



Business Connectivity Market Review

Further consultation

[~~Redacted for Publication~~]

Consultation

Publication date: 15 November 2012

Closing Date for Responses: 17 December 2012

Contents

Section		Page
1	Summary	1
2	Proposal to include some postcode sectors in Slough in the proposed WECLA geographic market	3
3	Proposed direction relating to service level guarantees	17
4	Accounting obligations	20
5	AISBO Trunk Aggregation Nodes and circuit routing rules	28
6	MISBO market power assessment	39
Annex		Page
1	Responding to this consultation	40
2	Ofcom's consultation principles	42
3	Consultation response cover sheet	43
4	Consultation questions	45
5	Draft Legal Instrument	46

Section 1

Summary

Introduction

- 1.1 We are currently conducting a review of competition in the provision of leased line services in the UK. Leased lines provide dedicated symmetric transmission capacity between fixed locations, and their overall value exceeds £2bn per annum in the UK. They play an important role in business communications services and are used to support a wide variety of applications, both in the private and public sectors. They also play a significant role in delivering fixed and mobile broadband services to consumers, because communications providers use them extensively in their networks.
- 1.2 On 18 June 2012, we published our business connectivity market review consultation¹ (June BCMR Consultation) in which we set out our market analysis for, and assessment of, each market that we had identified in relation to the provision of leased line services in the UK. As a result of our analysis of the market conditions, we set out a number of proposals, put broadly:
- to identify and define a number of relevant wholesale and retail product markets in certain geographical areas of the UK;
 - to determine that each of BT and KCOM has significant market power (SMP) in a number of those markets; and
 - to impose remedies on BT and KCOM, in the form of proposed SMP services conditions and directions under these conditions, to address the nature of the competition problems we had identified in each of the relevant markets where we considered that there is not effective competition.

We are revising some of our proposals

- 1.3 We are still considering the responses to the proposals we published in the June BCMR Consultation and are undertaking further analysis. However, our considerations so far have led us to revise some of our previous proposals. In this document, we set out our revised proposals and seek stakeholders' views on them.
- 1.4 In summary, our revised proposals concern:
- Geographic market in the London area – in the June BCMR Consultation we proposed to define a separate geographic market for some wholesale markets in London, in an area which we described as the West, East and Central London area (WECLA). We are now proposing that the definition of the WECLA should also include some postcode sectors in Slough.
 - Service-level guarantees – we are now proposing changes to the direction we proposed to impose on BT in relation to Service Level Guarantees (SLGs) to correct a drafting error. The revised version would apply limits to the

¹ Business Connectivity Market Review <http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/>

compensation payments payable by BT. The limits were inadvertently omitted from our previously proposed direction in the June BCMR Consultation.

- Accounting obligations – we are now proposing, first, that BT should be subject to cost accounting obligations in each of the product markets in which we have proposed that it has SMP, and secondly, that BT and KCOM should be subject to accounting separation obligations in each of the wholesale product markets in which we have proposed that they have SMP.
- Circuit routing rules – we are now proposing three changes to the rules that would apply to Openreach’s provision of Ethernet services operating at or below 1Gbit/s:
 - a revised definition of Trunk Aggregation Nodes (TANs) to correct the table of TANs and their constituent Openreach Handover Point (OHP) nodes presented in the June BCMR Consultation;
 - a simpler and more flexible set of circuit routing rules that obviates the need to define catchment areas for TANs; and
 - a minor change to the proposed definition of a backhaul segment as used for the purposes of setting the proposed SMP services conditions.

We are also seeking further stakeholder input to inform our SMP assessment of the MISBO market

- 1.5 In the June BCMR Consultation, we identified two wholesale product markets for very high bandwidth leased line services which we called Multiple Interface Symmetric Broadband Origination (MISBO) services. We proposed that BT has SMP in one of these markets which covers the UK excluding the WECLA and the Hull area.
- 1.6 We note from our review of the consultation responses (which we have published on our website) that BT has suggested that the competitive conditions in the MISBO market outside the WECLA and the Hull area differ significantly from those we described in the June BCMR Consultation. To assist our consideration of this matter, we are seeking from stakeholders further evidence on the competitive conditions in that market, including intensity of competition and the extent to which some businesses use dark fibre to self-provide MISBO services.

Consultation and next steps

- 1.7 We invite comments from interested parties on the proposals in this document. The consultation period runs for 1 month and the deadline for responses is 5pm on 17 December 2012.
- 1.8 We aim to publish our conclusions on the proposals in this document and on those in the June BCMR Consultation and the July 2012 Leased Line Charge Control consultation² in the first quarter of calendar year 2013.

² Leased Lines Charge Controls: proposals for a new charge control framework for certain leased lines <http://stakeholders.ofcom.org.uk/consultations/llcc-2012/>

Section 2

Proposal to include some postcode sectors in Slough in the proposed WECLA geographic market

Introduction

- 2.1 In the June BCMR Consultation, we proposed to define a separate geographic market in the London area for some of the proposed wholesale product markets. As explained in Section 1, we called this area WECLA - it is illustrated in Figure 2.1 below. It represents an expanded area relative to the area we called Central and Eastern London Area (CELA), which area we defined as a separate geographic market for some wholesale products in our previous review of the business connectivity markets (2007/8 Review).
- 2.2 In light of stakeholders' comments and our subsequent market analysis, we are now consulting on whether our proposed definition of the WECLA should also include some postcode sectors in Slough³ (Slough sectors).

Summary

- 2.3 For the reasons set out below, we are now proposing to include the Slough sectors in the geographic market to be defined as the WECLA.⁴ The Slough sectors and the WECLA as proposed in the June BCMR Consultation are illustrated below.

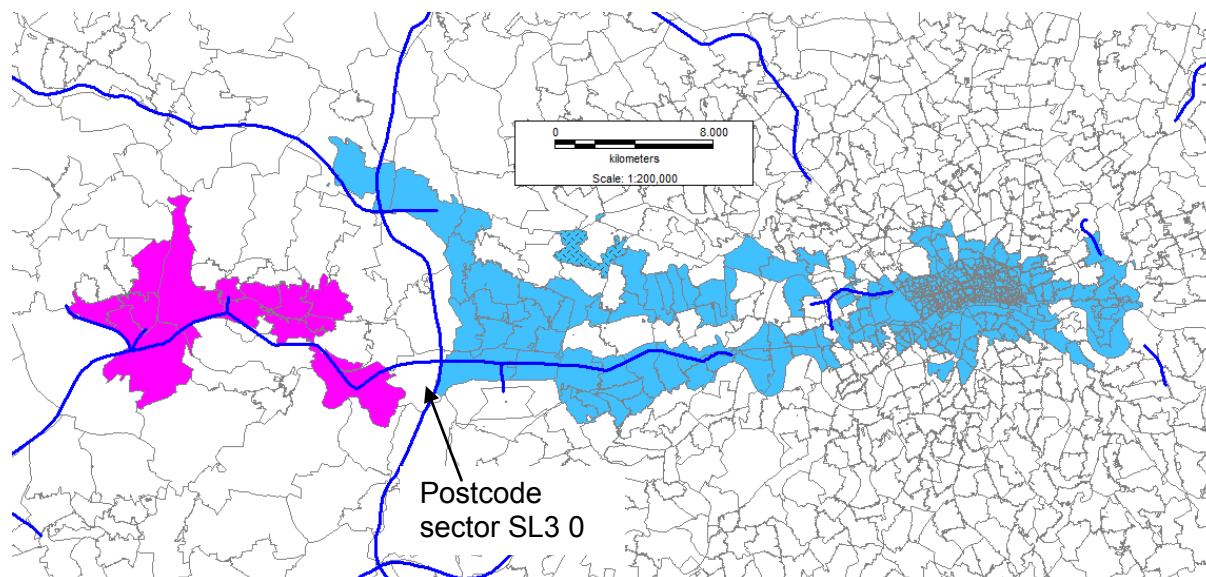
³ The postcode sectors are: SL1 0, SL1 1, SL1 2, SL1 3, SL1 4, SL1 5, SL1 6, SL2 5, SL3 9, SL6 0, SL6 1, SL6 2, SL6 4 and SL6 8.

⁴ This proposal is without prejudice to any other decision regarding the WECLA in the forthcoming statement. We are proposing to treat the Slough sectors in the same way as the WECLA, and thus any decisions about how to treat the WECLA in the final statement will similarly apply to the Slough sectors.

Figure 2.1: The WECLA and the Slough sectors

Key:  - the WECLA  - the Slough sectors which we propose to include in the WECLA

Blue line – motorways Grey line – postcode sectors



- 2.4 Following our further analysis, we now consider that the competitive conditions in this extended geographic area are sufficiently homogeneous such that it should be considered to be one geographic market. This view is based on the application of the criteria we applied to carry out our geographic market definition assessment in the June BCMR Consultation.
- 2.5 For the avoidance of doubt, we do not propose to include postcode sector SL3 0 in the proposed geographic market to be defined as the WECLA.

How we proposed to define the WECLA geographic market

- 2.6 Our approach to defining the geographic markets is set out at length in the June BCMR Consultation.⁵ In short, we defined the proposed geographic markets on the basis of sufficiently homogeneous competitive conditions. The first step was to identify an appropriate geographic unit, which we identified as the postcode sector.⁶ The second step was to aggregate postcode sectors into geographic markets where, according to our assessment, the competitive conditions within the area were sufficiently homogeneous and could be distinguished from neighbouring areas where the competitive conditions were appreciably different. To carry out this assessment, we applied the following three cumulative criteria:
- i) an assessment of the impact of alternative infrastructure;
 - ii) an analysis of wholesale service shares; and

⁵ See, in particular, Section 5 and Annex 7 of the June BCMR Consultation.

⁶ The reasoning behind choosing postcode sectors as the geographic unit is provided in paragraphs 5.28 to 5.32 of the June BCMR Consultation. The postcode sector boundary does not have any intrinsic economic significance for the provision of business connectivity services.

- iii) a review of BT's pricing policies.
- 2.7 The application of the first criterion produced geographic reference areas. We then assessed BT's service shares and its pricing policies in those geographic areas.
- 2.8 Regarding the first criterion, in order to measure the presence of alternative infrastructure, we performed what we referred to in the June BCMR Consultation as a 'network reach' analysis. The network reach analysis identified the average number of operators in a postcode sector that have network in proximity to business customers.
- 2.9 The methodology underpinning the network reach analysis is set out in detail in the June BCMR Consultation.⁷ We outline the steps below:
- we identified the network flexibility points⁸ of each OCP's⁹ network in the UK;
 - we identified the location of each large business site in the UK;
 - a buffer area of 200m was drawn around the location of each business; and
 - the number of different OCPs' networks having network flexibility points within the 200m buffer area around each business site (counting each OCP only once) was calculated.¹⁰
- 2.10 A postcode sector was deemed to be of high network reach (HNR) where, on average, there were two or more OCPs' networks within the buffer area of the large business sites in the sector.
- 2.11 Having identified postcode sectors with HNR, we applied the requirement of contiguity.¹¹
- 2.12 On the basis of this analysis, we considered the contiguous postcode sectors making up the WECLA as a reference area for the purpose of identifying separate geographic markets.
- 2.13 The network reach analysis did identify a number of HNR postcode sectors in Slough (coloured pink in Figure 2.1), however, these were not included in the definition of the WECLA which we proposed in the June BCMR Consultation because they were not strictly contiguous to it (we discuss this further below).
- 2.14 We then took the six proposed wholesale product markets¹² and, for each market, considered whether it was appropriate to define a separate WECLA geographic market. To do this, we applied the second and third criteria above - i.e. looking at BT's pricing and wholesale service shares. In particular, for each services market, we considered whether BT's service share in the WECLA looked sufficiently different

⁷ See paragraphs 5.83 to 5.121 of the June BCMR Consultation.

⁸ A flexibility point is a point on an existing network where a CP, in accordance with its current network planning practice, can add new fibre in order to connect it to end-users. See paragraph 5.88 of the June BCMR Consultation.

⁹ Defined as "other communications provider" – i.e. a communications provider other than BT.

¹⁰ See paragraph 5.90 of the June BCMR Consultation.

¹¹ For a discussion of contiguity refer to paragraphs 5.116 to 5.121 of the June BCMR Consultation.

¹² For a discussion of the wholesale product market definition refer to section 4 of the June BCMR Consultation.

compared to the rest of the country (excluding Hull).¹³ Based on the cumulative application of these criteria, we proposed to define a separate WECLA geographic market for four of the six wholesale product markets, in which we considered the competitive conditions in the WECLA differed sufficiently from those in the rest of the UK (excluding Hull). The product markets in which we proposed a separate WECLA market are¹⁴:

- Medium bandwidth (MB) traditional interface symmetric broadband origination (TISBO), at bandwidths above 8Mbit/s and up to and including 45Mbit/s;
- High bandwidth (HB) TISBO, at bandwidths above 45Mbit/s and up to and including 155Mbit/s;
- Low bandwidth alternative interface symmetric broadband origination (AISBO), at bandwidths up to and including 1Gbit/s; and
- MISBO.

2.15 We proposed that the Low bandwidth (LB) TISBO and Very high bandwidth (VHB) TISBO product markets were national in geographic scope (excluding Hull).

2.16 Stakeholders have raised a number of comments regarding the geographic market analysis. We do not intend to address all issues raised in this document, but our forthcoming statement will set out our reasoning for the decisions we eventually make, including our response to consultation responses as appropriate. In this document, we are only inviting comments on our proposal to include the Slough sectors in the proposed WECLA geographic market.

Stakeholders' comments on extending the WECLA to Slough

2.17 In response to the June BCMR Consultation, BT argued that the WECLA should be extended to other postcode sectors where there is evidence of competition. In particular, BT commented that postcode sectors in Slough should be included in the WECLA because the same CPs are present in Slough and the WECLA, and OCP networks extend westwards from the WECLA to Slough in a more or less seamless fashion. It noted that the reason why Slough was not included in the WECLA was a single postcode sector (SL3 0) with low network reach¹⁵ between the WECLA and Slough. It noted that several OCPs' networks run through this postcode sector and questioned whether the network reach assessment for the SL3 0 postcode sector was correct. BT considered that the intense competition observed in Slough should be sufficient to warrant its inclusion in the WECLA even if there was low network reach in the postcode sector SL3 0.

2.18 A report from DotEcon attached to BT's response noted that geographical features around postcode sector SL3 0, including the Heathrow Airport site, the M25 motorway and reservoirs around Heathrow, would make it difficult for CPs' networks to meet the network reach test. DotEcon said that it was not possible for customer sites or network flexibility points to be located in these areas.

