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Narrowband Market Review: Further Consultation

Proposals on price notification remedies in the WCT
markets and regulation of BT's interconnect circuits

Consultation

Publication date:

6 July 2017

Closing Date for Responses:

7 August 2017

About this document

This document sets out one revised proposal and one clarification in relation to our current Narrowband Market Review.

On 1 December 2016, we published a consultation on our Narrowband Market Review proposals for the future regulation of five wholesale markets that underpin the delivery of fixed voice telephone services to consumers. Those wholesale markets include fixed wholesale call termination (WCT), an arrangement where one telecoms provider charges another telecoms provider for terminating calls on their network. We also consulted on proposals for the regulation of BT's interconnection circuits, the arrangements where telecoms providers physically connect their network to BT's network so that they can exchange voice traffic.

We are now consulting on revised price notification requirements for all telecoms providers that offer WCT and, in addition, clarifying how our proposals for the regulation of BT's interconnection circuits may apply to interconnection using next generation voice networks (which rely on internet protocol (IP) technology).

We will take responses to this further consultation into account before reaching our final conclusions and publishing our statement on the review in late 2017.

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Section 1

Introduction

- 1.1 On 1 December 2016, we published a consultation on the proposed markets, market power determinations and remedies for the wholesale call termination (WCT), wholesale call origination (WCO) and wholesale narrowband access markets (the 2016 NMR Consultation).¹
- 1.2 The purpose of this consultation is:
 - to seek stakeholder views on proposals to impose a WCT price notification remedy and to withdraw our proposals for a WCT price transparency remedy; and
 - to clarify, in response to points raised in responses to the 2016 NMR Consultation, how our proposals for regulation of BT's interconnect circuits may apply to interconnection using next generation voice networks (which rely on internet protocol (IP) technology) (IP interconnection).
- 1.3 We do not repeat, in this document, our description or reasoning relating to the full set of 2016 NMR Consultation proposals. Instead, we set out specific revisions on which we are seeking further responses. The relevant proposals discussed in this consultation relate to:
 - **Price notification in the WCT markets:** In the 16 NMR Consultation, we proposed a price transparency obligation which would require all telecoms providers with SMP in the provision of WCT to notify changes to charges, and to give notice on or before the day the changes take effect. We are now withdrawing this proposal, and instead proposing to set a price notification condition which will require all WCT providers with SMP to notify Ofcom annually of their fixed termination rates (FTRs) over the preceding charge control year. This is consistent with the remedy we have proposed in our recent 2017 Mobile Call Termination (MCT) Consultation.²
 - **Remedies on BT for the provision of interconnection:** in the 2016 NMR Consultation, we proposed a number of remedies on BT for the provision of interconnect circuits, including a charge control on BT's TDM interconnect circuits. In the light of stakeholder responses to the Consultation, we are clarifying how our proposals would apply to the provision of IP interconnection.
- 1.4 We continue to consider all stakeholder responses to the 2016 NMR Consultation and will address all issues raised by stakeholders in our statement.

¹ Ofcom, 2016. *Narrowband Market Review, Consultation on the proposed markets, market power determinations and remedies for wholesale call termination, wholesale call origination and wholesale narrowband access markets* (2016 NMR Consultation). Available at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0016/95011/Narrowband-Market-Review.pdf.

² Ofcom, 2017. *Mobile call termination market review 2018-2021* (2017 MCT Consultation). Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0011/103340/mobile-call-termination-consultation.pdf.

Consultation and next steps

- 1.5 We invite comments from stakeholders on the proposals in this document. The consultation runs for one month and the deadline for responses is 7 August 2017. Annex 1 provides further details of how to respond.
- 1.6 We aim to publish our final statement by the end of 2017.

