

Indirect access dispute between BT and Cable and Wireless

Draft Direction for consultation

11 June 2003

Closing date for comments – Noon, Wednesday 25 June
2003

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Draft Direction

DIRECTION UNDER REGULATION 6(6) OF THE TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 RELATING TO A DISPUTE BETWEEN CABLE AND WIRELESS U.K. (“C&W”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”) OVER THE PROVISION OF A LOCAL TO TANDEM AND INTER-TANDEM TRANSIT SERVICE FOR INDIRECT ACCESS TRAFFIC.

WHEREAS:

(A) The Secretary of State granted to British Telecommunications on 22 June 1984 a licence (the “BT licence”) under section 7 of the Telecommunications Act 1984 (the “Act”) for the running of telecommunications systems specified in that Licence;

(B) By virtue of section 109 of and paragraph 20 of Schedule 5 of the Act the BT licence has effect as if granted to British Telecommunications plc (“BT”);

(C) The Secretary of State has granted to Cable and Wireless U.K. (formally Cable and Wireless Communications (Mercury) and Mercury Communications Limited) (“C&W”) on 5 December 1991 a licence under Section 7 of the Act for the running of telecommunications systems specified in that licence;

(D) On 1 January 1998, the European Parliament and Council Directive 97/33/EC came into force and was implemented in the UK through the Telecommunications (Interconnection) Regulations 1997 (the “Regulations”) and conditions in the licences of operators;

(E) Regulation 6(6) of the Regulations provides that where there is a dispute concerning interconnection between organisations, the Director General of Telecommunications (the “Director”) shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request. The direction that the Director makes to resolve the dispute must represent a fair balance between the legitimate interests of the parties, and must be notified to the parties in accordance with Regulation 8(3). The parties are entitled to a full statement of the reasons on which the direction is based;

(F) C&W entered into an interconnection agreement with BT on 1 May 1998;

(G) On 11 July 2002, C&W submitted a Statement of Requirements (“SoR”) to BT requesting BT to provide a facility that would allow C&W to offer a local to tandem and inter-tandem transit service to indirect access (“IA”) operators for IA traffic originating on BT’s network. On 10 September 2002, BT rejected C&W’s SoR. BT and C&W are therefore in dispute;

(J) On 28 January 2003, in accordance with the provisions of Regulation 6(6) of the Regulations, C&W referred this dispute to the Director for determination;

(K) The Director has a duty to encourage and secure adequate interconnection in the interests of all users in a way which provides maximum economic efficiency and gives maximum benefit to end-users;

(L) The Director has considered, inter alia, the information provided by the parties and the matters set out in Regulation 6(8) of the Regulations. The principal points are summarised in the explanatory memorandum, which accompanies, and is published with, this direction;

(M) The Director issued a draft of this direction and the explanatory memorandum that contains the Director's reasons on **11 June 2003** and responses were invited by **25 June 2003**;

NOW, THEREFORE:

PURSUANT TO REGULATION 6(6) OF THE INTERCONNECTION REGULATIONS, AND HAVING CONSIDERED THE VIEWS OF THE PARTIES AND THOSE MATTERS SET OUT IN REGULATION 6(8) OF THOSE REGULATIONS, THE DIRECTOR MAKES THE FOLLOWING DIRECTION TO RESOLVE THE DISPUTE BETWEEN C&W AND BT:

1. BT shall provide a facility to C&W that will allow C&W to offer a local to tandem and inter-tandem transit service to IA operators for IA traffic originating on BT's network (the "IA Transit Service"). Unless the Director consents otherwise, this IA Transit Service shall be based on the following parameters:
 - BT shall provide C&W with a facility to route IA traffic originating on BT's network to C&W switches at selected BT local and tandem exchanges, as required by C&W;
 - The IA operator's access code shall remain allocated to the IA operator; and
 - BT shall continue to bill the IA access code holder for the carriage of the IA traffic.
2. BT shall carry out an option appraisal relating to the provision of the IA Transit Service mentioned in paragraph 1 above and shall provide a copy of this option appraisal to the Director and to C&W within 6 weeks from the date of publication of this direction. The option appraisal shall include the following:
 - A full breakdown of BT's estimated development, operational and other costs associated with the provision of the IA Transit Service;
 - A full description of the technical characteristics of the IA Transit Service; and
 - A full description of the billing arrangement of the IA Transit Service.
3. Following the publication of the option appraisal referred to in paragraph 2 above, BT shall resume negotiations with C&W relating to the provision of the IA Transit Service and shall make the IA Transit Service available to C&W within 3 months from the date of publication of the option appraisal at the latest.

4. The parties shall amend their interconnection agreement to give effect to this direction.
5. Except as otherwise defined in this direction, words or expressions used shall have the same meaning as in the Act, the BT licence or BT's Standard Interconnect Agreement as appropriate.
5. This direction shall take effect on the date it is published.

Heather Clayton

Director of Investigations

**A person authorised under paragraph 8 of Schedule 1 of the
Telecommunications Act 1984**

11 June 2003

Summary and matters considered by the Director

S.1 The Director General of Telecommunications (the 'Director') has issued a draft direction in accordance with the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 (the 'Regulations') for the resolution of a dispute between Cable and Wireless U.K. ('C&W') and British Telecommunications plc ('BT') regarding Indirect Access services.

