

## Annex 14

# Draft Legal Instrument

## NOTIFICATION OF PROPOSALS UNDER SECTIONS 48A and 80A OF THE COMMUNICATIONS ACT 2003

### Proposals for identifying markets, making market power determinations and setting SMP services conditions in relation to BT and KCOM under section 45 of the Communications Act 2003.

#### Background

1. The Office of Communications (“Ofcom”), proposes to identify markets, make market power determinations and set SMP services conditions in relation to BT and KCOM under section 45 of the Communications Act 2003 (the “Communications Act”).
2. On 8 December 2008, Ofcom published the regulatory statement and consultation entitled *Business Connectivity Market Review, review of the retail leased lines, wholesale symmetric broadband and wholesale trunk segments* identifying markets, making certain market determinations and setting SMP services conditions (the “2008 BCMR Statement and Consultation”).
3. On 13 February 2009, Ofcom published a further regulatory statement entitled *Business Connectivity Market Review, review of the retail leased lines, wholesale symmetric broadband and wholesale trunk segments* supplementing the 2008 BCMR Statement and Consultation (the “2009 BCMR Statement”).
4. On 2 July 2009, Ofcom published a regulatory statement entitled *Leased Lines Charge Control, a new charge control framework for wholesale traditional interface and alternative interface products and services* implementing charge controls proposed in the 2008 BCMR Statement (the “2009 LLCC Statement”).
5. On 30 September 2010, Ofcom published a regulatory statement entitled *Leased Lines Charge Control, adoption of revised SMP services conditions following the Competition Appeal Tribunal’s Directions of 20 September 2010* (the “2010 LLCC Statement”).
6. On [today’s date] Ofcom published a consultation document entitled *Business Connectivity Market Review, review of the retail leased lines, wholesale symmetric broadband and wholesale trunk segments* consulting on new proposals identifying markets, making certain market determinations and setting SMP services conditions. It is proposed that, if adopted, these will replace the determinations and conditions set out in the 2008 BCMR Statement and Consultation and 2009 BCMR Statement. A consultation will be published shortly with proposals for charge controls.

#### Proposals in the UK outside the Hull Area

7. Ofcom is proposing to identify the following markets outside the Hull Area for the purpose of considering market power determinations:
  - 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 medium bandwidth traditional interface symmetric broadband origination in the WECLA, at bandwidths above 8Mbit/s and up to and including 45Mbit/s.
  - d) 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.
  - e) Wholesale market for high bandwidth traditional interface symmetric broadband origination in the WECLA, at bandwidths above 45Mbit/s and up to and including 155Mbit/s.
  - f) Wholesale market for very high bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths of 622Mbit/s.
  - g) 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.
  - h) Wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA, at bandwidths up to and including 1Gbit/s.
  - i) Wholesale market for multiple interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA.
  - j) Wholesale market for multiple interface symmetric broadband origination in the WECLA.
  - k) Wholesale market for regional trunk segments in the UK.
  - l) Wholesale market for national trunk segments in the UK.
  - m) Retail market for low bandwidth traditional interface leased lines in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s.
8. Ofcom is proposing that the markets listed at (c), (e), (f), (j) and (l) in paragraph 3 above are effectively competitive.
  9. Ofcom is proposing to determine that BT has significant market power in the markets listed at (a), (b), (d), (g), (h), (i), (k) and (m) in paragraph 3 above, and is consequently proposing to set the SMP services conditions set out in Schedule 2 to this notification.
  10. The effect of, and Ofcom's reasons for making, the proposals to set the SMP services conditions set out in Schedule 2 to this notification (as well as its reasons for proposing certain markets are effectively competitive and that no SMP services conditions are appropriate) are set out in the consultation document accompanying this Notification.

### **Proposals in the Hull Area**

11. Ofcom is proposing to identify the following markets inside the Hull Area for the purpose of considering market power determinations:
  - 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 8Mbit/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 45Mbit/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.
  - g) Retail market for low bandwidth alternative interface leased lines in the Hull Area, at bandwidths up to and including 1Gbit/s
12. Ofcom is proposing to determine that KCOM has significant market power in the markets listed at (a) to (g) inclusive in paragraph 11 above, and is consequently proposing to set the SMP services conditions set out in Schedule 3 to this notification.
13. The effect of, and Ofcom's reasons for making, the proposals to set the SMP services conditions set out in Schedule 3 to this notification are set out in the consultation document accompanying this Notification.

### **Proposals in relation to regulatory financial reporting**

14. Ofcom is also proposing to make the following amendments to Annex 2 of the document entitled *The regulatory financial reporting obligations on BT and Kingston Communications, final statement and notification dated 22 July 2004 (as amended)*:
  - a) In Part 1 of Schedule 1:
    - i) 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";
    - ii) 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";

- iii) 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";
- iv) 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";
- v) 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*])";
- vi) 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";
- vii) removing reference at paragraph 17a 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 United Kingdom but not including the Hull Area and the Central East London Area" to be replaced with "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"; and
- viii) updating the dates set out in paragraphs 14 – 17a by replacing the current dates with the date of the final statement.

b) In Part 2 of Schedule 1:

- i) 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
- ii) updating the date set out in paragraph 25 by replacing the current date with the date of the final statement.

15. Ofcom is also proposing to make the following amendments to Annex 3 of the document entitled *The regulatory financial reporting obligations on BT and Kingston Communications, final statement and notification dated 22 July 2004 (as amended)*:

a) In Part 1 of Schedule 1:

- i) 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”;
- ii) 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”;
- iii) 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”;
- iv) 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”;
- v) 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
- vi) updating the dates set out in paragraphs 9 – 12 by replacing the current dates with the date of the final statement.

b) In Part 2 of Schedule 1:

- i) inserting the following the following table:

Market identified and in which Kingston found to have SMP in previous Notification pursuant to section 79 of the Act	Date
13. Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s	
14. Retail market for low bandwidth alternative interface leased lines in the Hull Area, at bandwidths up to and including 1Gbit/s	

- ii) inserting the date of the final statement in paragraphs 13 and 14.

## Revocations

- 16. It is proposed that the conditions set out in the Notification that is published at Annex 8 of the 2008 BCMR Statement and Consultation be revoked in accordance with paragraph 17 below.
- 17. The proposed revocations would take effect on the publication of any Notification under sections 48(1) and 79(4) of the Communications Act

## Charge Controls

18. Insofar as SMP condition 5, as set out in Schedule 2 and regarding network access pricing, is concerned, these SMP conditions are contained in a separate Notification under sections 48A and 80A of the Act.

## Ofcom's duties and legal tests

19. In identifying and analysing the markets referred to in paragraphs 7 and 11 above, and in considering whether to make the proposals set out in this Notification Ofcom has, in accordance with section 79 of the Communications Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of an EU instrument and which relate to market identification and analysis or the determination of what constitutes significant market power.

20. In addition, in making all of the proposals referred to in this Notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Communications Act and the six Community requirements in section 4 of the Communications Act.

## Representations

21. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying explanatory statement no later than 24 August 2012.

22. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State, in accordance with sections 48C(1) and 81(1) of the Act.

## Interpretation

23. Except as otherwise defined in this Notification, words or expressions used shall have the same meaning as in the Communications Act.

24. In this Notification:

- a) "**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;
- b) "**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 Group plc;
- c) "**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;
- d) "**WECLA**" means the area in London consisting of the postal sectors set out in Schedule 1 to this Notification; and

- e) “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (1978 c30).

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

18 June 2012

## Schedule 1

### List of postal sectors constituting the WECLA

E1 0	EC1R 3	EC3A 1	EC4N 7	SE11 5	TW4 7	W1B 4	W1T 1	W8 7
E1 1	EC1R 4	EC3A 2	EC4N 8	SE11 6	TW5 0	W1B 5	W1T 2	W8 9
E1 2	EC1R 5	EC3A 3	EC4R 0	SE16 2	TW5 9	W1C 1	W1T 3	W9 3
E1 3	EC1V 0	EC3A 4	EC4R 1	SE16 4	TW7 4	W1C 2	W1T 4	WC1A 1
E1 5	EC1V 1	EC3A 5	EC4R 2	SE8 5	TW7 5	W1D 1	W1T 5	WC1A 2
E1 6	EC1V 2	EC3A 6	EC4R 3	SL9 7	TW8 0	W1D 2	W1T 6	WC1B 3
E1 7	EC1V 3	EC3A 7	EC4R 9	SW1A 0	TW8 8	W1D 3	W1T 7	WC1B 4
E1 8	EC1V 4	EC3A 8	EC4V 2	SW1A 1	TW8 9	W1D 4	W1U 1	WC1B 5
E14 0	EC1V 7	EC3M 1	EC4V 3	SW1A 2	UB1 1	W1D 5	W1U 2	WC1E 6
E14 1	EC1V 8	EC3M 2	EC4V 4	SW1E 5	UB1 3	W1D 6	W1U 3	WC1E 7
E14 2	EC1V 9	EC3M 3	EC4V 5	SW1E 6	UB11 1	W1D 7	W1U 4	WC1H 0
E14 3	EC1Y 0	EC3M 4	EC4V 6	SW1H 0	UB18 7	W1F 0	W1U 5	WC1H 8
E14 4	EC1Y 1	EC3M 5	EC4Y 0	SW1H 9	UB18 9	W1F 7	W1U 6	WC1H 9
E14 5	EC1Y 2	EC3M 6	EC4Y 1	SW1P 1	UB3 1	W1F 8	W1U 7	WC1N 1
E14 6	EC1Y 4	EC3M 7	EC4Y 7	SW1P 2	UB3 2	W1F 9	W1U 8	WC1N 2
E14 7	EC1Y 8	EC3M 8	EC4Y 8	SW1P 3	UB3 3	W1G 0	W1W 5	WC1N 3
E14 8	EC2A 1	EC3N 1	EC4Y 9	SW1P 4	UB3 4	W1G 6	W1W 6	WC1R 4
E14 9	EC2A 2	EC3N 2	N1 0	SW1V 1	UB3 5	W1G 7	W1W 7	WC1R 5
E1W 1	EC2A 3	EC3N 3	N1 6	SW1V 2	UB4 0	W1G 8	W1W 8	WC1V 6
E1W 2	EC2A 4	EC3N 4	N1 7	SW1W 0	UB5 6	W1G 9	W2 1	WC1V 7
E2 6	EC2M 1	EC3P 3	N1 8	SW1W 9	UB6 9	W1H 1	W2 2	WC1X 0
E2 7	EC2M 2	EC3R 5	N1 9	SW1X 0	UB7 0	W1H 2	W2 3	WC1X 8
E3 2	EC2M 3	EC3R 6	NW1 0	SW1X 7	UB7 7	W1H 4	W2 4	WC1X 9
E3 3	EC2M 4	EC3R 7	NW1 1	SW1X 8	UB7 8	W1H 5	W2 6	WC2A 1
E77 1	EC2M 5	EC3R 8	NW1 2	SW1X 9	UB7 9	W1H 6	W4 1	WC2A 2
E8 9	EC2M 6	EC3V 0	NW1 3	SW1Y 4	UB8 1	W1H 7	W4 2	WC2A 3
E98 1	EC2M 7	EC3V 1	NW1 5	SW1Y 5	UB8 2	W1J 0	W4 3	WC2B 4
EC1A 1	EC2N 1	EC3V 3	NW1 6	SW1Y 6	UB8 3	W1J 5	W4 4	WC2B 5
EC1A 2	EC2N 2	EC3V 4	NW1 7	SW3 1	UB8 9	W1J 6	W4 5	WC2B 6
EC1A 4	EC2N 3	EC3V 9	NW1 8	SW3 2	UB9 4	W1J 7	W5 2	WC2E 7
EC1A 7	EC2N 4	EC4A 1	NW1 9	SW3 3	W11 1	W1J 8	W5 3	WC2E 8
EC1A 9	EC2P 2	EC4A 2	NW10 5	SW7 1	W11 2	W1J 9	W5 5	WC2E 9
EC1M 3	EC2R 5	EC4A 3	NW10 6	SW7 4	W12 0	W1K 1	W5 9	WC2H 0
EC1M 4	EC2R 6	EC4A 4	NW10 7	SW7 5	W12 6	W1K 2	W6 0	WC2H 7
EC1M 5	EC2R 7	EC4M 5	SE1 0	SW8 1	W13 0	W1K 3	W6 6	WC2H 8
EC1M 6	EC2R 8	EC4M 6	SE1 1	SW8 5	W13 8	W1K 4	W6 7	WC2H 9
EC1M 7	EC2V 5	EC4M 7	SE1 2	SW95 9	W14 8	W1K 5	W6 8	WC2N 4
EC1N 2	EC2V 6	EC4M 8	SE1 3	SW99 0	W1A 1	W1K 6	W6 9	WC2N 5
EC1N 6	EC2V 7	EC4M 9	SE1 4	TW3 1	W1A 3	W1K 7	W7 1	WC2N 6
EC1N 7	EC2V 8	EC4N 1	SE1 6	TW3 3	W1A 9	W1S 1	W7 3	WC2R 0
EC1N 8	EC2Y 5	EC4N 4	SE1 7	TW3 4	W1B 1	W1S 2	W8 4	WC2R 1
EC1R 0	EC2Y 8	EC4N 5	SE1 8	TW3 9	W1B 2	W1S 3	W8 5	WC2R 2
EC1R 1	EC2Y 9	EC4N 6	SE1 9	TW4 6	W1B 3	W1S 4	W8 6	WC2R 3



