Discontinuation in part of continued provision Condition 43
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NOTICE TO BRITISH TELECOMMUNICATIONS PLC UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

NOTICE TO KINGSTON COMMUNICATIONS PLC UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003
Summary

S1 On 14 January 2004, the Office of Communications (“Ofcom”) published a consultation document Proposal that condition 43 will cease to have effect in respect of all services except those in markets specified in this document as exceptions (the “January Consultation Document”). The consultation period ended on 11 February 2004 and responses were received from the UK Competitive Telecommunications Association (“UKCTA”) and British Telecommunication plc (“BT”), and from one other respondent which made a confidential submission.

S2 Having considered the responses to the consultation exercise, Ofcom maintains, with two changes, its preliminary view, reported in the January Consultation Document, that all services except those in the markets specified as exceptions in the consultation document, should be removed from the scope of BT’s Condition 43 and Kingston Communications (Hull) plc’s (“Kingston”) Condition 43 which are continued provisions contained in Schedule 1 of the Continuation Notices given to BT (“BT’s Continuation Notice”) and to Kingston (“Kingston’s Continuation Notice”) on 23 July 2003, and which took effect on 25 July 2003.

S3 The excepted markets listed in the January Consultation Document were as follows:

- Retail Leased Lines markets being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003.
- Retail markets for services that incorporate products which fall within the alternative interface symmetric broadband origination market being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003.
- Wholesale markets for terminating segments and trunk segments of leased lines being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003.
- Wholesale end to end calls market(s) which, in the present context, is the intermediary market(s) between the fixed narrowband retail call services markets and fixed narrowband wholesale markets (e.g., call origination, termination and conveyance). This includes, but is not limited to, services equivalent to BT’s ‘Wholesale Calls Commitment Package’

S4 The two changes in Ofcom’s view relate to IPStream and retail traditional interface leased lines above 8Mbit/s. Ofcom has decided not to discontinue continued provision Condition 43 in respect of IPStream services until it has completed its evaluation of responses to the recent review of wholesale asymmetric broadband origination and broadband conveyance markets which refer to regulation of this service. Similarly, Ofcom has decided not to discontinue continued provision Condition 43 in respect of retail traditional interface leased lines above 8Mbit/s until it has completed its evaluation of responses to the review of retail leased lines, broadband origination and wholesale trunk segments. Continued provision Condition 43 will be discontinued in respect of IPStream and retail traditional interface leased lines above 8Mbit/s either when a decision has been taken not to review the relevant
market or when the relevant market has been reviewed and, where appropriate, SMP conditions imposed.

S5 The notices which discontinue continued provision Condition 43 in respect of all services except those in the markets specified as exceptions are at Annexes 1 and 2 to this Statement.

S6 Where BT or Kingston are no longer obliged by their continued provision Condition 43 to supply a service, the continued provision Condition 57 (prohibition of undue preference and undue discrimination) and the continued provision Condition 58 (obligation to publish charges, terms and conditions) will also cease to apply to that service.

S7 The present decision to discontinue continued provision Condition 43 in BT’s Continuation Notice and Kingston’s Continuation Notice other than in respect of the services referred to by exception in paragraph 3.5 below merely reflects the fact that Ofcom currently has no plans to review the markets in which these services fall and, therefore, it is no longer appropriate to maintain continued regulation in force. For the avoidance of doubt, Ofcom wishes to emphasise that it retains the discretion under the new regime to identify and review any markets in which these services fall at any time in the future. This includes at any time during the present reviews of wholesale and retail markets, though Ofcom’s present expectation is that this is unlikely.

S8 Should Ofcom decide that the behaviour of BT or Kingston, or any other supplier, in the markets in respect of which continued provision Condition 43 is being discontinued, may be having an anti-competitive effect or that those markets may warrant ex ante regulation, it will, amongst other things, consider using its statutory powers under the Competition Act 1998, the Enterprise Act 2002 or the Communications Act 2003 where appropriate.
Section 1

Background

Ofcom

1.1 Ofcom assumed its powers under the Communications Act 2003 (the "Act") on 29 December 2003. The present document refers to action taken by the Director of Telecommunications ("the Director") before that date, whereby the Director was able to carry out the functions of Ofcom for an interim period. As Ofcom has now assumed its powers under the Act this document specifies action which Ofcom now proposes to take.