¹³ The Hull area was excluded because BT is not the incumbent operator. The Hull area (where KCOM is the incumbent operator) has been defined as a separate geographic market (see paragraphs 5.46 to 5.48 of the June BCMR Consultation).

¹⁴ See section 5 of the BCMR Consultation.

¹⁵ Low network reach means a postcode sectors has, on average, less than two OCPs within reach of the large business sites. See paragraph 5.102 of the June BCMR Consultation.

Our further analysis

Contiguity between the WECLA and the Slough sectors

- 2.19 The Slough sectors are in close geographic proximity to the WECLA, and our analysis classifies them as HNR. However, the Slough sectors are separated from the WECLA by a single postcode sector (SL3 0) where there is low network reach. In light of stakeholders' comments, we have looked specifically at whether the application of strict contiguity might be creating an artificial geographic market distinction to be drawn between the Slough sectors and the WECLA. For the reasons set out below, we now consider that the lack of strict contiguity is not sufficient reason to separate the Slough sectors from the WECLA.
- 2.20 As explained in the June BCMR Consultation, we do not regard it as appropriate to consider individual postcode sectors or small groups of postcode sectors as separate markets, where these are surrounded by areas where there is low network reach.¹⁶ Rather, we are looking for sufficiently sizeable clusters of contiguous postcode sectors in which an assessment of competitive conditions can be carried out which reflects the economic characteristics of the wholesale provision of leased line services within that area and in which the competitive conditions can be distinguished from those of neighbouring areas which are appreciably different. In this context, a general contiguity requirement is a sensible approach to defining geographic markets.
- 2.21 However, the case of Slough is unusual in that there is only a single postcode sector separating the Slough sectors from the WECLA and linkages between the Slough sectors and the WECLA appear to be strong. In this situation, our present view is that, if other evidence suggests that competitive conditions across the Slough sectors and the WECLA are broadly similar, applying strict contiguity as the only reason for not combining the two would result in placing too much weight on this requirement.

The lack of HNR for postcode sector SL3 0 masks a high degree of connectivity running between Slough and the WECLA





- 2.22 The reason why postcode sector SL3 0 is classified as having low network reach relates partly to specific geographic features. Our further analysis shows that SL3 0 is less built-up than most of the postcode sectors in the WECLA and the Slough sectors¹⁷ and most of the large business sites in it are in the small town of Poyle between Heathrow airport and the Queen Mother reservoir (see Figure 2.2 below). Most OCPs have tended to build their network by taking a fairly direct route from the edge of the WECLA towards Slough - which we would expect if their objective was to link sites in Slough to sites in the WECLA.

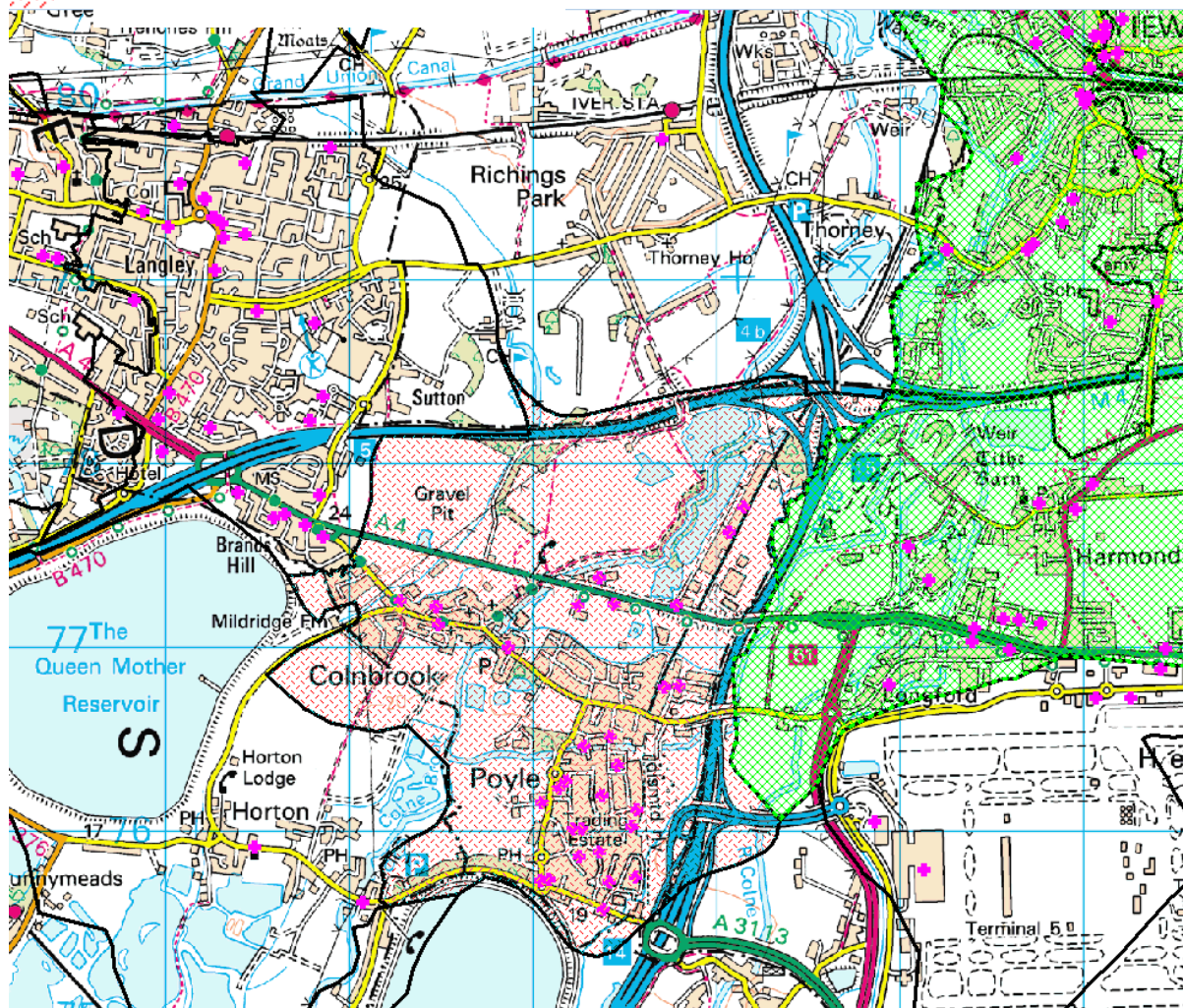
¹⁶ See paragraphs 5.116 to 5.121 and 5.303 to 5.315 of the June BCMR Consultation.

¹⁷ The parish of Colnbrook and Poyle which represents the urban area in the sector had a population of 5,408 in the 2001 census, source <http://www.ons.gov.uk/ons/rel/census/census-2001-key-statistics/urban-areas-in-england-and-wales/urban-areas-in-england-and-wales-ks01-usual-resident-population.xls>

Figure 2.2 – Postcode sector SL3 0 and surrounding area

Key:

-  Large business site
-  Edge of WECLA
-  Postcode sector boundary
-  SL3 0



© Crown Copyright and database right 2010. Ordnance Survey 100018047.

2.23 Our information shows that there are four OCPs with network flexibility points running through the sector which suggests that there are alternative providers to BT with continuous connectivity between the WECLA and the Slough sectors. While our analysis does not classify postcode sector SL3 0 as HNR overall,¹⁸ there clearly is a high degree of connectivity between the WECLA and the Slough sectors.

There are economic linkages between the Slough sectors and the WECLA

2.24 We have considered whether there are economic linkages between the WECLA and the Slough sectors which might suggest a single geographic market. To provide an indication of the level of economic interaction between the WECLA and the Slough

¹⁸ The flexibility points are not sufficiently close to the business sites to make the sector HNR.

sectors, we have particularly looked at the proportion of retail leased lines provided by OCPs that connect the two areas. We used retail circuit information because we were specifically interested in the end-to-end connectivity required by end-users.¹⁹ Using information provided by OCPs, we have looked at the number of OCP retail AISBO circuits and Wavelength Division Multiplexing (WDM) wavelengths with at least one end in the Slough sectors²⁰ and worked out the proportion that have the other end in the WECLA. Of the circuits with at least one end in the Slough sectors, we have found that 36 per cent connected to the WECLA.²¹ (As a comparison, we calculated the equivalent proportion for Manchester and Birmingham where the results were 7 and 9 per cent respectively.²²) This level of connectivity is consistent with there being a relatively high degree of economic interaction between the WECLA and the Slough sectors.

- 2.25 We have also looked at the limited information provided by OCPs on the retail customers purchasing AISBO circuits and WDM wavelengths in the Slough sectors and the WECLA. We have found that around 40 per cent of the retail customers for which we had information and which were purchasing AISBO/WDM circuits/wavelengths in the Slough sectors also purchased circuits/wavelengths in the WECLA. We consider that this information provides some evidence that leased line customers purchase services across a wider market, including the Slough sectors and the WECLA. However, due to the limited information available, we do not consider that it is conclusive.

Conclusion

- 2.26 Overall, our further analysis shows that:

- there is close geographic proximity between the Slough sectors and the WECLA;²³
- there is a number of competing networks with their own connectivity running through SL3 0 between the Slough sectors and the WECLA;
- there are economic linkages across the Slough sectors and the WECLA;
- there are specific geographic features of the postcode sector SL3 0 which contribute towards it being low network reach;
- there is a lack of any intrinsic economic significance that the postcode sector boundary *per se* has for the provision of business connectivity²⁴;
- there is a HNR observed in the Slough sectors; and
- there is scale of leased line provision in the area.

¹⁹ Due to equivalence of inputs reporting, in estimating wholesale service shares in the June BCMR Consultation, we did not need to obtain retail circuit information for AISBO products for BT. Therefore BT's retail AISBO circuits are not included in this analysis

²⁰ Some of these circuits have both ends in the Slough sectors.

²¹ In addition, 13 per cent of the AISBO and WDM circuits had both ends in the Slough sectors.

²² For this exercise, we defined Manchester and Birmingham as the contiguous postcode sectors with HNR in the city centres.

²³ i.e. the sectors with HNR in the Slough sectors are separated from the WECLA by a single postcode sector (SL3 0).

²⁴ See paragraph 5.118 of the June BCMR Consultation.

2.27 We therefore now consider that the absence of strict contiguity in and of itself should not prevent us from assessing whether the competitive conditions in the Slough sectors and the WECLA are sufficiently homogeneous, such that they may be considered to be in the same geographic market.

Assessment of competitive conditions in the Slough sectors and the WECLA

2.28 Our analysis of the competitive conditions in the Slough sectors focuses on the 14 contiguous sectors with HNR (coloured pink in Figure 2.1). For the cumulative reasons summarised in paragraph 2.26 above, we now consider that these are candidate sectors for inclusion in the WECLA. Our assessment covers the three criteria used in the June BCMR Consultation (set out in paragraph 2.6 above), i.e. the impact of alternative infrastructure, wholesale service shares and BT's pricing. Consistent with the June BCMR Consultation, we have also looked at barriers to effective competition – including limits to OCPs' network coverage and merchant market transactions.

Impact of alternative infrastructure

2.29 We have already identified that the Slough sectors are potentially competitive because our analysis classifies them as HNR. However, this does not tell us about the extent of coverage of each OCP's network across the area. Figure 2.3 below shows the coverage of each OCP's network in terms of; i) the percentage of large businesses within reach²⁵ and ii) the percentage of sectors where the OCP has network for the WECLA and the Slough sectors. This allows us to assess whether OCPs' networks have sufficient presence across the geographic area to be a credible alternative to BT in the absence of wholesale regulated products.

Figure 2.3: OCP coverage – WECLA and Slough sectors

Operator	WECLA		Slough sectors	
	Businesses	Sectors	Businesses	Sectors
Operator 1	90%	99%	80%	87%
Operator 2	80%	96%	1%	13%
Operator 3	47%	74%	27%	87%
Operator 4	44%	76%	29%	73%
Operator 5	31%	50%	97%	93%
Operator 6	13%	32%	5%	7%
Operator 7	13%	37%	13%	85%
Operator 8	4%	7%	72%	80%
Operator 9	3%	10%	10%	73%
Operator 10	2%	8%	2%	7%
Operator 11	2%	5%	0%	0%
Operator 12	0%	1%	0%	0%
Operator 13	0%	2%	0%	0%
Operator 14	0%	1%	0%	0%

2.30 In other words, the information in Figure 2.3 shows that two OCPs' networks have very significant coverage of the Slough sectors (over 80 per cent of businesses within reach), while a third OCP has good coverage (72 per cent of businesses within

²⁵ By 'within reach', we mean the OCP has a flexibility point within a 200m buffer of the business site.

reach). Coverage in the Slough sectors compares favourably to that in the WECLA (where two OCPs' networks cover over 80 per cent of businesses and a third OCP covered around half). Overall, the coverage information indicates that most large business sites in the Slough sectors have three possible suppliers of leased lines (in addition to BT).

- 2.31 Considering the WECLA and the Slough sectors together reveals that one OCP's network has extensive coverage over both areas. However, it is notable that the other two OCPs' networks that have good coverage in the Slough sectors have less coverage in the WECLA. These CPs might therefore need to rely on a merchant market to achieve full coverage of both areas, and possibly also for links between them through the SL3 0 postcode sector. One of these two OCPs has its own connectivity between the Slough sectors and the WECLA whilst, as noted above, three other OCPs also have such capacity. We do not therefore think that the need for such capacity would be an obstacle to an operator wishing to compete across both areas. We have investigated this further by looking at OCP wholesale provisions (i.e. excluding use of BT's network) of AISBO circuits and WDM wavelengths that have one end in the Slough sectors. Using data provided by OCPs, we have found that, of the total wholesale AISBO circuits and WDM wavelengths that had at least one end in the Slough sectors, 34 per cent had the other end in the WECLA.²⁶ This is consistent with OCPs being able to provide circuits/wavelengths between the two areas using their own networks.
- 2.32 We have also looked at the number of OCPs within reach of each individual large business site. This helps us to identify whether there are large businesses who lack alternative suppliers to BT (e.g. while OCP coverage across the area might be good as a whole, there could be pockets of businesses which have poor OCP coverage). The results are presented in Figure 2.4 below.