## Schedule 2

**[DRAFT] The conditions imposed on BT under the Communications Act 2003 as a result of the analysis of the markets listed below in which BT has been found to have significant market power.**

### Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 2 shall, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of Table 1 below to the extent specified in Column 2 of the Table 1.

**Table 1: Relevant markets for the purposes of this Schedule**

<b>Column 1: Relevant market</b>	<b>Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1</b>
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.	Condition 1, Condition 3, Conditions 5-10 inclusive.
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.	Condition 1, Condition 3, Conditions 5-10 inclusive.
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.	Condition 1, Condition 3, Conditions 5-10 inclusive.
Wholesale market for regional trunk segments in the UK.	Condition 1, Condition 3, Conditions 5-10 inclusive.
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.	Condition 1, Condition 2 (except 2.1(b)), Conditions 3-10 inclusive (except 4.3).
Wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA, at bandwidths up to and including 1Gbit/s.	Condition 1, Condition 2 (except 2.1(b)), Conditions 3-10 inclusive (except 4.3).
Wholesale market for multiple interface symmetric broadband origination in the UK excluding the Hull Area and the WECLA.	Conditions 1-10 inclusive.
Retail market for low bandwidth traditional interface leased lines in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s.	Conditions 11-13 inclusive.

## Part 2: Definitions and interpretation

### 1. In this Schedule 2—

**“Access Charge Change”** means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;

**“Access Charge Change Notice”** means a notice given by the Dominant Provider of an Access Charge Change;

**“Access Agreement”** means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1;

**“Access Segment”** mean a service providing uncontended bandwidth connecting an end-user premise to

- a) a Local Access Node ; or
- b) an operational building of the Dominant Provider; or
- c) an operational building of a Third Party.

**“Accommodation Services”** mean the provision of space permitting a Third Party to occupy part of an MDF/ODF Site reasonably sufficient to permit the use of one or more disaggregated access and backhaul leased lines products, and in particular to permit the connection of the Dominant Provider’s electronic communications network with that of a Third Party at that location and having the following characteristics:

- (a) the Third Party’s electronic communications network is situated in an area of the MDF/ODF Site which:
  - (i) is a single undivided space;
  - (ii) after proper performance by the Dominant Provider of its obligation to provide network access pursuant to Condition 1, would permit the normal operation of the Third Party’s electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF/ODF Site for such use); and
  - (iii) if so requested by the Third Party, is not unreasonably distant from the Dominant Provider’s electronic communications network within the MDF/ODF Site;
- (b) no permanent physical partition is erected in the space between the Third Party’s electronic communications network and the Dominant Provider’s electronic communications network; and
- (c) the Third Party’s electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider’s behalf;

**“Act”** means the Communications Act 2003;

**“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.

**“Commercial Information”** means information of a commercially confidential nature relating to products and services to which Condition 4 applies, and which relates to any or all of the following in relation thereto:

- (a) product development;
- (b) pricing;
- (c) marketing strategy and intelligence;
- (d) product launch dates;
- (e) cost;
- (f) projected sales volumes; or
- (g) network coverage and capabilities;

**“Customer-Sited Handover”** means interconnection between the network of the Dominant Provider and the network of a Third Party at an operational building of the Third Party;

**“Dominant Provider”** 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;

**“Equivalence of Inputs”** means that the Dominant Provider provides, in respect of a particular product or service, the same product or service to all Third Parties (including itself) on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Third Parties (including itself) of the same Commercial Information about such products, services, systems and processes. In particular, it includes the use by the Dominant Provider of such systems and processes in the same way as other Communications Providers and with the same degree of reliability and performance as experienced by other Communications Providers.

**“Ethernet Services”** mean services that are presented with the standard networking protocol defined in IEEE 802.3 and published by the Institute of Electrical and Electronics Engineers;

**“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

**“In-Building Handover”** means interconnection between the network of the Dominant Provider and the network of a Third Party within an operational building of the Dominant Provider;

**"In-Span Handover"** means interconnection between the network of the Dominant Provider and the network of a Third Party in an external structure located reasonably adjacent to an operational building of the Dominant Provider such as, but not limited to, a manhole;

**"In-Span Handover Extension"** means interconnection between the network of the Dominant Provider and the network of a Third Party in an external structure located remote from an operational building of the Dominant Provider such as, but not limited to, a manhole;

**"Interconnection Services"** mean:

- (a) In-Span Handover (in relation to traditional interface services only);
- (b) Customer-Sited Handover;
- (c) In-Span Handover Extension; and
- (d) In-Building Handover;

**"Local Access Node"** means an operational building of the Dominant Provider which supports the provision of services to end-users and to which the end user is directly connected. For the avoidance of doubt, such nodes include sites housing a main distribution frame or an optical distribution frame;

**"MDF/ODF Site"** means the site of an operational building of the Dominant Provider that houses a main distribution frame or an optical distribution frame;

**"Network Component"** means, to the extent they are used in the relevant market listed in Column 1 of Table 1 above, the network components specified in a direction given by Ofcom from time to time for the purpose of these Conditions;

**"Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;

**"Retail Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter an agreement for the provision of a retail leased line;

**"Serving Area"** means, in relation to a group of one or more of the Dominant Provider's operational buildings, the geographic area served by that group of buildings;

**"Third Party"** means a person providing a public electronic communications service or a person providing a public electronic communications network;

**"Transfer Charge"** means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within a relevant market listed in Column 1 of Table 1 and the use of Network Components in that market;

**"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**

<b>Column 1:Trunk Aggregation Nodes</b>	<b>Column 2: BT operational buildings</b>
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 and Southbank
London Docklands	Bermondsey and 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

"**Trunk Segment**" means a service connecting any two of the Dominant Provider's operational buildings listed in Column 2 of Table 2 above to the extent they are part of different Trunk Aggregation Node as listed in Column 1 of Table 2 above (for example, a service connecting Potters Bar and Southall would constitute a Trunk Segment but not one connecting Ealing and Southall);

"**Usage Factor**" means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity;

"**WDM Services**" mean services provided using wavelength division multiplexing equipment located at the end user's premises and which is capable of supporting multiple leased lines services over a single fibre or pair of fibres;

"**WECLA**" means the area in London consisting of the postal sectors set out in Schedule 1 to this Notification; and

"**Wholesale End-to-End Segments**" mean services providing uncontended bandwidth between an end-user premise and another end-user premise.

2. For the purpose of interpreting the SMP conditions in Part 3 of this Schedule 2:
- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 1 of this Part 2 and otherwise any word or expression shall have the same meaning as it has in the Act;
  - (b) headings and titles shall be disregarded;
  - (c) expressions cognate with those referred to in this Schedule 2 shall be construed accordingly; and
  - (d) the Interpretation Act 1978 (c. 30) shall apply as if each of the SMP conditions in Part 3 of this Schedule 2 were an Act of Parliament.