Continuing licence conditions

1.2 On 10 September, the Director published a Statement Continuing Licence Conditions after 25 July 2003 ("the September Statement"). As the September Statement explained, when the new EU communications regime was implemented in the UK on 25 July 2003, individual licences granted under section 7 of the Telecommunications Act 1984 were replaced by general conditions of entitlement which apply to all persons providing electronic communications networks and services. Additionally, individual providers may be subject to specific conditions, such as those imposed as a result of a finding of Significant Market Power (SMP), Access Related Conditions or conditions imposed as a consequence of a provider being designated as a universal service provider.

1.3 The new Directives and the Act seek to ensure that there is a coherent transition from the old regime to the new regime and to ensure that there is no regulatory gap. The Director and, subsequently, Ofcom have carried out already a number of consultations in relation to the new regime such as consultations on the General Conditions, Universal Service Conditions, Access-Related Conditions and SMP Service Conditions.

1.4 The Director originally intended to complete market reviews so that new SMP services conditions could be imposed on 25 July 2003. Before imposing SMP services conditions and Access-Related conditions (other than Conditional Access Conditions) the Director was, and Ofcom is, required by the new regime to carry out a national consultation. They are required also to notify and consult with the European Commission (the "Commission") and the National Regulatory Authorities ("NRAs") in other Member states for at least one month. However, the Commission’s Recommendation on relevant products and services markets (the “Recommendation”) which identified the relevant product and services markets was not published until 11 February 2003. Subsequently in April 2003 the Commission advised NRAs that the notifications could not be made under Article 7 of the Framework Directive before 25 July 2003. Accordingly, it did not prove possible for the Director to have new SMP services and Access-Related (other than Conditional Access) conditions in place on 25 July 2003.

1.5 In order to avoid a regulatory gap, the Directives permit and require Member States to continue the existing regime until such time as each Member State can complete its assessment of the imposition of the new SMP services and Access-Related (other than Conditional Access) conditions. This has been implemented in the United
Kingdom by paragraphs 9 and 22 of Schedule 18 of the Act, which permits Ofcom to issue continuation notices which have the effect of continuing certain Licence Conditions and Interconnection Directions under the existing regime for a transitional period.

**Condition 43**

1.6 As was explained in paragraphs 3.8 to 3.10 of the September Statement, one of the conditions which was continued was Condition 43, which requires BT and Kingston to provide telecommunications services consisting in the conveyance of messages other than voice telephony services on request.

1.7 Services which are subject to this continued provision Condition 43 are also subject to Conditions 57 and 58, being provisions which were continued for BT and Kingston, which, respectively, prohibit undue preference and undue discrimination and require publication of charges, terms and conditions for those services which BT and Kingston are obliged by continued provision Condition 43 to supply.

1.8 In so far as continued provisions Conditions 57 and 58 are concerned, the Director set out at paragraph 11 of the consultation document “Discontinuing licence conditions continued after 25 July 2003” published on 2 October 2003 (the “October consultation document”) his view that these obligations apply only where certain obligations are in place eg the obligation to interconnect or to provide specific services. He therefore did not consider it necessary to discontinue Conditions 57 and 58 for the listed services since they will cease to apply when other obligations, such as an obligation to provide specific services, are discontinued, which will be on a market by market basis. He proposed in the October consultation document that Conditions 57 and 58 are discontinued formally once the whole market review process has been completed. Ofcom shares this view.

**Process for discontinuing continued provisions**

1.9 As was explained in chapter 5 of the September Statement, Schedule 18 paragraph 9(11) of the Act requires the Director, as soon as reasonably practicable after giving a Continuation Notice, to take all steps necessary to enable him to decide whether or not to set a condition for the purpose of replacing the continued provision. That statement also explained that Schedule 18 paragraph 9 (12) of the Act requires the Director to give a notice that the continuation notice ceases to have effect, and that he must do this as soon as reasonably practicable after taking a decision to impose (or not to impose) conditions under the new regime. These requirements now apply to Ofcom.

1.10 Although the Act does not require Ofcom to consult before discontinuing a Continuation Notice, the September Statement announced that the Director had decided that it would be appropriate to carry out a public consultation on each proposal for discontinuation for a short period only, and he stated that in most cases this would be for a 14 day period.

1.11 On 14 January 2004, Ofcom published a consultation document Proposal that condition 43 will cease to have effect in respect of all services except those in markets specified in this document as exceptions. (the “January Consultation Document”). The consultation period ended on 11 February 2004.

1.12 Having considered the responses to this consultation exercise, Ofcom has decided, with two changes, to discontinue regulation as proposed in the January Consultation
Discontinuation in part of continued provision Condition 43

Document. The changes in Ofcom’s view relate to IPStream and retail traditional interface leased lines over 8Mbit/s.