Section 2

Price notification remedies in the WCT markets

Introduction

- 2.1 In the 2016 NMR Consultation, we proposed to find that all 315 telecoms providers that we had identified as terminating calls on UK geographic numbers have SMP in wholesale call termination (WCT) in respect of those numbers.
- 2.2 To address our competition concerns, we proposed remedies on all telecoms providers with SMP in WCT. These remedies included a price transparency obligation requiring all providers with SMP in the provision of WCT to notify changes to charges on or before the day the changes take effect.³
- 2.3 We are now withdrawing this proposal and instead, proposing to set a price notification condition which will require all telecoms providers with SMP in WCT to notify Ofcom annually of the FTRs charged in the previous charge control year. Providers would be required to submit this information to us within a month of the charge control period finishing (i.e. by 30 October each year, if we implement the current proposal for the charge control to run to 30 September). This is consistent with what we have proposed for MCT in the 2017 MCT Consultation.⁴
- 2.4 This section is structured as follows:
 - we set out the background to our proposals, including the current WCT requirement to notify charges, our position in the 2016 NMR Consultation, and stakeholders' responses to our proposals; and
 - we explain our revised proposals in relation to WCT price notification, including our consideration of stakeholder responses.

Background

Current regulation: WCT price notification

- 2.5 Currently, all telecoms providers with SMP in the provision of WCT (including BT and KCOM) are subject to a requirement to notify changes to charges. Terminating providers are obliged to give notice before making changes to their charges for the provision of existing or new network access to WCT.⁵
- 2.6 Under this obligation, BT is required to give notice 56 days before any change takes place. All other telecoms providers are required to give notice on or before the day the changes take effect.

³ 2016 NMR Consultation, paragraphs 12.52-12.68 and Annex 6, Condition 8 (BT) Condition 6 (KCOM) and Condition 3 (other specified CPs).

⁴ 2017 MCT Consultation, paragraph 4.60 and Annex 7, Condition M2.

⁵ Ofcom, 2013. *Review of the fixed narrowband market services*, Annex 1, Condition 5 (BT) and Condition 2 (other specified CPs). Available at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/50720/final_statement.pdf.

2016 NMR Consultation proposals: WCT price transparency

- 2.7 In the 2016 NMR Consultation, we proposed that we would continue to require all telecoms providers with SMP in WCT to notify changes to charges in advance, but that BT would no longer have to give 56 days' notice. Instead, we proposed that BT would be required to publish any changes to its charges on or before the day the charges take effect. This would bring BT's notice period in line with that of other providers with SMP in WCT, which we proposed would continue to be required to publish any changes to charges on or before the day such charges come into force.
- 2.8 We did not consider that 56 days' notice for BT remained necessary given our intention to publish the maximum permitted FTR under any charge control imposed. This would ensure that all providers purchasing WCT know the maximum they would pay at any time of day for any given control period.
- 2.9 In the light of BT's removal of time of day pricing for unregulated wholesale services and our proposal in the 2016 NMR Consultation that a single maximum FTR is appropriate,⁶ we further proposed to remove the current requirement that BT publish a network tariff gradient. This proposal is unaffected by the changes proposed in this document.

Stakeholders' responses to our WCT price transparency proposals

- 2.10 In response to our 2016 NMR Consultation, [X] commented that the proposed obligation was unnecessary as telecoms providers would be unlikely to charge less than the proposed charge control cap.
- 2.11 Three commented that all telecoms providers should be required to give 56 days' notice to changes in charges. Three was concerned about non-compliance with the proposed charge control cap, and considered that, without a notice period, providers would be unable to detect non-compliance in advance and take mitigating action.⁷
- 2.12 Three was also concerned that BT might reduce prices below the proposed charge control cap without notice, putting other telecoms providers at a disadvantage compared to BT's downstream divisions in reducing retail prices. [X] commented that the proposed transparency obligation on BT could help us to monitor BT's compliance with the no undue discrimination obligation which we proposed on BT in the 2016 NMR Consultation.⁸

Our proposals

- 2.13 As explained above, in the 2016 NMR Consultation, we proposed to require all telecoms providers with SMP in the provision of WCT (including BT) to publish changes to charges on or before the day that the changes take effect. We are now withdrawing this proposal as we consider it is no longer necessary, given that there is likely to be a high level of transparency of FTRs.
- 2.14 If we implement the proposed charge control on all telecoms providers with SMP in WCT, we will publish the maximum permitted FTR under the charge control on the Ofcom website annually, two months in advance of the change in FTR cap. This will ensure that purchasers of WCT can easily find out the maximum FTR that they can

⁶ 2016 NMR Consultation, paragraphs 15.21-15.32.

⁷ Three, 2016 NMR Consultation response, paragraphs 5-7.