### **Part 3: Conditions (BT)**

#### **Condition 1 – Network access on reasonable request**

- 1.1 The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2 The provision of network access by the Dominant Provider in accordance with this Condition must:
  - (a) take place as soon as reasonably practicable after receiving the request from a Third Party;
  - (b) be on fair and reasonable terms and conditions (excluding charges); and
  - (c) be on such terms and conditions (excluding charges) as Ofcom may from time to time direct.
- 1.3 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct and, for the avoidance of doubt, associated facilities include Accommodation Services and Interconnection Services.
- 1.4 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

#### **Condition 2 – Specific forms of network access.**

- 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.
- 2.2 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such other entitlements as Ofcom may from time to time direct.
- 2.3 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

#### **Condition 3 – No undue discrimination (wholesale)**

- 3.1 The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Conditions 1 and/or 2.
- 3.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

#### **Condition 4 – Equivalence of Inputs basis**

- 4.1 The Dominant Provider must provide network access in accordance with Conditions 1 and/or 2 on an Equivalence of Inputs basis.
- 4.2 Condition 4.1 shall not apply insofar as Ofcom has otherwise consented in writing, and shall not apply to:
  - (a) Accommodation Services other than in relation to the allocation of space (to be allocated on a first-come-first-serve basis) and power in operational buildings belonging to the Dominant Provider; and
  - (b) WDM Services with a straight line distance of more than 70km installed prior to [date]<sup>1</sup>.
- 4.3 In relation to WDM Services, where the service provided by the Dominant Provider to a Third Party differs from a service provided by the Dominant Provider to itself only in respect of the interface used, the obligation in Condition 4.1 will apply, except in respect of price, which must not be unduly discriminatory within the meaning of Condition 3.
- 4.4 Without prejudice to the generality of Condition 4.1, the Dominant Provider must not provide (or seek to provide) network access for its own services (including for those of its subsidiaries or partners), unless at the same time the Dominant Provider provides and/or offers to provide such network access to Third Parties on an Equivalence of Inputs basis.
- 4.5 For the avoidance of doubt, the obligations set out in this Condition 4 apply in addition to the obligations set out in Condition 3.

#### **Condition 5 – Charge Controls**

[...]

#### **Condition 6 – Publication of a Reference Offer**

- 6.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer.

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<sup>1</sup> Date to be inserted. See discussion in the explanatory statement accompanying this Notification.



**6.2** Subject to Condition 6.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of network access includes, where applicable, at least the following:

- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
- (b) the locations at which network access will be provided;
- (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
- (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
- (e) any ordering and provisioning procedures;
- (f) relevant charges, terms of payment and billing procedures;
- (g) details of interoperability tests;
- (h) details of maintenance and quality as follows:
  - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
  - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
  - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
  - (iv) a definition and limitation of liability and indemnity; and
  - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
- (n) the standard terms and conditions for the provision of network access;
- (o) the amount applied to:
  - (i) each Network Component used in providing network access with the relevant Usage Factors;

- (ii) the Transfer Charge for each Network Component or combination of Network Components described above;

reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

- 6.3** To the extent that the Dominant Provider provides to itself network access that:
- (a) is the same, similar or equivalent to that provided to any other person; or
  - (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person;
- in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 6.2(a)-(o).
- 6.4** The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force.
- 6.5** The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this Condition enters into force.
- 6.6** Publication referred to above shall be effected by:
- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
  - (b) sending a copy of the Reference Offer to Ofcom.
- 6.7** The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 6.8** The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 6.9** The Dominant Provider shall provide network access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.
- 6.10** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

### **Condition 7 – Notification of charges and terms and conditions**

- 7.1** Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and act in the manner set out below.
- 7.2** Where it proposes an Access Charge Change, the Dominant Provider shall send to Ofcom, and to every person with which it has entered into an Access Agreement pursuant to Conditions 1 and/or 2, an Access Charge Change Notice.

**7.3** The obligation in Condition 7.2 will not apply where the Access Charge Change is directed or determined by Ofcom or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.

**7.4** An Access Charge Change Notice must:

(a) In the case of an Access Charge Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect (except where the Access Charge Change relates solely to a reduction in the price of network access in which case it must be sent not less than 28 days before any such amendment comes into effect);

(b) In the case of an Access Charge Change involving new network access, be sent not less than 28 days before any such amendment comes into effect.

**7.5** The Dominant Provider shall ensure that an Access Charge Change Notice includes:

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;

(c) the date on which, or the period for which, the Access Charge Change will take effect (the "effective date"); and

(d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that network access, reconciled in each case with the current or proposed new charge.

**7.6** The Dominant Provider shall not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.

**7.7** To the extent that the Dominant Provider provides to itself network access that:

(a) is the same, similar or equivalent to that provided to any other person; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person, in a manner that differs from that detailed in an Access Charge Change Notice in relation to network access provided to any other person,

the Dominant Provider shall ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 7.5(a)-(d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with provides network access, it shall ensure it sends to Ofcom a notice equivalent to an Access Charge Change Notice.

## **Condition 8 – Quality of Service**

**8.1** The Dominant provider shall publish all such information as to the quality of service in relation to network access provided by the Dominant Provider pursuant to Conditions 1 and/or 2 in such manner and form, and including such content, as Ofcom may from time to time direct.

## Condition 9 – Notification of technical information

**9.1** Save where Ofcom consents otherwise, where the Dominant Provider provides network access pursuant to Conditions 1 and/or 2 and proposes new or amended terms and conditions relating to the following:

- (i) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);
- (ii) the locations at which network access will be provided; or
- (iii) technical standards (including any usage restrictions and other security issues),

the Dominant Provider shall publish a written notice (the “Notice”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of the existing Access Agreement come into effect. This obligation will not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act. This obligation for prior notification will also not apply in relation to new or amended technical specifications determined by NICC Standards Limited, whose registered company number is 6613589.

**9.2** The Dominant Provider shall ensure that the Notice includes:

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider’s Reference Offer of the relevant terms and conditions;
- (c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access or any amendments to the relevant terms and conditions will take effect (the “effective date”).

**9.3** The Dominant Provider shall not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

**9.4** Publication referred to in Condition 9.1 shall be effected by:

- (a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;
- (b) sending a copy of the Notice to Ofcom; and
- (c) sending a copy of the Notice to any person at that person’s written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Agreement pursuant to Conditions 1 and/or 2. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

## **Condition 10 - Requests for new forms of network access**

- 10.1** The Dominant Provider shall, for the purposes of transparency, publish guidelines in relation to requests for new forms of network access made to it. Such guidelines shall detail:
- (a) the form in which such a request should be made;
  - (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access; and
  - (c) the timescales in which such requests will be handled by the Dominant Provider in accordance with this Condition.
- 10.2** Such guidelines shall be published within two months of the date that this Condition enters into force following a consultation with Ofcom and Third Parties. The Dominant Provider shall keep the guidelines under review and consult with relevant Third Parties and Ofcom before making any amendments to the guidelines.
- 10.3** The Dominant Provider shall, upon a reasonable request from a Third Party considering making a request for a new form of network access, provide that Third Party with information so as to enable that Third Party to make a request for a new form of network access. Such information shall be provided within a reasonable period.
- 10.4** On receipt of a written request for a new form of network access, the Dominant Provider shall ensure that the requirements of this Condition are met. A modification of a request for a new form of network access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, shall be considered as a new request.
- 10.5** Within five working days of receipt of a request under Condition 10.4, the Dominant Provider shall acknowledge that request in writing.
- 10.6** Within fifteen working days of receipt of a request under Condition 10.4 the Dominant Provider shall respond in writing to the requesting Third Party in one of the following ways:
- (a) the Dominant Provider shall confirm that the request will be met and shall confirm that the following will be prepared:
    - (i) the timetable for the provision of network access;
    - (ii) an initial offer of terms and conditions for the provision of network access; and
    - (iii) the timetable for the agreement of technical issues.
  - (b) the Dominant Provider shall confirm that a feasibility study is reasonably required in order to determine whether the request made is reasonable and the Dominant Provider shall set out its objective reasons for the need for such a study;
  - (b) the Dominant Provider shall confirm that the request is not sufficiently well formulated and, where it does so, the Dominant Provider shall detail all of the defects in the request which has been made; or

- (d) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal.

**10.7** Where the Dominant Provider responds to a request under Condition 10.4 in accordance with Condition 10.6(a) it shall, within thirty five working days of receipt of a request under Condition 10.4, respond further to the requesting Third Party in writing and:

- (a) confirm the timetable for the provision of network access;
- (b) provide an initial offer of terms and conditions for the provision of network access; and
- (c) confirm the timetable for the agreement of technical issues.

**10.8** Where the Dominant Provider responds to a request under Condition 10.4 in accordance with Condition 10.6(a) and determines, due to a genuine error of fact, that it reasonably needs to complete a feasibility study, it may, as soon as practicable and in any event, within thirty five working days of receipt of a request under Condition 10.4, inform the requesting Third Party that a feasibility study is reasonably required and set out its objective reasons for such a study.

**10.9** Where Condition 10.8 applies the Dominant Provider shall, within forty five working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required, respond further to the requesting Third Party, in writing, in one of the following ways:

- (a) the Dominant Provider shall confirm that the request will be met and shall:
  - (i) confirm the timetable for the provision of network access;
  - (ii) provide an initial offer of terms and conditions for the provision of network access; and
  - (iii) confirm the timetable for the agreement of technical issues.
- (b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

**10.10** The time limit set out in Condition 10.9 above shall be extended up to seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to Condition 10.8, if:

- (a) circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within forty five working days of the date that the requesting Third Party was informed of the need for a feasibility study pursuant to Condition 10.8; or
- (b) the Third Party and the Dominant Provider agree to extend the time limit up to seventy working days.

**10.11** The time limit set out in Condition 10.9 above shall be extended beyond seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to Condition 10.8, if:

- (a) Ofcom agrees; or
- (b) the Third Party and the Dominant Provider agree to extend the time limit beyond seventy working days.

**10.12** Where the Dominant Provider responds to a request under Condition 10.4 in accordance with Condition 10.6(b) the Dominant Provider shall, within sixty working days of receipt of a request under Condition 10.4, respond further to the requesting Third Party, in writing, in one of the following ways:

- (a) the Dominant Provider shall confirm that the request will be met and shall:
  - (i) confirm the timetable for the provision of network access;
  - (ii) provide an initial offer of terms and conditions for the provision of network access; and
  - (iii) confirm the timetable for the agreement of technical issues.
- (b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

**10.13** The time limit set out in Condition 10.12 above shall be extended up to eighty five working days of receipt of a request under Condition 10.4, if:

- (a) circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within sixty working days of receipt of a request under Condition 10.4; or
- (b) the Third Party and the Dominant Provider agree to extend the time limit up to eighty five working days.

**10.14** The time limit set out in Condition 10.12 above shall be extended beyond eighty five working days of receipt of a request under Condition 10.4, if:

- (a) Ofcom agrees; or
- (b) the Third Party and the Dominant Provider agree to extend the time limit beyond eighty five working days.

**10.15** Within two months of the date that this Condition enters into force the Dominant Provider shall provide Ofcom with a description of the processes it has put in place to ensure compliance with this Condition. It shall keep those processes under review to ensure that they remain adequate for that purpose.