S.2 On 28 January 2003, C&W asked Oftel to resolve a dispute with BT regarding Indirect Access ('IA'). C&W had submitted a Statement of Requirements ('SOR') to BT requesting a facility that would enable C&W to provide a local to tandem and an inter-tandem transit service for IA service providers in relation to IA traffic originating on BT's network. In response to that SOR BT refused to provide C&W with the requested facility. A summary of the background to the dispute is set out in Chapter 1.

S.3 The details of the Director's consideration of the submissions made by C&W and BT, together with the reasons why the Director is minded to make the draft direction, are set out in Chapters 2 & 3.

S.4 In summary, the Director proposes to direct that BT should be required to:

- supply a facility to C&W which would allow C&W to provide a local to tandem and an inter-tandem transit service from selected BT local and tandem exchanges for IA traffic originating on BT's network;
- carry out a full option appraisal and provide the Director and C&W with a copy of this option appraisal within 6 weeks from the date of publication of the final direction; and
- recommence and complete negotiations with C&W **and** provide the requested facility within 3 months of publishing the option appraisal.

S.5 Having considered the facts specific to this dispute and the criteria set out in Regulation 6(8) of the Regulations, the Director believes that the draft direction to be issued under Regulation 6(6) of the Regulations represents a fair balance between the interests of the parties in this case. In reaching this view the Director has had regard to his wider duties to promote the development of the telecommunications industry in the UK and to encourage and secure adequate interconnection in the interests of all users in a way that provides maximum economic efficiency and gives the maximum benefit to end users.

S.6 The Director seeks views on these proposals to be received no later than **noon on Wednesday June 25 2003**. The Director will consider all relevant comments before making any final direction on this issue.

S.7 The Director is conscious of the impact on the resolution of this dispute of the new regulatory regime for electronic communications networks and services, which is due to come into effect on or after 25 July 2003. In order to ensure that any obligations imposed under the current regime continue to be enforceable against BT during the

transition to, and after the introduction of the new regime, the Director is minded to take the following steps:

- i) The Director intends to issue a continuation notice under the terms of paragraph 7 of Schedule 18 of the Communications Act 2003¹ to carry over the obligations imposed under any final direction issued in relation to this dispute for the period from 25 July 2003 until such time as the new obligations proposed in the Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets² come into force.
- ii) He will separately consult on the issues raised in this dispute as part of the above mentioned Review, and intends to propose similar obligations to those proposed in this draft direction under the new regime. A second consultation document for this Review is due to be issued on or after 25 July 2003. It should be noted that the Director's conclusions on the outcome of the consultation on this draft direction will be used to guide the Director's thinking in setting out his views in the consultation under the new regime

¹ This reference is based on the print of the Communications Bill dated 5 March 2003. It is intended that the Communications Bill will receive royal assent by 25 July 2003. However, in the event that the Communications Bill does not receive royal assent by 25 July 2003, the government has acknowledged that implementation will need to occur by Statutory Instruments made under the European Communities Act 1972 for an interim period until the Bill enters into force.

² 17 March 2003, http://www.oftel.gov.uk/publications/eu_directives/2003/eu_narrow/index.htm.

Chapter 1

Background to the Dispute

Indirect Access (IA)

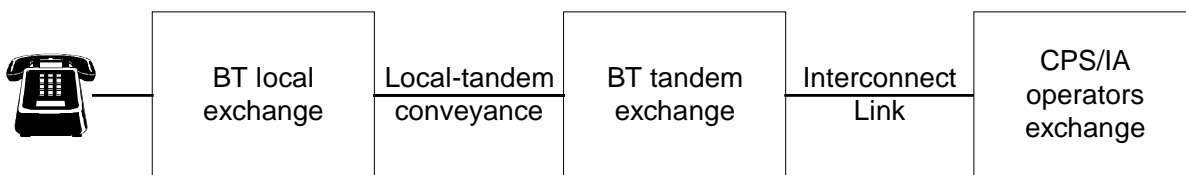
1.1 IA is a facility which allows a company other than BT to take voice telephony calls originated on BT lines and convey them onto an alternative network for some, or all, of the journey of the call. By routing calls through networks other than BT, companies are able to choose the most efficient routing and competitive conveyance and transit rates, which possibly allows them to make savings on the cost of calls. These IA operators are then able to offer calls only services to end user consumers in competition with BT.

1.2 Oftel's recent consumer research³, which underpinned the Director's decision to mandate the establishment of Wholesale Line Rental also confirmed that many consumers find the IA service, which allows the end user the facility to use different providers for different categories of call, valuable.