⁸ 2016 NMR Consultation, paragraphs 7.100-7.117.

be charged well in advance. Since WCT providers have SMP, we anticipate that they have the incentive and ability to price up to the cap, so in most cases we expect that the FTR published by Ofcom will be the rate that WCT providers charge for WCT. In the event that WCT providers chose to price below the FTR cap, we anticipate that much as noted in [X]'s response to the 2016 NMR Consultation, it is likely that interconnecting providers would have a contract with the WCT provider governing the appropriate notification period. Even if they didn't, we consider that an unexpected reduction in rates below the cap is likely to be less harmful to purchasers of WCT than an unexpected increase in rates – noting that in any case a single maximum rate cap for WCT at any time of day provides certainty on the maximum exposure of any interconnecting provider.

- 2.15 Since there is currently a price transparency obligation in place, information published pursuant to this requirement may be used by Ofcom as part of monitoring WCT providers' compliance with the WCT charge control. However, given that we now propose not to maintain a form of price transparency obligation over the next market review period, we propose to put in place a price notification requirement to ensure that Ofcom has available to it the information that it needs to monitor compliance. Specifically, we now propose to introduce a condition which will require all telecoms providers with SMP in the provision of WCT to notify Ofcom annually of the FTRs they have charged, by submitting to us this information within a month of the charge control period finishing (i.e. by 30 October each year, if we adopt our current proposal which is that the charge control year runs to 30 September). We consider that the proposed obligation will help facilitate the monitoring of compliance with the WCT charge control, as it would require providers with SMP to notify Ofcom annually of the FTRs charged in the previous charge control year. If they fail to provide this information, we will be able to take enforcement action.
- 2.16 This will also make our proposals in relation to price notification consistent across fixed and mobile termination markets. While there are some differences between fixed and mobile termination markets (such as the number of telecoms providers with SMP⁹ and the value of the markets) we have not identified any reason why this would mean that different approaches to price notification would be appropriate.
- 2.17 In response to the 2016 NMR Consultation, Three was concerned that telecoms providers would be unable to take early action against non-compliance with the proposed charge control cap. All providers with SMP in these markets will be required to comply with the charge control. Where there is a failure to comply, Ofcom has the power to take enforcement action, including financial penalties and requiring repayments to those who have been overcharged, which acts as a deterrent to non-compliance. Where there are instances of alleged non-compliance, providers should inform Ofcom so that we can investigate and take appropriate enforcement action. Although a notification period may have been helpful for providers who wish to take mitigating action, we do not think that it is necessary to address the concerns we have identified in WCT markets, in particular given the other SMP remedies we have proposed.
- 2.18 Three and [X] suggested that BT might unfairly discriminate against competing retail telecoms providers in relation to its WCT prices. However, if BT chooses to reduce its charges below the cap, this is unlikely to disadvantage competitors in the retail market because: first, BT's FTR is capped at LRIC, so BT's competitors should in

⁹ We consulted on the basis of 315 telecoms providers (including BT and KCOM) providing fixed call termination – see the 2016 NMR Consultation, Schedule 1. In contrast, we identified 80 mobile providers that provided mobile call termination – see the 2017 MCT Consultation, Annex 13.

principle face the same incremental costs of terminating a call as BT would (if it operated an NGN); and second, BT like any vertically integrated provider will always face the incremental network costs of terminating calls, regardless of whether its downstream division faces a transfer charge at or below the regulated FTR. If BT were to seek to price calls below incremental cost in a downstream market – notionally supported by a low FTR charged to itself – we would need to consider whether this amounted to a breach of BT's SMP obligations in the WCT market, or another related market (for example WCO). Potentially exclusionary pricing of calls can also be investigated using our competition law powers – for example, if the conduct amounted to an abuse of dominance by imposing a margin squeeze on a downstream market reliant on WCT (or another service where BT might be found dominant).

- 2.19 We are proposing that this new notification requirement forms part of the charge control conditions that we proposed in the 2016 NMR Consultation should apply to each of BT, KCOM and those other telecoms providers with SMP in WCT. We explained in that consultation why we considered that those charge control conditions satisfied the legal tests under the Act and we consider that such conditions, with the addition of the requirement we propose in this consultation, will continue to meet those legal tests for the reasons set out in the 2016 NMR Consultation.¹⁰

Consultation question

Question 2.1: Do you agree with our proposed obligation on all telecoms providers with SMP in the WCT markets to notify Ofcom annually of the FTRs they have charged? Please provide reasons and evidence in support of your views.