**10.16** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition 11 – Provision of retail leased lines**

- 11.1** Except where it has withdrawn supply in accordance with Condition 11.2, the Dominant Provider shall continue to supply retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s where the Dominant Provider was supplying that leased line on the date that this Condition enters into force.
- 11.2** If the Dominant Provider proposes to withdraw the supply of retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s, it must send to Ofcom, and to every person to whom it supplies such services, a notice, not less than one year before such withdrawal comes into effect.
- 11.3** The provision of retail leased lines in accordance with paragraph 11.1 shall be provided on fair and reasonable terms, conditions and charges, and on such terms, conditions and charges as Ofcom may from time to time direct.
- 11.4** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition 12 – No undue discrimination (retail)**

- 12.1** The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the supply of retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s.
- 12.2** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

**Condition 13 – Requirement to publish a Retail Reference Offer**

- 13.1** The Dominant Provider shall be required to publish a Retail Reference Offer in relation to the provision of retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s, except in so far as Ofcom may otherwise consent in writing and act in the manner set out below.
- 13.2** Subject to Condition 13.7, the Dominant Provider shall ensure that a Retail Reference Offer in relation to the provision of retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s, includes at least the following:
- (a) the technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point;
  - (b) charges, including the initial connection charges, the periodic rental charges and other charges. Where charges are differentiated, this must be indicated;



- (c) information concerning the ordering procedure;
  - (d) the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept; and
  - (e) any refund procedure.
- 13.3** The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Retail Reference Offer in relation to retail analogue leased lines and retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s that it is providing as at the date that this Condition enters into force.
- 13.4** The Dominant Provider shall update and publish the Retail Reference Offer, in relation to any amendments, or in relation to any further retail analogue leased lines or retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s provided after the date that this Condition enters into force, on the same day as such amendments take effect or further retail leased lines are offered.
- 13.5** Publication referred to above shall be effected by:
- (a) placing a copy of the Retail Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
  - (b) sending a copy of the Retail Reference Offer to Ofcom.
- 13.6** The Dominant Provider shall send a copy of the current version of the Retail Reference Offer to any person at that person's written request (or such parts which have been requested).
- 13.7** The Dominant Provider shall make such modifications to the Retail Reference Offer as Ofcom may direct from time to time.
- 13.8** The Dominant Provider shall provide retail analogue leased lines and retail traditional interface digital leased lines with a bandwidth capacity of below but not including 2Mbit/s at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly, unless Ofcom otherwise directs.
- 13.9** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

### Schedule 3

**[DRAFT] The conditions imposed on KCOM under the Communications Act 2003 as a result of the analysis of the markets listed below in which KCOM has been found to have significant market power.**

#### Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 3 shall, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of Table 1 to the extent specified in Column 2 of the Table.

**Table 1: Relevant markets for the purposes of this Schedule**

<b>Column 1: Relevant market</b>	<b>Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1</b>
Wholesale market for low bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 8Mbit/s.	Conditions 1-5 inclusive.
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.	Conditions 1-5 inclusive.
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.	Conditions 1-5 inclusive.
Wholesale market for very high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths of 622Mbit/s.	Conditions 1-5 inclusive.
Wholesale market for low bandwidth alternative interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 1Gbit/s.	Conditions 1-5 inclusive.
Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s.	Conditions 6-8 inclusive.
Retail market for low bandwidth alternative interface leased lines in the Hull Area, at bandwidths up to and including 1Gbit/s.	Conditions 6-8 inclusive.

#### Part 2: Definitions and interpretation

1. In this Schedule 3—

**“Access Charge Change”** means any amendment to the maximum charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;

**“Access Charge Change Notice”** means a notice given by the Dominant Provider of an Access Charge Change;

**“Access Agreement”** means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1;

**“Accommodation Services”** mean the provision of space permitting a Third Party to occupy part of an MDF/ODF Site reasonably sufficient to permit the use of one or more disaggregated access and backhaul leased lines products, and in particular to permit the connection of the Dominant Provider’s electronic communications network with that of a Third Party at that location and having the following characteristics:

- (a) the Third Party’s electronic communications network is situated in an area of the MDF/ODF Site which:
  - (i) is a single undivided space;
  - (ii) after proper performance by the Dominant Provider of its obligation to provide network access pursuant to Condition 1, would permit the normal operation of the Third Party’s electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF/ODF Site for such use); and
  - (iii) if so requested by the Third Party, is not unreasonably distant from the Dominant Provider’s electronic communications network within the MDF/ODF Site;
- (b) no permanent physical partition is erected in the space between the Third Party’s electronic communications network and the Dominant Provider’s electronic communications network; and
- (c) the Third Party’s electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider’s behalf;

**“Act”** means the Communications Act 2003;

**“Customer-Sited Handover”** means interconnection between the network of the Dominant Provider and the network of a Third Party at an operational building of the Third Party;

**“Dominant Provider”** 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;

**“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

**“In-Building Handover”** means interconnection between the network of the Dominant Provider and the network of a Third Party within an operational building of the Dominant Provider;

**“In-Span Handover”** means interconnection between the network of the Dominant Provider and the network of a Third Party in an external structure located reasonably

adjacent to an operational building of the Dominant Provider such as, but not limited to, a manhole;

**"In-Span Handover Extension"** means interconnection between the network of the Dominant Provider and the network of a Third Party in an external structure located remote from an operational building of the Dominant Provider such as, but not limited to, a manhole;

**"Interconnection Services"** mean:

- (a) In-Span Handover (in relation to traditional interface services only);
- (b) Customer-Sited Handover;
- (c) In-Span Handover Extension; and
- (d) In-Building Handover;

**"MDF/ODF Site"** means the site of an operational building of the Dominant Provider that houses a main distribution frame or an optical distribution frame;

**"Network Component"** means to the extent they are used in the relevant market listed in Column 1 of Table 1 above, the network components specified in a direction given by Ofcom from time to time for the purpose of these Conditions;

**"Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;

**"Retail Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter an agreement for the provision of a retail leased line;

**"Third Party"** means a person providing a public electronic communications service or a person providing a public electronic communications network;

**"Transfer Charge"** means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within a relevant market listed in Column 1 of Table 1 and the use of Network Components in that market; and

**"Usage Factor"** means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity.

2. For the purpose of interpreting the SMP conditions in Part 3 of this Schedule 3:
  - (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 1 of this Part 2 and otherwise any word or expression shall have the same meaning as it has in the Act;
  - (b) headings and titles shall be disregarded;

- (c) expressions cognate with those referred to in this Schedule 3 shall be construed accordingly; and
- (d) the Interpretation Act 1978 (c. 30) shall apply as if each of the SMP conditions in Part 3 of this Schedule 3 were an Act of Parliament.

**Part 3: SMP conditions (KCOM)****Condition 1 – Network access on reasonable request**

- 1.1 The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2 The provision of network access by the Dominant Provider in accordance with this Condition must:
  - (a) take place as soon as reasonably practicable after receiving the request from a Third Party;
  - (b) be on fair and reasonable terms and conditions (excluding charges); and
  - (c) be on such terms and conditions (excluding charges) as Ofcom may from time to time direct.
- 1.3 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct and, for the avoidance of doubt, associated facilities include Accommodation Services and Interconnection Services.
- 1.4 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

**Condition 2 – No undue discrimination (wholesale)**

- 2.1 The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Condition 1.
- 2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

**Condition 3 – Publication of a Reference Offer**

- 3.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer.
- 3.2 Subject to Condition 3.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of network access includes, where applicable, at least the following:
  - (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);

- (b) the locations at which network access will be provided;
- (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
- (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
- (e) any ordering and provisioning procedures;
- (f) relevant maximum charges, terms of payment and billing procedures;
- (g) details of interoperability tests;
- (h) details of maintenance and quality as follows:
  - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
  - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
  - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
  - (iv) a definition and limitation of liability and indemnity; and
  - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
- (n) the standard terms and conditions for the provision of network access;
- (o) the maximum amount applied to:
  - (i) each Network Component used in providing network access with the relevant Usage Factors;
  - (ii) the Transfer Charge for each Network Component or combination of Network Components described above;

reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

**3.3** To the extent that the Dominant Provider provides to itself network access that:

- (c) is the same, similar or equivalent to that provided to any other person; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 3.2(a)-(o).

- 3.4** The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force.
- 3.5** The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this Condition enters into force.
- 3.6** Publication referred to above shall be effected by:
- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
  - (b) sending a copy of the Reference Offer to Ofcom.
- 3.7** The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 3.8** The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 3.9** The Dominant Provider shall provide network access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.
- 3.10** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

#### **Condition 4 – Notification of charges and terms and conditions**

- 4.1** Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish maximum charges, terms and conditions and act in the manner set out below.
- 4.2** Where it proposes an Access Charge Change, the Dominant Provider shall send to Ofcom, and to every person with which it has entered into an Access Agreement pursuant to Condition 1, an Access Charge Change Notice.
- 4.3** The obligation in Condition 4.2 will not apply where the Access Charge Change is directed or determined by Ofcom or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.
- 4.4** An Access Charge Change Notice must:



- (a) In the case of an Access Charge Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect (except where the Access Charge Change relates solely to a reduction in the maximum price of network access in which case it must be sent not less than 28 days before any such amendment comes into effect);
- (b) In the case of an Access Charge Change involving new network access, be sent not less than 28 days before any such amendment comes into effect.

**4.5** The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;
- (c) the date on which, or the period for which, the Access Charge Change will take effect (the "effective date"); and
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that network access, reconciled in each case with the current or proposed new charge.

**4.6** The Dominant Provider shall not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.

**4.7** To the extent that the Dominant Provider provides to itself network access that:

- (a) is the same, similar or equivalent to that provided to any other person; or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person, in a manner that differs from that detailed in an Access Charge Change Notice in relation to network access provided to any other person,

the Dominant Provider shall ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 4.5(a)-(d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with provides network access, it shall ensure it sends to Ofcom a notice equivalent to an Access Charge Change Notice.

**Condition 5 – Notification of technical information**

**5.1** Save where Ofcom consents otherwise, where the Dominant Provider provides network access pursuant to Condition 1 and proposes new or amended terms and conditions relating to the following:

- (i) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);
- (ii) the locations at which network access will be provided; or
- (iii) technical standards (including any usage restrictions and other security issues),

the Dominant Provider shall publish a written notice (the “Notice”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of the existing Access Agreement come into effect. This obligation will not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act. This obligation for prior notification will also not apply in relation to new or amended technical specifications determined by NICC Standards Limited, whose registered company number is 6613589.

**5.2** The Dominant Provider shall ensure that the Notice includes:

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider’s Reference Offer of the relevant terms and conditions;
- (c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access or any amendments to the relevant terms and conditions will take effect (the “effective date”).

