Telephone directory information obligations and regulations
Consultation on a proposal to remove and/or amend universal service obligations and general conditions relating to the provision of telephone directory information

Consultation

Publication date: 10 March 2008
Closing Date for Responses: 30 June 2008
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Summary</td>
</tr>
<tr>
<td>2</td>
<td>Background</td>
</tr>
<tr>
<td>3</td>
<td>Meeting directory and directory enquiries access requirements</td>
</tr>
<tr>
<td>4</td>
<td>Access to telephone directory information</td>
</tr>
<tr>
<td>5</td>
<td>Wholesale telephone directory information management</td>
</tr>
<tr>
<td>6</td>
<td>Statutory duties under the Communications Act 2003</td>
</tr>
<tr>
<td>7</td>
<td>Next steps</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Annex</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Responding to this consultation</td>
</tr>
<tr>
<td>2</td>
<td>Ofcom’s consultation principles</td>
</tr>
<tr>
<td>3</td>
<td>Consultation response cover sheet</td>
</tr>
<tr>
<td>4</td>
<td>Questions raised in this consultation</td>
</tr>
<tr>
<td>5</td>
<td>Notification of proposed revocation of Universal Service Condition 7</td>
</tr>
<tr>
<td>6</td>
<td>Notification of proposed modifications to General Conditions 8, 14 and 19 and associated definitions</td>
</tr>
<tr>
<td>7</td>
<td>Impact Assessment</td>
</tr>
<tr>
<td>8</td>
<td>Relevant legal and regulatory framework</td>
</tr>
</tbody>
</table>
Section 1

Summary

1.1 For consumers in the UK, as in most countries around the world, the social and economic value of telecommunications is enhanced by access to easy-to-use information about how to reach a particular individual or business (“directory information”). The main forms of directory information are directories and on- and off-line directory information services.

1.2 Ofcom is responsible for ensuring that UK consumers have access to directory and directory information services. Specifically, we must ensure that:

1.2.1 at least one comprehensive directory and directory enquiry (DQ) service exists and that end-users have access to them;

1.2.2 subscribers have the right to be listed in directories and DQ services; and

1.2.3 that communication providers which assign telephone numbers provide all ‘relevant information’ on fair, objective, cost-orientated and non-discriminatory terms.

1.3 These obligations and rights are limited by the need to respect the requirements of the Privacy Directive to ensure subscribers can determine whether or not their data is included in any directory.

1.4 This consultation follows on from our consideration of two regulatory disputes referred to us by The Number (UK) limited (“The Number”) and Conduit Enterprises Ltd (“Conduit”) against British Telecommunications plc (“BT”). In considering the disputes, we have established that the regulation put in place by Oftel in 2003 to ensure a single directory information database cannot remain without modification. This policy consultation sets out our proposed changes to regulation responding to these issues.

1.5 This consultation document sets out:

1.5.1 an up-to-date assessment of the sector; and

1.5.2 proposed revisions to regulation that we think are needed to ensure the continued delivery of directories and directory enquiry services in the UK.

1.6 An additional question we are asking for views on is whether, in the context of the wholesale market for the maintenance of a centralised database, it is necessary for Ofcom to intervene to ensure that such a database exists, or whether businesses will fulfil the need for this information without regulation.

---

1 Article 5(1)a of Directive 2002/22/EC of 7 March 2002 on universal service and users’ rights to electronic communications (Universal Service Directive)
2 Article 5(2) of the Universal Service Directive
3 Article 25 of the Universal Service Directive
1.7 Our primary concern in addressing these issues is to ensure that UK consumers continue to have access to comprehensive, high-quality and affordable directory enquiry services and directories in line with the Universal Service obligations.

1.8 We will also consider how best to serve the interests of UK consumers with respect to access to directories and DQ services by ensuring that providers of directory information services and/or directories ("DIPs") and authorised directory information intermediaries continue to have access to the information necessary to offer those services on the appropriate terms.

1.9 In Section 2 of this document, we explain the relevant regulatory background, including the disputes and their consequences.

1.10 In Section 3, we consider the issues relating to ensuring end-users’ continued access to directories and directory information services. In particular, we consider whether the existing or likely future market is sufficient to provide these services.

1.11 In Section 4, we consider the nature of the telephone information and the process for the provision of this information by Communication Providers to DIPs.

1.12 In Section 5, we consider the appropriate wholesale mechanisms that should be in place to guarantee that DIPs have continued access to the information necessary to continue to offer directory information services and directories.