Figure 2.4: Cumulative distribution of OCPs within reach of large businesses – the WECLA and the Slough sectors

OCPs within 200m cumulative	Percentage of business sites - WECLA	Percentage of business sites - Slough sectors
0+	100%	100%
1+	99%	100%
2+	96%	95%
3+	78%	86%
4+	42%	53%
5+	18%	11%
6+	5%	5%
7+	2%	5%
8+	1%	0%
9+	0%	0%
10+	0%	0%

- 2.33 The results show that across both the WECLA and the Slough sectors the vast majority of large businesses have at least two OCPs' networks within reach. Across

²⁶ In paragraph 2.24 we noted that, for OCP retail AISBO circuits and WDM wavelengths with at least one end in the Slough sectors, 36 per cent connected to the WECLA.

the WECLA only 4 per cent of large businesses have less than two OCPs' networks within reach, for the Slough sectors the figure is 5 per cent.

*LLU/MDF, data centre and MNO sites*²⁷

2.34 In the June BCMR Consultation, we checked alternative operators' infrastructure coverage of the MDF (main distribution frame) sites used by LLU (local loop unbundling) operators, data centre sites and MNO sites across the WECLA on the basis that such sites might require leased line connectivity but might not be included in the dataset of large businesses used in the network reach assessment.²⁸ We have performed a similar analysis for the Slough sectors. In relation to MDF and data centre sites:

- we have identified three MDF sites in the Slough sectors. All are within reach of two or more OCPs' networks.
- we have identified eight data centres in the Slough sectors. Seven of these data centres are connected to two or more OCPs' networks. The remaining data centre is connected to one OCP's network and has flexibility points for three others within 500m reach.

2.35 We consider that this information suggests that the alternative infrastructure coverage of MPF and data centre sites across the WECLA and the Slough sectors is similar: nearly all such sites in both areas are within reach of two or more OCPs.

2.36 In relation to MNO sites, Figure 2.5 below shows the cumulative distribution for the number of OCPs within reach of mobile sites in the WECLA and the Slough sectors.

Figure 2.5: Cumulative distribution of OCPs within reach of mobile sites in the WECLA and the Slough sectors

Number of OCPs 200m cumulative	Percentage of MNO sites - WECLA	Percentage of MNO sites - Slough sectors
0+	100%	100%
1+	98%	82%
2+	94%	64%
3+	77%	56%
4+	47%	26%
5+	23%	7%
6+	8%	3%
7+	4%	1%
8+	2%	0%
9+	1%	0%
10+	1%	0%

2.37 The majority of mobile sites across both the WECLA and the Slough sectors are within reach of at least two OCPs. However, the information shows that OCP coverage across the Slough sectors and the WECLA is somewhat different. In the WECLA, we have found that 94 per cent of mobile sites have two or more OCPs within reach. For the Slough sectors, the equivalent figure is 64 per cent.

²⁷ See paragraph 5.147 of the June BCMR Consultation.

²⁸ See paragraphs 5.146 to 5.160 of the June BCMR Consultation.

Furthermore, a proportion of MNO sites in the Slough sectors (18 per cent) may lack an alternative supplier to BT. However:

- most mobile sites are currently served by LB TISBO where we are proposing to define a national market (excluding Hull), i.e. this product market is unaffected by the inclusion of the Slough sectors in the WECLA or otherwise;
- whilst we expect mobile operators to migrate to AISBO for backhaul from base station sites over the course of this forward-looking review²⁹, we proposed in the June BCMR Consultation that BT has SMP for AISBO both in the proposed WECLA and the rest of the UK (excluding Hull) markets; and
- as noted in the June BCMR Consultation, some variation in competitive conditions is to be expected in any geographic market.³⁰

2.38 In the light of the above information, we do not consider the scale of the apparent differences in network reach affecting MNO sites, in and of itself, to be inconsistent with the definition of a single geographic market.

Wholesale service shares

2.39 While our network reach assessment provides an indication of potential competition, we have also looked at evidence on the extent to which OCPs are actually successfully competing with BT. To assess this, we have particularly looked at BT's wholesale service share across the UK (excluding the WECLA and Hull), the WECLA, the Slough sectors and a combined WECLA and Slough sectors area (see Figure 2.6 below).

Figure 2.6: BT service share – UK, the WECLA, the Slough sectors and WECLA/Slough sectors combined

	UK excluding WECLA and Hull		WECLA		Slough sectors		WECLA and Slough sectors combined	
	Circuit ends	BT share	Circuit ends	BT share	Circuit ends	BT share	Circuit ends	BT share
MB TISBO	7,455	74%	2,772	17%	142	63%	2,914	19%
HB TISBO	4,017	49%	1,510	12%	70	34%	1,580	13%
AISBO	238,207	67%	48,333	41%	2,837	45%	51,170	42%
MISBO	7,769	59%	2,937	15%	74	7%	3,011	15%

2.40 In the Slough sectors, the number of circuit ends for MB TISBO, HB TISBO and MISBO services respectively are very small, both in relation to the proposed UK geographic markets³¹ and the WECLA geographic market. For the reasons set out in the June BCMR Consultation³², we do not place significant weight on these service share values. However, BT's share in the Slough sectors for the provision of AISBO services, which is by far the largest of these markets, and therefore less susceptible to measurement error, is very similar to that in the WECLA.

²⁹ As set out in the June BCMR Consultation, the forward-looking period taken into account for the purposes of this review is three years.

³⁰ See paragraphs 5.21 to 5.42, in particular paragraph 5.22 of the June BCMR Consultation.

³¹ i.e. the UK market excluding Hull and the WECLA as defined in the June BCMR Consultation, which included the Slough sectors.

³² See, for example, paragraph 5.64 and footnote 37, paragraphs 5.172 and 5.175 of the June BCMR Consultation.

BT's pricing policies

2.41 In the June BCMR Consultation, we discussed BT's geographic pricing discounts, concluding that they did not provide strong evidence to assist our assessment of competitive conditions.³³ For completeness, we note that the geographic scope of BT's discounts do not map precisely onto our specification of the WECLA, whether or not the Slough sectors are included as part of the WECLA.

Barriers to competition

2.42 In the June BCMR Consultation, we considered whether the following were barriers to effective competition in the WECLA:

- limits to individual operators' coverage in the proposed local geographic market; and
- limits to merchant market transactions³⁴ between OCPs (e.g. driven by barriers to interconnection).

2.43 We have discussed individual OCPs' networks' coverage above (see paragraphs 2.28 to 2.30).

2.44 Merchant market transactions are informative because, absent regulation, the only way an OCP can provide a service in an area where it does not have network is by purchasing wholesale services from other CPs on commercial terms. If there were no or very limited merchant market transactions which involve circuits delivered in the WECLA or the Slough sectors, this information might suggest that only operators with more or less complete coverage of these areas would be able to compete everywhere in it. Figure 2.7 below shows the merchant market ends as a percentage of total circuit ends in the WECLA and the Slough sectors to provide an indication of wholesale activity between OCPs.

Figure 2.7: Merchant market circuit ends – the WECLA and the Slough sectors

	WECLA		Slough sectors	
	Merchant ends	% of total ends	Merchant ends	% of total ends
MB TISBO	1,299	47%	32	22%
HB TISBO	783	52%	36	51%
AISBO	7,519	16%	508	18%
MISBO	411	14%	11	14%

2.45 The volume of merchant sales, as a percentage of total ends, in each of the AISBO, HB TISBO and MISBO markets in the Slough sectors is very similar to the equivalent figure for the WECLA. The AISBO market is by far the largest of the product markets (by volume), and so is less likely to be affected by small sample measurement issues. Taking all these SBO products together, the volume of merchant sales, as a percentage of total ends, in the WECLA and the Slough sectors is also very similar. In the June BCMR Consultation, we concluded that the extent of merchant market activity in the WECLA was such that limitations on individual operators' coverage

³³ See paragraphs 5.162 to 5.166 of the June BCMR Consultation.

³⁴ By merchant market we mean sales by an OCP of leased line capacity on its network to another CP.

would not warrant a revision of the proposed definition of the WECLA geographic market.³⁵ We consider this conclusion is also appropriate to the Slough sectors.

Conclusion

- 2.46 We have considered whether the lack of strict contiguity between the WECLA and the Slough sectors is a barrier, in and of itself, to defining both areas in a single geographic market. Our further analysis shows that this is not a barrier in these specific circumstances due to:
- the close geographic proximity between the Slough sectors and the WECLA;
 - the number of competing networks with their own connectivity running through SL3 0 between the Slough sectors and the WECLA;
 - the economic linkages across the Slough sectors and the WECLA;
 - the specific geographic features of the postcode sector SL3 0 which contribute towards it being low network reach;
 - the lack of any intrinsic economic significance that the postcode sector boundary *per se* has for the provision of business connectivity;
 - the HNR observed in the Slough sectors; and
 - the scale of leased line provision in the area.
- 2.47 We now consider that the significant connectivity and economic linkages between the Slough sectors and the WECLA (illustrated through OCP AISBO and WDM wholesale and retail circuits running between the WECLA and the Slough sectors) supports the existence of a single economic market.
- 2.48 Our further analysis also shows that the competitive conditions in the WECLA and the Slough sectors are sufficiently similar to include in the same geographic market. In particular:
- OCP coverage is extensive in the WECLA and the Slough sectors;
 - for the only product market with a substantial number of circuit ends in the Slough sectors (AISBO) BT's service share is similar to the WECLA; and
 - the scale of merchant market activity, as a percentage of the total number of circuit ends, is very similar in the WECLA and in the Slough sectors.
- 2.49 In light of our further analysis, we are now proposing that the Slough sectors should be included in the WECLA. The extent of the revised WECLA geographic market is illustrated in Figure 2.1 above (i.e. the blue and pink coloured sectors combined).

³⁵ That is, the definition proposed on the basis of the network reach analysis and other criteria. For further discussion see paragraphs 5.200 to 5.209, 5.224 to 5.228, 5.254 to 5.258 and 5.284 to 5.289 of the June BCMR Consultation.

However, we do not propose to include postcode sector SL3 0 in the WECLA because it is low network reach.³⁶

Question 1: Do you have any comments on our proposal to include the Slough sectors in the WECLA?

³⁶ In the June BCMR Consultation we did include three sectors in the WECLA which were low network reach but entirely surrounded by HNR sectors. We explained that these sectors had, on average, more than 1.6 OCPs within reach of the business sites, a relatively small number of business sites and a pattern of fibre flexibility points similar to those in HNR sectors (see footnote 55 of the June BCMR Consultation). We do not consider that postcode sector SL3 0 meets these criteria because it is not entirely surrounded by HNR sectors and has a significantly greater number of large business sites (49) relative to the other sectors (that have a maximum of 8 business sites).

Section 3

Proposed direction relating to service level guarantees

Introduction

- 3.1 In the June BCMR Consultation, we proposed to impose a direction specifying the Service Level Guarantee (SLG) compensation arrangements for services BT provides in the proposed AISBO³⁷ markets³⁸ (the Proposed SLG Direction).
- 3.2 As explained in the June BCMR Consultation³⁹, the Proposed SLG Direction is substantially the same direction that Ofcom imposed in the last 2007/08 Review⁴⁰ (the Previous SLG Direction).
- 3.3 The Previous SLG Direction was imposed as a result of Ofcom's decision in the 2007/08 Review⁴¹ to re-impose the direction originally set out in its previous 2008 SLG Statement⁴² (the Original SLG Direction).
- 3.4 The Original SLG Direction directed, amongst other things, that there should be caps of 60 working days for late provision compensation payments and 200 hours for compensation for late repairs⁴³. However, due to a drafting error, the Previous SLG Direction omitted these compensation caps. The Proposed SLG Direction was based on the Previous SLG Direction and therefore also omitted to include the necessary compensation caps. We did not, however, intend in the BCMR Consultation to make any change to the Previous SLG Direction for policy reasons – we considered the compensation caps remained appropriate to address the competition problems we have identified in this ongoing market review.

Rectification of drafting error in the Proposed SLG Direction

- 3.5 We are therefore taking this opportunity to rectify formally our drafting error to ensure the Proposed SLG Direction provides for the necessary compensation caps as set out in the Original SLG Direction.

³⁷ The proposed AISBO markets are the wholesale markets for low bandwidth alternative interface symmetric broadband origination at bandwidths up to and including 1Gbit/s: (i) in the WECLA; and (ii) in the UK excluding the WECLA and the Hull area. The "WECLA" is the Western, Eastern and Central London Area.

³⁸ See paragraphs 11.154 to 11.160.

³⁹ See paragraph 11.157.

⁴⁰ Business Connectivity Market Review, Review of the retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments markets, statement and consultation, published 8 December 2008.

⁴¹ See, for example, paragraph 1.45 of the 2007/08 Review.

⁴² Service level guarantees: incentivising performance, Statement and Directions, 20 March 2008, Annex 3 (<http://stakeholders.ofcom.org.uk/binaries/consultations/slg/statement/statement.pdf>). The Original SLG Direction was imposed under SMP services condition HH1 which itself was imposed as a result of the 2004 BCMR market review.

⁴³ See Annex 1 of the Original SLG Direction and paragraph 6.34 of the 2008 SLG Statement.

Aim of regulation

- 3.6 Under the Communications Act 2003 (Act), we are required to, amongst other things, give our reasons for the making of the Proposed SLG Direction. We continue to rely on the reasoning already provided in the June BCMR Consultation in relation to the need for the Proposed SLG Direction generally, but we supplement below that reasoning by addressing why we consider it appropriate to include the compensation caps.
- 3.7 As set out in the June BCMR Consultation, as a consequence of BT's control of wholesale infrastructure in these markets, CPs depend on BT for the provision of wholesale services which are able to support efficient and reliable end-user services. Whilst EOI⁴⁴ requirements give BT some incentive to deliver efficient and reliable services to CPs (as its own downstream divisions must also use them), in the 2008 SLG Statement we concluded that further measures are required to incentivise good performance.
- 3.8 In particular, we consider that it is important that the contractual arrangements for the wholesale products CPs buy from BT in this market are such that:
- they incentivise the efficient provision of reliable services to BT's wholesale customers;
 - they set out fair and reasonable compensation payments for delays in delivery and repair of such services, subject to specified compensation caps; and
 - they allow BT and its wholesale customers to monitor effectively the performance of BT's provision and repair of wholesale regulated products.
- 3.9 In order to achieve these objectives, contractual arrangements need to include:
- a set of Service Level Agreements (SLAs) which reflects the commercial SLAs provided to end users of Alternative Interface leased lines; and
 - a set of Service Level Guarantees (SLGs) which sets out fair and reasonable compensations for delays in delivery and repair of such services.
- 3.10 Taking into account the changes we are now proposing (emphasised in italics below), the Proposed SLG Direction would therefore require BT to:
- pay compensation for orders not delivered by the Contractual Delivery Date (CDD) or the Customer Requirements Date (whichever is later), *subject to specified compensation limits*;
 - pay compensation for faults not repaired within 5 hours, *subject to specified compensation limits*;
 - pay SLG compensation payments proactively; and
 - make compensation payments without prejudice to any right of CPs to claim for additional losses.