1.13 Ofcom does not consider that broadband intermediate services such as BT’s IPStream fall within its definition of Wholesale Broadband Access, and Ofcom’s review of this market did not include services such as IPStream. Several respondents to that consultation exercise, however, have expressed specific concern about this omission in their responses to the Wholesale Broadband Access consultation, and also in their responses to the January Consultation Document. Although the Commission has stated, in its response to the Wholesale Broadband Access review, that Ofcom’s position on IPStream is not inconsistent with the Commission’s regulatory approach to broadband markets, Ofcom is presently considering responses to the Broadband Access consultation and it would be premature to discontinue Continued Provision Condition 43 in respect of IPStream services until Ofcom has completed its evaluation of those responses.

1.14 Ofcom has not proposed that it should review the markets for retail traditional interface leased lines above 8Mbit/s with a view to imposing ex ante regulation. Ofcom believes that appropriate regulation at the wholesale level should address any competition concerns relating to the provision of these leased lines. However, the Commission has issued a Public Call for Input on a possible revision of the Commission Decision on the minimum set of leased lines and, separately, some responses to the review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets made specific reference to the need to review retail markets for higher bandwidth leased lines. In these circumstances, Ofcom believes it is appropriate to maintain continued regulation in force in respect of these services until it has completed its evaluation of responses to the review of leased lines, symmetric broadband origination and wholesale trunk segments markets.

1.15 Condition 43 will be discontinued in respect of IPStream services and retail traditional interface leased lines above 8Mbit/s either when a decision has been taken not to review the relevant market or when the relevant market has been reviewed and, where appropriate, SMP conditions imposed. For the purposes of this statement all references to “markets” shall include also a reference to IPStream services.

1.16 Notices are attached at Annexes 1 and 2 to the present statement, notifying BT and Kingston that the continued provision Condition 43 in BT’s and Kingston’s Continuation Notice will no longer apply to the services set out at paragraph 3.5 below from 14 April 2004.
Section 2

Responses to the consultation exercise

2.1 Responses were received from BT and UKCTA, and a further confidential submission was received from a respondent which wished to remain anonymous.

The programme of market reviews

2.2 UKCTA expressed general concern with Ofcom’s approach to the whole market review process, arguing that continued regulation should not be discontinued in any market until that market has been reviewed. Ofcom recognises the importance which should be attached to decisions concerning the markets which are to be reviewed, and it is reiterating the rationale for its approach in the following paragraphs.

2.3 Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the “Framework Directive”) required the Commission, after public consultation and consultation with national regulatory authorities, to adopt a Recommendation on relevant product and service markets which have characteristics which may be such as to justify ex ante regulation. The Commission conducted a public consultation exercise, and a Recommendation (the “Recommendation”) was adopted in February 2003.

2.4 The new European communications regime is intended to further harmonise regulation across Europe. NRAs may impose ex ante regulation only under specific circumstances defined in the new Directives. The Framework Directive requires NRAs to take the utmost account of the Recommendation and associated guidelines when defining markets appropriate to national circumstances, in particular relevant geographic markets within their territory.

2.5 The Commission has noted, in its Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (the “SMP Guidelines”), and Ofcom agrees, that in most cases it is preferable, where possible, to apply regulation at the wholesale level. This will serve a twofold purpose; it will address SMP problems in the wholesale market and it will in turn feed through to the level of competition in the downstream markets that rely on these wholesale inputs. The application of regulation at the wholesale level also fits with the Community requirement in Article 8 of the Framework Directive that NRAs take measures which meet the objective of encouraging efficient investment in infrastructure and promoting innovation. Appropriate regulation of wholesale markets, where the source of SMP is at this level, will encourage providers to purchase wholesale products and combine them with their own networks and where possible create products in competition with SMP providers.

2.6 The scope of Ofcom’s plans, and Oftel’s plans before it, to review markets has been discussed at length with the industry and others, both before and after the Commission published its Recommendation in February 2003. While Ofcom accepts that it would be inappropriate to discontinue continued regulation in respect of market areas in which Ofcom is considering the scope of the area to be reviewed, Ofcom does not accept that it is reasonable to maintain continued regulation in force more widely.
2.7 Ofcom has powers to review markets in accordance with the Directives and the Act, and would take the proper steps to notify the Commission of any proposal to define a market outside the list contained in the Commission’s Recommendation.

