



## **Statement on international controls in PTO licences**

*Issued by the  
Director General of Telecommunications*

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## Summary

S.1 Oftel's overall goal is the best possible deal for consumers, and Oftel believes that competitive markets are the best way of achieving this goal. Markets which are effectively competitive deliver quality, choice and low prices.

S.2 Oftel's strategy (*Oftel Strategy Statement: Achieving the best deal for telecom consumers*) recognises that over regulation in fast moving and competitive markets can reduce incentives to invest and innovate. As competition increases, Oftel therefore seeks to reduce regulation where appropriate.

S.3 Competition in international routes has grown substantially over recent years, with the full liberalisation of international telephony in the UK in 1997, the full liberalisation of most EU telecommunications markets from the beginning of 1998, and the coming into force of the World Trade Organisation's Agreement on Basic Telecommunications Services (to which 75 countries made commitments on liberalisation) in February of the same year. In line with Oftel's long term strategy, the Director General of Telecommunications (the Director) therefore commenced a public consultation in May 2000 on whether the 'international controls' (conditions 59 to 63) in the licences of Public Telecommunications Operators (PTOs) could be removed or relaxed. Having considered the responses to the consultation, the Director has decided to make the following modifications to the PTO licences:

- (a) to remove the requirement to notify the Director and other operators of accounting rate agreements with overseas operators (conditions 61.1 and 61.2);
- (b) to remove the accounting separation requirements which apply to operators with international business (condition 62); and
- (c) to remove the 'maintenance of effective competition' condition (condition 63) which has now been largely superseded by the provisions of the Competition Act 1998.

S.4 The Director has also decided to discontinue Oftel's policy of publishing accounting rate information.

S.5 In the light of comments received, the Director has decided to retain conditions 59, 60 and 61.3 (subject to some minor modifications). These conditions give him the power to take action to prevent certain types of anti-competitive behaviour (known as 'one-way bypass' and 'whipsawing') in certain circumstances. On balance, he considers these conditions still to be necessary to protect UK operators and consumers from potentially anti-competitive conduct by dominant operators overseas.

S.6 By reducing unnecessary regulatory burdens on operators with an international business, the Director believes that the above measures will promote competition in the international market and thereby benefit consumers.

S.7 The Director's decision follows publication of Of tel's consultative document – *International Controls in PTO Licences* in May 2000 and consideration of the responses received. The Director is commencing a statutory public consultation on the proposed modifications to all PTO licences under Section 12 of the Telecommunications Act 1984, as amended by the Electronic Communications Act 2000.

# Chapter 1

## Introduction

### The Consultation

1.1 In May 2000, Oftel published a consultative document, *International Controls in PTO Licences* (the 'May 2000 consultative document') considering whether the controls on international business in the licences of all Public Telecommunications Operators (PTOs) could be removed or relaxed in line with Oftel's strategy. These controls are contained in Part H (conditions 59 to 63) of PTO licences. The full text of the conditions concerned is attached at **Annex A** to this Statement. They are referred to in this document as the 'international conditions'. A detailed description of each of the conditions and of their purpose is contained in the May 2000 consultative document.

### Background

1.2 As explained in the May 2000 consultative document, the international conditions were introduced to promote competition on international routes and also to protect UK consumers from potential anti-competitive practices. Oftel sought to ensure that dominant far-end operators would not be able to take advantage of the liberalised UK market and of the accounting rate system to the detriment of UK operators and consumers. Of particular concern were the practices known as 'whipsawing' and 'one-way bypass'. The accounting rate system, whipsawing, and one-way bypass are explained further below. Oftel was also concerned that overseas operators might cross-subsidise their UK operations, with the effect of distorting competition in the UK.

1.3 *The Accounting Rate System:* The accounting rate system was developed at a time when international telecommunications services were supplied through bilateral correspondent relationships between national monopoly carriers. Under this system, traffic is carried by the originating operator to a notional mid-point on the route and then handed over to the terminating operator. The charge made by the terminating operator is known as the settlement rate, and the sum of the settlement rates in each direction (together with any transit charges) is known as the accounting rate. Usually the two settlement rates are identical, and accounting rates are uniform across the time of day and type of call. A reconciliation is made between the operators at the end of each time period and a payment is made only on the balance of the net traffic flows. The level of accounting rates can be substantially above the costs which carriers incur to terminate the traffic concerned. It is therefore in the interests of the operators with a net *inflow* of traffic to maintain this system, because of the large payments they receive for terminating calls. The high cost of accounting rates is ultimately passed on to consumers, who consequently can pay artificially high prices for international services conveyed under accounting arrangements.

1.4 *Whipsawing*: ‘Whipsawing’ describes the situation where foreign monopoly carriers use their market power to move accounting rates in the direction which is favourable to them and detrimental to the UK (eg to raise the accounting rate if they are a net recipient of traffic), taking advantage of competition in the UK by pitting competing UK carriers against one another. Foreign carriers cannot generally whipsaw UK operators if they lack market power at the foreign end of the route, as the UK operator can respond by entering an agreement with a different foreign carrier on the route.