⁴⁴ Equivalence of Input. See Section 11 of the June BCMR Consultation for an explanation of EOI.

- 3.11 Specifically in relation to the proposal to apply compensation caps, we consider the reasoning as set out in the 2008 SLG Statement for the imposition of the Original SLG Direction remains valid⁴⁵, and supports our proposal:
- we continue to consider that the absence of caps could expose BT to unlimited financial risk; and
 - in recognising there is a balance to be struck between, on the one hand, ensuring that appropriate compensation is paid in such a way to incentivise performance, and on the other, ensuring we are not introducing unreasonable burdens on BT, we consider the proposed level for the compensation caps continues to achieve that balance.

Legal tests

- 3.12 We are satisfied that with the proposed changes the Proposed SLG Direction continue to meet the relevant tests set out in the Act.
- 3.13 First, we have considered our duties under section 3 and all the Community requirements set out in section 4 of the Act. In particular, the Proposed SLG Direction remains aimed at promoting competition and securing efficient and sustainable competition for the maximum benefits for consumers by the implementation of an SLG regime that will incentivise BT to provide good quality of service to CPs.
- 3.14 Secondly, section 49 of the Act requires directions to be objectively justifiable, non-discriminatory, proportionate and transparent. The Proposed SLG Direction remains:
- objectively justifiable, in that it requires BT to adopt an SLG regime that will incentivise it to deliver good quality of services to CPs;
 - not unduly discriminatory, as it is proposed only for BT and no other operator has been found to hold a position of SMP in these markets;
 - proportionate since it not only seeks to incentivise good quality of service that would adversely affect competition and ultimately cause detriment to end-users but also recognises that the amount of compensation payable by BT should not be unlimited but capped at a proportionate level; and
 - is transparent in that the conditions are clear in what they are intended to achieve.

Question 2: Do you have any comments about the proposed amendments to the Proposed SLG Direction?

⁴⁵ See Section 6, in particular paragraphs 6.25 to 6.29, of the 2008 SLG Statement.

Section 4

Accounting obligations

Introduction

- 4.1 In the June BCMR Consultation, we have identified a number of competition problems in the product markets in which we propose to find that BT has SMP.⁴⁶ These included risks of excessive pricing and discrimination (including price discrimination). In order to address those competition problems, we proposed a number of SMP conditions including:
- obligation not to discriminate unduly;
 - requirement to publish a reference offer;
 - requirement to notify changes to terms and conditions; and
 - accounting separation obligations.
- 4.2 We also proposed to address the risk of excessive pricing by imposing charge controls in these markets, setting out our proposals in detail in the July 2012 LLCC Consultation.⁴⁷
- 4.3 For the reasons set out in the June BCMR Consultation⁴⁸ and in the July LLCC Consultation⁴⁹, we did not propose to impose cost orientation obligations on BT.

Summary

- 4.4 Having considered stakeholders' responses to the June BCMR Consultation, we now consider that it would be appropriate to impose cost accounting obligations on BT in each of the markets in which we propose that BT has SMP.
- 4.5 In the June BCMR Consultation, we also proposed that BT and KCOM should be subject to accounting separation obligations in each of the wholesale markets in which we proposed they have SMP. However, we accidentally omitted to explain how these proposals satisfy the legal tests in the Act, nor did we include the statutory notification to give effect to that proposal. We have therefore taken the opportunity to address this oversight in this document.

⁴⁶ These markets are: the wholesale market for low bandwidth TISBO in the UK excluding the Hull area at bandwidths up to and including 8Mbit/s; the wholesale market for medium bandwidth TISBO in the UK excluding the Hull area and the WECLA at bandwidths above 8Mbit/s and up to and including 45Mbit/s; the wholesale market for high bandwidth TISBO in the UK excluding the Hull area and the WECLA at bandwidths above 45Mbit/s and up to and including 155Mbit/s; the wholesale market for regional trunk segments in the UK; the wholesale market for low bandwidth AISBO in the WECLA at bandwidths up to and including 1Gbit/s; the wholesale market for low bandwidth AISBO in the UK excluding the Hull area and the WECLA at bandwidths up to and including 1Gbit/s; and the wholesale market for MISBO in the UK excluding the Hull area and the WECLA; and the retail market for low bandwidth TI leased lines in the UK excluding the Hull area at bandwidths up to and including 8Mbit/s.

⁴⁷ Leased Lines Charge Control, Proposals for a new charge control framework for certain leased lines services, 5 July 2012.

⁴⁸ Sections 10, 11 and 12 of the June BCMR Consultation.

⁴⁹ See paragraphs 2.24 to 2.37, 5.69 to 5.74, 6.110 to 6.114, 7.59 and 8.20 to 8.22.

Accounting separation obligations

Legal basis

- 4.6 Under sections 87(7) and 87(8) of the Act, appropriate accounting separation obligations may be imposed on the dominant provider in respect of the provision of network access, the use of the relevant network and the availability of relevant facilities. That is to say, the dominant provider may be required to maintain a separation for accounting purposes between such different matters relating to network access or the availability of relevant facilities. We intend to rely on this legal basis in imposing accounting separation obligations on BT and KCOM.

Aim of accounting separation obligations

- 4.7 In the June BCMR Consultation, we explained the rationale for our proposal that BT and KCOM should be subject to accounting separation obligations in each of the markets in which they have SMP, namely:

“It is essential, if the obligation to not unduly discriminate is to be meaningful, that BT and KCOM can be required to make transparent its wholesale prices and internal transfer prices, i.e. to demonstrate that they are not unduly discriminating against CPs. In practice this means that they are obliged to produce financial statements that reflect the performance of the markets as though they were separate businesses. Accounting separation therefore enables Ofcom to monitor whether BT and KCOM are unduly discriminating.”⁵⁰

Cost accounting obligations

Previous proposals

- 4.8 With regard to cost accounting obligations on BT, we stated in the June BCMR Consultation that “we are not proposing that BT should be subject to any cost orientation obligations in the business connectivity markets. Consequently we do not propose to apply cost accounting obligations”.⁵¹
- 4.9 We also did not propose to impose cost accounting obligations on KCOM.

Consultation responses

- 4.10 Seven respondents to the June BCMR Consultation objected to our proposal not to apply cost accounting obligations on BT. The main points made were:
- cost accounting obligations should be retained even if Ofcom decides not to apply cost orientation obligations;
 - publication of cost accounting information promotes transparency and enables CPs to monitor discriminatory conduct by BT such as loading costs into services that CPs consume more than BT;

⁵⁰ See paragraph 15.9. In the June BCMR Consultation, the SMP services conditions we proposed to impose on BT include a no undue discrimination SMP condition (see proposed SMP services conditions 3 and 12, as set out in Schedule 2 of the Notification at Annex 14 to the June BCMR Consultation).

⁵¹ Paragraph 15.12.

- scrutiny of cost accounting information by CPs helps ensure its integrity. Accounting problems are often uncovered by CPs rather than by Ofcom;
- continuity of publication of accounting information is also important to aid understanding and to maintain integrity; and
- Ofcom would require BT to produce cost accounting information in order to set charge controls.

Our current considerations

4.11 Having considered stakeholders' responses, we consider that it would be appropriate to impose cost accounting obligations on BT in each of the markets in which we propose BT has SMP, for the reasons we discuss below.

Legal basis

- 4.12 Section 87(9) of the Act provides, amongst other things, that appropriate cost accounting obligations may be imposed on dominant providers in relation to price controls which have been imposed in relation to matters connected with the provision of network access, the use of the relevant network and the availability of relevant facilities. These cost accounting obligations include rules about the recovery of costs and rules about the use of cost accounting systems
- 4.13 Section 87(11) of the Act provides that where, under an SMP services condition, we impose cost accounting obligations, we also need to require the dominant provider to make a description of the cost accounting system used in pursuance of that condition.
- 4.14 In addition, under section 91 of the Act where wholesale regulation in the upstream market would not suffice to achieve our duties and objectives with regard to the relevant retail market, the sorts of SMP conditions authorised or required by sections 87 to 89 of the Act may be set in that retail market.

Aims of cost accounting obligations

- 4.15 Cost accounting obligations require the dominant provider to maintain a cost accounting system (a set of processes and systems) to capture the costs, revenues, assets and liabilities associated with the provision of services and to attribute them in a fair, objective and transparent manner to individual services in order that the costs of individual services may be determined. In conjunction with the other financial reporting obligations, cost accounting obligations perform several important functions. In particular:
- Cost accounting obligations ensure that we have information necessary to carry out our work, pursuant to our statutory duties, including the following:
 - Information to support our market reviews. Our market reviews involve a forward-looking, structural evaluation of the relevant markets, based on existing market conditions. The information deriving from cost accounting obligations assists us in this evaluation, in particular, at the remedies stage in determining whether a form of price control⁵² (if any) should be imposed and, if so, what the appropriate price control should be. For the reasons set out in the

⁵² Within the meaning of section 87(9) of the Act.

June BCMR Consultation, we are proposing to impose charge controls in some of the markets in which we propose that BT has SMP. In our preferred method of charge control regulation – RPI+/-X – fully allocated cost (FAC) accounting information (usually information relating to the last financial year and preceding years) is an input to our assessment of the dominant provider's base year costs and cost trends. Similarly FAC, distributed stand alone cost (DSAC) and distributed long run incremental cost (DLRIC) information is used for our assessment of whether starting charge adjustments may be appropriate.⁵³ We have adopted this method in the July LLCC Consultation.

- Information to support the monitoring of effectiveness of remedies. Given the nature of a market review, any SMP findings apply prospectively. In this respect, cost accounting obligations provide important information to ensure that remedies we have applied in our market review, and those SMP conditions we have proposed in the June BCMR Consultation, continue to address the competition problems identified, in particular any price control we have imposed, and to enable our timely intervention should such intervention ultimately be needed.
- Information to support investigations of potential breaches of SMP obligations and anti-competitive practices generally. It may also be used in resolving disputes.
- Cost accounting obligations ensure that the dominant provider records all information necessary for the purposes listed above at the time that relevant transactions occur, by requiring the dominant provider to record detailed information about the costs it incurs in providing services on an ongoing basis. Absent such a requirement, there is a strong possibility that the necessary information would not be available when it is required, and in the necessary form and manner.
- The imposition of cost accounting obligations ensure that wholesale costs are attributed across the wholesale markets (and the individual services within them) in a consistent manner. This mitigates, in particular, against the risk of double recovery of costs or that costs might be loaded onto particular products or markets.
- Publication of cost accounting information aids transparency, providing reassurance to stakeholders about compliance with SMP obligations, allowing stakeholders to monitor compliance and more generally enabling stakeholders to make better informed contributions to the development of the regulatory framework.

Revised proposals

We propose to impose cost accounting obligations on BT only

- 4.16 In light of the competition problems identified, particularly the risks of excessive pricing and discrimination and of our proposal to apply charge controls, we now consider that BT should be subject to cost accounting obligations in these markets to secure the functions discussed above. We therefore propose to impose cost

⁵³ We usually prefer to use charge control glide paths to bring charges into line with forecast costs but where charges are significantly misaligned with costs and there is a risk of distortion we may use starting charge adjustments.

accounting obligations on BT in each of the markets in which we propose that BT has SMP.

- 4.17 We are not, however, minded to change our previous proposal in relation to KCOM and do not propose to impose cost accounting obligations on KCOM.

We propose to require BT to continue to deliver to Ofcom DLRIC and DSAC figures

- 4.18 A cost orientation obligation requires that services be sold at a price that is derived from a measure of the costs of providing those services. Ofcom's practice has been to consider that charges comply with cost orientation if they lie within the range of DSAC to DLRIC, and to apply this test taking into account a number of other 'non-mechanistic' factors. These cost measures test whether a price is excessively high or low by defining varying amounts of common costs to be allocated to a given product, in addition to the incremental costs of provision.
- 4.19 In light of our proposal not to apply cost orientation obligations in relevant product markets, we have further considered whether it is still appropriate for BT to be required to a) produce DLRIC and DSAC figures for products/services in these markets and b) to publish the DLRIC and DSAC figures for wholesale services in its Regulatory Financial Statements (RFS).
- 4.20 Our assessment is now that we will still require DLRIC and DSAC figures for these proposed services. As explained above, one reason is that we use these figures to inform our decisions about whether to apply starting charge adjustments. These figures may also be useful as indicators of SMP or to set future cost orientation obligations. We therefore propose to maintain the obligation for BT to produce these figures.
- 4.21 BT is currently required to publish DLRIC and DSAC figures for wholesale services in its RFS in order that CPs may gain confidence regarding BT's compliance with cost orientation obligations. If we were to adopt our proposal not to apply cost orientation obligations, the primary purpose for publication of these figures would therefore fall away. If so, our proposal is that BT should not be required to publish DLRIC and DSAC figures in these proposed wholesale product markets if we were to adopt our proposal not to apply cost orientation obligations, but only to continue to deliver them to Ofcom.
- 4.22 In the proposed charge controls, sub-caps are used to constrain the movement of individual charges, effectively replacing the function previously performed by cost orientation obligations. Compliance with these sub-caps can be readily monitored by stakeholders by reference to BT's pricing notifications whereas DLRIC and DSAC figures are published in arrears. We therefore consider there would be at least an equivalent level of transparency under the proposed new arrangements.

We do not propose to require any other changes to the cost accounting information that BT currently publishes

- 4.23 In connection with our proposal not to apply cost orientation obligations, we are not proposing to make any other changes to the cost accounting information that BT is required to produce and publish pursuant to the cost accounting obligations. In particular, BT would therefore continue to be required to deliver to Ofcom, as well as to publish, FAC figures at the market and product/service level and also to publish the calculation of FAC based on component costs. We consider that publication of

this information is appropriate in markets where there is a risk of pricing distortions or undue discrimination. Such transparency would, in particular, enable CPs to:

- assess the accuracy of product/service level data. In some ways, CPs are in a better position to do this than the regulator as they are involved in the business of buying and using the products/services concerned.
- monitor the effectiveness of charge controls, in particular to monitor actual costs against those forecast for the purpose of setting charge controls.
- monitor BT's compliance with other SMP obligations, including the no undue discrimination obligations.