**5.3** The Dominant Provider shall not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

**5.4** Publication referred to in Condition 5.1 shall be effected by:

- (a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;
- (b) sending a copy of the Notice to Ofcom; and
- (c) sending a copy of the Notice to any person at that person’s written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Agreement pursuant to Condition 1. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

## **Condition 6 – Provision of retail leased lines**

**6.1** The Dominant Provider shall supply a retail leased line where the Dominant Provider was supplying that retail leased line on the date that this Condition enters into force or where a new retail leased line is reasonably requested in writing.

**6.2** The provision of retail leased lines in accordance with paragraph 6.1 shall be provided on fair and reasonable terms, conditions and charges, and on such terms, conditions and charges as Ofcom may from time to time direct.

**6.4** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

## **Condition 7 – No undue discrimination (retail)**

- 7.1** The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the supply of a retail leased line.
- 7.2** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

### **Condition 8 – Requirement to publish a Retail Reference Offer**

- 8.1** The Dominant Provider shall be required to publish a Retail Reference Offer in relation to the provision of retail leased lines, except in so far as Ofcom may otherwise consent in writing and act in the manner set out below.
- 8.2** Subject to Condition 8.7, the Dominant Provider shall ensure that a Retail Reference Offer in relation to the provision of retail leased lines, includes at least the following:
- (a) the technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point;
  - (b) maximum charges, including the initial maximum connection charges, the periodic rental charges and other charges. Where charges are differentiated, this must be indicated;
  - (c) information concerning the ordering procedure;
  - (d) the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept; and
  - (e) any refund procedure.
- 8.3** The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Retail Reference Offer in relation to retail leased lines that it is providing as at the date that this Condition enters into force.
- 8.4** The Dominant Provider shall update and publish the Retail Reference Offer, in relation to any amendments, or in relation to any further retail leased lines provided after the date that this Condition enters into force, on the same day as such amendments take effect or further retail leased lines are offered.
- 8.5** Publication referred to above shall be effected by:
- (a) placing a copy of the Retail Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
  - (b) sending a copy of the Retail Reference Offer to Ofcom.
- 8.6** The Dominant Provider shall send a copy of the current version of the Retail Reference Offer to any person at that person's written request (or such parts which have been requested).

- 8.7** The Dominant Provider shall make such modifications to the Retail Reference Offer as Ofcom may direct from time to time.
- 8.8** The Dominant Provider shall provide retail leased lines at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly, unless Ofcom otherwise directs.
- 8.9** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

## Annex 15

# Draft directions

## NOTIFICATION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003

### Proposed Directions under sections 49 and 49A of the Communications Act 2003 and SMP Services Condition 1

#### Proposal in this Notification

1. Ofcom hereby makes, in accordance with section 49A of the Communications Act 2003 (the “Act”), the following proposal to give directions for the purposes of SMP services Condition 1, proposed as result of the analysis of:
  - a) the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
  - b) the 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) the 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; and
  - d) the wholesale market for regional trunk segments in the UK
2. Ofcom hereby also makes, in accordance with section 49A of the Act, the following proposal to give a direction for the purposes of SMP services Condition 1, proposed as a result of the analysis of:
  - a) the 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; and
  - b) the wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA, at bandwidths up to and including 1Gbit/s.
3. The proposed directions are set out in the Schedules to this Notification.
4. The effect of, and reasons for giving, the proposed directions are set out in the accompanying consultation document.

### **Ofcom's Duties**

5. In making the proposals set out in the Notification, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Ofcom will consider every representation about the proposals made to Ofcom during the period during which representations may be made.
7. Ofcom will have regard to every international obligation of the United Kingdom which has been notified to Ofcom for the purposes of section 49A(6) of the Act.

### **Making representations**

8. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation document by no later than 24 August 2012.

### **Delivery of copies of notifications in respect of directions**

9. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State.

### **Interpretation**

10. For the purposes of interpreting the Notification:
  - a) "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 Group plc; and
  - b) "WECLA" means the area in London consisting of the postal sectors set out in Schedule 1 to Annex 8 of the consultation document accompanying this Notification.
11. For the purposes of interpreting the Notification
  - a) except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act;
  - b) the Interpretation Act 1978 shall apply as the Notification were an Act of Parliament; and
  - c) heading and titles shall be disregarded.

M. Gibbs

**Marina Gibbs**  
**Competition Policy Director, Ofcom**

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

**18 June 2012**

## Schedule 1

**[Proposed] Direction under sections 49 and 49A of the Communications Act 2003 and SMP services Condition 1, proposed as a result of the analysis of the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s**

### Background

1. On [date of final statement] Ofcom concluded its review of the business connectivity markets (BCMR) in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification at Annex [X] to the BCMR, and explained in the accompanying explanatory statement.
2. Ofcom determined in the BCMR that BT, as a Dominant Provider, has significant market power in, amongst others, the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull area, at bandwidths up to and including 8Mbit/s.
3. SMP services Condition 1 was set in relation to, amongst others, the market referred to in paragraph 2.
4. This Direction concerns matters to which SMP services Condition 1 relates.
5. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii. proportionate to what it is intended to achieve; and
  - iv. in relation to what it is intended to achieve, transparent.
6. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
7. Ofcom has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 49A(6) of the Act.

**NOW, therefore, pursuant to SMP services Condition 1, Ofcom makes the following Direction:**



## Definitions

For the purpose of interpreting this Direction the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Dominant Provider**” 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;

“**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 Group plc;

“**Point of Connection**” means a point at which the Dominant Provider’s electronic communications network and another person’s electronic communications network are connected;

“**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile
- In-Span Handover (“ISH”)
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

<b>Term</b>	<b>Definition</b>
Acceptance of Terms	Date on which a Third Party confirms

	acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order Request Date until the Installation Date.
Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order

Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.

Subsequent Partial Private Circuit

A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

**The Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.**

### **Migration**

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.
2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.
3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.
4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.
5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.
6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.
7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a

Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

### **Forecasts**

11. The Dominant Provider shall only require a Third Party to provide a profile of future Partial Private Circuit capacity ordering intentions over a 12 month period, on a national aggregate basis for groupings of bandwidths no narrower than the following:

- less than 1Mbit/s; and
- 1Mbit/s through to 2Mbit/s.

12. The Dominant Provider shall allow a Third Party to set its Advance Capacity Order and Advance Order Commitment without any penalty by up to, 10% (by volume) below, or 20% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile for the period covered by the Advance Capacity Order or Advance Order Commitment.

13. The Dominant Provider shall allow a Third Party to revise periods covered by its previously stated Capacity Profile and Forecast Profile without any penalty by up to, 30% (by volume) below, or 30% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile, provided that paragraph 12 of this Direction does not apply.

14. In calculating any increase to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded up to the nearest integer.

15. In calculating any decrease to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded down to the nearest integer.

16. Where a Third Party places a Capacity Order at a Point of Connection for the period corresponding to that of the Advance Capacity Order, which total less than its Advance Capacity Order for the Point of Connection, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}2,490$$

Where B is the total capacity provision by number of VC4-equivalent units specified in the relevant Advance Capacity Order in respect of each Point of Connection; and

Where C is the number of VC4-equivalents ordered during the period to which the relevant Advance Capacity Order relates in respect of each Point of Connection, but does not include cancellations of Capacity Orders made during or after the relevant Advanced Capacity Order period, but does include any Capacity Order cancelled as a result of the inability of the Dominant Provider to secure consents for CSH links.

17. Where a Third Party places orders for Partial Private Circuits below 1 Mbit for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for the Partial Private Circuits below 1 Mbit, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}52$$

Where B is the total Advance Order Commitment for Private Partial Circuits below 1 Mbit; and

Where C is the number of Partial Private Circuits below 1 Mbit ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of the Dominant Provider to secure consents for Partial Private Circuits.

18. Where a Third Party places orders for Partial Private Circuits from 1 Mbit through to 2 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits from 1 Mbit through to 2 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}143$$

Where B is the total Advance Order Commitment for Private Partial Circuits from 1 Mbit through to 2 Mbit/s; and

Where C is the number of Partial Private Circuits from 1 Mbit through to 2 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19. [Paragraph not used].

20. In calculating (80% of B) in paragraphs 16 to 18 inclusive of this Direction the outcome shall, if not an integer, be rounded down to the nearest integer.

## **Service level agreements (SLAs)**

### ***General***

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the relevant Requisite Period (RP) and that any extension of the Committed Delivery Date beyond the relevant Requisite Period (RP) shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of:

– five working days for Partial Private Circuits of less than 2 Mbit/s; and

– eight working days for Partial Private Circuits of 2 Mbit/s and Network Infrastructure;

regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of one working day for Partial Private Circuits of 2 Mbit/s or below and two working days for Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by 50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

#### *Unliquidated damages*

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

#### **Service level guarantees (SLGs)**

34. The Dominant Provider shall ensure the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract **continue to** provide the following:

##### *Compensation per event and value of compensation*

a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).

b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:  
- for Regular Care customers, in the first two days on a per day basis thereafter; and  
- for Enhanced Care customers, in the first five hours on a per hour basis thereafter.

c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.

d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:

- for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and
- for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.

e) 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 (c) and (d) above.

*Additional losses*

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

*Proactive payments*

g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

35. The terms and conditions amended as set out in paragraph 34 above shall take effect from the 90<sup>th</sup> day after publication of the Final Statement.

***Partial Private Circuits***

*Quick quote and very high bandwidth quote on line*

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

*Concurrency of Partial Private Circuit and ISH link and CSH link delivery times*

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

*Expedited orders*

38. Upon a Third Party's written request, the Dominant Provider shall make reasonable endeavours to set a Committed Delivery Date for Partial Private Circuits within 50% of the relevant Requisite Period set out in the table in paragraph 41 of this Direction, rounded up to the nearest working day where necessary, for at least 15% (by volume) of a Third Party's previous month's order. The Third Party shall inform the Dominant Provider which particular Partial Private Circuits it shall endeavour to be expedited pursuant to this paragraph. This paragraph shall only apply to the delivery of Partial Private Circuits of 2 Mbit/s or less. This paragraph shall not apply to Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.



39. Paragraph 48 of this Direction does not apply to orders of Partial Private Circuits made pursuant to paragraph 38 of this Direction.