Current IA traffic routing arrangements

1.3 IA operators (IAOs) typically pick up calls originated on BT's network at one of BT's major network nodes, known as 'tandem exchanges'. Most of the large IAOs have points of interconnection with their own network at the majority of BT's tandem exchanges. BT provides a service which takes a call from the local exchange closest to the point of call origination, to the nearest tandem exchange where an IAO can interconnect. This is known as local-tandem conveyance (LTC). Interconnection arrangements look like this:

Figure 1 standard tandem interconnection

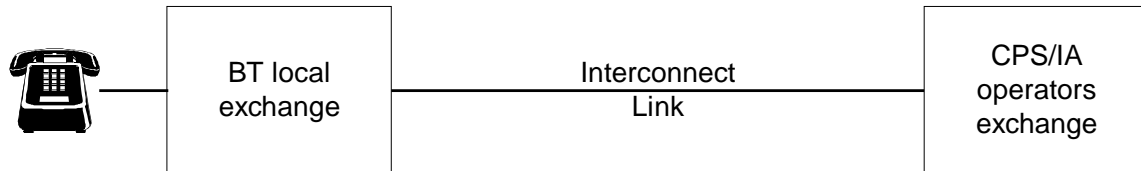


1.4 BT also provides a service where in addition to LTC it will convey traffic between tandem exchanges. This is of use to IAOs who do not have interconnection at all of BT's tandem exchanges and where it is more efficient for traffic to be routed across BT's tandem network before being picked up by the IAO. This service is known as inter-tandem conveyance (ITC).

³ <http://www.oftel.gov.uk/publications/research/2002/q8fixr0402.htm#ch4>

1.5 A few IAOs now interconnect with some of BT's local exchanges. This eliminates the need for BT to provide local-tandem conveyance, as illustrated below:

Figure 2 Local exchange interconnection



1.6 However, few operators have the scale to justify this form of interconnection. BT has approximately 800 local exchange processors, and the amount of traffic from each exchange to a given IA operator will not normally justify a dedicated interconnect link at each of those exchanges.

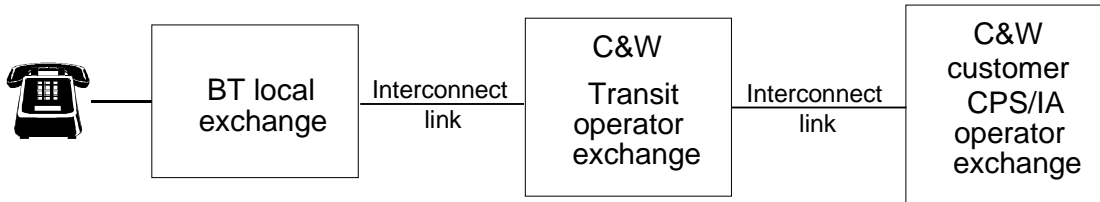
C&W's request

1.7 As C&W has an extensive network it is able to pick up BT originated IA traffic at a number of BT local exchanges and tandem exchanges. C&W wanted to use this network efficiently for itself and for its own customers. On 11 July 2002 C&W submitted a statement of requirements (SOR) to BT asking it to provide functionality that would allow C&W to offer a local-tandem transit (LTT) and an inter-tandem transit (ITT) service to IAOs. C&W stated that it had a customer that wished to route some of its IA traffic to C&W's switches. Such a facility would allow traffic to be routed onto the C&W network at a local or transit exchange where it had a point of interconnection. Where C&W did not have a point of interconnection at the relevant local or tandem exchange, the traffic would be routed directly to the terminating IAO. In effect, C&W is requesting to be allowed to operate as a transit operator such that it can provide LTT and ITT to IAOs from selected exchanges

1.8 C&W wanted an arrangement where it could pick up traffic for a third party customer only at nominated exchanges where it has a point of interconnection (bearing in mind that C&W does not have points of interconnection at all exchanges). This would imply that where C&W did not have an interconnection at the exchange, some of the IA operator's traffic would have to be routed via BT to the terminating IAO in the normal manner.

1.9 By the provision of such a facility C&W would then be able to offer LTT and ITT services to its customer in order to convey traffic up to a further point of interconnection with that customer's network. Under this arrangement BT would continue to bill the IA code holder for conveyance over BT's network, unlike in regular interconnection arrangements where the interconnecting operator is billed.

1.10 This proposed arrangement, in the case where the service being provided by C&W is LTT, is set out below:

Figure 3 C&W proposal**BT's response to the SOR**

1.11 Following some unsuccessful discussions between the parties BT wrote to C&W on 10 September 2002 rejecting its SOR.

This letter listed 3 main reasons for rejecting C&W's SOR:

- i) **Contractual change.** BT believed that by having an interconnection arrangement which involves two different operators (C&W and its customer) C&W's proposal went much further than the standard interconnection agreement, 'making for a more complicated and overlapping set of commercial relationships'. BT raised concerns about where relative liabilities would lie for commercial responsibilities and fault handling and reporting. Overall BT considered that C&W's proposal would, 'result in the commercial relationships being unreasonably complicated and unnecessary'
- ii) **Significant impact on Operations & Maintenance (O&M).** BT considered that C&W's proposal would mean that there would be a need for development of, 'time consuming, complex fault testing procedure for Link & Network Fault Handling to cater for the non-standard arrangement of traffic routing adding significantly to BT's costs'. BT also identified commercial confidentiality issues around releasing fault information to the IA code owner when a third party operator was also involved.
- iii) **Significant impact on Billing.** BT indicated that it would incur significant development costs to, 'enhance each of its billing/charging systems to allow for the association of multiple Operators to a *single number range* and the further costs of enhancing the 'cross functional system/processes which audit across all the individual systems.'

1.12 Overall BT concluded that C&W's proposal would, 'raise substantial costs and will be onerous to provide and operate. Therefore BT does not accept the SOR. BT suggested that C&W explore alternatives, including swapping 3rd party prefix over to C&W or targeting specific codes to C&W prefix, and reconciling billing C&W Network'.