4.24 However, we note that we are currently reviewing BT's regulatory financial reporting obligations as part of our cost orientation and regulatory financial reporting project. We recently published a consultation⁵⁴ on regulatory financial reporting obligations setting out initial proposals. We also plan a publication on cost orientation obligations later this year.

Implementation and legal tests

4.25 Consistent with our approach in other market reviews, we intend to implement our detailed proposals regarding the imposition of regulatory financial reporting obligations in relation to BT and to KCOM in our annual update through directions applied to BT's, and to KCOM's, regulatory financial reporting obligations.

4.26 We propose in this document to set SMP conditions to impose those obligations on BT and KCOM, respectively, which conditions will also provide the legal basis for above-mentioned future directions. We consider that the proposed accounting separation and cost accounting obligations satisfy the relevant legal tests for the reasons set out below.

Accounting separation legal tests

4.27 As noted above, under sections 87(7) and 87(8) of the Act, appropriate accounting separation obligations may be imposed on the dominant provider in respect of the provision of network access, the use of the relevant network and the availability of relevant facilities. That is to say, the dominant provider may be required to maintain a separation for accounting purposes between such different matters relating to network access or the availability of relevant facilities.

4.28 We are satisfied that the accounting separation obligations set out in Schedule 2 of Annex 2 (in respect of BT) and Annex 3 (in respect of KCOM) to the Financial Reporting Statement and Notification 2004⁵⁵ meet the various tests set out in the Act.

4.29 We have considered our duties under section 3 of the Act and consider that the application of the accounting separation obligations on BT and on KCOM is justifiable

⁵⁴ Regulatory Financial Reporting: a review, published 6 September 2012

http://stakeholders.ofcom.org.uk/consultations/regulatory-financial-reporting/?utm_source=updates&utm_medium=email&utm_campaign=req-financial-reporting

⁵⁵ *The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification, published 22 July 2004*

http://stakeholders.ofcom.org.uk/binaries/consultations/fin_reporting/statement/finance_report.pdf

to promote competition in relation to the provision of electronic communications networks and to ensure the provision of network access and services interoperability for the purpose of securing efficient and sustainable competition and the maximum benefit for consumers.

- 4.30 We have considered the Community requirements set out in section 4 of the Act and consider they are met. Specifically, the accounting separation obligations encourage the provision of network access for the purpose of securing efficient and sustainable competition in the markets for electronic communications networks and services, by ensuring dominant providers – i.e. BT and KCOM both of whom we have proposed, in the June BCMR Consultation, have SMP in a number of markets – do not discriminate unduly in favour of their own downstream businesses, thereby disadvantaging 3rd party CPs.
- 4.31 We consider that the accounting separation obligations meet the criteria set out in section 47 of the Act in that they are:
- objectively justifiable for the reasons set out above;
 - not unduly discriminatory, as we are proposing that they only apply to BT and KCOM who are the only providers we have proposed in the June BCMR Consultation have SMP and we have proposed that both providers should be subject to a no-undue discrimination obligation⁵⁶;
 - proportionate, as they are necessary as a mechanism to allow Ofcom and 3rd parties to monitor whether BT and KCOM are engaging in discriminatory behaviour; and
 - transparent, as they are set out in Schedule 2 of Annex 2 (in respect of BT) and Annex 3 (in respect of KCOM) to the Financial Reporting Statement and Notification 2004.

Cost accounting legal tests

- 4.32 First, we are proposing wholesale cost accounting obligations under section 87(9) of the Act. Section 88 of the Act states that Ofcom are not to set an SMP condition falling within section 87(9) except where it appears from the market analysis that there is a relevant risk of adverse pricing effects arising from price distortion and it also appears that the setting of the condition is appropriate for the purposes of:
- promoting efficiency;
 - promoting sustainable competition; and
 - conferring the greatest possible benefits on the end-users of the public electronic communications services.
- 4.33 Section 88(2) also requires that we must take account of the extent of investment in the matters to which the conditions relates and the person to whom the condition applies i.e. BT in this case.

⁵⁶ See proposed SMP services condition 3 in Schedule 2, and proposed SMP services condition 2 in Schedule 3, of the Notification at Annex 14 to the June BCMR Consultation.

- 4.34 As discussed above, in the June BCMR Consultation, we identified the risk of excessive pricing in the markets in which we proposed BT has SMP.
- 4.35 For the reasons set out above⁵⁷, we consider that cost accounting obligations promote efficiency and promote sustainable competition. We have also taken account of the extent of the investment of BT in the matters to which the cost accounting obligations relate.
- 4.36 In addition, under section 91 of the Act where wholesale regulation in the upstream market would not suffice to achieve our duties and objectives with regard to the relevant retail market, the sorts of SMP conditions authorised or required by sections 87 to 89 of the Act may be set in that retail market. In this respect, we consider imposing accounting separation on BT only in the relevant wholesale markets would not provide us with the necessary transparency in the relevant retail market.
- 4.37 Secondly, we have considered our duties under section 3 of the Act. In particular, we consider our proposal to impose cost accounting obligations on BT would further the interests of citizens and further the interests of consumers in relevant markets by the promotion of competition. Further, we consider that, in accordance with section 4 of the Act, cost accounting obligations in particular promote competition in relation to the provision of electronic communications networks and encourage the provision of network access for the purpose of securing efficiency and sustainable competition in downstream markets for electronic communications networks and services, resulting in the maximum benefit for retail consumers.
- 4.38 Thirdly, we consider our proposal to impose cost accounting obligations on BT meets the criteria set out in section 47(2) in that cost accounting obligations are:
- objectively justifiable, for the reasons set out above;
 - not unduly discriminatory, as it is proposed only for BT and no other operator has been found to hold a position of SMP in the relevant markets in which we propose cost accounting obligations would apply;
 - proportionate since they achieve the appropriate balance between the provision of relevant financial information to Ofcom and the publication of relevant financial information to provide sufficient transparency to stakeholders; and
 - transparent as they are set out in Schedule 2 of Annex 2 to the Financial Reporting Statement and Notification 2004.

Question 3: Do you have any comments about our proposal that BT should be subject to cost accounting obligations and not required to publish DLRIC & DSAC figures?

⁵⁷ See paragraphs 4.15 to 4.24

Section 5

AISBO Trunk Aggregation Nodes and circuit routing rules

Introduction

- 5.1 In the June BCMR Consultation, we proposed to define the following two wholesale product markets for the purpose of making proposed market power determinations:
- Wholesale market for low bandwidth AISBO in the UK excluding the Hull Area and the WECLA, at bandwidths up to and including 1Gbit/s; and
 - AISBO market in the WECLA at bandwidths up to and including 1Gbit/s.
- 5.2 We proposed that BT has SMP in both AISBO markets⁵⁸.
- 5.3 In the June BCMR Consultation, we also set out the remedies we proposed to impose on BT in each of the AISBO markets to address the identified competition problems.⁵⁹
- 5.4 We considered, amongst other things, how we should address stakeholder concerns that rules that BT had proposed (but not implemented) would have unnecessarily restricted Ethernet Access Direct (EAD) circuit routings by specifying restrictions for EAD circuits routed between Trunk Aggregation Nodes (TANs) in these markets.
- 5.5 For the reasons set out in the June BCMR Consultation, we considered it would be appropriate for us to clarify the rules that should apply to these circuits and proposed a set of rules for inclusion in the proposed SMP services conditions for the AISBO markets.

Summary

- 5.6 In light of stakeholders' responses, we are now proposing the following changes to the rules we proposed in the June BCMR Consultation:
- changes to the proposed definition of Trunk Aggregation Node⁶⁰, as used for the purposes of the proposed SMP services conditions. In particular, we are making changes to the list of BT operational buildings which we assigned to each of BT's TANs;
 - changes to our proposals in relation to circuit routing restrictions. To give effect to this proposal, we are proposing to remove certain wording from proposed SMP service condition 2 entitled "Specific forms of network access"; and
 - changes to the proposed definition of Backhaul Segment⁶¹, as used for the purposes of the proposed SMP services conditions.

⁵⁸ See Section 7.

⁵⁹ See Section 11.

⁶⁰ As set out in Part 2 of Schedule 2 of the Notification at Annex 14 to the BCMR June Consultation.

⁶¹ As set out in Part 2 of Schedule 2 of the Notification at Annex 14 to the BCMR June Consultation.

Background

- 5.7 In the June BCMR Consultation⁶² we explained how, in the 2007/08 Review, we had considered that CPs could benefit from economies of scale by building networks in a manner designed to aggregate traffic and to realise these economies of scale in the core of their networks to a much greater extent than in the access segments.
- 5.8 We observed that a number of CPs had built core networks by establishing points of presence (PoPs) in main population centres and connected these PoPs with high capacity resilient links. We considered that a CP's choice of location for these PoPs would be driven by the number and concentration of customers it served in the corresponding areas and that the design of its core network connecting these PoPs would be driven by the scale of traffic to be transmitted between locations.
- 5.9 Our inference on how competition would work in the AISBO market⁶³ was mainly based on the observations of the TI⁶⁴ market. We particularly observed that, in most circumstances, a CP would not locate its PoPs and interconnect with BT at more than one BT Tier 1 node where BT had other Tier 1 nodes in close proximity within the same urban area. A CP would only do so if there was a sufficient volume of traffic within a particular urban area to justify the additional interconnection.
- 5.10 Therefore, in considering the boundary between trunk and terminating segments in AISBO services, our decision in the 2007/08 Review was based on CPs' typical choice of interconnection rather than on the location of core nodes in BT's network – in the case of AISBO services, BT's 106 core nodes – which it calls Openreach Handover Points (OHPs). We explained that we considered that it would be sustainable for a CP to reach national coverage in the AISBO market by interconnecting its core network with BT at 56 different points rather than all 106 BT OHPs. For this purpose, we grouped BT's OHPs into 56 regional groups known as TANs.

Changes to the assignment of BT's operational buildings to AISBO TANs

- 5.11 In the June BCMR Consultation⁶⁵, we explained that we had grouped BT's 106 OHPs into 56 TANs. We proposed a specific grouping as part of the proposed definition of Trunk Aggregation Node.
- 5.12 In its response to the June BCMR Consultation, BT queried why, in the proposed definition of Trunk Aggregation Node, the grouping of OHPs into TANs in Table 2 differed from that specified in the 2007/08 Review. In particular, the 2007/08 Review had only defined a sub-set of its OHP buildings (then known as "metro-nodes") as TANs⁶⁶, whereas the June BCMR Consultation assigns all the OHPs to their closest TANs.
- 5.13 We have reviewed Table 2 in the proposed definition of Trunk Aggregation Node and we acknowledge that the difference was unintended. We consider that the reasoning

⁶² See Section 11 paragraph 11.84 onwards.

⁶³ The 2007/08 Review defined the AISBO market at speeds up to and including 1Gbit/s as national in scope – i.e. the UK excluding Hull – and found BT had SMP in the market.

⁶⁴ Traditional Interface.

⁶⁵ Paragraph 11.88.

⁶⁶ These were listed in the December 2008 Statement in Table 6.13 on page 143.

and conclusions of the 2007/08 Review about the assignment of OHPs to the 56 TANs remains valid.

- 5.14 To correct this unintended change, we propose to change the proposed definition of Trunk Aggregation Node by changing Column 2 (BT operational buildings) of Table 2 as shown below.

"Trunk Aggregation Node" means a node listed in Column 1 of Table 2 below consisting of any one or more of the Dominant Provider's operational buildings as listed in Column 2 of Table 2 below;

Table 2: Trunk Aggregation Nodes

Column 1: Trunk Aggregation Nodes	Column 2: BT operational buildings
Aberdeen	Aberdeen Central; Inverness Macdhui
Basingstoke	Basingstoke/Bounty
Belfast	Belfast/City; Belfast/Seymour; Portadown
Birmingham	Birmingham Central; Birmingham Midland Birmingham Perryfields (Bromsgrove); Erdington
Bishops Stortford	Bishops Stortford
Brighton	Brighton Hove
Bristol	Bedminster, Bristol Redcliffe; Yeovil
Cambridge	Cambridge Trunks
Cardiff/Newport	Aberystwyth; Bridgwater; Cardiff; Newport (Gwent); Swansea
Carlisle	Carlisle
Chelmsford	Chelmsford Town; Southend-On-Sea
Coventry	Coventry Greyfriar; Leamington Spa
Crawley	Crawley
Croydon	Croydon
Darlington	Darlington
Derby	Derby
Doncaster	Doncaster; Lincoln
Edinburgh	Edinburgh Donaldson
Exeter	Exeter Castle; Truro; Plymouth
Falkirk	Dundee Tay; Falkirk
Glasgow/Clyde Valley	Glasgow Central; Glasgow Douglas
Gloucester	Gloucester
Guildford	Guildford/Martyr
Ipswich	Colchester Town; Ipswich Town; Norwich City
Irvine	Irvine
Kendal	Kendal
Kingston	Kingston
Leeds	Bradford (2); Leeds (3); Pontefract
Leicester	Leicester Montfort
Liverpool	Liverpool Central; Wrexham Grosvenor; Bangor (Wales)
London Central	BT Tower (West Block); Covent Garden, Faraday Te (Moorgate), South Kensington; Southbank
London Docklands	Bermondsey; Stepney Green
London East	Hornchurch, Kidbrooke, Upton Park; Woodford
London North	Potters Bar

London West	Colindale; Ealing; Southall
Luton	Luton Ate/Tower Block
Maidstone	Ashford; Maidstone; Tunbridge Wells
Manchester	Bolton; Dial House (Manchester); Oldham; Pendleton
Milton Keynes	Bedford Town ; Milton Keynes
Newcastle	Newcastle Central; South Shields
Northampton	Northampton
Nottingham	Nottingham Longbow
Oxford	Oxford City
Peterborough	Peterborough Wentw
Portsmouth/Southampton	Bournemouth ; Cosham; Southampton
Preston	Preston (Lancs)
Reading	Bracknell
Salisbury	Salisbury
Sheffield	Chesterfield; Sheffield Cutler
Slough	High Wycombe; Slough
Stoke	Stoke Trinity/Pott
Swindon	Swindon
Warrington	Ashton In Makerfield; Northwich
Watford	Hemel Hempstead ; Watford
Wolverhampton	Walsall Central, Wolverhampton Central; Shrewsbury
York	Malton

Changes to our proposals in relation to circuit routing restrictions

- 5.15 In the June BCMR Consultation⁶⁷, we set out our understanding that when BT introduced its EAD service it defined geographic catchment areas for each TAN based on the exchanges ‘served’ by each Access Service Node (ASN). We said that BT then initially restricted EAD circuit routings that crossed the boundaries of these TAN areas except for end-to-end circuits (i.e. those between two end-user premises), but that these restrictions were subsequently suspended after discussions between BT and other CPs.
- 5.16 We went on to explain that CPs regard such TAN area boundaries restrictions as unduly restrictive and remain concerned that BT might reintroduce them. BT, on the other hand, was concerned that EAD circuits between TANs would contain a trunk segment which it is not required to provide.
- 5.17 Based on the above, we sought to clarify the rules concerning routing between TANs in the proposed AISBO markets.
- 5.18 We noted that, in respect of AISBO services, we define trunk segments as circuits between aggregation nodes rather than circuits routed between the catchment areas served by those aggregation nodes. Predicated on our understanding that BT had defined catchment areas for each TAN, we argued that circuits that cross a catchment area boundary do not therefore necessarily contain a trunk element and provisionally concluded that it would be inappropriate to restrict EAD circuits or other point-to-point circuits such as Wholesale Extension Service (WES) and Backhaul

⁶⁷ See paragraphs 11.89 to 11.90.