*Time scales for fixed individual compensation*

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Bandwidth of Partial Private Circuit</b>	<b>Requisite Period</b>
64 kbit/s	10 working days
128 kbit/s to 256 kbit/s delivered over copper	10 working days
128 kbit/s to 256 kbit/s delivered over fibre	30 working days
320 kbit/s to 960 kbit/s	30 working days
1 Mbit/s	30 working days
2 Mbit/s	30 working days
Subsequent Partial Private Circuit of 2 Mbit/s	10 working days

*Third Party's ability to cancel order*

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 41 of this Direction</b>	<b>Cancellation Threshold</b>
10 working days	10 working days
30 working days	20 working days

43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite Periods for Partial Private Circuits*

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Bandwidth of Partial Private Circuit</b>	<b>Reduced Requisite Period</b>
128 kbit/s to 256 kbit/s delivered over fibre	20 working days
320 kbit/s to 960 kbit/s	20 working days
1 Mbit/s	20 working days
2 Mbit/s	20 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits of 64 kbit/s;
- Partial Private Circuits of 128 kbit/s to 256 kbit/s delivered over copper;
- Subsequent Private Partial Circuits of 2Mbit/s;
- Partial Private Circuit orders to which paragraph 38 of this Direction applies; and
- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

*Multiple orders*

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

*Availability of service*

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 62, 63 and 64 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

**Network Infrastructure***Time scales for fixed individual compensation*

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Network Infrastructure</b>	<b>Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Requisite Period (where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days
ISH links – provision of new multiplexor on an existing Point of Connection	Not applicable	60 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	60 working Days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	60 working Days
CSH links requiring only provision of new tributary		

card on existing  
multiplexor

Not applicable

25 working Days

*Third Party's ability to cancel order*

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite Periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 51 of this Direction</b>	<b>Cancellation Threshold</b>
21 to 40 working days	20 working days
41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite periods for Network Infrastructure*

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Network Infrastructure</b>	<b>Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days

CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	40 working days
CSH links requiring only provision of new tributary card on existing multiplexor	Not applicable	20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

***Repair of Partial Private Circuits and Network Infrastructure***

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	<b>Operational hours</b>	<b>Repair/response time</b>	<b>Extras</b>
<b>Regular Care</b>	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third Party.	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the fault.
<b>Enhanced Care</b>	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party. Repair within five hours of receipt of a	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the Dominant Provider shall contact the Third Party to

		fault report by a Third Party.	report progress being made to remedy the fault.
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59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider’s Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider’s Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider’s Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider’s Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

**Change of speed or interface**

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party’s written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

**STM-1, ISH and CSH handover**

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party’s written request for a Synchronous Transfer Mode–1 (“STM-1”), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover

shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

### **Equipment re-use**

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy ("PDH") and Synchronous Digital Hierarchy ("**SDH**") equipment situated at a third party site ("Equipment").

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment **if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.**

### **Other Circuits**

73. Unless Ofcom otherwise agrees, the Dominant Provider shall offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party's request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party's written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer's premises to a Third Party's single Point of Connection.

### **RBS Backhaul**

75. The Dominant Provider shall offer to provide to a Third Party, within a reasonable period of the Third Party's written request, transparent transmission capacity at all bandwidths up to and including a bandwidth capacity of two megabits per second between a radio base station and a Point of Connection with a Third Party's electronic communications network connected to the nearest appropriate digital cross connection node.

### **General**

76. The Dominant Provider shall implement this Direction within 10 working days of its publication.

77. This Direction shall take effect on the day it is published.

[...]

**Competition Policy Director, Ofcom**

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

**June 2012**



## Schedule 2

### **[Proposed] Direction under sections 49 and 49A of the Communications Act 2003 and SMP services Condition 1, proposed as a result of the analysis of the 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**

#### **Background**

1. On [date of final statement] Ofcom concluded its review of the business connectivity markets (BCMR) in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification at Annex [X] to the BCMR, and explained in the accompanying explanatory statement.
2. Ofcom determined in the BCMR that BT, as a Dominant Provider, has significant market power in, amongst others, the 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.
3. SMP services Condition 1 was set in relation to, amongst others, the market referred to in paragraph 2.
4. This Direction concerns matters to which SMP services Condition 1 relates.
5. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii. proportionate to what it is intended to achieve; and
  - iv. in relation to what it is intended to achieve, transparent.
6. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
7. Ofcom has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 49A(6) of the Act.

**NOW, therefore, pursuant to SMP services Condition 1, Ofcom makes the following Direction:**

**Definitions**

For the purpose of interpreting this Direction the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Dominant Provider**” 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;

“**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 Group plc;

“**Point of Connection**” means a point at which the Dominant Provider’s electronic communications network and another person’s electronic communications network are connected;

“**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network; and

“**WECLA**” means the area in London consisting of the postal sectors set out in Schedule 1 to Annex 14.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile
- In-Span Handover (“ISH”)
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

<b>Term</b>	<b>Definition</b>
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order Request Date until the Installation Date.

Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.
Subsequent Partial Private Circuit	A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

**The Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.**

### **Migration**

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.
2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.
3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.
4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.
5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.
6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working

days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.

7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

## **Forecasts**

11. The Dominant Provider shall only require a Third Party to provide a profile of future Partial Private Circuit capacity ordering intentions over a 12 month period, on a national aggregate basis for groupings of bandwidths no narrower than the following:

- Above 8 Mbit/s through to 45 Mbit/s.

12. The Dominant Provider shall allow a Third Party to set its Advance Capacity Order and Advance Order Commitment without any penalty by up to, 10% (by volume) below, or 20% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile for the period covered by the Advance Capacity Order or Advance Order Commitment.

13. The Dominant Provider shall allow a Third Party to revise periods covered by its previously stated Capacity Profile and Forecast Profile without any penalty by up to, 30% (by volume) below, or 30% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile, provided that paragraph 12 of this Direction does not apply.

14. In calculating any increase to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded up to the nearest integer.

15. In calculating any decrease to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded down to the nearest integer.

16. Where a Third Party places a Capacity Order at a Point of Connection for the period corresponding to that of the Advance Capacity Order, which total less than its Advance

Capacity Order for the Point of Connection, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}2,490$$

Where B is the total capacity provision by number of VC4-equivalent units specified in the relevant Advance Capacity Order in respect of each Point of Connection; and

Where C is the number of VC4-equivalents ordered during the period to which the relevant Advance Capacity Order relates in respect of each Point of Connection, but does not include cancellations of Capacity Orders made during or after the relevant Advanced Capacity Order period, but does include any Capacity Order cancelled as a result of the inability of the Dominant Provider to secure consents for CSH links.

17. [paragraph not used]

18. Where a Third Party places orders for Partial Private Circuits from above 8 Mbit/s through to 45Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits from above 8 Mbit/s through to 45 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}143$$

Where B is the total Advance Order Commitment for Private Partial Circuits from above 8 Mbit through to 45 Mbit/s; and

Where C is the number of Partial Private Circuits from above 8 Mbit/s through to 45 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19. [Paragraph not used].

20. In calculating (80% of B) in paragraphs 16 to 18 inclusive of this Direction the outcome shall, if not an integer, be rounded down to the nearest integer.

## **Service level agreements (SLAs)**

### ***General***

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the relevant Requisite Period (RP) and that any extension of the Committed Delivery Date beyond the relevant Requisite Period (RP) shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of eight working days for Partial Private Circuits of above 8 Mbit/s and up to and including 45 Mbit/s and Network Infrastructure regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of two working days for Partial Private Circuits of above 8 Mbit/s and up to and including 45 Mbit/s and Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by 50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

#### *Unliquidated damages*

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

#### **Service level guarantees (SLGs)**

34. The Dominant Provider shall ensure the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract continue to provide the following:

##### *Compensation per event and value of compensation*

a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).

b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:

- for Regular Care customers, in the first two days on a per day basis thereafter; and
- for Enhanced Care customers, in the first five hours on a per hour basis thereafter.

c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.

d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:

- for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and
- for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.

e) 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 (c) and (d) above.

##### *Additional losses*



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

*Proactive payments*

g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

**Partial Private Circuits**

*Quick quote and very high bandwidth quote on line*

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

*Concurrency of Partial Private Circuit and ISH link and CSH link delivery times*

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

38. [paragraph not used]

39. [paragraph not used]

*Time scales for fixed individual compensation*

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

**Bandwidth of Partial Private Circuit**

**Requisite Period**

34 Mbit/s to 45 Mbit/s

57 working days

*Third Party's ability to cancel order*

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a

Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 41 of this Direction</b>	<b>Cancellation Threshold</b>
57 working days	25 working days

43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

#### *Reduced Requisite Periods for Partial Private Circuits*

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Bandwidth of Partial Private Circuit</b>	<b>Reduced Requisite Period</b>
34 Mbit/s to 45 Mbit/s	45 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

#### *Multiple orders*

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in

paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

#### *Availability of service*

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 60, 61 and 63 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

#### **Network Infrastructure**

##### *Time scales for fixed individual compensation*

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Network Infrastructure</b>	<b>Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Requisite Period (where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days
ISH links – provision of new multiplexor on an existing Point of Connection	Not applicable	60 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	60 working Days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	60 working Days

CSH links requiring only provision of new tributary card on existing multiplexor

Not applicable

25 working Days

*Third Party’s ability to cancel order*

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider’s reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 51 of this Direction</b>	<b>Cancellation Threshold</b>
21 to 40 working days	20 working days
41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite periods for Network Infrastructure*

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Network Infrastructure</b>	<b>Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on		

existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	40 working days
CSH links requiring only provision of new tributary card on existing multiplexor	Not applicable	20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

***Repair of Partial Private Circuits and Network Infrastructure***

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	<b>Operational hours</b>	<b>Repair/response time</b>	<b>Extras</b>
<b>Regular Care</b>	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third Party.	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the fault.
<b>Enhanced Care</b>	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party.	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the

		Repair within five hours of receipt of a fault report by a Third Party.	Dominant Provider shall contact the Third Party to report progress being made to remedy the fault.
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59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider’s Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider’s Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider’s Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider’s Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

**Change of speed or interface**

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party’s written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

**STM-1, ISH and CSH handover**

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request for a Synchronous Transfer Mode-1 ("STM-1"), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

### **Equipment re-use**

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy ("PDH") and Synchronous Digital Hierarchy ("**SDH**") equipment situated at a third party site ("Equipment").

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment **if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.**

### **Other Circuits**

73. Unless Ofcom otherwise agrees, the Dominant Provider shall, offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party's request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party's written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer's premises to a Third Party's single Point of Connection.

### **General**

75. The Dominant Provider shall implement this Direction within 10 working days of its publication.

76. This Direction shall take effect on the day it is published.

[...]