1.13 Following the receipt of this rejection it appears that there were some further discussions between BT and C&W, which were unsuccessful in resolving the issue to the satisfaction of both parties. Therefore on 28 January 2003 C&W referred this issue to OfTel for resolution as a dispute under Regulation 6 (6) of the Regulations.

Chapter 2

C&W Complaint

C&W's complaint

2.1 C&W's complaint to Oftel re-iterated its request for BT to provide C&W with functionality to allow it to provide LTT and ITT services for IA traffic originating on the BT network. C&W criticised BT's refusal of its SOR and made the following points:

Contractual responsibilities. C&W recognised that contractual responsibilities would need to be clearly allocated. However it believed that the contractual relationship would remain between BT and the IAO and that arrangements between the three parties involved would not be particularly complicated if there was a clear delineation of responsibilities. C&W pointed to its existing 'mature' relationship with BT in other areas of interconnection as an indication that arrangements for the requested product could be resolved satisfactorily and that any added complexity would not create an unreasonable burden on BT.

Fault handling. C&W did not believe that the development of the product it had requested would create insurmountable problems if there was sufficient co-ordination between the relevant parties. C&W accepted that it would be necessary for BT engineers to be made aware of arrangements between C&W and its customer but did not believe that this would be any more complicated than carrying out a network expansion.

2.2 In summary, C&W believed that BT's refusal of its SOR prevented it from offering a LTT and ITT service to its IA customers thereby forcing those customers to use BT's own conveyance services where they have not built out their own network to interconnect with BT. If BT provided the interconnection service C&W requested, 'C&W would be able to provide network operators with a choice between own built, transit over C&W's network or transit over BT's network. Operators would be able to **choose** the most efficient method of routing calls and would not be limited to a choice of buy from BT or build out a duplicate network, which is a long term and expensive proposition.'

Chapter 3

BT's representations, Director's response and initial conclusions

3.1 During Oftel's investigation of C&W's complaint BT has provided information on why it believes that its rejection of C&W's SOR was reasonable and expanded on its original arguments. The Director's initial views on these representations are detailed below.

Numbering regulations

BT's view

3.2 BT is of the view that provision of the facility requested by C&W would mean offering an IA code splitting product. Not only does BT believe that it is not obliged to do so, but it also believes that regulatory rules on numbering prevent it from doing so.

Director's view

3.3 The Director is of the view that the provision of the requested facility would not require any number code splitting or change of ownership since the IA operator would still retain the number code. As the owner of the traffic, the IA operator is entitled to choose the manner in which its traffic is routed onto its own network, including whether to route traffic via a third party transit operator. It is for the IA operator to provide the relevant routing information to BT to enable such routing.

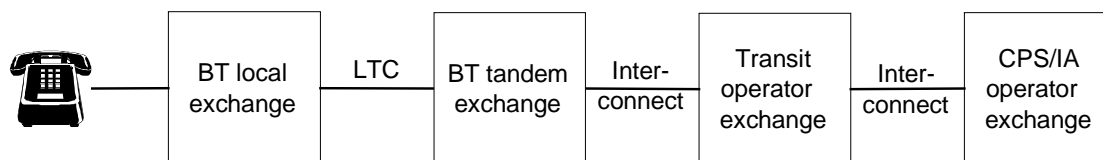
3.4 The Director does not believe that there are specific regulatory obligations relating to numbering which would prevent BT providing the service requested by C&W.

Whole code transfer

BT's view

3.5 BT has offered an arrangement whereby it provides interconnection at the local exchange for C&W on behalf of the C&W customer who holds the IA code. However BT would only offer this service if the IA code of C&W's customer was transferred entirely to C&W. In these circumstances C&W would have to purchase LTC from BT in those areas where it did not have points of interconnection at the local exchange level. This arrangement is set out below:

Figure 4 Under BT's proposal where C&W does not have local exchange interconnect



Director's view

3.6 The Director believes that this proposal results in a business model for C&W's transit service which is not viable. A key objective of C&W's request to BT was to allow C&W to provide a competing service to BT's LTC for those exchanges where C&W had a direct interconnection. Yet the interconnection arrangements proposed by BT for those local exchanges where C&W does not have direct interconnection result in this service having a cost-base which includes LTC, and which also includes an additional switching stage and an additional interconnect link. A similar argument applies to ITT where C&W does not have direct interconnection at specific tandem exchanges.

3.7 This means that C&W would not be able to use its connectivity at the local exchange to offer a competing service to BT's LTC. In addition C&W would not be able to use its connectivity at the tandem exchanges to offer a competing inter-tandem service to IA operators, as it currently does for other terminating operators. Therefore the Director does not believe that this proposal adequately meets C&W's requirements.

Contractual and fault testing issues

BT's view

3.8 BT has stated that the provision of the facility would mean an increase in the complexity of commercial relationships between the three parties: BT, the IA operator and C&W. This complexity would require a clear allocation of responsibilities between the three parties for fault reporting and handling, associated liabilities and risks, bad debt and insolvency etc.

Director's view

3.9 While the Director acknowledges that there is likely to be an increase in interconnection relationships and commercial agreements, he is not convinced that these need be unnecessarily complex or that complexity of contractual arrangements is a legitimate reason to refuse an otherwise legitimate access request. Appropriately constructed agreements can allocate commercial responsibilities between the parties with no impact on the consumer. Indeed, such agreements are already part of

interconnection arrangements for NTS and for other types of traffic from other access operators.