2.8 The present decision to discontinue continued provision Condition 43 in BT’s Continuation Notice and Kingston’s Continuation Notice in respect of the services referred to by exception in paragraph 3.5 below merely reflects the fact that Ofcom currently has no plans to review the markets in which these services fall and, therefore, it is no longer appropriate to maintain continued regulation in force. For the avoidance of doubt, Ofcom wishes to emphasise that it retains the discretion under the new regime to identify and review any markets in which these services fall at any time in the future. This includes at any time during the present reviews of wholesale and retail markets, though Ofcom’s present expectation is that this is unlikely.

2.9 Ofcom will assess the impact of its implementation of the new regime on an ongoing basis, and will maintain close contact with industry and other key stakeholders. Ofcom will also pay close attention to decisions which are taken by NRAs in other Member States, as Ofcom is aware that most other NRAs have still to decide the extent of their own market reviews.

2.10 In addition, Ofcom is also complying with its obligation referred to in paragraph 1.9 of this document.

Service-specific concerns expressed by UKCTA

2.11 More specifically, UKCTA also expressed concern that the scope of the present proposal is unclear, and that Ofcom should have listed all of the BT products in respect of which Condition 43 was being discontinued, rather than merely listing the markets in which services will remain subject to condition 43. Ofcom considers that any list of services, however comprehensive, would fail to catch services which BT offers or modifies at some time in the future. Ofcom considers that discontinuing condition 43 except in relation to service covered by specific markets more clearly states the limited circumstances where condition 43 does, for the time being, continue to apply.

2.12 UKCTA asked specifically for clarification of whether retail calls to NTS numbers would remain subject to condition 43 if Ofcom’s proposals were implemented. To the extent that retail calls to NTS numbers were subject to continued provision Condition 43, they will no longer be subject to this continued provision. However, BT, in common with other providers, is obliged by the General Conditions to publish its standard prices for such services. BT, as a universal service provider is also subject to an obligation to provide Telephony Services on the basis of uniform prices throughout the UK except for the Hull area.

2.13 UKCTA also asked Ofcom to list what products remain subject to condition 43 when the proposals set out in the consultation exercise are implemented. It is Ofcom’s view that as the continued provision, and indeed new SMP conditions, are intended to apply to markets rather than services, it would be limiting to list the services to which any condition applies, and likely to result in new or modified services failing to be subject to the condition as intended. Nevertheless, at a practical level, Ofcom agrees that it is important that SMP operators and their competitors have a clear understanding of whether any given service is subject to a regulatory condition. Ofcom would expect to clarify specific queries that may be raised as appropriate.
Pre-judging the outcome of market reviews

2.14 UKCTA also argued that Ofcom’s proposals, if implemented, would prejudge the outcome of specific market reviews which Ofcom is presently conducting. Ofcom recognises this risk and has taken care to avoid pre-judging those outcomes. To the extent that the susceptibility of a market to ex ante regulation is under consideration, even if not included in the markets which Ofcom is currently reviewing, Ofcom agrees that continued regulation should not be discontinued. For this reason, as was explained in Chapter 1 of this Statement, Ofcom has decided not to discontinue continued provision Condition 43 in respect of IPStream and retail traditional interface leased lines above 8Mbit/s until after it has evaluated respondents’ arguments that the relevant markets should be reviewed.

Views expressed by BT

2.15 BT agreed that continued provision Condition 43 should be discontinued in respect of all services except those in the markets listed by Ofcom as exceptions. BT noted that condition 43 currently applies on a broad and non specific basis which is not targeted, proportionate or transparent. Ofcom agrees that it is not appropriate to maintain condition 43 in force except in respect of specific markets which Ofcom has plans to review.

2.16 BT asked for clarification that Ofcom’s proposal would mean that retail leased lines above 8Mbit/s would no longer be subject to condition 43. Ofcom’s reasons for deciding not to apply retail regulation to higher bandwidth leased lines was explained in the recent review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003. However, as was explained in paragraph 1.14 above, Ofcom has now decided not to discontinue continued regulation in respect of such services until after it has completed its evaluation of response to the recent consultation exercise.

2.17 BT also asked whether the inclusion of wholesale end to end calls within the list of excepted markets would mean that wholesale calls on the international routes already found to be competitive following the review of wholesale international services, concluded on 18 November 2003, would be remain subject to condition 43. To the extent that condition 43 has already been discontinued in respect of that review (including wholesale international routes which were found to be competitive), Ofcom can confirm that condition 43 will not apply. This is without prejudice, however, to any market definitions and decisions regarding SMP which might be made in the context of the review of wholesale end to end calls.

