

**NOTICE OF A 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**

**NOTICE OF DETERMINATION**

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

WHEREAS:

1. Condition 43 of the Licence granted by the Secretary of State for Trade and Industry to British Telecommunications ("BT") on 22 June 1984 under section 7 of the Telecommunications Act 1984 (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;
2. BT requested in September 2000 that the Director make a determination under Condition 43 of its Licence that BT is no longer obliged to provide certain voice NTS services on request;
3. In issuing this Notice, the Director has taken into consideration the matters described in the Explanatory Memorandum to this Notice in accordance with Condition 43 of the Licence;
4. 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 ARGUMENTS OF THE LICENSEE AND INTERESTED PARTIES, HEREBY DETERMINES THAT:**

1. The publication of this Notice, and the accompanying Explanatory Memorandum, constitutes the start of the consultation procedure applicable to a determination to be made under paragraph 6 of Part 1 of Schedule 1 of BT's Licence;
2. At the end of the consultation period, and subject to the views expressed during the consultation, the Director intends to remove the obligation on the Licensee to provide Number Translation Services used for a voice telephony service as referred to in Condition 43 of its Licence, for the reasons given in the Explanatory Memorandum which accompanies this Notice.

Peter Waller

2 April 2002

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

## **Explanatory memorandum**

### **Introduction**

1.1 This document considers whether the Director General of Telecommunications (the 'Director') should issue a determination to remove BT's current obligations under its licence to supply voice number translation services (NTS). These are the services supplied to NTS customers which allow them to use non-geographic numbers (0800, 0845 etc), ie 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.

1.2 The specific NTS services which are considered within this explanatory memorandum and accompanying notice of 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 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.

1.3 Under Condition 43 of its licence, BT (the 'Licensee') 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).

1.4 Condition 43 of its licence requires BT to provide services on reasonable request except to the extent that the Director determines otherwise. BT has made a request for such a determination in relation to certain voice NTS services. In considering whether to make a determination under Condition 43.1 to disapply the obligation to supply in relation to those NTS services, the Director is required to have regard to all factors which appear to him to be relevant. The factors which are required to be considered include those listed in Condition 43.4 of the BT licence.

The Director must also have regard to his duties under section 3 of the *Telecommunications Act 1984*.

1.5 Under the process set out in paragraph 6 of Part 1 of Schedule 1 of the BT Licence, publication of this notice of determination initiates the initial period of 28 days in which the Licensee and Interested Parties can make representations. The closing date for representations from the Licensee and Interested Parties is 30 April 2002. After this date, all non-confidential representations will be published and the Licensee and Interested Parties will have a further 28 days to make observations on the representations. Having considered all representations and any observations made, the Director will then publish a draft decision and statement of reasons for this decision, and send it to the Licensee and any Interested Party who has submitted representations or observations, or both, for comment. The Director will consider any comments received within 14 days and will then inform the Licensee of his decision. See paragraph 6 of Part 1 of Schedule 1 of BT's licence for further details of the determination procedure.

### **Factors to be considered by the Director**

1.6 In making a determination the Director is required to consider all relevant factors. The Director considers one of these relevant factors to be the presence or otherwise of effective competition in the relevant market for NTS services. This is consistent with Oftel's strategy statement (*Achieving the best deal for consumers*, January 2000) which states that ex ante regulation in a market which is effectively competitive is not necessary to promote competition.

1.7 Oftel has defined the relevant market, and considered the extent of competition within it, during the course of its effective competition review of NTS. During the course of the review, a consultation document and statement considered whether or not there was effective competition in the market for NTS. The Oftel statement, *Effective competition review of number translation services* (March 2002), set out the reasons for the Director's view that competition in the relevant market for voice NTS services is effective. As indicated in the March 2002 statement, the Director considers that the presence of effective competition will ensure that all reasonable demands for NTS services used for a voice telephony service will be met. A number of different considerations led Oftel to the view that the relevant market for NTS services is effectively competitive:

- Prices for voice NTS services have fallen in recent years.
- Barriers to entry into the relevant market are low, as evidenced by the extent of entry in recent years. There are now over a hundred potential suppliers of NTS, and the number of suppliers has increased significantly in recent years.
- The costs to customers of switching between NTS suppliers are also low.
- Customers who obtain NTS from operators seem to be well informed about the range of services on offer to them, and are able to use this information to negotiate favourable prices, terms and conditions with suppliers.
- The evidence available suggests BT's market share, which is below 40 per cent, has declined in recent years, whilst the market shares of its competitors have risen.