3.10 Therefore the Director agrees with C&W's view that fault testing and contractual issues are not sufficiently difficult to prevent BT from developing the requested product.

Costs

BT's view

3.11 BT has stated that it anticipates that there would be additional costs relating to data management, switching, network routing, interconnect policy and the amendment of routing forms. There would also be contract development costs associated with the development of a three-way contract.

Director's view

3.12 The draft direction requires BT to provide, as part of an option appraisal, a full outline of the development and operational costs for providing this service. However, as set out in more detail below, the Director does not believe that the additional costs referred to by BT are an obstacle to the provision of the requested facility.

3.13 In its representations BT set out 3 options which would meet C&W's requirement but argued that all of these options are unfeasible. These options and the Director's response to the points made by BT are set out below:

Option 1: Increasing user maintenance information to identify exit POC

Technical issues

3.14 This option would involve the continued use of BT's current system of manually inputting the routing information provided by IA operators in their routing plans into a database to determine the points of connection (POCs) at which IA operators pick up their traffic. BT estimates that if a facility to allow C&W to route the traffic were allowed, under the current system, this would require a massive increase in manual data collection and maintenance to determine the exit POCs. At the worst BT estimates that the volume of data would be of the following order; 100 IA codes × 600 BT exchanges × average number of POCs.

Director's view

3.15 The Director believes that the BT solution is over-engineered. BT has allowed for any possible combination of IA codes, originating exchange and POC. In the Director's view this exaggerates the potential cost to BT. The Director believes that BT is able to develop a more proportionate means of providing the solution, reflecting the likely levels of demand for the service.

3.16 Even taking BT's solution, the Director believes that the cost for BT will still be reasonable. The Director recognises that there may be some issues relating to manual data collection and maintenance if demand for the service requested by C&W is greater than expected. However he believes that if high demand for the service emerges, BT could develop a more robust ordering process to cope with greater volumes. It is not viable for BT to refuse to provide a service on the basis that its ordering systems can only cope with low volumes. This argument suggests that it is reasonable for BT, by simply failing to provide adequate ordering systems, to prevent the development of products/services where there is substantial pent up demand and where the Director may believe there is a consumer/competitive benefit in obliging BT to provide the services.

Billing issues

3.17 The element based charge (EBC) matrix that BT currently uses for conveyance charging, is able to check whether or not the POC at which the traffic is assumed to leave BT's network is associated with the same operator in BT's routing reference model and also with the destination number range in the Numbering Exchange and Charging Database (NCDB). In meeting C&W's request, BT runs the risk that the system would either assign a default conveyance charge band for any POCs where it cannot identify the operator and the number code, or would assign an incorrect charge as it would assume that the transit operator was bearing the charge.

3.18 BT estimates that it would need to undertake some system development to ensure that the billing processes recognise all the traffic belonging to the IA operator. BT's initial estimate of the cost of doing this is £126,000.

Director's view

3.19 The Director acknowledges that system development changes would be required in order to enable the recognition of traffic that should be conveyed by BT as well as the traffic that should be conveyed by C&W. However, it is the Director's view that a cost of £126,000 is reasonable when considered in the context of the benefits that the provision of the requested facility would bring to IA operators through increased competition. IA operators are currently constrained from using transit providers unless those providers can route **all** of the IA operator's traffic. This is because operators face significant costs in building out networks to all of BT's local exchanges, which creates a barrier to the provision of competitive LTT services. The provision of the requested facility would allow IA operators the choice of transit provider on certain routes.

Option 2: Automated charging derived from network routing management system (NMRS) information

Technical issues

3.20 This option would involve using the NMRS model, which is a routing tool, to identify the exit POC for each IA code and call origin. The NMRS model would

determine the actual least cost routing based on the actual path taken to the IA operator's first choice POC. This is different from the current IA charging model which determines the cost based on a theoretical least cost routing path. BT doubts that a neat mapping of NMRS data onto a charging system could be made and this would reduce data integrity.

The Director's view

3.21 The Director understands that both NMRS and the existing EBC would use theoretical least cost routing. The issue is that the network data held by the two systems is inconsistent so the output bills would differ.

3.22 The Director believes that all BT's systems should use consistent and accurate network data as the basis for billing. Any inconsistencies that do exist between BT's systems should be resolved quickly and accurately by BT. But such systems defects cannot be allowed to stand in the way of meeting legitimate access requests.

Billing issues

3.23 BT believes that it is not practical to use one billing system for IA traffic routed through a transit operator and another for IA traffic routed through BT. In addition, such a mechanism might result in increased bills as calls would be routed through the 'first choice' path and not necessarily the least cost path. This is an issue that would affect all IA operators and would require an industry consultation. BT has provided an estimate of the costs of developing its billing systems to undertake Option 2 and has stated that an initial estimate would be £161,000.

Director's view

3.24 As stated above, the Director believes that the issue with this option is that the network data held by the two systems is inconsistent, so the output bills would differ. The Director believes that all BT's systems should use consistent and accurate network data as the basis for billing. Any inconsistencies that do exist between BT's systems should be resolved quickly and accurately by BT. But such systems defects cannot be allowed to stand in the way of meeting legitimate access requests. In addition it is also the Director's view that BT's current stated cost for developing a billing system does not appear to be disproportionate and would not create a barrier to developing the requested service.

