

**Draft Determination:
Rollover of general price controls**

27 June 2002

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Summary

S.1 In February 2001, Oftel published the statement entitled *Proposals for Network Charge and Retail Price Controls from 2001*. In that statement, Oftel set out its proposed licence modifications to extend BT's general retail price controls for one year from 1 August 2001 to 31 July 2002. In addition, it also set out modifications to extend ('rollover') the retail price controls for one further year beyond that date in the event that BT decided to object to Oftel's final proposals for retail price control arrangements from 1 August 2002. This latter proposal was designed to ensure that there was no gap in retail price control arrangements during any potential investigation by the Competition Commission into the public interest of Oftel's proposals.

S.2 In June 2002, Oftel published the statement entitled *Protecting consumers by promoting competition: Oftel's conclusions*. In that statement, Oftel set out its proposed licence modifications to give effect to price control arrangements from 1 August 2002. The period for public consultation on those proposals expires on 19 July 2002 and Oftel will thereafter need to give BT seven days' notice of its intention to make the modifications during which time BT will have the opportunity to object to them. Accordingly, at the time of writing, Oftel does not, and cannot, know whether or not BT will object to the proposed licence modifications to give effect to Oftel's price control proposals, and Oftel will only know this a short time before the end of July. In the event that BT does object to those proposals, Oftel will not then have sufficient time to consult on any draft determination made to 'rollover' the retail price controls, as referred to in paragraph S1, prior to 1 August 2002. Oftel therefore sets out in this document the draft determination that will, if it becomes necessary, give effect to a 'rollover' of the present price controls.

Draft Determination

DRAFT DETERMINATION RELATING TO THE ROLLOVER OF GENERAL PRICE CONTROLS UNDER CONDITION 74B OF THE LICENCE OF BRITISH TELECOMMUNICATIONS PLC

WHEREAS:

- (A) on 22nd June 1984, the Secretary of State for Trade and Industry (the “Secretary of State”) granted to British Telecommunications plc (“BT”) a licence (the “Licence”) under section 7 of the Telecommunications Act 1984 (the “Act”) for the running of telecommunications systems specified in Annex A to the Licence;
 - (B) in the statement entitled Proposals for Network Charge and Retail Price Controls from 2001, which was published in February 2001, the Director General of Telecommunications (the “Director”) set out proposed modifications to the Licence, which he intended make under section 12 of the Act, that would enable the Director to determine that the price controls that he proposed to take effect from 1st August 2001 and which were to last until 31st July 2002 could be extended for one further year to 31st July 2003 if certain provisions had been satisfied;
 - (C) BT did not object to the proposed modifications under section 12(4B) of the Act and the modifications therefore took effect, as proposed, on 27 March 2001 by the insertion of a new Condition 74B in Part J of Schedule 1 to the Licence, which gave the Director the powers to extend the price controls following the making of a determination, as referred to in paragraph (B) above;
 - (E) prior to the making of the mentioned determination, the Director must ensure that the conditions in paragraphs (a) to (c) of Condition 74B.1 of the Licence are satisfied by 31 July 2002. Those conditions have been satisfied before 31 July 2002 in that:
 - (i) in accordance with the requirements of Section 12(2) and (3) of the Act, the Director gave notice on 21st June 2002 that he proposed to replace Condition 67, 70 and 74 of the Licence and sought representations (or objections) on his proposals[, which representations he has now duly considered];
 - (ii) BT objected to the proposed modifications to its Licence on **[date to be inserted]** under Section 12A(2)(b) of the Act and the requirements of Section 12A of the Act are therefore not satisfied in the case of those proposals for the purposes of Section 12(4B)(b) of the Act; and
 - (iii) on **[date to be inserted]**, the Director made a reference to the Competition Commission under Section 13 of the Act in relation to the proposed modifications to the Licence to which BT has objected;
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- (F) on **[date to be inserted]**, the Director issued a draft determination in which he stated that he intended, if BT objected to the proposed modifications, to extend the controls set out in Conditions 67, 70 and 74 of the Licence for the period 1st August 2002 to 31st July 2003;
- (G) in making this determination, the Director has considered respondents' comments and observations;

NOW, THEREFORE, THE DIRECTOR, PURSUANT TO CONDITION 74B OF THE LICENCE, HEREBY DETERMINES THAT:

sub-paragraph (i) of the definition of "Relevant Year" in paragraph 1 of Part 1 of Schedule 1 to the Licence shall be substituted as follows:

"Relevant Year" means:

...