1.5 *One-way bypass*: One-way bypass describes the situation where a foreign monopoly operator bypasses the accounting rate system when sending traffic to the UK (for example, by sending traffic via ISVR or by obtaining a PTO licence in the UK and routing all incoming traffic to its own subsidiary), but UK operators are compelled to pay high settlement rates to terminate traffic in the monopoly operator’s country.

1.6 The potential for whipsawing and one-way bypass was addressed by the ‘proportionate return’ and ‘information about accounting rates’ conditions (59 to 61), and the potential for cross-subsidisation and distortion of competition in the UK was dealt with by the ‘accounting separation’ and ‘maintenance of effective competition’ conditions (62 and 63). Each of these conditions is discussed in turn in Chapter 2 below.

### **Development of competition in international markets**

1.7 The UK international market was liberalised in 1996, with the introduction of International Facilities Licences. Since then, two significant further milestones on the trend towards liberalisation have been achieved. First, most EU telecommunications markets were fully liberalised from the beginning of 1998. Secondly, the World Trade Organisation’s Agreement on Basic Telecommunications Services came into force in February 1998, with 75 countries making commitments on liberalisation of basic telecommunications services. The market for international telecommunications services has hence changed dramatically over recent years, with the cost of installing international networks falling steeply and the emergence of numerous new operators.

1.8 Thus, for example, in the UK, BT’s overall share of international call revenues has fallen from 70% in 1995/96 to 51% in 1999/00. This drop in market share is largely accounted for by the new entrants such as WorldCom, RSL and COLT which have been particularly successful in providing international calls to business customers. In this business market for international calls, WorldCom now has a market share of 18.5% of revenues, with RSL and COLT enjoying shares of 3.9% and 2.3% respectively (Source: *Oftel Market Information 1995/96 to 1999/00*).

1.9 In the light of this increasing competition, Oftel’s May 2000 consultative document invited comments on whether it would now be appropriate to remove or relax all or any of the international conditions. Oftel was particularly concerned to ensure that the conditions do not have the unintended effect of stifling competition on international routes.

1.10 The Director has now reviewed the responses received from interested parties to this consultation and this Statement sets out his decisions, subject to statutory public consultation on the proposed licence modifications.

## Chapter 2

### Responses to the Consultation

2.1 Oftel received responses to its May 2000 consultative document from five respondents, listed in **Annex B**. Consideration of the main points raised by the respondents is set out below.

#### General points

2.2 Generally, the operators who responded welcomed the Director's decision to review the international conditions in PTO licences and agreed that competition in international markets had increased substantially since liberalisation of the UK international market in 1997. Accordingly, one operator thought that conditions 59 to 63 should be removed entirely. The others supported relaxation, or qualification of certain of the conditions, but not complete removal.

#### Proportionate return (Conditions 59 and 60)

##### *The conditions*

2.3 Conditions 59 and 60 relate to proportionate return for International Simple Voice Resale (ISVR) services and international conveyance services respectively. They are aimed at preventing one-way bypass by dominant far-end operators.

2.4 **Condition 59:** This condition acts as a reserve power, applying only if the Director issues a notice in respect of a particular country route. He may do this in respect of countries which deliver proportionately more ISVR traffic **to** the UK than they receive in ISVR traffic **from** the UK (for example, countries which do not permit incoming ISVR traffic). If he issues a notice then relevant licensees must ensure that the ratio of ISVR traffic to and from the UK on that route, is as specified in the notice. In practice, therefore, the condition allows the Director to prohibit UK operators receiving ISVR traffic from a country which itself prohibits ISVR.

2.5 **Condition 60:** This condition does not apply to EEA countries (which are excluded), or those which have signed up to the WTO agreement (as the Secretary of State for Trade and Industry has lifted it in respect of those routes). In respect of other routes, licensees must not deliver proportionately more traffic to the UK than they send out of the UK. If they do, then the Director may make a determination compelling the Licensee to remedy the situation. Thus, if an overseas operator is bypassing the accounting rate system in the UK by sending traffic to its own UK subsidiary (whilst forcing UK operators to send their outgoing traffic via the accounting rate system), the condition allows the Director to make a determination against that UK subsidiary.

## ***Comments on the conditions***

### *Extent of risk*

2.6 Operators differed on the extent to which they considered one-way bypass or whipsawing to be a genuine threat to UK operators. One operator commented that there had been ‘little evidence’ of one-way bypass or whipsawing in practice; and another thought that whilst there was still a ‘possible risk’ of UK operators encountering whipsawing and one-way bypass, this risk was ‘minimal’ given the increase in competition. However, one of the other operators thought that ‘whipsawing, one-way bypass and predatory pricing still pose a risk’.

### *Effects of proportionate return conditions*

2.7 One operator claimed that the existence of the conditions assisted their negotiations with foreign monopoly operators and that the threat of the Director taking action under these conditions deterred such operators from engaging in one-way bypass. Others, however, claimed that proportionate return may have detrimental effects on operators, restricting operators’ freedom to negotiate volume deals with far-end carriers, prolonging the existence of the accounting rate regime, and deterring new entry into the international telecommunications market.