Option 3: Conveyance IA codes

3.25 Under this option, BT has suggested that IA operators be provided with multiple codes depending on call origin so as to remove the need to identify the call origin in order to determine the appropriate conveyance operator. This would not only require OLOs to build and manage extra codes, but the exit POC operator would still not necessarily be the same as the IA range holder. Although this would have the least

impact on BT's systems, there would still need to be system development which BT initially estimates to be £98,000.

Director's view

3.26 It is the Director's view that allocating further IA codes to identify the call origin is a disproportionate response to the required facility. Not only would this place an extra burden on consumers to use multiple codes to avail themselves of an IA operator's facility, it would also work against the Director's objective in conserving number codes. Therefore the Director does not believe that Option 3 is a reasonable option for the facility requested.

Costs of developing the three options proposed by BT

3.27 During the course of this investigation, the Director requested certain information from BT about the costs of introducing this product. BT's response was that it needed to carry out a six-week feasibility study in order to establish the costs involved. Given that BT's response to C&W's SOR referred expressly to development costs as a reason for rejecting the request, the Director has expressed surprise and some concern that at least some elements of this work had not already been undertaken. He believes that the failure to engage in discussions at this level of detail at an early stage is not a helpful precedent, particularly when it leads to suggestions of further work being needed in the course of a regulatory investigation.

3.28 Although BT was unable to provide detailed cost information, the Director requested BT to at least provide details of the costing estimates that led to its rejection of C&W's SOR last year. Though this information was limited in scope it indicated that for each of the three options the development costs were in the range of £100k-£150k. The Director believes that the costs, based on the estimates he has received from BT, do not represent a financial barrier to introducing the requested facility.

3.29 BT maintains that it nevertheless needs a full feasibility study to identify other associated costs such as routing and data management. The Director accepts that BT will need to decide how to implement this facility, and that evaluating the practical costs and implications of different options may form part of the initial process. However, given the Director's view on the reasonableness of the request, he believes that this study should be part of the implementation process, and should not influence the decision whether or not to provide the facility.

3.30 The Director has further considered how BT should treat any development costs associated with the introduction of this facility. This issue is important in terms of cost recovery and thus, price.

3.31 BT levies interconnection charges to operators who connect to and convey calls over its network. These charges are an integral cost for any operator who wishes to compete in the downstream markets such as local exchange to tandem exchange

conveyance, inter-tandem conveyance and retail services. The charges for these services are subject to certain controls.

3.32 Network Charge Controls apply to these charges in markets in which competition is not effective⁴. The Network Charge Control (“NCC”) allows for the recovery of costs on a forecast basis. Forecast error may occur, but could be in either direction. The Director believes that it is reasonable that BT should not set specific charges to C&W (and any operators that wish to take up this service) to cover the implementation costs. This is because the requested service is a variant of the call origination service provided to IA operators and it is reasonable to take the view that the NCC costs forecasts allowed for the inclusion of such costs. In addition, the magnitude of the costs is sufficiently small such that no change in the value of the X would be required in the call origination price basket.

3.33 The Director believes that BT should make no additional charge for this service and that any implementation costs should be recovered from existing charges such as call origination. This would not only ensure that IA services are provided to all operators at the minimum cost, but would also be practical to implement without any changes to the charging regime. Even if the recovery of such costs was made through the charge for call origination, such an increase would not impact on BT’s obligations to price within the required cap of the NCC basket. This is because such costs would be spread over the significant volumes of traffic that BT originates for IA operators, which would result in a negligible cost on a pence per minute basis.

3.34 Thus, in terms of balancing the two companies’ interests, the development costs do not seem to be an obstacle to providing the requested facility. The Director has noted that BT’s belief that its current estimate of development costs is not complete and that it believes that there may be additional costs relating to data management, switching, network routing, interconnect policy, routing forms and contract development. However, given the current level of BT’s estimates, the Director believes that costs could still rise significantly without creating concern that they were prohibitive to the development of the requested facility.

Director’s initial conclusions and fit with Interconnection Regulations

3.35 The Director’s view is that BT should be required to provide the IA routing service requested by C&W in its 11 July 2002 SOR. In reaching this view, the Director has taken into account the factors set out in Regulation 6(1) and 6(8) of the Telecommunications (Interconnection) Regulations 1997.

(i) The wider public interest and benefits for end users

3.36 The Director believes that the provision of the requested facility will lead to greater choice for IAOs who will be able to purchase local-tandem and inter-tandem transit services from operators competing with BT. IAOs can currently only use BT to

⁴ See Oftel’s Guidelines on the Operation of the Network Charge Controls: http://www.oftel.gov.uk/publications/ind_guidelines/pcr1201.htm.

purchase local-tandem conveyance and inter-tandem conveyance services from BT for all of their traffic. The availability of this facility will allow IAOs to purchase such services from alternative providers for a proportion of their traffic and continue purchasing from BT for the rest of their traffic, thereby allowing them to use more competitive conveyance and potentially allowing them to pass on the benefits to end-users. The facility should ensure more efficient use of the two parties' networks. C&W and other operators will be able to exploit their presence at the local exchange level and allow interconnection at a variety of different points, increasing the flexibility for IAOs. This should have consequent benefits for end users in terms of choice, price and service.