### **Competition Policy Director, Ofcom**

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

**June 2012**

## Schedule 3

### **[Proposed] Direction under sections 49 and 49A of the Communications Act 2003 and SMP services Condition 1, proposed as a result of the analysis of the 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**

#### **Background**

1. On [date of final statement] Ofcom concluded its review of the business connectivity markets (BCMR) in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification at Annex [X] to the BCMR, and explained in the accompanying explanatory statement.
2. Ofcom determined in the BCMR that BT, as a Dominant Provider, has significant market power in, amongst others, the wholesale market for medium 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.
3. SMP services Condition 1 was set in relation to, amongst others, the market referred to in paragraph 2.
4. This Direction concerns matters to which SMP services Condition 1 relates.
5. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii. proportionate to what it is intended to achieve; and
  - iv. in relation to what it is intended to achieve, transparent.
6. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
7. Ofcom has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 49A(6) of the Act.



**NOW, therefore, pursuant to SMP services Condition 1, Ofcom makes the following Direction:**

**Definitions**

For the purpose of interpreting this Direction the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Dominant Provider**” 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;

“**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 Group plc;

“**Point of Connection**” means a point at which the Dominant Provider’s electronic communications network and another person’s electronic communications network are connected;

“**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network; and

“**WECLA**” means the area in London consisting of the postal sectors set out in Schedule 1 to Annex 14.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile
- In-Span Handover (“ISH”)
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

<b>Term</b>	<b>Definition</b>
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order Request Date until the Installation Date.

Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.
Subsequent Partial Private Circuit	A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

**The Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.**

### **Migration**

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.
2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.
3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.
4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.
5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.
6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working

days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.

7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

### **Forecasts**

11. The Dominant Provider shall only require a Third Party to provide a profile of future Partial Private Circuit capacity ordering intentions over a 12 month period, on a national aggregate basis for groupings of bandwidths no narrower than the following:

- Above 45 Mbit/s through to 155 Mbit/s.

12. The Dominant Provider shall allow a Third Party to set its Advance Capacity Order and Advance Order Commitment without any penalty by up to, 10% (by volume) below, or 20% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile for the period covered by the Advance Capacity Order or Advance Order Commitment.

13. The Dominant Provider shall allow a Third Party to revise periods covered by its previously stated Capacity Profile and Forecast Profile without any penalty by up to, 30% (by volume) below, or 30% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile, provided that paragraph 12 of this Direction does not apply.

14. In calculating any increase to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded up to the nearest integer.

15. In calculating any decrease to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded down to the nearest integer.

16. Where a Third Party places a Capacity Order at a Point of Connection for the period corresponding to that of the Advance Capacity Order, which total less than its Advance

Capacity Order for the Point of Connection, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}2,490$$

Where B is the total capacity provision by number of VC4-equivalent units specified in the relevant Advance Capacity Order in respect of each Point of Connection; and

Where C is the number of VC4-equivalents ordered during the period to which the relevant Advance Capacity Order relates in respect of each Point of Connection, but does not include cancellations of Capacity Orders made during or after the relevant Advanced Capacity Order period, but does include any Capacity Order cancelled as a result of the inability of the Dominant Provider to secure consents for CSH links.

17. [paragraph not used]

18. Where a Third Party places orders for Partial Private Circuits of 155 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits for 155 Mbit, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}3,788$$

Where B is the total Advance Order Commitment for Private Partial Circuits of 155 Mbit/s; and

Where C is the number of Partial Private Circuits of 155 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19. [Paragraph not used].

20. In calculating (80% of B) in paragraphs 16 to 18 inclusive of this Direction the outcome shall, if not an integer, be rounded down to the nearest integer.

## **Service level agreements (SLAs)**

### ***General***

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the the relevant Requisite Period (RP) and that any extension of the Committed Delivery Date beyond the the relevant Requisite Period (RP) shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of eight working days for Partial Private Circuits of above 45 Mbit/s and up to and including 155 Mbit/s and Network Infrastructure regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of two working days for Partial Private Circuits of above 45 Mbit/s and up to and including 155 Mbit/s and for Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by 50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

#### *Unliquidated damages*

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

#### **Service level guarantees (SLGs)**

34. The Dominant Provider shall ensure the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract continue to provide the following:

##### *Compensation per event and value of compensation*

a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).

b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:  
- for Regular Care customers, in the first two days on a per day basis thereafter; and  
- for Enhanced Care customers, in the first five hours on a per hour basis thereafter.

c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.

d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:  
- for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and  
- for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.

e) 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 (c) and (d) above.

##### *Additional losses*

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

*Proactive payments*

g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

**Partial Private Circuits**

*Quick quote and very high bandwidth quote on line*

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

*Concurrency of Partial Private Circuit and ISH link and CSH link delivery times*

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

*Expedited orders*

38. [paragraph not used]

39. [paragraph not used]

*Time scales for fixed individual compensation*

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

**Bandwidth of Partial Private Circuit**

**Requisite Period**

155 Mbit/s

57 working days

*Third Party's ability to cancel order*

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has



expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider’s reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 41 of this Direction</b>	<b>Cancellation Threshold</b>
57 working days	25 working days

43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite Periods for Partial Private Circuits*

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Bandwidth of Partial Private Circuit</b>	<b>Reduced Requisite Period</b>
155 Mbit/s	45 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party’s Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party’s Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

*Multiple orders*

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in

paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

#### *Availability of service*

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 60, 61 and 63 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

#### **Network Infrastructure**

##### *Time scales for fixed individual compensation*

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Network Infrastructure</b>	<b>Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Requisite Period (where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days
ISH links – provision of new multiplexor on an existing Point of Connection	Not applicable	60 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	60 working Days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	60 working Days

CSH links requiring only provision of new tributary card on existing multiplexor

Not applicable

25 working Days

*Third Party's ability to cancel order*

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 51 of this Direction</b>	<b>Cancellation Threshold</b>
21 to 40 working days	20 working days
41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite periods for Network Infrastructure*

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Network Infrastructure</b>	<b>Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on		

existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	40 working days
CSH links requiring only provision of new tributary card on existing multiplexor	Not applicable	20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

***Repair of Partial Private Circuits and Network Infrastructure***

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	<b>Operational hours</b>	<b>Repair/response time</b>	<b>Extras</b>
<b>Regular Care</b>	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third Party.	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the fault.
<b>Enhanced Care</b>	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party.	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the

		Repair within five hours of receipt of a fault report by a Third Party.	Dominant Provider shall contact the Third Party to report progress being made to remedy the fault.
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59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider's Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider's Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

### **Change of speed or interface**

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

### **STM-1, ISH and CSH handover**

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request for a Synchronous Transfer Mode-1 ("STM-1"), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

### **Equipment re-use**

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy ("PDH") and Synchronous Digital Hierarchy ("**SDH**") equipment situated at a third party site ("Equipment").

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment **if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.**

### **Other Circuits**

73. Unless Ofcom otherwise agrees, the Dominant Provider shall, offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party's request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party's written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer's premises to a Third Party's single Point of Connection.

### **General**

75. The Dominant Provider shall implement this Direction within 10 working days of its publication.

76. This Direction shall take effect on the day it is published.

[...]

**Competition Policy Director, Ofcom**

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

**June 2012**

## Schedule 4

### **[Proposed] Direction under sections 49 and 49A of the Communications Act 2003 and SMP services Condition 1, proposed as a result of the analysis of the wholesale market for regional trunk segments in the UK**

#### **Background**

1. On [date of final statement] Ofcom concluded its review of the business connectivity markets (BCMR) in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification at Annex [X] to the BCMR, and explained in the accompanying explanatory statement.
2. Ofcom determined in the BCMR that BT, as a Dominant Provider, has significant market power in, amongst others, the wholesale market for regional trunk segments in the UK.
3. SMP services Condition 1 was set in relation to, amongst others, the market referred to in paragraph 2.
4. This Direction concerns matters to which SMP services Condition 1 relates.
5. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii. proportionate to what it is intended to achieve; and
  - iv. in relation to what it is intended to achieve, transparent.
6. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
7. Ofcom has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 49A(6) of the Act.

**NOW, therefore, pursuant to SMP services Condition 1, Ofcom makes the following Direction:**

#### **Definitions**

For the purpose of interpreting this Direction the following definitions shall apply:

**“Act”** means the Communications Act 2003;

**“Dominant Provider”** 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;

**“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 Group plc;

**“Point of Connection”** means a point at which the Dominant Provider’s electronic communications network and another person’s electronic communications network are connected;

**“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order
- Advance Order Commitment
- BT Retail Private Circuit
- BT Serving Node
- Capacity Order
- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile
- In-Span Handover (“ISH”)
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

Term	Definition
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is



committed to the order.

Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation ("FOC")	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.
FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit ("PPC")	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order Request Date until the Installation Date.
Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order

Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.

Subsequent Partial Private Circuit

A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

**The Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.**

### **Migration**

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.
2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.
3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.
4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.
5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.
6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.
7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a

Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

### **Forecasts**

11. The Dominant Provider shall only require a Third Party to provide a profile of future Partial Private Circuit capacity ordering intentions over a 12 month period, on a national aggregate basis for groupings of bandwidths no narrower than the following:

- less than 1 Mbit/s;
- 1 Mbit/s through to 2 Mbit/s;
- Above 8 Mbit/s through to 45 Mbit/s; and
- 155 Mbit/s.

12. The Dominant Provider shall allow a Third Party to set its Advance Capacity Order and Advance Order Commitment without any penalty by up to, 10% (by volume) below, or 20% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile for the period covered by the Advance Capacity Order or Advance Order Commitment.

13. The Dominant Provider shall allow a Third Party to revise periods covered by its previously stated Capacity Profile and Forecast Profile without any penalty by up to, 30% (by volume) below, or 30% (by volume) above, the amount stated in the Third Party's previous Capacity Profile or Forecast Profile, provided that paragraph 12 of this Direction does not apply.

14. In calculating any increase to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded up to the nearest integer.

15. In calculating any decrease to an Advance Capacity Order, Advance Order Commitment, Capacity Profile or Forecast Profile pursuant to paragraphs 12 and 13 of this Direction, the outcome of the revision shall, if not an integer, be rounded down to the nearest integer.

16. Where a Third Party places a Capacity Order at a Point of Connection for the period corresponding to that of the Advance Capacity Order, which total less than its Advance Capacity Order for the Point of Connection, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}2,490$$

Where B is the total capacity provision by number of VC4-equivalent units specified in the relevant Advance Capacity Order in respect of each Point of Connection; and

Where C is the number of VC4-equivalents ordered during the period to which the relevant Advance Capacity Order relates in respect of each Point of Connection, but does not include cancellations of Capacity Orders made during or after the relevant Advanced Capacity Order period, but does include any Capacity Order cancelled as a result of the inability of the Dominant Provider to secure consents for CSH links.