¹⁰ 2016 NMR Consultation, paragraphs 13.79-13.87.

Section 3

Remedies on BT: delivery of traffic to BT's terminating and originating switches using IP interconnection

Introduction

- 3.1 In the 2016 NMR Consultation we set out our proposals for regulating BT's provision of interconnection.¹¹ In the light of stakeholder responses, we are clarifying how our proposals may apply to BT's provision of IP interconnection where it is used to deliver traffic to BT's TDM Digital Local Exchanges (DLEs).
- 3.2 This section is structured as follows:
 - we set out the background to our proposals, our position in the 2016 NMR Consultation and stakeholders' responses to our proposals; and
 - we explain our clarifications in relation to the delivery of traffic to BT's DLEs using IP interconnection.

Background

- 3.3 We consider that regulation of BT's interconnection arrangements is needed in order to address our competition concerns arising out of its SMP in the WCO and WCT markets. Given the topology of BT's legacy TDM network, other telecoms providers are required to interconnect with BT at over 600 DLEs in order to exchange voice traffic. With this many interconnections, it is essential that the arrangements are fair and reasonable. Therefore, absent regulation of BT's interconnection arrangements, the remedies imposed on it as a result of its SMP in the WCO and WCT markets are unlikely to be effective.¹²

2016 NMR Consultation proposals

- 3.4 In our 2016 NMR Consultation we proposed to impose a requirement on BT to provide interconnection in response to a reasonable request. This interconnection requirement was supplemented by a number of other remedies (see Table 3.1 below).

¹¹ 2016 NMR Consultation, Section 17.

¹² For similar reasons, we consider it is appropriate to require KCOM to provide interconnection within the Hull Area.

Table 3.1: Summary of proposed remedies on BT

Proposed remedies
Charge control on TDM circuits ¹³
Provide network access on reasonable request
Requirement not to unduly discriminate
Publish a Reference Offer
Notify changes to charges
Accounting separation
Cost accounting
Transparency as to quality of service

- 3.5 In the 2016 NMR Consultation we set out our proposed interconnection requirement to provide access on reasonable request and on fair and reasonable, terms, conditions and charges.¹⁴ We explained that we consider that TDM remains an efficient technology choice for BT and, therefore, we considered that BT should provide access to the services we proposed to regulate – WCO and WCT – at its DLEs. Consequently, we proposed that the interconnection requirement should also apply in respect of BT's provision of interconnection at its DLEs. Although we explained that this would currently mean that BT is required to provide interconnect circuits based on TDM technology at the DLE, we did not explicitly limit interconnection at the DLE to only these services; whether or not a form of interconnection falls within the scope of our proposed interconnection requirement would depend on what forms of interconnection are required to make the WCO and WCT remedies effective and the reasonableness of any request in this context.

Stakeholder responses

- 3.6 In response to our proposals, stakeholders including Magrathea, Sky, TalkTalk, Verizon and Vodafone raised concerns relating to BT's provision of IP interconnection to deliver traffic to the DLE. Concerns raised focused on: the terms, conditions and charges for BT's IP Exchange product; the need for certainty; and the potential impact on the timeline for migration from TDM to IP.
- 3.7 We are still considering responses to the 2016 NMR Consultation and have not finalised our position. However, in the light of the concerns expressed by stakeholders, we are clarifying how our proposed regulation may apply in the event of transition to IP occurring during the period of this review.

¹³ We proposed to a cap on the interconnect services basket (ISB), including in-span interconnection (ISI), interconnection extension circuits (IEC) and Customer-Sited Interconnect (CIS) circuits, plus intra-building circuits (IBC). See NMR 2016 Consultation, p.336.

¹⁴ 2016 NMR Consultation, paragraphs 17.21-725.