Extension Service (BES)⁶⁸ from crossing TAN boundaries. Furthermore, we viewed such restrictions on point-to-point Ethernet circuits crossing catchment areas as likely to limit CPs' freedom to aggregate circuits in locations other than the ASNs that BT had chosen for its own backhaul network and hence limit CPs' ability to use their own network assets for backhaul. We therefore provisionally concluded that TAN catchment area boundary crossing restrictions should not be reintroduced as they were likely to be contrary to our objective of encouraging competition in backhaul.

5.19 Whilst we did not propose specifying product distance limits (since doing so might be unduly restrictive as the technical capabilities of equipment may change), we nevertheless took the view that technical transmission limits, which currently limit the circuit radial distances of standard products to 25km and those of extended reach products to 35km, should be sufficient to ensure that those products are not used to provide trunk connections.

5.20 Based on the above reasoning, we:

- i) proposed to defined access, backhaul, end-to-end and trunk segments⁶⁹;
- ii) specified that BT is required to provide access, backhaul, end-to-end but not trunk segments; and
- iii) specified that BT is required to provide access and backhaul segments that cross boundaries between adjacent TAN areas.

5.21 We proposed to apply these rules in proposed SMP services condition 2.1, which is reproduced below.

2.1 Without prejudice to the generality of Condition 1, the provision of network access under Condition 1 shall include the following specific forms of network access:

(a) Ethernet Services which do not contain a Trunk Segment and in which the ends of each service lie either in the Serving Area of a single Trunk Aggregation Node or in the Serving Areas of two Trunk Aggregation Nodes whose Serving Areas are adjacent, including the provision of the following services:

- (i) Access Segments,*
- (ii) Backhaul Segments, and*
- (iii) Wholesale End-to-End Segments, up to a maximum straight-line distance of 25km; and*

(b) WDM Services delivered as Wholesale End-to-End Segments.

Consultation responses

5.22 In its response to our June BCMR Consultation⁷⁰, BT pointed out that we were incorrect to suggest that BT or anyone else had defined the catchment area of the

⁶⁸ BT has since announced that in addition to its earlier notice of the withdrawal from new service of most of its WES, WEES and BES products from June 2011, its 2.5Gbit/s and 10Gbit/s variants will be withdrawn from new service from August 2013 at the earliest.

⁶⁹ We proposed these defined terms for use in the proposed SMP services conditions. The terms are defined in Part 2 of Schedule 2 of the Notification at Annex 14 to the June BCMR Consultation.

⁷⁰ See link at footnote 1 - page 81, paragraph 11-14.

TANs in terms of geographical boundaries. It noted that Openreach had discussed such a definition with the industry but that, in BT's view, gaining industry-wide agreement would be complex and potentially problematic.

- 5.23 BT suggested that, in order to remove the need to identify notional TAN geographic boundaries precisely, a pragmatic solution would be that Openreach should accept requests for end-to-end AISBO circuit provision up to the relevant product distance limits, irrespective of the location of the customer site end-points. However, it said that we should clarify that the AISBO obligation would not extend to requiring Openreach to provide either a circuit connecting two AI TAN nodes, nor to connect from one AISBO TAN node to a business customer or other site within other "TAN catchment areas". BT argued that, while Openreach might continue to provide the latter, it would be inappropriate for us to set a formal obligation for it to do so because it would undermine the basis of infrastructure competition by allowing a sub-scale network operator without PoPs at all 56 TANs to obtain national coverage using regulated products.
- 5.24 In its response to the June BCMR Consultation⁷¹, Exponential-e commented that Openreach had implemented rules prohibiting Ethernet Backhaul Direct (EBD) circuits from crossing between TAN areas and not simply circuits between OHPs in different TANs.
- 5.25 In its response, Exponential-e explained particular circumstances in which Openreach may claim that the provision of a circuit includes a trunk segment and the inability of a CP to verify this, illustrating ambiguity in Openreach's current obligations. Exponential-e suggested that a definitive dataset is required from BT showing which ASNs belong to which TAN.
- 5.26 In its confidential response, [X] raised similar concerns to Exponential-e. It concluded that it is difficult to assess the impact of our proposed clarification to circuit routing restrictions because it does not know which BT exchanges fall into which TANs (other than certain OHPs).

Ofcom's view

- 5.27 In response to the comments made by Exponential-e and the confidential respondent [X], we note that, in respect of EBD (Ethernet backhaul circuits providing uncontented bandwidth from an ASN to an OHP currently available in 1Gbit/s or 10Gbit/s variants), Openreach makes available details to CPs⁷² describing which ASNs are connected to which OHPs and that CPs can purchase EBD from one ASN to OHPs which may be assigned to different TANs.
- 5.28 We accept that the industry has not reached agreement on the definition of TAN catchment areas. It is clear therefore that the circuit routing proposals in the June BCMR Consultation will not provide the clarification we intended because they were predicated on the existence of such an agreed definition.
- 5.29 We consider that a simpler set of rules should suffice. In essence, this would codify the current arrangements whereby Openreach:

⁷¹ Exponential-e's non-confidential response of 31 August 2012 is published at <http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/responses/Exponential-e.pdf>

⁷² Known as 'data set 8'.

- provides wholesale end-to-end services, such as EAD, between any two end-user premises up to 25km;
 - provides terminating segments, such as EAD, between two points subject only to the distance limits specified for the products;
 - provides EBD backhaul services between ASNs and one of the OHPs in the TANs to which they are connected; and
 - provides customer sited handover of EBD services by means of a BTL circuit; but
 - does not have to provide circuits between OHPs in different TANs.
- 5.30 As set out in the June BCMR Consultation⁷³, we consider that the maximum radial range of BT's wholesale AI access products, currently 25km for standard products and 35km for extended reach products, would limit sufficiently the extent to which those products are used to provide trunk connections.
- 5.31 In relation to BT's suggestion that we clarify that Openreach is not obliged to provide circuits connecting one AISBO TAN node to a business customer or other site within other AISBO "TAN catchment areas", this suggestion does not seem to us to be reconcilable with BT's observation, which we accept, that the geographical boundaries of TAN catchment areas have not been defined.
- 5.32 We have therefore changed our proposed circuit routing rules in proposed SMP services condition 2.1(a) such that terminating segments and wholesale end-to-end segments are not restricted to circumstances in which the ends of each service lie either in the same or adjacent TANs. The circuits which we define as trunk segments, and which are therefore excluded from the wholesale AISBO markets, are services connecting any two of BT's operational buildings which are assigned to different TANs.

Minor amendment to definition of Backhaul Segment

- 5.33 We also propose a minor amendment to the definition of Backhaul Segment to clarify that backhaul segments include circuits between two CP network nodes as well as those between BT network nodes and between BT network nodes and CP network nodes. This clarification was omitted from the proposed definition of Backhaul Segment as set out in the June BCMR Consultation.

Changes to proposed SMP services condition 2.1 and to proposed definition of Backhaul Segment

- 5.34 We have set out below the relevant proposed changes:

2.1 Without prejudice to the generality of Condition 1, the provision of network access under Condition 1 shall include the following specific forms of network access:

(a) Ethernet Services which do not contain a Trunk Segment ~~and in which the ends of each service lie either in the Serving Area of a single Trunk Aggregation Node or in the Serving Areas of two Trunk Aggregation~~

⁷³ See paragraphs 11.92 to 11.94.

~~Nodes whose Serving Areas are adjacent, including the provision of the following services:~~

- ~~(i) Access Segments,~~
- ~~(ii) Backhaul Segments, and~~
- ~~(iii) Wholesale End-to-End Segments, up to a maximum straight-line distance of 25km; and~~

~~(b) WDM Services delivered as Wholesale End-to-End Segments.~~

~~“Backhaul Segment” means a service providing uncontended bandwidth connecting an operational building of the Dominant Provider to:~~

~~(a) another operational building of the Dominant Provider; or~~

~~(b) an operational building of a Third Party.~~

(a) an operational building of the Dominant Provider to:

- (i) another operational building of the Dominant Provider; or
- (ii) an operational building of a Third Party.

or

(b) an operational building of a Third Party to:

- (i) Another operational building of the Third Party;
- (ii) An operational building of the Dominant Provider.

Aim of regulation and legal tests

Aim of regulation

5.35 The aim of proposed SMP services condition 2 remains as explained in the June BCMR Consultation. As a result of its SMP, we consider that it is appropriate to impose a requirement for BT to meet reasonable requests for network access. We consider that, in the absence of such a requirement, BT would have an incentive not to provide such access, and would be able to monopolise the provision of services in the downstream markets. Proposed SMP services condition 2 is in addition to a general requirement to providing network access⁷⁴, and introduces the following specific network access obligations:

- a requirement to provide Ethernet access;
- a requirement to provide Ethernet backhaul; and
- a requirement to provide short range end-to-end services.

5.36 We propose to introduce these new specific remedies as part of the SMP obligations to ensure that BT keeps supplying wholesale disaggregated access and backhaul Ethernet services and short range end-to-end services. In view of the concerns about the circuit routing restrictions (discussed above) we have also specified in more detail the circuits that BT is required to provide.

⁷⁴ See proposed SMP services condition 1.

5.37 In the absence of these requirements, we consider BT would have an incentive to withdraw or no longer supply disaggregated products and make different products available under the general requirement of network access. In our view, this would be significantly disruptive to industry which, due to pre-existing regulation has developed its business models around the availability of disaggregated Ethernet access and backhaul.

Legal tests

Section 87 of the Act

5.38 Section 87(3) of the Act authorises the setting of an SMP services condition requiring the dominant provider to provide such network access as we may, from time to time, direct. These conditions may, pursuant to Section 87(5), include provision for securing fairness and reasonableness in the way in which requests for network access are made and responded to, and for securing that the obligations in the conditions are complied with within periods and at the times required by or under the conditions.

5.39 When considering the imposition of such conditions in a particular case, we must take into account six factors set out in Section 87(4) of the Act, including *inter alia*:

- the technical and economic viability of installing and using other facilities, including the viability if other network access products whether provided by the dominant provider⁷⁵ or another person⁷⁶, that would make the proposed network access unnecessary;
- the feasibility of the proposed network access; and
- the need to secure effective competition, including where it appears to us to be appropriate, economically efficient infrastructure based competition, in the long term.

5.40 In proposing both SMP services condition 1 and 2, we have taken all these six factors into account.

5.41 As explained in the June BCMR Consultation, the definition of access and the way in which we might assess reasonable demands for access are set out in our Access Guidelines.⁷⁷ We consider it is appropriate in cases where we propose a CP has SMP (such as BT in this case) to impose an access obligation on that provider requiring it to meet all reasonable requests for network access within the relevant wholesale market, irrespective of the technology required, on fair and reasonable terms, conditions and charges.

5.42 As discussed in our SMP assessment in the June BCMR Consultation, there are considerable sunk costs associated with building networks to provide leased lines services. We consider it is unlikely to be economically viable or efficient to build competing access networks on a sufficient scale to provide effective constraint on BT's SMP in the downstream markets.

⁷⁵ i.e. in this instance BT.

⁷⁶ i.e. other CPs.

⁷⁷ *Imposing access obligations under the new EU directives*, Ofcom, 13 September 2002, available at http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.pdf

- 5.43 Therefore, we are currently of the view that requirements for BT to provide general network access, as set out in proposed SMP services condition 1, and specific network access, as set out in proposed SMP services condition 2, are appropriate. They facilitate competition in downstream markets by enabling CPs to compete without the need to invest in a network, an investment which we consider, on the basis of our market analysis, represents a structural barrier to entry and expansion in the AISBO markets. Consequently, we consider these requirements are necessary for securing effective competition including economically efficient infrastructure based competition, in the long term. The requirements for BT only to meet reasonable network access requests also ensures that due account is taken of the technical and economic viability of installing and using other facilities, the feasibility of the proposed network access, and of the investment made by BT initially in providing the network.

Sections 3 and 4 of the Act

- 5.44 In addition to taking into account the six factors in section 87(4) of the Act, we remain of the view that proposed SMP services condition 2, in tandem with proposed SMP services condition 1:

- furthers the interests of citizens in relation to communications matters and further the interests of consumers in the AISBO markets by promoting competition, in accordance with our general duty under section 3(1) of the Act;
- seeks to achieve the objective of securing the availability throughout the UK of a wide range of electronic communications services, in accordance with our duty under section 3(2) of the Act;

- 5.45 In accordance with our duty under section 3(4) of the Act, we have also had regard to:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets; and
- the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom

- 5.46 We also remain of the view that that proposed SMP services condition 2, in tandem with proposed SMP services condition 1, accords with the six European Community requirements for regulation, in particular by:

- promoting competition in the provision of electronic communications networks and services, associated facilities and the supply of directories; and
- encouraging the provision of network access and service interoperability, namely securing efficient and sustainable competition, efficient investment and innovation, and the maximum benefit for customers of CPs.

Section 47 of the Act

- 5.47 Section 47 of the Act requires SMP services conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. We consider proposed SMP service condition 2 remains:

- objectively justifiable, in that it facilitates and encourages access to BT's network and therefore promotes competition to the benefit of consumers;
- not unduly discriminatory, as it is proposed only for BT and no other operator has been found to hold a position of SMP in this market;
- proportionate, since it is targeted at addressing the market power that we propose BT holds in both AISBO is markets and does not require it to provide access if it is not technically feasible or reasonable; and
- transparent in that proposed SMP services condition 2 remains clear in its intention to ensure that BT provides access to its networks in order to facilitate effective competition.