(ii) *The availability of alternatives*

3.37 The Director does not believe that alternative methods of interconnection allow operators such as C&W to fully exploit their network to the benefit of IAOs and end users. For the reasons set out at paragraphs 3.6 and 3.7, BT's suggested arrangement whereby an IA operator could transfer its IA code entirely to C&W would not be a viable option. Similarly, as explained at paragraph 3.26 BT's suggestion that OfTel issue multiple access codes to IA operators depending on call origin is also not a viable alternative. Therefore the Director considers the C&W request to be the most practical proposal to provide the requested facility.

(iii) *Undue burden and proportionality*

3.38 The Director acknowledges that BT will need to address certain technical and operational changes when introducing this facility. This will cover areas such as billing, where BT has indicated there will be changes to its operational processes. However, whilst these issues certainly require attention, the Director has not received any information that indicates that there are major practical obstacles to providing the requested facility. He notes that BT has not suggested that the issues are insoluble. As explained in paragraph 3.12, he also does not consider that the costs likely to be incurred by BT are disproportionate.

3.39 Therefore, as explained in paragraphs 3.1 to 3.34 above the Director does not believe, on the basis of the information the parties have provided to him, that the provision of the requested facility will be an undue burden on BT.

(iv) *The promotion of competition and relative market positions of the companies*

3.40 Pursuant to Regulation 4(1) of the Regulations, BT has been designated as having Significant Market Power (SMP) in the market for fixed public telephone networks and fixed public telephone services. The facility requested by C&W falls within this market.

3.41 The Director notes that C&W's request will enable C&W to provide direct competition to BT in the provision of a transit service for IA traffic at the local and

tandem exchanges. Therefore, the Director is of the view that requiring BT to provide the facility requested by C&W will promote competition in the relevant market.

3.42 Additional market analysis relevant to this case is included at Annex A

(v) *Technical feasibility and commercial viability*

3.43 The Director has not received any persuasive evidence to suggest the requested provision is technically unfeasible. He notes BT will have to carry out some changes to its operational processes in areas such as billing and fault detection in order to meet C&W's request. However, the Director believes the requisite technical and operational changes can be reasonably achieved by contractual negotiations. BT has the technical capacity to provide the requested facility, and has produced evidence to the Director which estimates that BT is likely to incur only a relatively limited cost in providing the facility.

3.44 C&W has shared commercial information with the Director regarding preliminary discussions it has conducted with specific potential clients who have expressed an interest in purchasing the IA transit product proposed by C&W. Although C&W is unable to quantify the exact level of demand until the details of the service have been agreed with BT, on the basis of the discussions it has already held with IA operators, C&W has estimated demand for the proposed IA transit service to be approximately [] minutes⁵ per month over a two year period. In the Director's view this information shows that there is likely to be sufficient demand for the service which C&W wishes to provide for BT's provision of the facility requested to be commercially viable.

⁵ Please note – this information has been withheld from the documents on grounds of confidentiality.

Chapter 4

Director's proposals and implementation

Service parameters

4.1 As set out in Chapter 3, the Director's initial conclusion is that BT should be required to provide the facility C&W requested. For the avoidance of doubt the Director sets out below the parameters for this facility:

- BT should provide C&W with a facility to route IA traffic to selected switches of C&W rather than the IA access code holder's switches;
- this facility will be available at selected BT local and tandem exchanges, as required by C&W. ;
- the IAO's access code (1xxx number) will remain allocated to that operator even though some, or all, of its traffic will be routed via C&W's network; and
- BT will continue to bill the IA access code holder for carriage of traffic over BT's network when that traffic is routed to C&W's switches.

It is proposed that these parameters can only be altered with the consent of the Director.

Timescales for implementation

4.2 The Director recognises that BT will need to carry out a development process in order to make this service available to C&W and other operators who may wish to offer a similar IA transit service. Having considered the information submitted by C&W and BT on the potential level of complexity and cost involved in introducing this service, the Director proposes that it is reasonable for BT to produce a full option appraisal within 6 weeks from the publication of any final direction. This appraisal should cover the following issues:

- a full breakdown of estimated development, operational and ongoing costs;
- a full description of the technical characteristics of the service; and
- a full description of the billing arrangements of the service.

4.3 A copy of this appraisal should be made available to Oftel and C&W. The Director proposes that BT should enter into discussions with C&W for provision of the requested service and the requested service should be made available within 3 months of the publication of the appraisal.

Pricing

4.4 Bearing in mind that the Director believes that any development costs for this service can be recovered through the existing Network Charge Control and that BT has SMP in the relevant market he believes that any pricing of the service should be set on

the same basis as existing interconnection charges for IA. The Director's view is based on the information on development costs provided to him by BT during the course of this investigation and is set out in more detail in paragraphs 3.27 to 3.34 above.

4.5 The Director has noted that BT's current estimate of development costs is not complete and that it believes that there may be additional costs relating to data management, switching, network routing, interconnect policy, routing forms and contract development. However, given the current level of BT's estimates the Director believes that costs could still rise significantly without creating concern that they were prohibitive to the development of the requested facility.

Chapter 5

Consultation

Introduction

5.1 Oftel is publishing this consultation document so that interested parties may comment on the issues which it addresses.