Clarification of remedies during the transition to IP

- 3.8 As explained above, the focus of our interconnection regulation is to allow access to BT's DLEs in order to provide WCO and WCT services. This is because we consider that it remains an efficient choice for BT to provide services using its TDM network and customers connect to the TDM network at the DLEs. Consequently, given that telecoms providers need access to the DLEs to access BT's WCO and WCT services, we proposed in the 2016 NMR Consultation to continue to impose specific regulation on BT's provision of TDM interconnect circuits at the DLE level.
- 3.9 We consider that this access requirement is currently sufficient to make the WCO and WCT remedies effective. However, it is possible that the effectiveness of this intervention may diminish during the market review period. As discussed in the 2016 NMR Consultation, as telecoms providers increasingly migrate to IP, volumes of traffic on TDM interconnect are falling while IP traffic is increasing, and we expect to see further migration during this review period.
- 3.10 For as long as telecoms providers have the option of buying TDM interconnect circuits from BT, our interconnection requirement to provide access supported by the proposed charge control on TDM interconnect circuits to BT's DLEs will provide a degree of constraint on BT's commercial agreements to use IP to deliver traffic to those DLEs (for example, using BT's commercial IP Exchange product). At present, providers which have the option of both TDM and IP interconnection with BT are able to negotiate commercial agreements for the use of IP.
- 3.11 However, as telecoms providers further migrate to IP they may remove their TDM interconnects at BT's DLEs and, ultimately, retire their TDM investments. Following a provider's removal of its TDM equipment and circuits, it would be unlikely to be economic (and perhaps not possible) for that provider to reinstate it. The removal of other telecoms providers' equipment and circuits could reduce the effectiveness of the constraint from TDM DLE interconnect circuits on the pricing of IP interconnection to deliver traffic to BT's DLEs.
- 3.12 If this occurred, we would be concerned if BT was able to price excessively for delivering traffic to/from its DLEs via an IP interconnection agreement. Such conduct is likely to undermine the remedies imposed on it as a result of its SMP in the WCO and WCT markets.
- 3.13 Therefore, in the event that migration to IP during this review period results in telecoms providers no longer being in a position to use TDM circuits to deliver traffic to BT's DLEs (either through their own network deployment or a transit provider) to access WCO and WCT, we would expect to interpret our proposed interconnection requirement to provide access as applying to IP interconnection at BT's DLE. Consequently, our interconnection requirement would apply to the delivery of traffic to BT's DLEs via IP interconnection, with the effect that it would need to be provided on fair and reasonable terms, conditions and charges.
- 3.14 Should the concerns set out above arise, we would look to consider whether the charges for the delivery of traffic to BT's DLEs via IP interconnection are fair and reasonable. We would expect that the commercial agreements made when telecoms providers had the option of buying TDM interconnection would provide a suitable starting point for considering this.

Consultation question

Question 3.1: Do you agree with the remedy we propose in relation to interconnection, so far as they may relate to IP interconnection? Please provide reasons and evidence in support of your views.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, **by 5pm on 7 August 2017**.
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/further-consultation-narrowband-market-review>. We also provide a cover sheet (<http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to nmr2017@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.

James King
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

- A1.5 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact James King on 020 7981 3291, or email nmr2017@ofcom.org.uk.
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact James King on 020 7981 3291, or email james.king@ofcom.org.uk.

Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in

the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.14 Following this consultation period, Ofcom aims to publish a statement by the end of 2017.
- A1.15 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601
Email steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet from: <https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>.
- A3.5 Please put any parts of your response you consider are confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Draft Legal Instrument

Proposals for SMP services conditions

NOTIFICATION OF PROPOSALS UNDER SECTION 48A OF THE COMMUNICATIONS ACT 2003

Proposals for setting SMP services conditions in relation to BT, KCOM and specified communications providers providing termination services under section 45 of the Communications Act 2003

Background

1. On 1 December 2016, Ofcom published a consultation entitled *Narrowband Market Review – Consultation on the proposed markets, market power determinations and remedies for wholesale call termination, wholesale call origination and wholesale narrowband access markets* (“**2016 NMR Consultation**”). Annex 6 to the 2016 NMR Consultation set out the notification under sections 48A and 80A of the Act in which Ofcom proposed to:
 - identify certain markets;
 - make market power determinations; and
 - set SMP conditions.(the “**2016 NMR Notification**”)
2. Among these proposals, Ofcom proposed to identify 315 separate markets in the United Kingdom for the purpose of considering market power determinations.
3. These are the markets for wholesale call termination services which are provided by BT, KCOM and each of the 313 communications providers listed in the Annex to Schedule 3 to this Notification (CP) to another communications provider, for the termination of voice calls to United Kingdom geographic numbers in the area served by that CP.
4. Ofcom proposed to determine that BT, KCOM and each of the persons listed in the Annex to Schedule 3 to the 2016 NMR Notification have significant market power (SMP) in relation to the relevant market in which that person operates.
5. As a result of the proposed market power determinations, Ofcom proposed to set a number of SMP conditions on BT, KCOM and each of the persons specified in the Annex to Schedule 3 to the 2016 NMR Notification and proposed that those SMP conditions shall apply, in the case of each person on whom they are set, in respect of the relevant market on which that person operates.