1.13 In Section 6, we confirm that we have met our statutory duties under the Communications Act 2003.

1.14 In Section 7, we set out the next steps in this policy review with a proposed timetable.

1.15 We are asking for Stakeholders’ views on these issues are sought by 19 May 2008. Annex 1 to this document sets out further details on how to respond to this consultation. A summary of the questions raised by Ofcom in this document is set out in Annex 4, one of which relates to Ofcom’s proposed revocation of USC7 (see the statutory notification of this proposal at Annex 5 to this document). Annex 6 sets out the proposed modifications to the General Conditions. Annex 7 sets out our impact assessment of the policy options considered.
Section 2

Background

Introduction

2.1 This Section provides a brief background to put the issues considered in the remainder of this document in their proper context.

The directory information services market in the UK

Main categories of service

2.2 By “directory information services”, we refer in this document to retail services provided by DIPs to UK consumers that allow an individual to find a particular telephone number by reference to information about the user of that number (for example, their name). The three main categories of directory information services are:

- **voice DQ services** where users call a particular telephone number to speak to an operator about their search requirements in the expectation of receiving the telephone number they are looking for;

- **on-line DQ services** where users will submit search requirements via a website in the expectation of receiving the telephone number they are looking for; and

- **paper directories** of telephone numbers together with other data services such as electronic directories on CD-Rom.

2.3 The services offered can vary within the above categories. However, the two main types of searching criteria are:

- **name-specific searches** – i.e. the user knows the name of the person/business they require the telephone number for. e.g. “Mr R Jones, Acacia Avenue, Bristol”; “Barclays Bank, High Street, Ilford”; and

- **classified business searches** – i.e. the end-user wants a telephone number for a particular type of business maybe in a particular location. e.g. “Plumber in Muswell Hill”; “taxi firm in Nottingham”; “printers in Belfast”.

2.4 These categories of service are described in more detail below.

Voice DQ and on-line DQ services

2.5 The voice DQ market was liberalised in December 2002, when services on the new ‘118 XXX’ number range began operating in parallel with the legacy ‘192’ and ‘153’ DQ service access codes. The legacy services ceased operating in August 2003. Prior to the introduction of ‘118 XXX’ numbers, end-users using ‘192’/‘153’ would be routed to the DQ service provider selected by their network provider. BT operated its own voice DQ business and therefore all 192/153 calls made by BT-connected customers would route to the BT-operated voice DQ service. Other voice DQ

---

5 Ex-directory records, and those for inclusion only in voice DQ services are excluded from on-line searches.
providers would compete with BT for the wholesale business of the remaining network providers in order to receive the 192/153 calls of their customers.

2.6 The launch of ‘118 XXX’ numbers meant that users could directly select their preferred voice DQ service. This led to a number of new entrants providing voice DQ services in the UK, and it resulted in an overall reduction in BT’s share of voice DQ calls. Most voice DQ providers offer callers a choice of name-specific or classified business searches. Many voice DQ providers also offer additional services including call connection where calls are forwarded to the searched-for number without the need to re-dial.

2.7 In March 2006, we published consumer research on voice DQ services, which showed that the average cost for voice DQ services was 54p per call without call connection for a single number request.6 We understand that today there are about 100 firms offering voice DQ services.7

2.8 Since 2002, voice DQ volumes have fallen, while growing internet usage has meant that the use of on-line DQ services has increased rapidly.8 On-line DQ services also tend to offer both name-specific and classified business searches to users. On-line DQ services are usually offered free to users, funded by advertising and paid-for classified links.

Paper directories

2.9 BT provides the only comprehensive residential and business ‘A to Z’ (alpha-sorted) listings paper directory on a UK-wide basis. BT’s directory, known as ‘The Phonebook’ is distributed in 171 local areas across the UK (excluding Hull).9

2.10 The Phonebook is included with BT’s line rental service, and is included in the service that BT provides to other Communications Providers to enable them to offer line rental services using the BT network.10 The Phonebook now features classified business listings, where businesses are categorised by business type for ease of reference (“Plumbers”, “Taxi firms”, “Printers”). Reflecting the practicalities of distribution, we understand that, at present, BT makes a commercial judgement that it is simpler not to seek to deliver The Phonebook only to its own customers but instead distributes it annually to all households and businesses in the UK (excluding Hull).11 This distribution decision is further supported commercially by the inclusion of classified listings in the Phonebook and the need for BT to meet commitments to its classified customers to deliver to at least 95% of all households in a given district.