5.2 Oftel is applying a ten working day consultation period in this case. Therefore, comments on this consultation must arrive at Oftel by **noon on Wednesday 25 June 2003**. As set out on page 7 of this document, the new regulatory regime for electronic communication networks and services is due to come into effect on or after 25 July 2003. Under the new procedures, consultations will usually be open for ten working days. Oftel is applying these new procedures to this dispute.

5.3 Oftel has informed both parties of the above approach, and we have not received any formal objections.

How to comment on this consultation

5.4 Where possible, comments should be made in writing and sent by e-mail to steve.burniston@oftel.gov.uk. However, copies may also be posted or faxed to the address below. If any interested parties are unable to respond in one of these ways, they should contact

Steve Burniston
Oftel
50 Ludgate Hill
London
EC4M 7JJ
Tel: 020 7634 8938
Fax: 020 7634 8949
e-mail: steve.burniston@oftel.gov.uk

Further copies of this document

5.5 This document can be viewed in the *Publications* section of Oftel's website at www.oftel.gov.uk/publications/licensing/ida0603.htm. 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.

Publication of comments made by stakeholders

5.6 On this occasion, Oftel is not programming a formal period during which interested

parties may comment on the responses made by others. Nevertheless, in the interests of transparency, comments will be published, except where respondents indicate that a response, or part of it, is confidential. Respondents are therefore asked to separate out any confidential material into **a confidential annex which is clearly identified** as containing confidential material. Oftel will take steps to protect the confidentiality of all such material from the moment that it is received at Oftel's offices. However, in the interests of transparency, respondents should avoid applying confidential markings wherever possible.

5.7 Non confidential responses can be viewed on Oftel's website in the *Publications* section under *Responses to Oftel consultations*. Comments can also be viewed at Oftel's Research and Information Unit. Appointments must be made in advance (see contact details in paragraph three).

e-mail notifications

5.8 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, subscribers to the list receive an e-mail alert. To register, please go to the *What's New* section of the website and access the electronic form.

Annex A

Market analysis

The Relevant markets

A.2 IA operators purchasing single and double tandem call origination from BT have to currently purchase local-tandem conveyance and inter-tandem conveyance services from BT. The facility requested by C&W is to be able to use its connections to BT's local and tandem exchanges to pick up traffic belonging to IA operators and deliver it to those operators for termination. By doing so, it would be able to offer local-tandem and inter-tandem transit services for BT originated traffic to IA operators, in competition with BT.

A.3 It is important to note that BT is willing for such a transit service to be provided, but only if it applies to all originating exchanges. The Director believes that this constraint creates a very substantial entry barrier.

The product

A.4 The facility that C&W is requesting is that for BT to route specified traffic owned by C&W's IA customer on dedicated C&W routes using the C&W customer's existing indirect access code.

A.5 The facility therefore requires that BT recognise that a part of the traffic of the IA customer has to be routed on C&W's network at either local or tandem exchange level, and routed accordingly. In effect therefore, C&W is requesting BT for such a routing service and is additionally requesting that the billing accompanying this routing service (which includes the cost of origination) be made to the IA customer.

A.6 The product relevant for consideration of the market analysis is therefore a routing and accompanying billing service.

The market

A.7 Indirect access operators that have traffic originating on BT's network need to purchase call origination from BT. This can be local, single tandem or double tandem call origination, depending on where the IA operator has direct connections to BT's network. In order to be able to pick up traffic at any of the points on which it has connections to BT's network, the IA operator also depends on BT to route the traffic accordingly to the point of interconnection. The routing of traffic of all interconnecting operators is a facility that is necessarily associated with call origination. Routing can therefore be considered to be an associated facility. Billing of BT originated traffic is a feature of all such traffic irrespective of how and where the traffic is routed. For the purposes of market definition relevant to this direction, the Director does not propose to analyse the billing of routed traffic separately, and would consider it to be part of the relevant market for the routing facility.

A.8 The Director has recently published a consultation on the narrowband wholesale market⁶, in which he has defined wholesale call origination of call types to be a relevant market. Although different call types may not be perceived to be substitutes on the demand side, on the supply side, all the services face a common pricing constraint. This is because providers of call origination services will seek to exploit the economies of scale and scope by providing call origination services for a number of different call types.

This suggests that competing providers of call origination services compete for *customers* rather than in relation to particular services. This distinction is important because it reinforces the view that providers of call origination would compete to provide a range or basket of services across a customer's exchange line rather than offering only limited services across many exchange lines. Such competition means customers choose the provider who can provide the range of services at the lowest price. The fact that call origination services face a common pricing constraint suggests that all call origination services should be treated as part of the same wholesale market.

A.9 In a similar manner, the provider of call origination will provide the associated facilities such as routing, since the functionality of such a facility is a value-added element of the basic call origination service. As argued above, a common pricing constraint operates on the provider of such a facility and therefore this facility would be part of the market for call origination.

A.1 As noted at paragraph 3.40, pursuant to Regulation 4(1) of the Regulations, BT has been determined as having Significant Market Power (SMP) in the market for fixed public telephone networks and fixed public telephone services. The facility requested by C&W falls within this market.

⁶ http://www.oftel.gov.uk/publications/eu_directives/2003/eu_narrow/index.htm.