

## **Draft Determination to remove BT's obligation to provide Number Translation Services**

1 July 2002

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**DRAFT 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
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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.
1. **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:** 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 1 2002

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

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## Explanatory memorandum

### Introduction

1.1 In September 2000, BT made a request that the Director make a determination under Condition 43 of its Licence that BT is no longer obliged to provide certain voice Number Translation Services (NTS) on request. 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. On 2 April 2002, the Director General of Telecommunications (the 'Director') published a *Notice of determination to remove BT's obligation to provide Number Translation Services* (the 'Notice').

1.2 Publication of the Notice began the process under paragraph 6 of Part 1 of Schedule 1 of BT's licence, which provides for a consultation process where the Director proposes to make a determination for the purposes of, amongst other things, Part B of BT's licence ie Condition 43. Representations on this Notice from BT and interested parties were invited by 30 April 2002. Representations were received from two respondents, BT and Cable & Wireless, and these were published in accordance with sub-paragraph (d) of paragraph 6. 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. The Director has considered the representations made and has now decided to publish a draft determination and accompanying explanatory memorandum, for a further period of consultation of 14 days, in accordance with sub-paragraph (f) of paragraph 6.

### NTS

1.3 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 are numbers which 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 may be defined therefore as the process associated with the routing of a non-geographic number to a network termination point.

1.4 The specific NTS services which are considered within this explanatory memorandum and accompanying draft determination are the number translation services supplied in the UK for a voice telephony service. A voice telephony service may be 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

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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 obligations**

1.5 Under Condition 43 of its licence, BT is currently required 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).

1.6 The Director has decided to publish a draft determination for the purposes of Condition 43.1 of BT's licence, for consultation. If adopted by the Director, the determination would have the effect of removing the obligation to supply number translation services used for a voice telephony service.

1.7 As required by paragraph 6(f) of Part 1 of Schedule 1 of the BT licence, in addition to the publication of this draft determination, it is also being sent to BT and to Cable & Wireless.

### **Reasons for the draft Determination**

1.8 The Director has decided to publish a draft determination on the basis of the information available and taking into account the representations made to him during the consultation on the Notice. Oftel's response to the representations made is in Annex A of this document.

1.9 The representations 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. For the reasons set out in the explanatory memorandum that accompanied the Notice, and having considered the points raised by respondents in response to the Notice, and based on the analysis in the Statement, Oftel considers it appropriate to issue a Determination.

1.10 Having regard to his duties under section 3 of the Telecommunications Act 1984, the Director considers that it would not be reasonable to require the Licensee to provide NTS services used for a voice telephony service, in particular, because:

- the relevant market is effectively competitive; and
  - there is evidence to conclude that all reasonable demands for NTS services will be met in absence of such an obligation.
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1.11 The Director has also considered the factors set out in Condition 43.4 of the BT licence. His view on these factors is set out in the explanatory memorandum which accompanied the Notice.

1.12 The Licensee and interested parties now have a further 14 day period, **ending on July 15 2002** to comment on the draft determination. At the end of this additional period, the Director will consider all comments and inform the Licensee of his final decision, which will also be published.

1.13 Comments should be made in writing and, where possible, sent by e-mail to [anil.patel@oftel.gov.uk](mailto:anil.patel@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 discuss alternatives with the Oftel manager named below:

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#### **Further copies of this document**

1.14 This document can be viewed in the Publications section of Oftel's website at [www.oftel.gov.uk](http://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](mailto:infocent@oftel.gov.uk).

#### **Publication of comments**

1.15 Comments received in response to this explanatory memorandum 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.

1.16 All non-confidential responses can be viewed on Oftel's website. Responses to Oftel consultations can also be viewed at Oftel's Research and Information Unit. Appointments must be made in advance.

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## Annex A

### Oftel's response to the points raised in the consultation

A.1 This annex provides Oftel's response to the representations made during the consultation on the Notice.