### *Suggested approach*

2.8 The operators in favour of retaining this condition, and the Scottish Advisory Committee on Telecommunications (SACOT), suggested that Oftel should follow the approach of the US Federal Communications Commission (FCC), applying the proportionate return conditions only to non-competitive routes or where the far-end operator has market power. In order to do this Oftel would have to agree (and keep up-to-date) a list of non-competitive routes and/or overseas operators with market power to which the condition would apply.

## ***Oftel’s response to comments***

### *Condition 59*

2.9 The Director notes that condition 59 does give him the power to protect UK operators from one-way bypass of the accounting rate system using ISVR – by prohibiting UK operators from delivering ISVR traffic which originates in countries where ISVR is prohibited. As increasing numbers of countries liberalise their telecommunications markets this risk of one-way bypass by ISVR has substantially diminished over recent years. However, the risk cannot be considered to have disappeared entirely.

2.10 The Director notes also that, as Condition 59 is merely a *reserve* power (it imposes no obligations on operators unless he issues a notice), its retention would not impose any burden on operators. He does not agree that the condition restricts operators’ freedom to negotiate with far end carriers or deters new entry into the market. Were he to issue a notice under this condition, such action would, of course, restrict operators’ freedom to take ISVR traffic on a certain route. He would therefore

have to consider whether such action was proportionate in the circumstances. The mere retention of the *power* to issue a notice, however, does not have such an effect.

2.11 As there is still at least a potential risk from one-way bypass, and the retention of this condition does not appear to have any detrimental effect on operators or consumers, the Director considers that it is not yet appropriate to remove this condition. **He has therefore decided to retain condition 59.**

2.12 The Director has considered the suggestion that he should follow the approach of the US FCC, applying the proportionate return conditions only to non-competitive routes or overseas operators with market power. The Director considers that the approach of the FCC provides a good guide for Oftel policy and would certainly consider whether the far end was competitive and/or the far end operator had market power in deciding whether to issue a notice under Condition 59. However, as the condition is only a reserve power, he does not consider it necessary to limit its application in the way suggested. Such an approach would require Oftel to conduct a full analysis of the extent of competition in overseas markets, and regularly to update and review this information, which would be a disproportionate way of dealing with a small and diminishing problem. The Director has therefore decided to retain the existing situation whereby the condition does not limit the routes in respect of which he may issue a notice requiring proportionate return. In practice, the Director would not be likely to issue a notice under Condition 59 in respect of a route which was competitive at the far end.

#### *Condition 60*

2.13 Condition 60 can also protect UK operators from one-way bypass, as it allows the Director to make a determination against licensees which, on non-WTO routes, receive proportionately more traffic into the UK than they send out of the UK. Again, as increasing numbers of countries liberalise their telecommunications markets this risk of one-way bypass has substantially diminished over recent years. However, until all overseas routes are liberalised, the risk will not disappear entirely.

2.14 Unlike Condition 59, Condition 60 is not a mere reserve power. However, as it only applies to non-WTO countries, the Director is not convinced that it places a significant burden on operators. There is, on the other hand, some benefit to the extent that it has a deterrent effect in preventing one-way bypass. In the May 2000 consultative document Oftel estimated the potential cost to the UK of one-way bypass as being in the region of £30 million per year.

2.15 The Director believes that, if the condition might help prevent one-way bypass by dominant overseas operators, then it is preferable that the condition should be retained. **He has therefore decided to retain Condition 60.**

2.16 As noted at **paragraph 2.8** above, certain operators, and SACOT, proposed that Oftel follow a similar approach to that of the FCC, applying the proportionate return conditions only where the far end is not competitive or where the far end operator has market power. As noted above, however, this would require maintenance of a list of relevant routes and operators which would, in the Director's view, be a disproportionately costly way of dealing with a relatively small problem. He has

therefore decided to retain the existing situation whereby condition 60 applies only to non-WTO routes.

### **Information about accounting rates (Condition 61)**

#### ***The condition***

2.17 Condition 61 provides that licensees must:

- (a) give prior notice to the Director of accounting rate agreements with persons running telecoms systems outside the EEA; and
- (b) inform the Director and all other licensees operating (or who have announced an intention to operate) on a particular route, of the terms of any 'correspondent arrangement' with an overseas operator (including changes to accounting rates), as soon as practicably possible after making the arrangement.

2.18 The condition also empowers the Director to direct a licensee not to enter into an agreement (or to vary an agreement) under certain circumstances.

2.19 Oftel's current policy on publication of this information is set out in its July 1998 Statement – *The collection and publication of international call information*. Oftel currently publishes:

- (a) for liberalised and potentially liberalised routes – all accounting rates for Concert and any international operators deemed to have 'Market Influence' on a particular route (in practice this only applies to Cable & Wireless); and
- (b) for routes not liberalised – all accounting rates between UK operators and far end operators (although in practice, again, this is only Concert and Cable & Wireless's rates).