2.18 BT also asked for clarification that condition 43 will be discontinued in its entirety once the review of the last of the markets now listed in paragraph 3.5 below has been completed. Ofcom confirms that this is its present intention.

2.19 Finally, BT made a number of observations concerning the wording of the Notices at Annexes 1 and 2. Ofcom agrees with these observations, and has corrected the text accordingly.
Section 3

Ofcom’s decision

3.1 Ofcom has decided to discontinue continued provision Condition 43 in BT’s Continuation Notice in respect of all services except those in the markets listed in paragraph 3.5 below. To the extent that Kingston is also obliged to supply equivalent services, Ofcom has decided to discontinue continued provision Condition 43 in Kingston’s Continuation Notice in respect of the same services.

3.2 Ofcom is including IPStream services in the list of excepted markets in paragraph 3.5 as it is still considering responses to its review of Broadband Access markets which argued that Ofcom should apply ex ante regulatory controls to IPStream services. Although in its response the Commission has stated that Ofcom’s approach in the Broadband Access review is not inconsistent with its own regulatory approach to broadband, Ofcom believes it would be premature to discontinue condition 43 in respect of IPStream before it has completed its evaluation of comments made in respect of IPStream. Condition 43 will be discontinued in respect of IPStream either when Ofcom has decided not to review the relevant market, or when the relevant market has been reviewed and, where appropriate, SMP conditions have been imposed.

3.3 Similarly, Ofcom is including retail traditional interface leased lines above 8Mbit/s in the list of excepted markets in paragraph 3.5 as it is still considering responses to its review of retail leased lines, symmetric broadband origination and wholesale trunk segments. Ofcom believes it would be premature to discontinue condition 43 in respect of these services before it has completed its evaluation of comments made in respect of higher bandwidth retail leased lines. Condition 43 will be discontinued in respect of such services either when Ofcom has decided not to review the relevant market, or when the relevant market has been reviewed and, where appropriate, SMP conditions have been imposed.

3.4 Paragraph 9(11) of Schedule 18 of the Act requires Ofcom as soon as reasonably practicable after giving the Continuation Notice, to take all steps necessary to enable it to decide whether or not to set a Condition for the purpose of replacing the continued provision. Paragraph 9(12) of Schedule 18 of the Act requires that it must then decide as soon as reasonably practicable whether or not to exercise its power to set a Condition within the categories set out in the Act.

3.5 In the case of all services other than those in the markets listed below, Ofcom currently has no plans to identify those relevant markets for the purpose of conducting market reviews, and, therefore, it is appropriate to discontinue the continued provision Condition 43 in respect of the those services. The excepted markets are as follows;

- Retail Leased Lines markets being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003.

- Retail markets for services that incorporate products which fall within the alternative interface symmetric broadband origination market being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by Oftel on 18 December 2003.
• Wholesale asymmetric broadband origination and broadband conveyance markets being reviewed in the document Wholesale Broadband Access published by Oftel and Ofcom on 16 December 2003.

• Wholesale markets for terminating segments and trunk segments of leased lines being reviewed in the document Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets published by OfTEL on 18 December 2003.

• Wholesale end to end calls market(s) which, in the present context, is the intermediary market(s) between the fixed narrowband retail call services markets and fixed narrowband wholesale markets (e.g., call origination, termination and conveyance). This includes, but is not limited to, services equivalent to BT’s ‘Wholesale Calls Commitment Package’

• Retail markets for traditional interface leased lines above 8Mbit/s.

• IPStream services

**Future market reviews and investigations of possible breaches of competition law**

3.6 The present decision to discontinue continued provision Condition 43 in BT’s Continuation Notice and Kingston’s Continuation Notice in respect of all services except those in the markets listed in paragraph 3.5 above merely reflects the fact that Ofcom currently has no plans to review the markets in which these services fall and, therefore, it is no longer appropriate to maintain continued regulation in force. For the avoidance of doubt, Ofcom wishes to emphasise that it retains the discretion under the new regime to identify and review any markets in which these services fall at any time in the future. This includes at any time during the present reviews of wholesale and retail markets, though Ofcom’s present expectation is that this is unlikely.

3.7 Should Ofcom decide that the behaviour of BT or Kingston, or any other supplier in these markets, may be having an anti-competitive effect or that the relevant markets may warrant ex ante regulation, it will, amongst other things, consider using its statutory powers under the Competition Act 1998, the Enterprise Act 2002 or the Communications Act 2003 where appropriate.
NOTICE TO BRITISH TELECOMMUNICATIONS PLC UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that certain continued provisions set out in the continuation notices given to British Telecommunications plc on 23 July 2003 will cease to have effect from the 14th April 2004.

