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## **Business Connectivity Market Review 2016**

Revocation of certain measures imposed in the  
business connectivity markets

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**STATEMENT:**

Publication Date: 23 November 2017

## About this document

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This document contains a notification revoking certain measures imposed in the business connectivity markets.

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# 1. Background

- 1.1 In April 2016, Ofcom concluded its review of the business connectivity markets.
- 1.2 BT appealed certain of Ofcom's decisions concerning product market definition, geographic market definition and the delineation of the competitive core.
- 1.3 The Competition Appeal Tribunal has found Ofcom to have erred in relation to various aspects of the decisions concerning market definition under appeal and required Ofcom to look again at some specific matters concerning market definition.<sup>1</sup> In the meantime it has required Ofcom to revoke the market identifications, market power determinations, SMP services conditions and directions (where applicable) in relation to:
  - a) the wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area;
  - b) wholesale market for contemporary interface symmetric broadband origination in the Central London Area; and
  - c) the wholesale market for contemporary interface symmetric broadband origination in the London Periphery.<sup>2</sup>
- 1.4 The attached notification revokes the relevant measures accordingly.

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<sup>1</sup> The Tribunal's judgment is available at <http://www.catribunal.org.uk/167-10038/Judgment-Market-Definition.html>

<sup>2</sup> The Tribunal's order is available at [http://www.catribunal.org.uk/files/1260\\_BT\\_Order\\_201117.pdf](http://www.catribunal.org.uk/files/1260_BT_Order_201117.pdf)

# A1. Revocation notification concerning the business connectivity markets

## Notification under section 195(6) of the Communications Act 2003 revoking certain market identifications, market power determinations and SMP services conditions and directions

### Background

1. On 28 April 2016, the Office of Communications (“**Ofcom**”) concluded, in a statement entitled ‘*Business Connectivity Market Review – Review of competition in the provision of leased lines*’ (“**2016 BCMR Statement**”), its review of the business connectivity markets.
2. At Annex 35 to the 2016 BCMR Statement, Ofcom published a notification (“**2016 BCMR Notification**”) identifying markets and making market power determinations in relation to, among others, the following markets:
  - a. wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area;
  - b. wholesale market for contemporary interface symmetric broadband origination in the Central London Area; and
  - c. wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
3. Ofcom also decided to set SMP services conditions in relation to the markets referred to in paragraphs 2(a) and 2(c) above, to be applied to British Telecommunications plc (“**BT**”) as the person with significant market power in these markets.
4. On 28 June 2016, BT brought an appeal against the 2016 BCMR Statement to the Competition Appeal Tribunal (“**Tribunal**”) under section 193 of the Communications Act 2003 (“**Act**”). BT appealed, among other things, Ofcom’s decisions concerning product market definition, geographic market definition and the delineation of the competitive core in relation to the markets referred to in paragraph 2 above.
5. On 26 July 2017, the Tribunal gave its ruling in relation to Ofcom’s decisions concerning market definition which had been appealed by BT. The Tribunal identified certain errors in Ofcom’s market definition analysis in relation to product market definition, geographic market definition and the delineation of the competitive core.
6. Pursuant to section 195(4) of the Act, the Tribunal has remitted the decisions under appeal to Ofcom with the directions set out in the Tribunal’s order.

## Revocation of market identifications, market power determinations and SMP services conditions and directions

7. Under section 195(6) of the Act it is Ofcom's duty to comply with every direction given by the Tribunal under section 195(4) of the Act.
8. Ofcom is therefore revoking the market identifications and market power determinations made in respect of the markets referred to in paragraphs 2(a) to 2(c) as set out in rows (b) to (d) of Table A contained in the BCMR 2016 Notification.
9. As a result of the revocation referred to in paragraph 8 above, the following SMP services conditions and directions (insofar as they applied to the markets set out in paragraphs 2(a) and 2(c) above) have ceased to apply to BT from the date of publication of this notification:
  - a. the SMP services conditions applied to BT in the markets set out in paragraphs 2(a) and 2(c) above, as set out in paragraphs 17, 18 and 21 and Schedule 1 of the BCMR 2016 Notification;
  - b. the Quality of Service Directions set out in paragraph 10 and Schedules 1, 2 and 3 of the notification of the Directions under section 49 of the Act and SMP services conditions 1 and 7 in section 2 of the 2016 BCMR Notification imposing the following minimum quality of service requirements:
    - i. in the provision of the Relevant Ethernet Services: compliance with minimum performance standards set out in Schedule 1; and provision and publication of Key Performance Indicators ("KPIs") set out in Schedule 2;
    - ii. in the provision of the Dark Fibre Access: provision of KPIs set out in Schedule 3;
  - c. the Service Level Guarantee Direction set out in paragraph 11 and Schedule 4 of the notification of the Directions under section 49 of the Communications Act 2003 and SMP services conditions 1 and 7 in section 2 of the 2016 BCMR Notification;
  - d. the Direction under section 49 of the Act and SMP services condition 11.4 specifying the Regulatory Accounting Principles;
  - e. the Direction under section 49 of the Act and SMP services condition 11.4 specifying the requirements in relation to consistency with regulatory decisions and regulatory asset value;
  - f. the Direction under section 49 of the Act and SMP services condition 11.4 specifying the transparency requirements for the purposes of preparing and maintaining the accounting records, the Accounting Methodology Documents and the Regulatory Financial Statements;

- g. the Direction under section 49 of the Act and SMP services condition 11.4 setting requirements in relation to audit, form of the FPIA opinion and form of the PPIA opinion for Regulatory Financial Statements;
  - h. the Direction under section 49 of the Act and SMP services condition 11.4 setting the requirements in relation to reconciliation report and accompanying audit opinion;
  - i. the Direction under section 49 of the Act and SMP services condition 11.4 specifying the requirements in relation to additional reporting of information relating to BT's adjusted financial performance;
  - j. the Direction under section 49 of the Act and SMP services condition 11.4 setting the requirements in relation to preparation, delivery, publication, form and content of the Regulatory Financial Statements; and
  - k. the Direction under section 49 of the Act and SMP services condition 11.4 specifying network components.
10. The revocation shall take effect on 27 November 2017.

## Unaffected measures imposed on BT

11. The following Ofcom's decisions in respect of BT set out in the 2016 BCMR Statement and 2016 BCMR Notification are unaffected by the Tribunal's judgment and therefore continue to have effect as provided for in the 2016 BCMR Notification:
- a. identification of the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s ("**TISBO market**"), making a market power determination in respect of BT and imposing SMP services conditions on BT in the TISBO market;<sup>3</sup>
  - b. the Direction given to BT under section 49 of the Act and SMP services condition 1 in the TISBO market set out in section 2 of the 2016 BCMR Notification; and

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<sup>3</sup> As set out in the following parts of the 2016 BCMR Notification: (i) row (a) of Table A in paragraph 14, (ii) paragraph 17 insofar it relates to row (a) of Table A; (iii) SMP services conditions 1, 3, 5 to 9 (inclusive), 10E and 11 set out in Schedule 1 insofar they relate to the TISBO market; and (iv) SMP services condition 10D set out in Schedule 1.

- c. the Directions given to BT in relation to cost accounting and accounting separation obligations as referred to in paragraphs 9(c) to 9(j) above insofar as these Directions apply to BT in the TISBO market.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large initial 'D'.

David Clarkson

**Competition Policy Director, Ofcom**

***A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002***

23 November 2017