Proposals in this Notification

BT

6. Ofcom is proposing to amend SMP condition 5C (*wholesale call termination charge control*) proposed in Schedule 1 to the 2016 NMR Notification by inserting the following SMP condition 5C.5A

“5C.5A Within one month of the end of each Relevant Period, the Dominant Provider must notify Ofcom in writing of the level of the Call Termination Charge or Charges it made to each third party during that Relevant Period.”

7. Ofcom is no longer proposing to set on BT, SMP condition 8 (*price transparency*) proposed in Schedule 1 to the 2016 NMR Notification.

KCOM

8. Ofcom is proposing to amend SMP condition 3 (*charge control*) proposed in Schedule 2 to the 2016 NMR Notification by inserting the following SMP condition 3.3A

“3.3A Within one month of the end of each Relevant Period, the Dominant Provider must notify Ofcom in writing of the level of the Call Termination Charge or Charges it made to each third party during that Relevant Period.”

9. Ofcom is no longer proposing to set on KCOM, SMP condition 6 (*price transparency*) proposed in Schedule 2 to the 2016 NMR Notification.

Specified communications providers

10. In relation to the each of the persons listed in the Annex to Schedule 3 to the 2016 NMR Notification, Ofcom is proposing to amend SMP condition 2 (*charge control*) proposed in Schedule 3 to the 2016 NMR Notification by inserting the following SMP condition 2.3A

“2.3A Within one month of the end of each Relevant Period, the Dominant Provider must notify Ofcom in writing of the level of the Call Termination Charge or Charges it made to each third party during that Relevant Period.”

11. Ofcom is no longer proposing to set on each of the persons specified in the Annex to Schedule 3 to the 2016 NMR Notification, SMP condition 3 (*price transparency*) proposed in Schedule 3 to the 2016 NMR Notification.

12. It is proposed that the proposals referred to in paragraphs 6, 8 and 10 will take effect from the date of any notification under sections 48(1) of the Act adopting the proposals set out in this Notification.

Ofcom's duties and legal tests

13. The effect of, and Ofcom's reasons for making, the proposals for identifying the markets, making the market power determinations and determinations in relation to SMP conditions referred to in this Notification are set out in the consultation document accompanying this Notification.

14. Ofcom considers that the proposed SMP conditions comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition.
15. In making all of the proposals referred to in this Notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Ofcom has also, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by the Body of European Regulators for Electronic Communications (BEREC).

Making representations

16. Representations may be made to Ofcom about any of the proposals set out in this Notification and the accompanying consultation document by no later than 7 August 2017.
17. Copies of this Notification and the accompanying consultation document will be sent to the Secretary of State in accordance with sections 48C(1) of the Act.

Interpretation

18. For the purpose of interpreting this Notification:
 - (a) except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 19 below, and otherwise any word or expression has the same meaning as it has in the Act;
 - (b) headings and titles shall be disregarded;
 - (c) expressions cognate with those referred to in this Notification shall be construed accordingly; and
 - (d) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
19. In this Notification:
 - (a) "**2016 NMR Consultation**" means the consultation described in paragraph 1 above;
 - (b) "**2016 NMR Notification**" means the notification described in paragraph 1 above;
 - (c) "**Act**" means the Communications Act 2003 (c. 21);
 - (d) "**BT**" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
 - (e) "**Framework Directive**" means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended;
 - (f) "**Hull Area**" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the

Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);

- (g) “**KCOM**” means KCOM Group plc, whose registered company number is 02150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- (h) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- (i) “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (c. 30).

Signed

A handwritten signature in blue ink, appearing to read "D. Clarkson".

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

6 July 2017