

DETERMINATION TO REMOVE BT'S OBLIGATION TO PROVIDE NUMBER TRANSLATION SERVICES ("NTS") USED FOR A VOICE TELEPHONY SERVICE UNDER THE PROVISIONS OF CONDITION 43 OF ITS TELECOMMUNICATIONS ACT 1984 LICENCE

(Under Paragraph 6 of Part 1 of Schedule 1 to BT's Licence)

WHEREAS:

1. the Secretary of State for Trade and Industry granted to British Telecommunications on 22 June 1984 a licence (the "Licence") under section 7 of the Telecommunications Act 1984 (the "Act") for the running of telecommunications systems specified in that Licence;
2. by virtue of section 109 of paragraph 20 of Schedule 5 to the Act the Licence has effect as if granted to British Telecommunications plc ("BT");
3. Condition 43 of the Licence obliges BT to supply telecommunications services (other than voice telephony services) to any person who reasonably requests such services except to the extent that the Director General of Telecommunications (the "Director") determines otherwise;
4. BT requested in September 2000 that the Director make a determination under Condition 43 of the Licence that BT is no longer obliged to provide certain voice Number Translation Services ("NTS") on request;
5. in March 2002, the Director issued a statement, *Effective competition review of number translation services* (the "Statement") which set out the Director's conclusions that the market for voice NTS is effectively competitive. In the Statement, the Director also set out his view that the presence of effective competition will ensure that all reasonable demands for NTS are met, and therefore that the Director's duty under section 3(1) of the Act will be met if BT's regulatory obligations are removed;
6. on 2 April 2002, the Director issued a Notice (the "Notice") of a Determination to remove BT's obligation to provide voice NTS under the provisions of Condition 43 of the Licence. In issuing the Notice, the Director took into consideration the matters described in the Explanatory Memorandum to the Notice in accordance with Condition 43;
7. in making this Determination, the Director has taken into consideration the matters described in the Statement, the Explanatory Memorandum to the Notice and the Explanatory Memorandum which accompanies this Determination, in accordance with Condition 43 of the Licence and his duties under section 3 of the Act;
8. the Director considers that for the time being the market for the purposes of making a determination under Condition 43 of the Licence is the market for the supply in the UK of NTS for a voice telephony service.

NOW THEREFORE THE DIRECTOR, FOR THE PURPOSES OF CONDITION 43 OF THE LICENCE, AND HAVING CONSIDERED THE REPRESENTATIONS OF BT AND INTERESTED PARTIES, HEREBY DETERMINES THAT:

1. the obligation on BT to supply Number Translation Services used for a Voice Telephony Service under the provisions of Condition 43 of the Licence is hereby removed.

2. in this Determination, words or expressions used have the same meaning as in the Act or the Licence.

Peter Waller

July 29 2002

A person authorised in that behalf under Section 8 of Schedule 1 of the Telecommunications Act 1984

Explanatory Memorandum

Number translation services

1. This explanatory memorandum gives reasons for the determination by the Director General of Telecommunications (the "Director") to remove regulatory obligations on BT which oblige it to supply number translation services used for a voice telephony service.

2. Number translation services (NTS) are the services supplied to NTS customers which allow them to use non-geographic numbers (such as 0800, 0845 etc). These numbers are used to identify a type of service rather than a geographical location. NTS services translate a number from its non-geographic format into a geographic form, which then enables it to be routed to a specific location. Number translation services are defined therefore as the process associated with the routing of a non-geographic number to a network termination point.

3. The Director's determination, which accompanies this explanatory memorandum, relates to the number translation services supplied in the UK for a voice telephony service. A voice telephony service is defined as a service available to the public for the commercial provision of direct transport of real-time speech via the public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location to communicate with another user of equipment connected to another termination point.

BT's regulatory obligations

4. Condition 43 of BT's licence currently requires it to supply telecommunications services (other than those supplied as part of the universal service obligations contained in Part A of its licence), including NTS services, to any person who reasonably requests such services. Linked to this obligation is a prohibition on undue preference and undue discrimination (Condition 57) together with the requirement to notify prices in Condition 58 (publication of charges, terms and conditions).

5. The effect of the determination accompanying this explanatory memorandum is to remove the obligation to supply number translation services used for a voice telephony service. This also has the effect of removing the related obligations to publish prices in advance and supply on terms which do not involve undue preference or undue discrimination.

Reasons for the Director's decision

6. In September 2000, BT made a request that the Director issue a determination under Condition 43 of the BT licence that BT is no longer under an obligation to provide certain voice NTS services. Following receipt of this request, Oftel conducted a review of competition in the relevant market for NTS services in order to assess whether competition was effective. The conclusions of this review were set out in the statement,

Effective competition review of number translation services, (the "Statement") published in March 2002. The Director's conclusion was that the market for voice NTS is effectively competitive.

7. In April 2002, the Director published a *Notice of determination to remove BT's obligation to provide Number Translation Services* (the "Notice"). Representations on this Notice were received from two respondents, BT and Cable & Wireless, and these were published in accordance with sub-paragraph (d) of paragraph 6 of Part I, Schedule I to BT's licence. There then followed a second 28-day period of consultation during which BT and interested parties had the opportunity to make observations on the representations received during the first period of consultation. No observations were received.

