will be no later than six months from the date of receipt. The actual deadline will depend on the urgency and complexity of the dispute. The more clearly the party who refers the dispute to Of tel is able at the outset to define the request and provide full background information the more quickly will Of tel be able to resolve it.

4.2 Of tel will, first, confirm with the parties involved that there is a genuine dispute, that the parties have sought to resolve the matter commercially and what the precise matters are on which agreement cannot be reached.

4.3 Of tel will request any further relevant information from the parties in dispute. Of tel may require detailed cost and accounting information (in the case of determination of interconnect charges), technical information and/ or views on the various options available for settling a dispute including any wider implications. Often, responses to information requests raise additional questions and issues and this might result in further requests for information. Of tel may put these requests in writing or make the requests in bi-lateral or multi-lateral direct discussions with the operators concerned.

4.4 Sometimes, after making a request for a direction, operators continue to negotiate which can lead to settlement of that dispute. It is important that parties keep Of tel informed of any such developments. Similarly, Of tel will keep the parties to the dispute updated on the progress of its consideration of the dispute and in any event provide an update at least every six weeks.

4.5 After all the necessary information is received, Of tel will reach a preliminary view on the resolution of the dispute and prepare a draft direction and an explanatory document, explaining the reasons for its view, for consultation.

4.6 The standard period for consultation is a single period of not less than 28 days for representations and comments on the draft direction in accordance with Of tel's Statement of August 2001 (*Of tel's Use of Public Consultation*). Where the making of a direction necessarily involves significant development of regulatory policy, it may be preceded by a wider consultation on the issues involved. However, this is likely to only occur in a few exceptional cases.

4.7 Of tel will not generally provide for an additional period for comments-on-comments in such consultations. However, in appropriate cases where, for example, the issue is expected to be particularly contentious and subject to opposing views from different stakeholder groups and an iterative approach is expected to be productive, Of tel may specify a formal period for comments-on-comments. This will be made plain when the draft direction is issued.

4.8 All comments received will be made publicly available, unless a party has specifically requested that a submission, or part of it, is confidential

4.9 After analysing the comments received, Oftel will review its draft decision and will then aim to make the final decision within six months of the request. It should be noted that, although resolution of the dispute can take several months, Oftel may backdate the effect of the direction in those cases where it is considered appropriate and possible.

**OFTEL**  
**November 2001**