2.20 Publication of accounting rates is aimed at facilitating the detection of whipsawing, identifying anti-competitive behaviour by UK operators, and reducing information asymmetry between incumbents and new entrants.

#### ***Comments on the condition***

##### ***Effects of publication***

2.21 Concert's comments on this condition claimed that Oftel's current practice of publishing accounting rates has a detrimental effect on them and, consequently, UK consumers. In particular, Concert stated that publication of their rates places them at a competitive disadvantage compared to other international operators, as competitors can see a significant component of their costs. They also claimed that accounting rate publication may be preventing the negotiation of lower rates, as foreign operators can be reluctant to agree to reduced settlement rates when they know that these will be published.

### *Usefulness of information*

2.22 Some respondents also questioned whether the information was effective in serving the functions set out in the consultative document. It was argued that:

- (a) publication is not necessary for the detection of whipsawing as, if an operator's interests were being harmed by whipsawing, the operator would be aware of this and would alert Of tel to the problem;
- (b) publication is not necessary to identify anti-competitive behaviour by UK operators as most UK international traffic is on competitive routes, on which there is minimal scope for anti-competitive behaviour; and re-file and re-origination opportunities mean that no UK carrier could prevent market entry on any route; and
- (c) neither is publication necessary to reduce information asymmetry between incumbents and new entrants, as only Concert and Cable & Wireless use accounting rates extensively. Other operators reach agreements outside the accounting rate system.

2.23 Others, however, claimed that publication was effective in serving these functions.

### *Of tel's response to comments*

2.24 The Director considers that publication of accounting rates may have a detrimental effect on Concert, putting them at a competitive disadvantage and hindering the negotiation of lower accounting rates. Insofar as publication is capable of preventing whipsawing then it is – by definition – restrictive of competition (allowing UK operators to co-ordinate their accounting rates and thereby preventing overseas operators playing them off against one another). The costs of publication (in terms of the burden it places on operators whose rates are published, and the potential distortions of competition) are therefore relatively high. Consequently, there must be compelling reasons to justify continuing this practice.

2.25 In light of the competitiveness of the international market at the UK end, the Director does not consider that that it is still necessary to take interventionist measures such as accounting rate publication in order to assist new entry (by reducing information asymmetry) or identify anti-competitive behaviour. He does not therefore consider these reasons still to justify publication.

2.26 The third reason for publication of accounting rates is prevention of whipsawing. Whipsawing is not possible where the far end is competitive, but could still occur where the far end has not been liberalised and so is still a risk on certain routes.

2.27 The Director agrees with one respondent's comment that, where an operator's interests are being harmed by whipsawing, the operator is likely to alert Of tel to this. If the Director retains the power to deal with such situations *ex post*, he could then deal with whipsawing by taking action following such a complaint. In this way the

Director retains the power to protect UK operators from whipsawing behaviour without burdening operators with accounting rate publication or distorting competition by publishing this information.

2.28 Accordingly, subject to statutory consultation, **the Director has decided to remove conditions 61.1 and 61.2** which require operators to notify him, and each other, of accounting rate agreements. In addition, Oftel will no longer follow the policy – set out in Oftel’s July 1998 Statement on *The collection and publication of international call information* – of publishing accounting rates.

2.29 However, **the Director has decided to retain his power in condition 61.3 to direct Licensees not to enter into or to vary accounting rate agreements**. This condition does not, in itself, impose any burdens or costs on operators, but will allow the Director to deal with whipsawing cases *ex post*, if operators complain to him about such behaviour. As a consequence of removing conditions 61.1 and 61.2, it will be necessary to modify condition 61.3 slightly. The proposed modification is attached at **Annex C** to this Statement.

### **Accounting separation (Condition 62)**

#### ***The condition***

2.30 This condition provides that Licensees must maintain accounting records which deal separately with their ‘International Business’ carried on in the UK. The condition does not apply to BT or Concert (whose licences have their own accounting separation conditions). The condition is aimed at detecting unfair cross-subsidy, particularly where an operator leverages market power in an overseas market with the effect of distorting competition in the UK.

#### ***Comments on the condition***

2.31 Two of the operators who responded suggested that this condition should be removed entirely as, where BT or Concert are concerned, Oftel can rely on the general accounting separation requirements in their licences, and where other operators are concerned, Oftel can rely on general competition legislation to prevent unfair cross-subsidy. It was also suggested that the potential risks addressed by the condition are minimal. However, two of the operators who responded favoured qualifying the condition with a market influence or dominance test.

#### ***Oftel’s response to comments***

2.32 The Director notes that he has never requested information under this condition and has not seen evidence of operators leveraging market power in overseas markets to distort competition in the UK. He also agrees with one operator’s observation that linking the condition to Market Influence or dominance would have the undesirable consequence of ‘[putting] Oftel in the position of assessing the market power of an operator in a market other than the UK’. Furthermore, as has been noted, the licences of BT and Concert have their own accounting separation conditions.