Question 4: Do you have any comments about the proposed TAN definition or the proposed circuit routing rules?

Section 6

MISBO market power assessment

- 6.1 In the June BCMR Consultation, we identified two MISBO markets for the purpose of making market power determinations.⁷⁸ In the proposed MISBO market in the UK excluding the Hull Area and the WECLA, we have proposed that BT has SMP.⁷⁹
- 6.2 In its response to the June BCMR Consultation, BT submitted that the supply of MISBO services is competitive throughout the UK. This submission is based, in part, on its view that the MISBO is national in its geographic scope, on a separate estimate of market shares and on a view that the market is characterised by complex multi-site competitive bids, with high revenues and lengthy contract periods. BT also said that some important users of very high-bandwidth services choose to locate in areas where competing networks are already present and generally have the option to self-supply using dark fibre.⁸⁰
- 6.3 We are still considering the evidence that BT has submitted, as well as the other responses we have received. To help evaluate this evidence, we are gathering additional information on the market. We would welcome further evidence from stakeholders on the intensity of competition in the market, including the extent to which some businesses use dark fibre to self-provide MISBO services.

Question 5: Do you have further evidence on competition in the MISBO market outside the WECLA, including the use and impact of dark fibre?

⁷⁸ Wholesale market for multiple interface symmetric broadband origination: (i) in the UK excluding the Hull Area and the WECLA; and (ii) in the WECLA.

⁷⁹ See Section 7, in particular paragraphs 7.243 to 7.292.

⁸⁰ See BT response, in particular Part 1, and the Analysys Mason and Ovum reports on high-speed services in Part 2.

<http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/?showResponses=true>

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 17 December 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/bcmr-reconsultation/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email business.review@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Andreas Iliopoulos
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Clive Hillier on 020 7783 4674.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all

responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in Q1 2013.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those 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 in Word or RTF format from the ‘Consultations’ section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept 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: Business Connectivity Market Review – Further Consultation

To (Ofcom contact): Andreas Iliopoulos

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

Consultation questions

Question 1: Do you have any comments on our proposal to include the Slough sectors in the WECLA?

Question 2: Do you have any comments about the proposed amendments to the Proposed SLG Direction?

Question 3: Do you have any comments about our proposal that BT should be subject to cost accounting obligations and not required to publish DLRIC & DSAC figures?

Question 4: Do you have any comments about the proposed TAN definition or the proposed circuit routing rules?

Question 5: Do you have further evidence on competition in the MISBO market outside the WECLA, including the use and impact of dark fibre?

Annex 5

Draft Legal Instrument

NOTIFICATION OF PROPOSALS UNDER SECTIONS 48A AND 49A OF THE COMMUNICATIONS ACT 2003

Proposals for the setting of SMP services conditions, and of a direction, in relation to BT and for the setting of SMP services conditions in relation to KCOM, under sections 45 and 49 of the Communications Act 2003

Background

1. On 18 June 2012, Ofcom published the June BCMR Consultation in which it set out its proposals to identify markets, make market power determinations and set SMP services conditions in relation to BT and KCOM under section 45 of the Act.
2. In relation to BT, Ofcom proposed that BT has SMP in the following markets:
 - a) 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;
 - b) Wholesale market for medium bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA, at bandwidths above 8Mbit/s and up to and including 45Mbit/s;
 - c) Wholesale market for high bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA, at bandwidths above 45Mbit/s and up to and including 155Mbit/s;
 - d) Wholesale market for low bandwidth alternative interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA, at bandwidths up to and including 1Gbit/s;
 - e) Wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA, at bandwidths up to and including 1Gbit/s;
 - f) Wholesale market for multiple interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA;
 - g) Wholesale market for regional trunk segments in the UK; and
 - h) Retail market for low bandwidth traditional interface leased lines in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s.
3. In relation to KCOM, Ofcom proposed that KCOM has SMP in the following markets:
 - a) Wholesale market for low bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 8Mbit/s;

- b) Wholesale market for medium bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 8bit/s and up to and including 45Mbit/s;
 - c) Wholesale market for high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 45bit/s and up to and including 155Mbit/s;
 - d) Wholesale market for very high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths of 622Mbit/s;
 - e) Wholesale market for low bandwidth alternative interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 1Gbit/s;
 - f) Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s; and
 - g) Retail market for low bandwidth alternative interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 1Gbit/s.
4. As a result of the proposed market power determinations in the markets listed above at paragraph 2, Ofcom proposed to set a number of SMP services conditions and directions on BT in each of those markets.
5. In particular, in the markets listed above at d) and e) of paragraph 2, the SMP services conditions and directions proposed by Ofcom included the following:
- a) Proposed SMP services condition 2; and
 - b) The SLG Direction.
6. As a result of the proposed market power determinations in the markets listed above at paragraph 3, Ofcom proposed to set a number of SMP services conditions on KCOM in each of those markets.
7. The period within which representations could be made to Ofcom about its proposals in the June BCMR Consultation ended on 24 August 2012. Ofcom received representations from several respondents to the proposals set out in the June BCMR Consultation. In light of Ofcom's consideration of those representations, Ofcom sets out its further proposals in this Notification.

Summary of additional proposals in this Notification

8. Ofcom proposes to set SMP services conditions in relation to regulatory financial reporting in the markets listed above at paragraphs 2 and 3, to be applied to BT and KCOM respectively.
9. Ofcom proposes in relation to BT only:
- a) proposed change to Proposed SMP services condition 2;
 - b) proposed change to the SLG Direction;
 - c) proposed changes to two defined terms used for the purposes of the proposed SMP services conditions, as set out in the June SMP Notification; and

- d) proposed change to the proposed geographic market which Ofcom defined as the WECLA, as set out in the June SMP Notification.

Proposal to set SMP services conditions in relation to regulatory financial reporting in the markets listed above at paragraphs 2 and 3

10. In relation to BT:

- a) In the markets listed a) to g) above at paragraph 2, Ofcom is proposing to set SMP services conditions OA1 to OA28, OA32 and OA33, as set out in the BT Notification 2004; and
- b) In the market listed h) above at paragraph 2, Ofcom is proposing to set SMP services conditions OA1 to OA25, OA29 to OA31 and OA34, excluding subparagraphs (b), (d) and (e) of OA23, as set out in the BT Notification 2004.

11. Also in relation to BT:

- a) At paragraph 4.(a)(i) of the BT Notification 2004, Ofcom is proposing to remove “and 17a”;
- b) In Part 1 of Schedule 1 of the BT Notification 2004, Ofcom is proposing to make the following changes:
 - o Removing the reference at paragraph 14 to “Provision of traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second within the United Kingdom but not including the Hull Area” to be replaced with “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”;
 - o Removing the reference at paragraph 15 to “Provision of traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second and up to and including forty five megabits per second within the UK but not including the Hull Area and the Central East London Area” to be replaced with “Wholesale market for medium bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA (as defined in OFCOM’s notification published on [*date of publication of final statement*]), at bandwidths above 8Mbit/s and up to and including 45Mbit/s”;
 - o After paragraph 15, inserting the following paragraph 15a “Wholesale market for high bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA (as defined in OFCOM’s notification published on [*date of publication of final statement*]), at bandwidths above 45Mbit/s and up to and including 155Mbit/s”;
 - o Removing the reference at paragraph 16 to “Provision of alternative interface symmetric broadband origination with a bandwidth capacity up to and including one gigabit per second in the United Kingdom but not including the Hull Area” to be replaced with “Wholesale market for low bandwidth alternative interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA (as defined in OFCOM’s notification published on [*date of publication of final statement*]), at bandwidths up to and including 1Gbit/s”;

- After paragraph 16, inserting the following paragraph 16a “Wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA (as defined in OFCOM’s notification published on [*date of publication of final statement*]), at bandwidths up to and including 1Gbit/s”;
 - After paragraph 16a, inserting the following paragraph 16b “Wholesale market for multiple interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA (as defined in OFCOM’s notification published on [*date of publication of final statement*])”;
 - Removing reference at paragraph 17 to “Provision of wholesale trunk segments at all bandwidths within the UK” to be replaced with “Wholesale market for regional trunk segments in the UK”;
 - Deleting paragraph 17a.;
 - Updating the dates set out in paragraphs 14 to 17 by replacing the current dates with the date of the final statement.
- c) In Part 2 of Schedule 1 of the BT Notification 2004, Ofcom is proposing to make the following changes:
- Removing reference at paragraph 25 to “Provision of traditional interface retail leased lines up to and including a bandwidth capacity of eight megabits per second within the UK but not including the Hull Area” to be replaced with “Retail market for low bandwidth traditional interface leased lines in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s”; and
 - Updating the date set out in paragraph 25 by replacing the current date with the date of the final statement.

12. In relation to KCOM:

- a) In the markets listed a) to e) above at paragraph 3, Ofcom is proposing to set SMP services conditions OB1 to OB27 and OB31 to OB33, excluding subparagraphs (a) to (c) and (f) of OB23, as set out in the KCOM Notification 2004.

13. Also in relation to KCOM:

- a) At paragraph 4.(a) of the KCOM Notification 2004, Ofcom is proposing to remove subparagraph (ii);
- b) At paragraph 4.(a)(iii) of the KCOM Notification 2004, after “numbered 5 and 8”, Ofcom is proposing to add “and 9 to 12”;
- c) In Part 1 of Schedule 1 of the KCOM Notification 2004, Ofcom is proposing to make the following changes:
- Removing reference at paragraph 9 to “Provision of traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second within the Hull Area” to be replaced with “Wholesale market for low bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 8Mbit/s”;

- Removing reference at paragraph 10 to “Provision of traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second and up to and including forty five megabits per second within the Hull Area” to be replaced with “Wholesale market for medium bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 8Mbit/s and up to and including 45Mbit/s”;
 - Removing reference at paragraph 11 to “Provision of traditional interface symmetric broadband origination with a bandwidth capacity above forty five megabits per second and up to and including one hundred and fifty five megabits per second within the Hull Area” to be replaced with “Wholesale market for high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 45Mbit/s and up to and including 155Mbit/s”;
 - After paragraph 11, inserting the following paragraph 11a “Wholesale market for very high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths of 622Mbit/s”;
 - Removing reference at paragraph 12 to “Provision of alternative interface symmetric broadband origination with a bandwidth capacity of up to and including one gigabit per second within the Hull Area” to be replaced with “Wholesale market for low bandwidth alternative interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 1Gbit/s”; and
 - Updating the dates set out in paragraphs 9 to 12 by replacing the current dates with the date of the final statement.
- d) In Part 2 of Schedule 1 of the KCOM Notification 2004, Ofcom is no longer proposing to make any changes. Consequently the June SMP Notification should be read accordingly.
14. The effect of, and the reasons for making, the proposals set out above at paragraphs 10 to 13 are set out in the consultation document accompanying this Notification.

Proposed change to Proposed SMP services condition 2

15. Ofcom is proposing to change the wording of Proposed SMP services condition 2, and consequently the June SMP Notification should be read accordingly. The change is set out in Schedule 1.
16. The effect of, and the reasons for making, the proposal set out above at paragraph 15 are set out in the consultation document accompanying this Notification.

Proposed change to the SLG Direction

17. Ofcom is proposing to add wording to the SLG Direction, and consequently the June SMP Notification should be read accordingly. The change is set out in Schedule 2 and the proposed added wording is underlined.
18. The effect of, and the reasons for making, the proposal set out above at paragraph 17 are set out in the consultation document accompanying this Notification.

Proposed changes to two defined terms used for the purposes of the proposed SMP services conditions, as set out in the June SMP Notification

19. For the reasons set out in the consultation document accompanying this Notification, Ofcom is proposing to change the wording of the definition of “Backhaul Segment”. Consequently the June SMP Notification should be read accordingly. The change is set out at Schedule 3.
20. For the reasons set out in the consultation document accompanying this Notification, Ofcom is proposing to change the wording of the definition of “Trunk Aggregation Node”. Consequently the June SMP Notification should be read accordingly. The change is set out at Schedule 4.

Proposed change to the proposed geographic market which Ofcom defined as the WECLA, as set out in the June SMP Notification

21. For the reasons set out in the consultation document accompanying this Notification, Ofcom is proposing that the list of postcode sectors making up the WECLA should include certain additional postcode sectors. Consequently the June SMP Notification should be read accordingly. The proposed full list of postcode sectors is set out in Schedule 5.

Ofcom’s duties and legal tests

22. In accordance with section 79 of the Act, Ofcom has taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of an EU instrument and which relate to market identification and analysis or the determination of what constitutes market power.
23. 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, and the six Community requirements set out in section 4, of the Act.

Representations

24. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation document no later than 5pm on 17 December 2012.
25. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State, in accordance with sections 48C(1) and 49C(1) of the Act.

Interpretation

26. Schedules 1 to 5 form part of this Notification.
27. For the purposes of interpreting this Notification:
 - a) Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them below in paragraph 28 or the meaning assigned to them in Part 2 of Schedule 2 of the June SMP Notification, and otherwise any word or expression shall have the same meaning as it has in the Act; and
 - b) Headings and titles shall be disregarded.

28. In this Notification:

- a) “**Act**” means the Communications Act 2003;
- b) “**BT**” means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
- c) “**BT Notification 2004**” means the notification to BT under sections 48(1) and 86(1) of the Act setting further SMP services conditions on BT in relation to regulatory accounting in respect of various markets, as set out in Annex 2 to the Financial Reporting Statement and Notification 2004, as amended;
- d) “**Financial Reporting Statement and Notification 2004**” means the document entitled “The regulatory financial reporting obligations on BT and Kingston Communications, Final statement and notification, Accounting separation and notification: Final statement and notification”, published by Ofcom on 22 July 2004;
- e) “**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 KCOM;
- f) “**June BCMR Consultation**” means the consultation document entitled “Business Connectivity Market Review, Review of the retail leased lines, wholesale symmetric broadband and wholesale trunk segments”, published by Ofcom on 18 June 2012;
- g) “**June Direction Notification**” means the notification under sections 49 and 49A of the Act in which Ofcom proposed to make directions for the purposes of Proposed SMP services condition 1 as a result of the analysis of the proposed markets set out at paragraphs 1 and 2 of the notification, as set out in Annex 15 to the June BCMR Consultation;
- h) “**June SMP Notification**” means notification under sections 48A and 80A of the Act setting out Ofcom’s proposals for identifying markets, making market power determinations and setting SMP services conditions in relation to BT and to KCOM under section 45 of the Act, as set out in Annex 14 to the June BCMR Consultation;
- i) “**KCOM**” means KCOM Group plc, whose registered company number is 2150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- j) “**KCOM Notification 2004**” means the notification to KCOM under sections 48(1) and 86(1) of the Act setting further SMP services conditions on Kingston in relation to regulatory accounting in respect of various markets, as set out in Annex 3 to the Financial Reporting Statement and Notification 2004, as amended;
- k) “**Kingston**” means KCOM;
- l) “**Ofcom**” means the Office of Communications;

- m) “**Proposed SMP services condition 1**” means proposed SMP services condition 1 – Network access on reasonable demand, as set out in the June SMP Notification;
- n) “**Proposed SMP services condition 2**” means proposed SMP services condition 2 – Specific forms of network access, as set out in the June SMP Notification;
- o) “**SLG Direction**” means the proposed direction set out in Schedule 5 of the June Direction Notification;
- p) “**SMP**” means significant market power;
- q) “**UK**” means the United Kingdom;
- r) “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (c. 30); and
- s) “**WECLA**” means Western, Eastern and Central London Area.