- Other regulatory measures, including those concerning NTS interconnection, are available to prevent BT from leveraging its market power in related markets into the relevant market for voice NTS.

1.8 As well as the presence or otherwise of effective competition, a number of other factors are also relevant to considering whether or not to issue a determination. These are set out in Condition 43(4) of the licence. The Director's initial view on these factors, as far as they are relevant to deciding whether or not to remove BT's current regulatory obligations, are set out below.

### ***The relative size of BT's business***

1.9 BT has an extensive telecommunications network which allows it to provide NTS services throughout the country. The intelligent network features that allow it to do so are located across this network. Other providers offer NTS services through technology that is typically embedded within the switches they use. A number of other operators have built local networks in city centres, and these mainly serve high-volume users, particularly in the financial sector. In addition, cable companies have traditionally targeted residential consumers using bundled TV services as an incentive, but increasingly are using Internet services as a means of targeting the small- and medium-sized enterprise market.

1.10 BT continues to have a high proportion of local access lines. Oftel's latest market information statistics indicate that it has 81.1 per cent of residential local access lines (see *The UK Telecommunications Industry: Market Information 2000/01*, December 2001). Providers of NTS services other than BT are however able to interconnect with the BT network and can thus provide NTS services throughout the country, including through local access lines supplied by BT.

1.11 Given the fact that BT has been found to lack market power in the provision of NTS, and that other NTS suppliers are able to compete effectively against it, removal of the obligation to supply NTS services would not, in the Director's view, lead to a significant change in the relative size of BT's business.

### ***BT's relative capability to provide NTS services***

1.12 The Director considers that BT is as capable of providing NTS services in the UK as other operators in the relevant market. A supplier of NTS does not require a national network in order to provide NTS services across the UK; it is sufficient for NTS suppliers to be able to interconnect with the networks of BT and other operators. Also, BT's lack of market power in the relevant market for NTS used for a voice telephony service, combined with its other regulatory obligations, indicates that BT does not have a capability to provide NTS services significantly in excess of other parties.

### ***The likely net cost of providing NTS services***

1.13 BT has indicated that the supply of NTS services is a profitable activity. Hence, removal of the obligation to supply NTS services under Condition 43 of the licence

will not in the Director's view lead to a significant increase in the net cost to it of providing such services.

### ***BT's financial stability***

1.14 BT has indicated that it will continue to offer NTS services after a removal of the obligation to supply. Given this fact, the Director considers that if a determination were to be issued which removed the current regulatory obligations in respect of voice NTS services, the financial stability of BT would not be significantly affected.

### ***The willingness of BT to provide NTS services***

1.15 If the obligation to supply NTS services were to be removed, then BT has indicated that it will remain willing to offer these services.

### **Conclusion**

1.16 On the basis of the arguments set out above, the Director has decided to publish a Notice of his intention to issue a determination under Condition 43(1) of the BT licence removing its existing obligation to supply number translation services used for a voice telephony service 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.

1.17 The Director considers therefore that it would not be reasonable in the circumstances to require the Licensee to provide NTS services used for a voice telephony service.

### **Consultation**

1.18 In accordance with paragraph 6 of Part 1 of Schedule 1 of the BT licence, the Director invites comments from the Licensee and Interested Parties on the Notice to issue a determination under Condition 43.1 of BT's licence.

1.19 All comments from the Licensee and other Interested Parties on the Notice and the reasons for them set out in the Explanatory Memorandum must be received by 30 April 2002.

1.20 This will be followed by a further 28-day period to allow BT and Interested Parties to make observations on the published representations. At the end of the second 28-day period, having considered all representations and observations the Director will, if appropriate, publish a draft decision. BT and Interested Parties will then have a further 14-day period to comment on the draft decision. The Director will consider all comments and inform BT and Interested Parties of his final decision at the end of that period.

1.21 Comments should be sent to:

Anil Patel  
OfTel  
50 Ludgate Hill  
London  
EC4M 7JJ  
Tel: 020 7634 8928  
Fax: 020 7634 8893  
e-mail: anil.patel@oftel.gov.uk

1.22 Representations made during the periods of consultation will be available for public inspection in OfTel's Research and Intelligence Unit. Respondents should include confidential material in a clearly marked annex. In the interests of transparency, respondents are asked to keep confidentiality markings to a minimum.

### **Timetable**

1.23 The Notice was published on 2 April 2000. The first period for representations will close on 30 April 2002. Representations received during this period will be published, and the 28-day period for observations on these representations, will then begin.