2.33 In the light of the above, the Director does not consider that the potential benefits of this condition outweigh the compliance costs of retaining it. Subject to statutory consultation, **he has therefore decided to remove condition 62 from all PTO licences.**

### **Maintenance of effective competition (Condition 63)**

#### ***The condition***

2.34 This condition provides that the Director may make a determination where it appears to him that ‘as a result of any act or omission of the Licensee either by itself or with or through any Associated Person competition in the provision of any telecommunication service ... in the UK is being or is likely to be restricted, distorted or prevented’.

2.35 The condition overlaps substantially with the Chapter I and II prohibitions contained in the Competition Act 1998. The Chapter I prohibition applies to “agreements between undertakings ... which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK” (Competition Act, s2(1)). The Chapter II prohibition applies to conduct which amounts to an abuse of a dominant position within the UK and may affect trade within the UK (s18(1) and (3)).

2.36 However, the condition is slightly wider than the provisions of the Competition Act 1998. The principal differences are the following:

- Condition 63 may apply to *any* act or omission of the Licensee which restricts, distorts or prevents competition in the UK. The Competition Act, on the other hand, will only apply where there is an ‘agreement between undertakings’ or conduct which amounts to an abuse of a dominant position. Thus, in the absence of an anti-competitive agreement, the undertaking would have to be *dominant* in the relevant market for its behaviour to breach the provisions of the Competition Act.
- Condition 63 applies to acts or omissions as a result of which *competition in the UK* is being or is likely to be restricted, distorted or prevented. There is thus no requirement, for example, that the conduct take place in the UK: a mere *effect* on competition in the UK is all that is required. The Competition Act, on the other hand, will only apply to agreements which are *implemented* in the UK or to abuses of a dominant position where the dominant position is held in the UK.

#### ***Comments on the condition***

2.37 The responses received contained little discussion of this condition. Two operators argued that it should be removed, stating that the Competition Act was sufficient to prevent anti-competitive behaviour. One, however, thought it should be retained on the ground that the Competition Act is ‘unproven’, and SACOT considered that the provisions of the Competition were “[not] necessarily adequate to deal with the risk of anti-competitive agreements or conduct”.

### *Oftel's response to comments*

2.38 The Director has never used his powers under this condition, and the provisions of the Competition Act 1998 now give him jurisdiction to take action against most types of behaviour covered by this condition. Although condition 63 is slightly wider in its jurisdiction than the Competition Act, the Director is not convinced that there are genuine threats to competition in the UK which can only be dealt with using this condition. He does not therefore think it necessary to retain this condition.

2.39 Subject to statutory consultation, **the Director has therefore decided to remove condition 63 from all PTO licences.**

### **Consequential modification**

2.40 As a consequence of the modifications proposed above, it is also proposed to delete Condition 64.16 from all PTO licences. Condition 64.16 provides that:

*“Paragraph 64.2 does not apply to Condition 62 (Accounting separation for international business) or Condition 63 (Maintenance of Effective Competition)”*

2.41 As the Director is proposing to remove both Conditions 62 and 63 from all PTO licences, the Condition 64.16 will therefore become redundant.

## Chapter 3

### Conclusions

3.1 Having taken account of all the responses received as set out above, the Director has decided to make the following modifications to all PTO licences:

- (a) Conditions 61.1 and 61.2 shall be removed in their entirety. Condition 61.3 shall be retained, but subject to certain minor consequential modifications;
- (b) Condition 62 shall be removed in its entirety;
- (c) Condition 63 shall be removed in its entirety; and
- (d) Condition 64.16 shall be removed in its entirety.

3.2 These modifications are set out in **Annex C** to this Statement. They are subject to statutory consultation and the appropriate Notice will be published on 24 November 2000.

3.3 The Director believes that these modifications will promote competition in the international market by reducing unnecessary regulatory burdens on operators with an international business, and that the modifications will therefore benefit consumers.

3.4 The Director has decided to retain conditions 59 and 60. However, he recognises that the need for these conditions has diminished with the increasing liberalisation of overseas markets and undertakes to keep these conditions under review in the light of international developments.

## **Chapter 4**

### **Consultation on proposed licence modifications**

4.1 Under Section 12 of the Telecommunications Act 1984, the Director is seeking comments on the proposed modifications to all PTO licences set out in **Annex C** to this Statement.

4.2 The Director will publish the appropriate statutory Notices on 24 November 2000.

4.3 The Director, in the statutory Notices published on 24 November, seeks the views of interested parties on the proposed modifications to all PTO licences by 22 December 2000. There will then be a period of just over two weeks to 10 January 2001 during which comments on the representations made during this further phase of consultation are invited.

4.4 Comments on the proposed modifications should be made in writing and sent to:

Vince Affleck  
Network Competition Manager  
Compliance Directorate  
Of tel  
50 Ludgate Hill  
London, EC4M 7JJ

e-mail: [vincent.affleck@oftel.gov.uk](mailto:vincent.affleck@oftel.gov.uk)

4.5 Written comments will be made publicly available in Of tel's Research and Intelligence Unit except where respondents indicate that the response, or parts of it, is confidential. Respondents are therefore asked to separate out any confidential material into a confidential annex and clearly mark it as such. In the interests of transparency, respondents are requested to avoid confidentiality markings wherever possible. Appointments to view written comments in Of tel's Research and Intelligence Unit must be made in advance (tel: 020 7634 8761, fax: 020 7634 8946).

