

13 December 2002

Frank Phillips
Of tel
50 Ludgate Hill
London
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Dear Frank,

Draft Guidelines for the Interconnection of Public Electronic Communication Networks

Centrica is pleased to submit comments to the above referenced consultation, which was published by Of tel on 13 September 2002.

We welcome the creation of an Industry Interconnection Guideline, which will provide important guidance on how key provisions relating to interconnection are likely to be interpreted and applied under the Access and Interconnection Directive (97/33/EC) “(AID)”. We suggest that early publication of the Guidelines will assist stakeholders in determining who will be entitled to interconnection rights and obligations under the new regulatory regime from July 2003 and how those rights are likely to be acquired and maintained.

Despite the lowest degree of involvement being envisaged on the part of the regulator under the interconnection provisions of the AID, we understand that stakeholders wishing to interconnect for the first time will still be required to make a formal application to Ofcom for interconnection status to be recognised. We suggest that it would be helpful to include details of any application process within the proposed Guidelines. For example, if the current Annex II Secretariat will be performing such a review going forward, then it would be useful for details of key contacts, application forms and the review timing process to be included as supplemental information.

It would also be useful for Of tel to advise industry on the interconnection arrangements envisaged to cover the transitional period between 25 July 2003 when the AID is fully implemented and the later statutory creation of Ofcom. In particular, will stakeholders currently on the Annex II list have to re-apply for interconnection status under the provisions contained in the AID, or will Annex II status automatically transfer to Public Electronic Communication Network (PECN) status under the new regime. It would also

be useful to understand how first time interconnection requests will be dealt with during the transitional period.

We provide comments on the specific consultation questions posed by Oftel as follows:

Question 1 – Do stakeholders agree that the main tests of whether a PECN is provided are whether an ECN is provided and whether publicly available services are provided over that network?

Centrica agrees with the two-stage test proposed by Oftel for determining the presence of a PECN and the associated rights and obligations to interconnect.

Question 2 – Do stakeholders agree with the Guidelines’ understanding of what constitutes an ECN and in particular, with what is to be understood by providing a transmission system?

Centrica agrees with the understanding contained within the proposed Guidelines as to what will constitute an ECN. In particular we welcome the Guidelines recognition that exclusive rights are not required over infrastructure and that prior provision of essential technical elements of an ECN do not need to be in place before an application for interconnection can be submitted for approval.

In the interests of legal and regulatory certainty we believe that it is unfortunate that the key element to be present in an ECN, namely a transmission system, is not defined in the AID or the Interpretation Section of the draft Communications Bill. However, we support the broad and purposive interpretation proposed in the Guidelines as to how a transmission system will be identified for the purpose of an ECN. We believe it is important to avoid technical complexity under the new interconnection application process. A streamlined technical review, which captures the spirit of the AID, will avoid unnecessary and vexed questions, which could otherwise introduce delay and possible rejection of PECN applications, a result not intended under the AID.

Question 3 – Do stakeholders agree with the Guidelines’ understanding of what constitutes an electronic communications service?

We agree with the Guidelines’ understanding of what constitutes an electronic communications service.

Question 4 – Do stakeholders agree with the distinction the Guidelines draw between conveyance and the provision of contents?

We agree with the distinction drawn between conveyance and content and support the proposal that an ECS must have as its principal feature the conveyance of signals. The provision of what is actually provided in the signal demarks this from a content service.

Question 5 – Do stakeholders agree with the Guidelines understanding of what constitutes a publicly available service?

Centrica understands that the AID and the draft Communications Bill do not define what is meant by a service that is “publicly available” and hence this will be a question for NRAs to determine.

Oftel states in the draft Guidelines:

“Oftel’s understanding has been that a publicly available service is one that is theoretically available to anyone who is both willing to pay for it and to abide by the applicable terms and conditions. There is no imposed upper limit on the set of potential customers.”

Oftel states further that:

“...it is conceivable that a service available to members of the public may only have one customer because others have not chosen to take the service up. However, other customers would not be prevented from taking up the service.”

We suggest that services provided via cable networks or provided via fixed line broadband access would fail the test of being “publicly available” if interpreted literally and in a strict geographical sense. However, we recognise that there a number of providers in the UK limited to a regional customer base and such services are considered to be available to the public. We suggest that the definition of a PECN is helpful in this area as it states:

“...means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public.”

We suggest the important distinction here is the wording “members of the public” as opposed to “the public”. We believe that “members of the public” should be interpreted to mean that services should be available to a certain proportion of the public, as opposed to the public in its entirety.

We believe it would be useful for the Guidelines to include a set of minimum criteria below which a service could not be deemed to be publicly available. This could detail how large a geographical area needs to be in order to qualify, how many potential customers the service should be available to and provide further guidance on the types of prior relationship arrangements that might be considered to qualify. For example, Oftel advise that a landlord providing services to customers on a single set of served premises

would not qualify because admittance to the set of potential customers is not generally open to anyone. However, how would this be viewed if the landlord had more than one set of linked premises in a certain geographic area or if linked premises were rolled out on a national basis? The question we raise here is where would the break point be for services to be deemed publicly available.

We do understand that the issue of public availability will essentially be a question of degree and ultimately determined on a case-by-case basis. However, we do believe that further details to assist stakeholders further in determining public availability should be included in the Guidelines.

Question 6 – Do stakeholders agree that the maintenance of a list of PECNs is desirable?

Centrica recognises that under the new regulatory framework providers will not be required to seek prior authorisation in order to offer services to the public and the creation of a PECN list tends to contradict the spirit of the new regime. However, we suggest the creation and maintenance of a list of PECNs is important as it offers industry transparency as to who qualifies for interconnection rights and obligations. It would also offer regulatory certainty of the interconnect arrangements that are being agreed and implemented in the UK and could prevent Ofcom from having to become subsequently involved in order to resolve disputes as to PECN status.

We believe that providers of PECNs will have the commercial motivation to seek inclusion on a list of PECNs that is publicly available in order to prevent unnecessary delays during interconnection discussions and to prevent the provision of commercially confidential information to potential competitors in order to establish this status.

Question 7 – Do stakeholders agree with the suggestion that if a list were considered to be desirable, it should be developed on a voluntary basis?

We agree with the suggestion that a list should be developed on a voluntary basis. We believe that providers of PECNs will be commercially motivated to seek inclusion on the list in order to avoid the types of commercial problem discussed above.

Question 8 – By whom should any list be maintained? Are stakeholders content with the idea of a list maintained by Ofcom?

We are content that Ofcom should maintain the list of PECNs. An additional element could be added to the PECN application process whereby recognised providers of PECNs have the option of including their details on the PECN list which is available for public inspection, either via an Ofcom website or by a private viewing appointment.

Overall, Centrica supports the interpretation given by Ofstel to the key interconnection provisions contained within the draft Guidelines. We believe that the Guideline document has been drafted to capture the spirit of the AID to enhance the existing arrangements for sustainable competition and to broaden the interoperability of services.

If you wish to discuss any aspect of the comments we have provided in this response then please do not hesitate to contact me on the number supplied below.

Yours sincerely,

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