8. The Director considered the representations received and took the information provided into account before deciding to publish, in July 2002, a *Draft Determination to remove BT's obligation to provide Number Translation Services* (the "Draft Determination"). A period of 14 days was allowed for comment and a copy of the draft determination sent to BT and Cable and Wireless in accordance with sub-paragraph (f) of paragraph 6 of Part 1 of Schedule 1 to BT's licence. One set of comments was received. Having considered these comments, the Director has now decided to publish the accompanying determination. The Director's response to comments made during the consultation on the Draft Determination is given in Annex A of this document.

9. The Director has decided to publish a determination on the basis of the information available and taking into account the representations and comments made to him during the consultations on the Notice and the Draft Determination.

10. The representations and comments received have not changed the Director's view as expressed in the Explanatory Memorandum to the Notice that a determination should be issued removing BT's obligation to supply NTS services used for a voice telephony service. The Director considers it appropriate to issue a determination for the reasons set out in the Explanatory Memorandums that accompanied the Notice and the Draft Determination, and having considered the representations and comments made by respondents. The Director has also considered the factors set out in Condition 43.4 of BT's licence. His view on these factors is set out in the Explanatory Memorandum which accompanied the Notice.

11. The Director has also based his decision on the analysis in the Statement, since he considers the presence or otherwise of effective competition in the relevant market for voice number translation services to be a relevant factor under the terms of Condition 43.4 of the BT licence. In the Statement, the Director set out his view that the presence of effective competition in the relevant market for voice NTS services will ensure that all reasonable demands for NTS are met, and therefore that the Director's duty under section 3(1) of the Telecommunications Act 1984 (the "Act") will be met if a determination were to be issued.

12. Having regard to his duties under section 3 of the Act, the Director considers that it would not be reasonable to require BT to provide NTS services used for a voice telephony service, in particular, because:

- the *relevant* market is effectively competitive;
- there *is* evidence to conclude that all reasonable demands for NTS services will be met in absence of such an obligation.

13. Further details on the reasons for this decision can be found in the Explanatory Memorandums accompanying the following Oftel publications:

- *Notice of determination to remove BT's obligation to provide Number Translation Services, April 2002*
- *Draft Determination to remove BT's obligation to provide Number Translation Services, July 2002*

14. Also relevant is the Oftel statement:

- *Effective competition review of number translation services, March 2002*

15. Pursuant to paragraph 6(g) of Part 1 of Schedule 1 of the BT licence, in addition to the publication of this determination, it is also being sent to BT.

Further copies of this document

16. This document can be viewed in the publications section of Oftel's website at www.oftel.gov.uk. Paper copies and alternative 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 phoning 020 7634 8761 or by sending an e-mail to infocent@oftel.gov.uk

Annex A: Comments on the Draft Determination

A1. This annex provides Oftel's response to the comments received during the consultation on the Draft Determination. Some of the comments made were similar to representations received during consultation on the Notice. Oftel's response to these representations is in Annex A of the Explanatory Memorandum published with the Draft Determination.

A2. In its comments on the Draft Determination, Cable and Wireless reiterated that ex ante regulation of interconnection prices did not prevent BT from applying a margin squeeze and that regulation of the retail voice NTS market was necessary as a result to prevent BT from leveraging market power in call origination into the market for NTS services. In this specific context, a margin squeeze would involve BT raising the cost of interconnection and/or lowering its prices for provision of voice NTS services. Although BT's total revenue may remain unchanged, the effect would be to reduce the gross margin available to its competitors, which might well make them unprofitable and force them to exit the market.

A3. For the purposes of this determination, the relevant issue considered by Oftel is whether ex ante regulation is necessary in the market for voice NTS in order to prevent anti-competitive margin squeezing. Oftel acknowledges that in certain circumstances it can be appropriate to apply ex ante regulation in downstream markets as a result of the presence of market power upstream. In this particular case, however, Oftel considers that there are other means available of ensuring that such margin squeezes do not take place.

A4. One such means is ex ante regulation, in the form of regulation of BT's interconnection prices. BT has an obligation under its licence to ensure that its interconnection prices are cost-oriented and it has to be able to provide information to the Director that this is the case. The second possible means of preventing anti-competitive margin squeezing is ex post enforcement through the Competition Act 1998, where such behaviour constitutes an abuse of a dominant position under the Chapter II prohibition of the Act (see the Competition Act guidelines, *The Application of the Competition Act in the Telecommunications Sector*, January 2000). In this particular case, therefore, Oftel does not consider that additional regulation, in the form of ex ante regulation of the voice NTS market, is necessary.

A5. Cable and Wireless also suggested that it was necessary to perform a cost-benefit analysis before the regulation was removed. As stated in the Explanatory Memorandums to the Notice and the Draft Determination, Oftel does not consider such a cost-benefit analysis to be necessary in markets which are effectively competitive. Cable and Wireless suggested that the market for voice NTS services is only competitive because of the current ex ante regulation which applies in the area. Oftel believes that the relevant market for voice NTS services is effectively competitive for a number of different reasons which are set out in full in the statement, *Effective competition review of number translation services* (March 2002).