#### **Internet Access**

4.6 Of tel would like to set up a link between this consultative document on Of tel's web site and any responses placed on respondents' own Internet pages. Please contact Jo Hamilton by email at Of tel or on 020 7634 8755 to arrange this. Confidential responses should not be sent via the Internet.

#### **Alternative Formats**

4.7 Copies of this Statement are available on disk.

4.8 The Summary at the beginning of this Statement can be made available in large print, Braille, and tape formats.

4.9 Please contact the Ofcom Research and Intelligence Unit on 020 7634 8761, or by e-mail: [info@ofcom.gov.uk](mailto:info@ofcom.gov.uk) or call textphone 020 7634 8769 for more information.

## Annex A

### Part H of the PTO Licence

#### **PART H: REQUIREMENTS RELATING TO OPERATORS WITH AN INTERNATIONAL BUSINESS**

**Condition  
59**

##### PROPORTIONATE RETURN IN RESPECT OF THE PROVISION OF INTERNATIONAL SIMPLE VOICE RESALE SERVICES

**59.1** This Condition applies where the Licensee acquires or has acquired an International Simple Resale Bearer Circuit from another person holding a Licence and provides International Simple Voice Resale Services by means of it and, for the purposes of this Condition, the Licensee shall not be treated as acquiring or having acquired an International Simple Resale Bearer Circuit only as a consequence of having acquired a Private Leased Circuit between the Applicable Systems and a telecommunication system run by another person who has acquired an International Simple Resale Bearer Circuit.

**59.2** This Condition shall apply only:

- (a) if it appears to the Director to be requisite or expedient for this Condition to apply in the interests of maintaining or promoting effective competition in the conveyance of Messages to or from one or more countries and territories where for a calendar quarter, the percentage by volume of the Messages delivered to the United Kingdom from a country or territory, that were comprised in International Simple Voice Resale Services was greater than the percentage by volume of the Messages sent from the UK to that country or territory, that were comprised in International Simple Voice Resale Services; and
- (b) if the Director has:
  - (i) issued a notice informing the Licensee that this Condition shall apply in respect of such countries or territories and for such periods as he has specified in the notice from a date 28 days from the date of the notice; and
  - (ii) has not, by a further notice given before expiry of the first notice, varied or cancelled that specification.

**59.3** Any notice given under sub-paragraph 59.2(b)(i) or 59.2(b)(ii), shall appear in a list kept by the Director and made available by him for inspection by the general public.

**59.4** In respect of each country or territory specified in a notice given under sub-paragraph 59.2(b)(i) as varied by a notice (if any) given under sub-paragraph 59.2(b)(ii), the Licensee shall ensure that in each such period specified the ratio between:

- (a) the volume of Messages comprised in International Simple Voice Resale Services which are conveyed by means of the Applicable Systems and are delivered to the United Kingdom from that country or territory; and
- (b) the volume of Messages comprised in International Simple Voice Resale Services which are conveyed by means of the Applicable Systems and are sent from the United Kingdom to that country or territory,

shall not be greater than the reference ratio for that country or territory specified in the notice.

**PROPORTIONATE RETURN IN RESPECT OF INTERNATIONAL  
CONVEYANCE SERVICES**

**60.1** This Condition shall apply in respect of International Conveyance Services provided to any country and territory in the world outside the European Economic Area and other than as specified from time to time by the Director or the Secretary of State.

**60.2** Except insofar as the Director may otherwise consent in writing, the Licensee shall ensure (using the most up-to-date information available) that over each quarterly period for each Accounting Rate Service the First Ratio shall be no greater than the Second Ratio.

**60.3** Where it appears to the Director that in respect of any country or territory the obligation imposed by paragraph 60.2 is being breached, he may make a determination to that effect and the Licensee shall take such steps as the Director may direct for the purpose of remedying the situation. In particular, and without prejudice to the generality of the foregoing, any such direction may require the Licensee to cease to convey any Messages to that country or territory.

**60.4** In this Condition:

- (a) “First Ratio” means the volume of Messages comprised in each Accounting Rate Service which are conveyed by the Applicable Systems and are delivered to the United Kingdom divided by the volume of all Messages comprised in each Accounting Rate Service which are delivered to the United Kingdom; and
- (b) “Second Ratio” means the volume of all Messages comprised in each Accounting Rate Service which are conveyed by the Applicable Systems and are sent from the United Kingdom divided by the volume of all Messages comprised in each Accounting Rate Service which are sent from the United Kingdom.