M. Gibbs

Competition Policy Director, Ofcom

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

14 November 2012

Schedule 1

Proposed change to Proposed SMP services condition 2

2.1 Without prejudice to the generality of Condition 1, the provision of network access under Condition 1 shall include the following specific forms of network access:

- (b) Ethernet Services which do not contain a Trunk Segment ~~and in which the ends of each service lie either in the Serving Area of a single Trunk Aggregation Node or in the Serving Areas of two Trunk Aggregation Nodes whose Serving Areas are adjacent,~~ including the provision of the following services:
 - i. Access Segments,
 - ii. Backhaul Segments, and
 - iii. Wholesale End-to-End Segments, up to a maximum straight-line distance of 25km; and
- b. WDM Services delivered as Wholesale End-to-End Segments.

Schedule 2

Pursuant to SMP services condition 1, Ofcom makes the following direction:

The Dominant Provider shall provide Ethernet Services and shall do so in accordance with this direction.

Service level guarantees (SLGs)

1. The Dominant Provider shall ensure the terms and conditions which govern the supply of Ethernet Services in the wholesale markets of the provision of low bandwidth alternative interface symmetric broadband origination at bandwidths up to and including 1Gbit/s in: (i) the UK excluding the Hull Area and the WECLA; and (ii) the WECLA, provide the following⁸¹:

Compensation per event and value of compensation

- a) The definition of “Contractual Delivery Date” as set out in the Dominant Provider’s terms and conditions shall be amended to require BT to provide reasons to justify a Contractual Delivery Date which is set beyond the 57th day and that any extension of the Contractual Delivery Date beyond the 57th shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld;
- b) BT shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Contractual Delivery Date or the “CP Requirement Date” (as set out in the Dominant Provider’s terms and conditions), whichever is later;
- c) BT shall pay the Third Party compensation for each and every fault which has not been restored in the first five hours on a per hour basis thereafter;
- d) The compensation payable in event of the each late provision of the required Backhaul Extension Services, Wholesale Extension Services or Wholesale End-to-End Segments shall be set at 100% of one month’s line rental for every day or part day of delay beyond the Contractual Delivery Date or CP Requirement Date (whichever is later), up to a maximum of 60 days;
- e) The compensation payable in the event of each late fault repair in relation to Backhaul Extension Services, Wholesale Extension Services or Wholesale End-to-End Segments shall be 15% of one month’s line rental for every hour thereafter until service is restored, up to a maximum of 200 hours;

Limitations on compensation- removal of caps

- f) Any limits on compensation payable as a result of a failure to satisfy the service guarantees shall be removed other than those set out in d) and e); and

Additional losses

- g) Any compensation payable under the contract shall be without prejudice to any right of either party to claim for additional loss.

Proactive payments

- h) BT shall monitor its performance against the service guarantees for fault repair and compensate Third Parties proactively should it fail to satisfy the service guarantees.

⁸¹ In particular, the following contracts will require modification to reflect the requirements set out in the direction: (i) the Conditions for Backhaul Extensions Services; and (ii) the Conditions for Wholesale Extension Services.

Compensation payments shall be made on a monthly basis. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

General

2. The Dominant Provider shall implement the direction within 10 working days of its publication.
3. This direction shall take effect on the day it is published

[...]

Competition Policy Director

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

Schedule 3

Proposed change to the definition of the term “Backhaul Segment” used for the purposes of the proposed SMP services conditions, as set out in the June SMP Notification

“**Backhaul Segment**” means a service providing uncontended bandwidth connecting ~~an operational building of the Dominant Provider to:~~

~~(c) another operational building of the Dominant Provider; or~~

~~(d) an operational building of a Third Party.~~

(c) an operational building of the Dominant Provider to:

(iii) another operational building of the Dominant Provider; or

(iv) an operational building of a Third Party.

or

(d) an operational building of a Third Party to:

(iii) Another operational building of the Third Party;

(iv) An operational building of the Dominant Provider.

Schedule 4

Proposed change to the definition of the term “Trunk Aggregation Node” used for the purposes of the proposed SMP services conditions, as set out in the June SMP Notification

“Trunk Aggregation Node” means a node listed in Column 1 of Table 2 below consisting of any one or more of the Dominant Provider’s operational buildings as listed in Column 2 of Table 2 below;

Table 2: Trunk Aggregation Nodes

Column 1: Trunk Aggregation Nodes	Column 2: BT operational buildings
Aberdeen	Aberdeen Central; Inverness Macdhui
Basingstoke	Basingstoke/Bounty
Belfast	Belfast/City; Belfast/Seymour; Portadown
Birmingham	Birmingham Central; Birmingham Midland Birmingham Perryfields (Bromsgrove); Erdington
Bishops Stortford	Bishops Stortford
Brighton	Brighton Hove
Bristol	Bedminster, Bristol Redcliffe; Yeovil
Cambridge	Cambridge Trunks
Cardiff/Newport	Aberystwyth; Bridgwater; Cardiff; Newport (Gwent); Swansea
Carlisle	Carlisle
Chelmsford	Chelmsford Town; Southend On Sea
Coventry	Coventry Greyfriar; Leamington Spa
Crawley	Crawley
Croydon	Croydon
Darlington	Darlington
Derby	Derby
Doncaster	Doncaster; Lincoln
Edinburgh	Edinburgh Donaldson
Exeter	Exeter Castle; Truro; Plymouth
Falkirk	Dundee Tay; Falkirk
Glasgow/Clyde Valley	Glasgow Central; Glasgow Douglas
Gloucester	Gloucester
Guildford	Guildford/Martyr
Ipswich	Colchester Town; Ipswich Town; Norwich City
Irvine	Irvine
Kendal	Kendal
Kingston	Kingston
Leeds	Bradford (2); Leeds (3); Pontefract
Leicester	Leicester Montfort
Liverpool	Liverpool Central; Wrexham Grosvenor; Bangor (Wales)
London Central	BT Tower (West Block); Covent Garden, Faraday Te (Moorgate), South Kensington; Southbank
London Docklands	Bermondsey; Stepney Green
London East	Hornchurch, Kidbrooke, Upton Park; Woodford
London North	Potters Bar
London West	Colindale; Ealing; Southall

Luton	Luton Ate/Tower Block
Maidstone	Ashford ; Maidstone; Tunbridge Wells
Manchester	Bolton; Dial House (Manchester); Oldham; Pendleton
Milton Keynes	Bedford Town ; Milton Keynes
Newcastle	Newcastle Central; South Shields
Northampton	Northampton
Nottingham	Nottingham Longbow
Oxford	Oxford City
Peterborough	Peterborough Wentw
Portsmouth/Southampton	Bournemouth ; Cosham; Southampton
Preston	Preston (Lancs)
Reading	Bracknell
Salisbury	Salisbury
Sheffield	Chesterfield; Sheffield Cutler
Slough	High Wycombe; Slough
Stoke	Stoke Trinity/Pott
Swindon	Swindon
Warrington	Ashton In Makerfield; Northwich
Watford	Hemel Hempstead ; Watford
Wolverhampton	Walsall Central, Wolverhampton Central; Shrewsbury
York	Malton

Schedule 5

Proposed change to the proposed geographic market which Ofcom defined as the WECLA, as set out in the June SMP Notification. Changes shown in bold.

List of postal sectors constituting the WECLA

E1 0	EC1R 5	EC3A 5	EC4R 9	SL1 3	TW3 3	W1B 1	W1S 3	W8 6
E1 1	EC1V 0	EC3A 6	EC4V 2	SL1 4	TW3 4	W1B 2	W1S 4	W8 7
E1 2	EC1V 1	EC3A 7	EC4V 3	SL1 5	TW3 9	W1B 3	W1T 1	W8 9
E1 3	EC1V 2	EC3A 8	EC4V 4	SL1 6	TW4 6	W1B 4	W1T 2	W9 3
E1 5	EC1V 3	EC3M 1	EC4V 5	SL2 5	TW4 7	W1B 5	W1T 3	WC1A 1
E1 6	EC1V 4	EC3M 2	EC4V 6	SL3 9	TW5 0	W1C 1	W1T 4	WC1A 2
E1 7	EC1V 7	EC3M 3	EC4Y 0	SL6 0	TW5 9	W1C 2	W1T 5	WC1B 3
E1 8	EC1V 8	EC3M 4	EC4Y 1	SL6 1	TW7 4	W1D 1	W1T 6	WC1B 4
E14 0	EC1V 9	EC3M 5	EC4Y 7	SL6 2	TW7 5	W1D 2	W1T 7	WC1B 5
E14 1	EC1Y 0	EC3M 6	EC4Y 8	SL6 4	TW8 0	W1D 3	W1U 1	WC1E 6
E14 2	EC1Y 1	EC3M 7	EC4Y 9	SL6 8	TW8 8	W1D 4	W1U 2	WC1E 7
E14 3	EC1Y 2	EC3M 8	N1 0	SL9 7	TW8 9	W1D 5	W1U 3	WC1H 0
E14 4	EC1Y 4	EC3N 1	N1 6	SW1A 0	UB1 1	W1D 6	W1U 4	WC1H 8
E14 5	EC1Y 8	EC3N 2	N1 7	SW1A 1	UB1 3	W1D 7	W1U 5	WC1H 9
E14 6	EC2A 1	EC3N 3	N1 8	SW1A 2	UB11 1	W1F 0	W1U 6	WC1N 1
E14 7	EC2A 2	EC3N 4	N1 9	SW1E 5	UB18 7	W1F 7	W1U 7	WC1N 2
E14 8	EC2A 3	EC3P 3	NW1 0	SW1E 6	UB18 9	W1F 8	W1U 8	WC1N 3
E14 9	EC2A 4	EC3R 5	NW1 1	SW1H 0	UB3 1	W1F 9	W1W 5	WC1R 4
E1W 1	EC2M 1	EC3R 6	NW1 2	SW1H 9	UB3 2	W1G 0	W1W 6	WC1R 5
E1W 2	EC2M 2	EC3R 7	NW1 3	SW1P 1	UB3 3	W1G 6	W1W 7	WC1V 6
E2 6	EC2M 3	EC3R 8	NW1 5	SW1P 2	UB3 4	W1G 7	W1W 8	WC1V 7
E2 7	EC2M 4	EC3V 0	NW1 6	SW1P 3	UB3 5	W1G 8	W2 1	WC1X 0
E3 2	EC2M 5	EC3V 1	NW1 7	SW1P 4	UB4 0	W1G 9	W2 2	WC1X 8
E3 3	EC2M 6	EC3V 3	NW1 8	SW1V 1	UB5 6	W1H 1	W2 3	WC1X 9
E77 1	EC2M 7	EC3V 4	NW1 9	SW1V 2	UB6 9	W1H 2	W2 4	WC2A 1
E8 9	EC2N 1	EC3V 9	NW10 5	SW1W 0	UB7 0	W1H 4	W2 6	WC2A 2
E98 1	EC2N 2	EC4A 1	NW10 6	SW1W 9	UB7 7	W1H 5	W4 1	WC2A 3
EC1A 1	EC2N 3	EC4A 2	NW10 7	SW1X 0	UB7 8	W1H 6	W4 2	WC2B 4
EC1A 2	EC2N 4	EC4A 3	SE1 0	SW1X 7	UB7 9	W1H 7	W4 3	WC2B 5
EC1A 4	EC2P 2	EC4A 4	SE1 1	SW1X 8	UB8 1	W1J 0	W4 4	WC2B 6
EC1A 7	EC2R 5	EC4M 5	SE1 2	SW1X 9	UB8 2	W1J 5	W4 5	WC2E 7
EC1A 9	EC2R 6	EC4M 6	SE1 3	SW1Y 4	UB8 3	W1J 6	W5 2	WC2E 8
EC1M 3	EC2R 7	EC4M 7	SE1 4	SW1Y 5	UB8 9	W1J 7	W5 3	WC2E 9
EC1M 4	EC2R 8	EC4M 8	SE1 6	SW1Y 6	UB9 4	W1J 8	W5 5	WC2H 0
EC1M 5	EC2V 5	EC4M 9	SE1 7	SW3 1	W11 1	W1J 9	W5 9	WC2H 7
EC1M 6	EC2V 6	EC4N 1	SE1 8	SW3 2	W11 2	W1K 1	W6 0	WC2H 8
EC1M 7	EC2V 7	EC4N 4	SE1 9	SW3 3	W12 0	W1K 2	W6 6	WC2H 9
EC1N 2	EC2V 8	EC4N 5	SE11 5	SW7 1	W12 6	W1K 3	W6 7	WC2N 4
EC1N 6	EC2Y 5	EC4N 6	SE11 6	SW7 4	W13 0	W1K 4	W6 8	WC2N 5
EC1N 7	EC2Y 8	EC4N 7	SE16 2	SW7 5	W13 8	W1K 5	W6 9	WC2N 6
EC1N 8	EC2Y 9	EC4N 8	SE16 4	SW8 1	W14 8	W1K 6	W7 1	WC2R 0
EC1R 0	EC3A 1	EC4R 0	SE8 5	SW8 5	W1A 1	W1K 7	W7 3	WC2R 1

EC1R 1	EC3A 2	EC4R 1	SL1 0	SW95 9	W1A 3	W1S 1	W8 4	WC2R 2
EC1R 3	EC3A 3	EC4R 2	SL1 1	SW99 0	W1A 9	W1S 2	W8 5	WC2R 3
EC1R 4	EC3A 4	EC4R 3	SL1 2	TW3 1				