#### Effective competition

A.2 Oftel's statement, *Effective competition review of number translation services*, published in March 2002, concluded that the relevant market for the provision of number translation services was effectively competitive. The finding of effective competition was based on a number of different indicators including those relating to market structure, price changes and customer information. One of the reasons given for the conclusion was that other regulation was available to prevent the leverage of market power from related markets. In particular, it was stated that regulation of the terms offered by BT for interconnection with its network prevented BT from leveraging its market power in call origination into the downstream market for voice NTS services.

A.3 Cable & Wireless, in its response, suggested that the NTS interconnection regulation does not prevent BT from leveraging market power. It was suggested that the current interconnection prices allow BT to apply a margin (or price) squeeze. In this specific context, a margin squeeze would involve BT raising the cost of interconnection and/or lowering its prices for provision of 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.

A.4 Oftel considers that if interconnection prices were not controlled it would be possible for BT to apply a margin squeeze in this way. However, the current regulatory obligations on BT with regard to interconnection charges, which seek to ensure that interconnection prices are cost-oriented, will prevent such a margin squeeze. The Competition Act 1998 should also help to deter both margin squeezing and predation since such practices may be found to be in breach of the Act's Chapter II prohibition (see the Competition Act guidelines, *The Application of the Competition Act in the Telecommunications Sector*, January 2000).

A.5 Cable & Wireless suggested that the current interconnection prices did not prevent a margin squeeze, and that the current regulations applying in the market for voice NTS services were necessary as a result to ensure the market was effectively competitive. Oftel is currently considering a number of interconnection disputes during which it has been suggested that the current interconnection prices for NTS calls are not cost-oriented. If, during the course of such a dispute, Oftel were to find that BT was not meeting its regulatory obligations in respect of interconnection, then it would seek to ensure that these obligations were met. If necessary, Oftel could issue a direction obliging BT to change its interconnection

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prices. Oftel does not therefore consider that regulation of the retail NTS market is necessary in order to prevent anti-competitive behaviour in related markets which are themselves the subject of regulation.

A.6 Cable & Wireless suggested that the price publication obligations which apply in respect of voice NTS services would make it easier to identify practices such as margin squeezing. Oftel considers that, in some cases, it may be appropriate to use regulation (such as price publication) in a downstream market to prevent anti-competitive behaviour in an upstream market, but only where such regulation is both necessary and proportionate.

A.7 In this particular case, BT has an obligation under its Licence to ensure that its interconnection charges are cost-oriented. BT also has to be able to demonstrate to the satisfaction of the Director that this is the case. The Director does not therefore consider that price publication obligations are currently necessary in the downstream NTS market in order for the Director to obtain information to enforce BT's licence obligations in respect of interconnection for NTS services.

### **Cost-benefit analysis**

A.8 Cable & Wireless stated that the lifting of ex ante regulation on BT should be preceded by a cost-benefit analysis of the effects of removal. Oftel considers that consideration of costs and benefits of regulation can be useful in markets which are not effectively competitive. In such cases, it can be useful to examine the impact of regulation in order to assess whether it is necessary to maintain regulation, or whether it can be lifted without adverse effects on the market. For instance, a cost-benefit analysis was carried out by Oftel before deciding to issue determinations removing the findings of Market Influence on Vodafone and BT Cellnet (see *Notices of determinations to remove the determinations that Vodafone and BT Cellnet have Market Influence under Condition 56 of their respective licences*, December 2001).

A.9 Oftel's strategy statement (*Achieving the best deal for telecoms consumers*, January 2000) indicates that it is not Oftel's intention to conduct a cost-benefit analysis where the market in question is effectively competitive. This is because regulation for competition reasons in markets which are effectively competitive is neither necessary nor proportionate. Oftel believes that the relevant market for NTS services is effectively competitive for the reasons set out in the statement, *Effective competition review of number translation services* (March 2002).

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