1. Ofcom, in accordance with Paragraph 9(12) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc (‘BT’) that certain continued provisions contained in Schedule 1 of the continuation notice given to BT on 23 July 2003, which had effect from 25 July 2003, (‘the Continuation Notice’), will cease to have effect to the extent set out in Schedule 1 to this notice (‘the Discontinued Provisions’) from the 14th April 2004.

2. In giving this notice, Ofcom has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling them to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the continued provisions and whether or not to exercise their power to set a condition under that Chapter for that purpose.

3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the 14th April 2004 to the extent that they were given or made for the purposes of the Discontinued Provisions.

4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to BT in accordance with Paragraph 9(12) of Schedule 18 to the Act that it shall cease to have effect.

5. Ofcom issued a consultation as to his proposals to discontinue the provisions on 14 January 2004 and requested comments by 11 February 2004. Ofcom has taken into account the comments they received during that consultation.

6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them. For the purposes of interpreting this notice, headings and titles shall be disregarded.

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

8 April 2004
Schedule 1

Continued provision Condition 43, which is contained in Schedule 1 of the continuation notice given to BT on 23 July 2003 and which took effect from 25 July 2003, will cease to have effect in respect of all services, except those services in the following markets, from the 14th April 2004.

- Retail Leased Lines markets being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by Oftel on 18 December 2003.
- Retail markets for services that incorporate products which fall within the alternative interface symmetric broadband origination market being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by Oftel on 18 December 2003.
- Wholesale markets for terminating segments and trunk segments of leased lines being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by Oftel on 18 December 2003.
- Wholesale end to end calls market(s) which, in the present context, is the intermediary market(s) between the fixed narrowband retail call services markets and fixed narrowband wholesale markets (e.g., call origination, termination and conveyance). This includes, but is not limited to, services equivalent to BT’s ‘Wholesale Calls Commitment Package’
- Retail markets for traditional interface leased lines above 8Mbit/s.
- IPStream services

In this Schedule, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act or if it has no meaning there in BT’s price list.
NOTICE TO KINGSTON COMMUNICATIONS PLC UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that certain continued provisions set out in the continuation notices given to Kingston Communications plc on 23 July 2003 will cease to have effect from the 14th April 2004.

1. Ofcom, in accordance with Paragraph 9(12) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to Kingston Communications plc ('Kingston') that certain continued provisions contained in Schedule 1 of the continuation notice given to Kingston on 23 July 2003, which had effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect to the extent set out in Schedule 1 to this notice ('the Discontinued Provisions') from the 14th April 2004.

2. In giving this notice, Ofcom has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling them to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the continued provisions and whether or not to exercise their power to set a condition under that Chapter for that purpose.

3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the 14th April 2004 to the extent that they were given or made for the purposes of the Discontinued Provisions.

4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to Kingston in accordance with Paragraph 9(12) of Schedule 18 to the Act that it shall cease to have effect.

5. Ofcom issued a consultation as to their proposals to discontinue the provisions on 14 January 2004 and requested comments by 11 February 2004. Ofcom have taken into account the comments they received during that consultation.

6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them. For the purposes of interpreting this notice, headings and titles shall be disregarded.

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

8 April 2004
Schedule 1

Continued provision Condition 43, which is contained in Schedule 1 of the continuation notice given to Kingston on 23 July 2003 and which took effect from 25 July 2003, will cease to have effect in respect of all services, except those services in the markets set out below, from the 14th April 2004.

- Retail Leased Lines markets being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by OfTEL on 18 December 2003.
- Retail markets for services that incorporate products which fall within the alternative interface symmetric broadband origination market being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by OfTEL on 18 December 2003.
- Wholesale markets for terminating segments and trunk segments of leased lines being reviewed in the document “Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets” published by OfTEL on 18 December 2003.
- Wholesale end to end calls market(s) which, in the present context, is the intermediary market(s) between the fixed narrowband retail call services markets and fixed narrowband wholesale markets (e.g., call origination, termination and conveyance). This includes, but is not limited to, services equivalent to BT’s ‘Wholesale Calls Commitment Package’
- Retail markets for traditional interface leased lines above 8Mbit/s.
- IPStream services

In this Schedule, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act or if it has no meaning there, in BT’s price list to the extent Kingston offers services which are substantially the same.