17. Where a Third Party places orders for Partial Private Circuits below 1 Mbit for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for the Partial Private Circuits below 1 Mbit, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}52$$

Where B is the total Advance Order Commitment for Private Partial Circuits below 1 Mbit; and

Where C is the number of Partial Private Circuits below 1 Mbit ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of the Dominant Provider to secure consents for Partial Private Circuits.

18. Where a Third Party places orders for Partial Private Circuits from 1 Mbit through to 2 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits from 1 Mbit through to 2 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}143$$

Where B is the total Advance Order Commitment for Private Partial Circuits from 1 Mbit through to 2 Mbit/s; and

Where C is the number of Partial Private Circuits from 1 Mbit through to 2 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19. Where a Third Party places orders for Partial Private Circuits from above 8 Mbit/s through to 45 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits from above 8 Mbit/s through to 45 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}143$$

Where B is the total Advance Order Commitment for Private Partial Circuits of 155 Mbit/s; and

Where C is the number of Partial Private Circuits of 155 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

19A. Where a Third Party places orders for Partial Private Circuits of 155 Mbit/s for the period corresponding to that of the Advanced Order Commitment, which total less than its Advance Order Commitment for Partial Private Circuits of 155 Mbit/s, the Dominant Provider may levy a charge no more than a sum equal to:

$$[(80\% \text{ of } B) - C] \times \text{£}3,788$$

Where B is the total Advance Order Commitment for Private Partial Circuits from above 8 Mbit/s through to 45 Mbit/s; and

Where C is the number of Partial Private Circuits from above 8 Mbit/s through to 45 Mbit/s ordered during the period to which the Advance Order Commitment relates, but does not include cancellations of orders for Partial Private Circuits made during or after the relevant Advanced Order Commitment period, but does include any order for a Partial Private Circuit cancelled as a result of the inability of Dominant Provider to secure consents for Partial Private Circuits.

20. In calculating (80% of B) in paragraphs 16 to 19A inclusive of this Direction the outcome shall, if not an integer, be rounded down to the nearest integer.

## **Service level agreements (SLAs)**

### ***General***

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the the relevant Requisite Period (RP) and that any extension of the Committed Delivery Date beyond the the relevant Requisite Period (RP) shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the

amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of:

- five working days for Partial Private Circuits of less than 2 Mbit/s; and
- eight working days for Partial Private Circuits of 2 Mbit/s and above, and Network Infrastructure;

regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of one working day for Partial Private Circuits of 2 Mbit/s or below and two working days for Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by

50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

#### *Unliquidated damages*

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

#### **Service level guarantees (SLGs)**

34. The Dominant Provider shall ensure the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract continue to provide the following:

##### *Compensation per event and value of compensation*

- a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).
- b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:
  - for Regular Care customers, in the first two days on a per day basis thereafter; and
  - for Enhanced Care customers, in the first five hours on a per hour basis thereafter.
- c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.
- d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:
  - for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and
  - for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.
- e) 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 (c) and (d) above.

##### *Additional losses*

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

##### *Proactive payments*

- g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after

the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

### ***Partial Private Circuits***

#### *Quick quote and very high bandwidth quote on line*

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

#### *Concurrency of Partial Private Circuit and ISH link and CSH link delivery times*

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

#### *Expedited orders*

38. Upon a Third Party's written request, the Dominant Provider shall make reasonable endeavours to set a Committed Delivery Date for Partial Private Circuits within 50% of the relevant Requisite Period set out in the table in paragraph 41 of this Direction, rounded up to the nearest working day where necessary, for at least 15% (by volume) of a Third Party's previous month's order. The Third Party shall inform the Dominant Provider which particular Partial Private Circuits it shall endeavour to be expedited pursuant to this paragraph. This paragraph shall only apply to the delivery of Partial Private Circuits of 2 Mbit/s or less. This paragraph shall not apply to Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

39. Paragraph 48 of this Direction does not apply to orders of Partial Private Circuits made pursuant to paragraph 38 of this Direction.

#### *Time scales for fixed individual compensation*

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Bandwidth of Partial Private Circuit</b>	<b>Requisite Period</b>
64 kbit/s	10 working days
128 kbit/s to 256 kbit/s delivered over copper	10 working days



128 kbit/s to 256 kbit/s delivered over fibre	30 working days
320 kbit/s to 960 kbit/s	30 working days
1 Mbit/s	30 working days
2 Mbit/s	30 working days
Subsequent Partial Private Circuit of 2 Mbit/s	10 working days
34 Mbit/s to 155 Mbit/s	57 working days
Above 155 Mbit/s	72 working days

*Third Party's ability to cancel order*

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 41 of this Direction</b>	<b>Cancellation Threshold</b>
10 working days or less	10 working days
11 to 20 working days	15 working days
21 to 40 working days	20 working days
41 to 60 working days	25 working days
Over 60 working days	30 working days

43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

*Reduced Requisite Periods for Partial Private Circuits*

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Bandwidth of Partial Private Circuit</b>	<b>Reduced Requisite Period</b>
128 kbit/s to 256 kbit/s delivered over fibre	20 working days
320 kbit/s to 960 kbit/s	20 working days

1 Mbit/s	20 working days
2 Mbit/s	20 working days
34 Mbit/s to 155 Mbit/s	45 working days
Above 155 Mbit/s	50 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits of 64 kbit/s;
- Partial Private Circuits of 128 kbit/s to 256 kbit/s delivered over copper;
- Subsequent Private Partial Circuits of 2Mbit/s;
- Partial Private Circuit orders to which paragraph 38 of this Direction applies; and
- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider:

- at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less; or
- at least two Partial Private Circuits of the same bandwidth where such Partial Private Circuits are more than 2 Mbit/s.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

#### *Multiple orders*

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

#### *Availability of service*

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of

total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 60, 61 and 63 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

### **Network Infrastructure**

#### *Time scales for fixed individual compensation*

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

<b>Network Infrastructure</b>	<b>Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Requisite Period (where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days
ISH links – provision of new multiplexor on an existing Point of Connection	Not applicable	60 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	60 working Days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	60 working Days
CSH links requiring only provision of new tributary card on existing multiplexor	Not applicable	25 working Days

#### *Third Party's ability to cancel order*

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for

Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

<b>Requisite Period set out in the table in paragraph 51 of this Direction</b>	<b>Cancellation Threshold</b>
21 to 40 working days	20 working days
41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

#### Reduced Requisite periods for Network Infrastructure

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

<b>Network Infrastructure</b>	<b>Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)</b>	<b>Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)</b>
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days
CSH links - provision of new multiplexor on existing Point of Connection	Not applicable	40 working days
CSH links requiring only provision of new tributary		

card on existing multiplexor

Not applicable

20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

***Repair of Partial Private Circuits and Network Infrastructure***

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	<b>Operational hours</b>	<b>Repair/response time</b>	<b>Extras</b>
<b>Regular Care</b>	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third Party.	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the fault.
<b>Enhanced Care</b>	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party. Repair within five hours of receipt of a fault report by a Third Party.	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the Dominant Provider shall contact the Third Party to report progress being made to remedy the fault.

59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider's Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider's Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

### **Change of speed or interface**

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

### **STM-1, ISH and CSH handover**

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request for a Synchronous Transfer Mode-1 ("STM-1"), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the

same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

### **Equipment re-use**

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy ("PDH") and Synchronous Digital Hierarchy ("**SDH**") equipment situated at a third party site ("Equipment").

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment **if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.**

### **Other Circuits**

73. Unless Ofcom otherwise agrees, the Dominant Provider shall, offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party's request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party's written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer's premises to a Third Party's single Point of Connection.

### **RBS Backhaul**

75. The Dominant Provider shall offer to provide to a Third Party, within a reasonable period of the Third Party's written request, transparent transmission capacity at all bandwidths up to and including a bandwidth capacity of two megabits per second between a radio base station and a Point of Connection with a Third Party's electronic communications network connected to the nearest appropriate digital cross connection node.

### **General**

76. The Dominant Provider shall implement this Direction within 10 working days of its publication.

77. This Direction shall take effect on the day it is published.

[...]

### **Competition Policy Director, Ofcom**

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

**June 2012**

## Schedule 5

**[Proposed] Direction under sections 49 and 49A of the Communications Act 2003 and SMP services Condition 1, proposed as a result of the analysis of the wholesale markets for 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**

### Background

1. On [date of final statement] Ofcom concluded its review of the business connectivity markets (BCMR) in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification at Annex [X] to the BCMR, and explained in the accompanying explanatory statement.
2. Ofcom determined in the BCMR that BT, as a Dominant Provider, has significant market power in, amongst others:
  - i. the 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; and
  - ii. the wholesale market for low bandwidth alternative interface symmetric broadband origination in the WECLA, at bandwidths up to and including 1Gbit/s.
3. SMP services Condition 1 was set in relation to, amongst others, the markets referred to in paragraph 2.
4. This Direction concerns matters to which SMP services Condition 1 relates.
5. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii. proportionate to what it is intended to achieve; and
  - iv. in relation to what it is intended to achieve, transparent.
6. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.



7. Ofcom has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of section 49A(6) of the Act.

**NOW, therefore, pursuant to SMP services Condition 1, Ofcom makes the following Direction:**

### **Definitions**

For the purpose of interpreting this Direction, the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Backhaul Extension Service**” means BT’s product of that name existing at the date this Direction takes effect and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time;

“**Dominant Provider**” 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;

“**Ethernet Services**” mean services that are presented with the standard networking protocol defined in IEEE 802.3 and published by the Institute of Electrical and Electronics Engineers;

“**Hull Area**” means the area defined as the 'Licensed Area' in the licence granted on November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

“**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network;

“**WECLA**” means the area in London consisting of the postal sectors set out in Schedule 1 to Annex 14.

“**Wholesale Extension Service**” means the Dominant Provider’s product of that name existing at the date this Direction taking effect and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.

“**Wholesale End-to-End Segments**” means services providing uncontended bandwidth between an end-user premise and another end-user premise.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

Headings and titles shall be disregarded

**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 for 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 following<sup>2</sup>:

### *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 57<sup>th</sup> day and that any extension of the Contractual Delivery Date beyond the 57<sup>th</sup> 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);
- 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 fault which has not been restored in the first five hours for every hour thereafter until service is restored;

### *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; 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. 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.

<sup>2</sup> In particular, the following contracts will require modification to reflect the requirements set out in the accompanying Annex to this Direction: (i) the Conditions for Backhaul Extensions Services; and (ii) the Conditions for Wholesale Extension Services.

3. This Direction shall take effect on the day it is published.

[...]

**Competition Policy Director, Ofcom**

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

**June 2012**