- (i) except for the purposes of Condition 69 and 73, any of the six periods of 12 months beginning on 1st August, starting with 1st August 1997 and ending on 31st July 2003;

DAVID ALBERT EDMONDS

DIRECTOR OF TELECOMMUNICATIONS

[] JULY 2002

Background

1.1 On 20 June 2002, Oftel published the statement entitled *Protecting consumers by promoting competition: Oftel's conclusions*. In that statement, Oftel set out its vision for the future of price control arrangements in the UK and the proposed licence modifications to give effect to its proposals. In broad terms, Oftel proposed that from 1 August 2002 BT should:

- be subject to retail price controls set at RPI-RPI and focussed on the expenditure patterns of the bottom eight deciles of residential customers for four years;
- extend the Light User Scheme, which currently protects consumers in deciles one and two, to decile three, which would mean that customers in decile three could expect to see their bills increase by no more than the change in the retail prices index (inflation); and
- provide its competitors with access to its retail customers in the form of a Wholesale Line Rental product that would end BT's relationship with customers that it maintains under indirect access and carrier pre-selection through the provision of access (line rental).

1.2 These proposals will take effect only if BT does not object under section 12A(2)(b) of the Telecommunications Act 1984 to the proposed modifications to its licence (or, as the case may be, BT gives it formal consent to the making of those modifications), provided of course that the Director General decides to proceed with the modifications after considering any representations made during the consultation.

1.3 However, when extending the current retail price controls for one year from 1 August 2001 to 31 July 2002, Oftel made allowance for any potential reference to the Competition Commission and the end of the price control arrangements that were in place. In the statement entitled *Proposals for Network Charge and Retail Price Controls from 2001*, which was published in February 2001, Oftel set out proposed modifications to BT's licence to give effect to the extension of the price controls and also to give the Director General an opportunity to 'rollover' the same controls for one further year. This additional mechanism was required in the event that BT decided to object to Oftel's proposals for further retail price controls beyond 1 August 2002, and the Director General believed that he had no option but to refer the issue to the Competition Commission. The 'rollover' provisions give the Director General backstop powers to determine that price control arrangements should continue during the investigation by the Competition Commission.

1.4 At the time of writing with the publication of this draft Determination, the Director General did not know whether BT would object to the proposed modifications to its licence, because the period for public consultation on the proposed licence modifications does not end until 19 July 2002. Therefore, to ensure that consumers continue to receive price control protection from 1 August 2002 whatever BT decides in relation to the price control proposals, the Director General has chosen to now issue this draft determination to allow sufficient time for consultation. This will

give the Director General time to issue a final determination triggering the 'rollover' provisions before the present price controls end on 31 July 2002 if BT objects to the licence modifications which the Director General will put to it following the public consultation.

1.5 Should BT not object to the proposed modifications to its licence, the Director General will not issue a final determination to extend the present controls for one year. This is because the controls set out in paragraph 1.1 would take effect from 1 August 2002, unless the Director General decided not to proceed with the proposed modifications after having considered any representations made during the statutory public consultation on those modifications.

Consultation

2.1 The draft Determination set out in this document is being made available to BT, and published on Oftel's website, together with the Director General's reasons set out in the accompanying background chapter, so that BT and any interested parties may have a reasonable opportunity to make representations.

2.2 Subject to the point made in paragraph 1.5 in the background chapter, the Director General will, if appropriate after having considered any such representations, make the final determination together with his reasons for making it, which will be published on Oftel's website and notified to BT.

2.3 Any comments on, or representations to, the proposed draft determination should be made to:

Mike Galvin
Oftel
50 Ludgate Hill
London
EC4M 7JJ

tel: 020 7634 8869
e-mail: mike.galvin@oftel.gov.uk

no later than **25 July 2002**.

2.4 Any confidential information should be clearly marked as such and separated out in a confidential annex. All representations received by Oftel, with the exception of material marked confidential, will be published on Oftel's website and made available for inspection on Oftel's Research and Information Unit.

2.5 Oftel does not intend on this occasion to allow a further period during which observations may be made on the representations made by others. Nevertheless, in the interests of transparency, all non-confidential representations will be published.

Annex

Condition 74B of BT's Licence

ROLLOVER OF GENERAL PRICE CONTROLS

74B.1 If by 31st July 2002:

- (a) the Director, having given notice and considered representations or objections in accordance with the requirements of Section 12(2) and (3) of the Act, has submitted to the Licensee proposals for any or all of Conditions 67, 70 and 74 of this Licence to be replaced or modified; and
- (b) the requirements of Section 12A of the Act are not satisfied in the case of those proposals for the purposes of Section 12(4B)(b) of the Act because the Licensee has objected to them under Section 12A(2)(b); and
- (c) the Director has made a reference to the Competition Commission under Section 13 of the Act in relation to any part of the proposals (including the whole) to which the Licensee has not consented as referred to in paragraph(b) above, but in relation to no other matter,

the Director may determine that, in order to extend the period of control provided for in those Conditions, sub-paragraph (i) of the definition of "Relevant Year" in paragraph 1 of Part 1 of Schedule 1 to this Licence shall be substituted as follows:

"Relevant Year" means:

...

- (i) except for the purposes of Condition 69 and 73, any of the six periods of 12 months beginning on 1st August, starting with 1st August 1997 and ending on 31st July 2003;