**INFORMATION TO THE DIRECTOR ABOUT INTERNATIONAL  
ACCOUNTING RATES ETC**

**61.1** The Licensee shall not enter into or vary any agreement or arrangement (nor remain a party to any such agreement or arrangement, or agreement or arrangement so varied) with a person running a telecommunication system authorised in any country or territory in the world outside the European Economic Area and other than as specified from time to time by the Director or the Secretary of State for or with a view to the provision of International Conveyance Services being an agreement or arrangement establishing or relating to international accounting methods, rates and divisions unless it has first given the Director notice, before those rates are put into operation.

**61.2** As soon as practicably possible after making any correspondent arrangement with an overseas operator, the Licensee shall inform the Director and all other holders of a Licence authorising the provision of International Conveyance Services in the United Kingdom and who are operating, or who have announced an intention to operate on that particular route, of the terms of that arrangement, in particular and without prejudice to the generality of the foregoing, details of any changes to existing accounting rates or methods of settlement or the division of the accounting rates.

**61.3** Where, whether as a result of receiving notice under paragraph 61.1 or otherwise, the Director considers that any, or any variation of, such an agreement or arrangement would be or is liable to prejudice the interests of providers and users of International Conveyance Services in the United Kingdom, he may, after consulting the Licensee, make a direction to the Licensee not to enter into or vary the agreement or arrangement, as the case may be, and the Licensee shall comply with such direction.

**ACCOUNTING SEPARATION FOR INTERNATIONAL BUSINESS**

**62.1** This Condition shall not apply to the extent that Condition 78 applies to the Licensee. Without prejudice to any other provision in this Licence relating to the maintenance of accounting records, the Licensee shall maintain such accounting records dealing separately with its International Business carried on in the United Kingdom as will enable it to show and explain, in response to any request from the Director under paragraph 62.4, all the transactions to which paragraph 62.2 refers.

**62.2** This paragraph refers to all transactions between that International Business and:

- (a) any other business carried on by the Licensee whether in the United Kingdom or elsewhere; or
- (b) the business of any Associated Person whether in the United Kingdom or elsewhere.

**62.3** The Licensee shall update the accounting records referred to in paragraph 62.1 no less frequently than monthly and those records shall include in particular the costs (including capital costs), revenue and a reasonable assessment of assets employed in and liabilities attributable to that International Business and, separately, the amount of any material item of revenue, cost, asset or liability which has been either:

- (a) charged from or to any other business of the Licensee or Associated Person together with a description of the basis of the value on which the charge was made; or
- (b) determined by apportionment or attribution from an activity common to the business and any other business of the Licensee or any Associated Person and, if not otherwise disclosed, the basis of the apportionment or attribution.

**62.4** The Director may at any time request from the Licensee copies of any of the accounting records which the Licensee is obliged to maintain by this Condition, covering any period between:

- (a) the date on which the Licensee first carried on its International Business in the United Kingdom or, if later, the date of this Licence; and
- (b) the date on which such records were, or should have been, last updated in accordance with paragraph 62.3.

The Licensee shall provide any such records requested by the Director within 28 days of receiving such a request in writing.

**62.5** Accounting records submitted to the Director shall be prepared in the formats and in accordance with the accounting principles and rules which apply to the annual accounts of the Licensee and shall state the accounting policies used and where the Licensee is a body corporate incorporated outside the United Kingdom the preparation and adoption of those accounts shall comply with the requirements of sections 226 and 231 to 234A of the Companies Act 1985 as if that body corporate were incorporated in the United Kingdom.

**62.6** Where it appears to the Director that to do so would be beneficial to the promotion or maintenance of competition he may direct the Licensee to publish the accounting statements submitted to the Director in such manner as he may specify. In so directing the Licensee the Director shall have regard to the need for excluding, so far as that is practicable, any matter where publication of that matter might, in the opinion of the Director, seriously and prejudicially affect the interests of the Licensee or any Associated Person.

**MAINTENANCE OF EFFECTIVE COMPETITION**

**63.1** This Condition shall apply where the Licensee or any Associated Person is the operator of any telecommunication system or provides telecommunication services in a country or territory outside the United Kingdom.

**63.2** Where it appears to the Director that as a result of any act or omission of the Licensee either by itself or with or through any Associated Person competition in the provision of any telecommunication service or any particular description of telecommunication services in the United Kingdom is being or is likely to be restricted, distorted or prevented he may make a determination to that effect.

**63.3** Where the Director makes a determination under paragraph 63.2 the Licensee shall take such steps as the Director may direct for the purpose of remedying the situation. In particular (and without prejudice to the generality of the foregoing) any such direction may require compliance by the Licensee with any other Condition, as appropriate, including in particular any Condition providing for publication of charges, terms and conditions, or such direction may prohibit undue discrimination and undue preference, in relation to the provision of any telecommunication service within the United Kingdom notwithstanding that any condition precedent to the application of that Condition is not otherwise satisfied.

**63.4** Without prejudice to any other provision in this Licence relating to the provision of information, and notwithstanding the provisions of Condition 33.2 the Licensee shall:

- (a) keep accurate records and copies of all agreements with any Associated Person and deliver copies of the same to the Director promptly in response to any request of the Director in respect of any agreement or arrangement; and
- (b) keep accurate records of all services, money and things transferred or supplied by the Licensee to any Associated Person or by an Associated Person to the Licensee, such records to include full details of the type and quantity, and the prices, charges and methodology of charging such prices.

## **Annex B**

### **List of respondents**

Oftel received responses to the consultation from the following operators:

- Cable & Wireless;
- Concert;
- Global Crossing; and
- WorldCom.

Oftel also received comments from the Scottish Advisory Committee on Telecommunications (SACOT).

## Annex C

### Modifications to all PTO licences

#### Condition 61

Condition 61.1 should be modified as follows:

#### INFORMATION TO THE DIRECTOR ABOUT INTERNATIONAL ACCOUNTING RATES ETC

~~61.1~~ The Licensee shall not enter into or vary any agreement or arrangement (nor remain a party to any such agreement or arrangement, or agreement or arrangement so varied) with a person running a telecommunication system authorised in any country or territory in the world outside the European Economic Area and other than as specified from time to time by the Director or the Secretary of State for or with a view to the provision of International Conveyance Services being an agreement or arrangement establishing or relating to international accounting methods, rates and divisions unless it has first given the Director notice, before those rates are put into operation.

~~61.2~~ As soon as practicably possible after making any correspondent arrangement with an overseas operator, the Licensee shall inform the Director and all other holders of a Licence authorising the provision of International Conveyance Services in the United Kingdom and who are operating, or who have announced an intention to operate on that particular route, of the terms of that arrangement, in particular and without prejudice to the generality of the foregoing, details of any changes to existing accounting rates or methods of settlement or the division of the accounting rates.

~~61.31~~ Where, whether as a result of receiving notice under paragraph 61.1 or otherwise, the Director considers that any, or any variation of, ~~such an agreement or arrangement~~ an Accounting Rate Agreement would be or is liable to prejudice the interests of providers and users of International Conveyance Services in the United Kingdom, he may, after consulting the Licensee, make a direction to the Licensee not to enter into or vary the Accounting Rate Agreement ~~agreement or arrangement~~, as the case may be, and the Licensee shall comply with such direction.

61.2 In this Condition “Accounting Rate Agreement” means an agreement or arrangement establishing or relating to international accounting methods, rates and divisions with a person running a telecommunication system authorised in any country or territory outside the United Kingdom.

#### Condition 62

Condition 62 should be deleted in its entirety.

#### Condition 63

Condition 63 should be deleted in its entirety.

#### Condition 64.16

Condition 64.16 should be deleted in its entirety.

# Glossary

## Key Definitions

This glossary contains definitions of terms used in this Statement.

**Accounting Rate:** The per-minute charge agreed by the two parties at each end of an international route at which traffic will be charged. Under the accounting rate system, traffic is carried by the originating operator to a notional mid-point on the route and then handed over to the terminating operator. The charge made by the terminating operator is known as the settlement rate, and the sum of the settlement rates in each direction (together with any transit charges) is known as the accounting rate. Usually the two settlement rates are identical, and accounting rates are uniform across the time of day and type of call. A reconciliation is made between the operators at the end of each time period and a payment is made only on the balance of the net traffic flows.

**International Facilities Licence (IFL):** IFL licences were granted under the Telecommunications Act 1984 to authorise the connection of a UK telecommunication system to a telecommunication system outside the UK and the provision of telecommunication services over the system to countries outside the UK. Such authorisation is now contained in all PTO licences.

**International Simple Voice Resale (ISVR):** ISVR is an international service provided by an operator to customers using the international facilities owned by other operators. In the case of an outgoing call, the operator collects traffic from the public telecommunications network, transfers it to a line leased from a facilities operator, and then hands it over to a Public Telecommunications Operator in an overseas country who will deliver the call to its destination. It therefore involves breakout onto the public telecommunications network at both ends, but with the international leg of the call being carried on leased circuits. ISVR traffic bypasses the accounting rate system.

**Market Influence:** The ability to raise prices above the competitive level in that market for a non-transitory period without losing sales to such a degree as to make this unprofitable.

**Public Telecommunications Operator (PTO):** A PTO is a network operator providing services to the public designated by the Secretary of State for Trade and Industry under section 9 of the Telecommunications Act 1984 as having a Public Telecommunication System and who is subject to the obligations in section 8 of the Act.

**Settlement Rate:** Usually half the accounting rate, and the amount of money per traffic minute actually paid by one party if international traffic is not in balance (ie if traffic flow one direction is more than in the other).

**World Trade Organisation (WTO):** International body that deals with the trade between countries. The WTO provides the legal framework for international commerce.

**WTO Agreement on Basic Telecommunications Services:** The WTO Global Agreement on Trade in Basic Telecommunications Services (known as the Fourth Protocol to the General Agreement on Trade in Services) came into force in February 1998. The agreement provides a framework for the gradual liberalisation of market access and also establishes a framework of basic regulatory principles (such as measures to prevent anti-competitive behaviour and non-discriminatory and timely provision of interconnection and cost-oriented rates).