---

6 http://www.ofcom.org.uk/media/news/2006/03/nr_20060327
7 There are around 130 118XXX services listed (though a number of these are controlled by the same provider).
8 Fixed line DQ call minutes fell 47% between 2000 and 2006 (around 167M call minutes reduction), we have only recently been monitoring mobile DQ call though there seems to be a slight upward trend (14% from 2003 to 2006 ie from 98M to 114M).
9 Hull falls within the local service provision area of KCOM Group plc.
10 The service that BT provides is known as ‘wholesale line rental’.
11 See BT’s Initial Submission to the Competition Commission during its market inquiry into classified directory advertising services in the UK, where it states that: “BT aims to distribute a copy of the Phone Book free at point of delivery to every household and business in the relevant area (except Hull)”: http://www.competition-commission.org.uk/inquiries/ref2005/classdirec/main_party_submissions.htm
12 For practical reasons of access bulk mailings are not able to ensure 100% delivery to all households (for example access to high security blocks of flats can be problematic). BT is examining its approach to bulk delivery to such households but remains committed to free delivery of the Phonebook either by bulk mail or where that is not possible direct mail on request.
Therefore, on this basis, The Phonebook is in almost all cases provided to all end-user customers of other Communications Providers free of charge.

2.11 As the principal telecommunications provider in the Kingston upon Hull area, KCOM Group plc ("KCOM")\(^\text{13}\) provides a comprehensive residential and business 'A to Z' (alpha-sorted) listings paper directory in that area annually to its customers as part of its line rental service.

2.12 Like BT in other areas, KCOM also provides a 'white pages' directory annually to all households and businesses in Hull free of charge. In addition, it publishes a separate classified directory, Hull Colour Pages, for Kingston upon Hull. Its classified directory includes an A–Z listing of businesses, with addresses, telephone and fax numbers of the businesses concerned.

2.13 Other providers supply directories containing simply business 'A to Z' listings and classified business listings. These 'classified directories' are also published on a 'local' basis (although the defined 'local' area will vary according to publisher). We understand that these directories are usually distributed free of charge to individuals in that local area. Businesses usually receive a free line entry in classified directories, with providers of those directories paid by the businesses which advertise in them, who pay according to the type of entry they select.

**BT's OSIS database**

2.14 BT\(^\text{14}\) keeps an up-to-date database (known as the 'Operator Services Information System' or “OSIS") containing telephone directory information in relation to all listed UK telephone numbers (excluding unlisted numbers which includes most mobile numbers), including the Kingston upon Hull area. OSIS is the principal database for directory information, and the terms of access to OSIS were central to the disputes referred to Ofcom.

2.15 OSIS contains various types of data relating to the use of a telephone number, including whether, and if so the manner that it should appear in a directory, whether for purposes of displaying its listings together with other listings (known as “grouping”\(^\text{15}\)) or for the purposes of processing data under data protection legislation. Records within OSIS are ‘customer-defined’ so that they reflect the express wishes of (contractual) subscribers to whom the relevant telephone numbers have been issued about how those subscribers wish information about themselves, and their telephone number, to appear and be presented in directories and via DQ services.

2.16 OSIS, therefore, covers in addition to the basic General Condition 19\(^\text{16}\) data (name, address and telephone number of the subscriber):

---

\(^{13}\) KCOM Group plc was previously named Kingston Communications (Hull) plc

\(^{14}\) OSIS is provided by BT Wholesale Markets, which is a business unit that is part of the BT Group. OSIS is operated separately from the 'BT Directories' business (that is part of BT Retail).

\(^{15}\) OSIS records may be either single or grouped entries. Single entries (including most residential entries) link one telephone number to one individual at an individual address. In contrast, grouped entries contain individual records relating to a group of telephone numbers allocated to a person or organisation. For instance, a bank or local authority may have a list of telephone numbers which they want to be published in paper directories (this is not relevant to electronic directories).

\(^{16}\) The General Conditions of Entitlement for the operation of communications services (“General Conditions”)
Telephone directory information obligations and regulations

- **the name** that a subscriber wishes to appear in the directory entry, which may differ from the (contractual) subscriber’s name to reflect the actual end-user of the relevant telephone number (e.g. a parent may subscribe to a phone line, but want their child’s name, as the end-user, to appear on OSIS in relation to the telephone number; a business may outsource their telecoms purchasing so that the name of the subscriber of the phone line differs from the name of the actual end-user), plus the related titles (Mr, Miss, etc);

- **additional identification data** that subscribers may want to associate with specific numbers, such as a certain business description; and

- the overall **appearance** of the directory entry, including the way in which any group captions are structured and presented for ease of reference. Businesses creating group captions may want to direct enquirers to certain key numbers within departments for specific purposes and OSIS provides the flexibility to structure a group caption to do this.

2.17 BT acquires data from Communications Providers about their subscribers for inclusion within OSIS on terms set out in Schedule 11 of BT’s standard form of contractual terms, known as the ‘Standard Interconnect Agreement’. This Agreement also determines the charges BT itself pays for the receipt of data. Currently, BT seeks to acquire information from all Communications Providers issuing telephone numbers - in other words, BT aggregates all data received to produce OSIS.

2.18 Finally, OSIS is used by DIPs (including BT itself) to provide directory information services. Therefore, by obtaining information from all other providers and by providing the contents of the OSIS database to DIPs, BT acts, in effect, as a central dissemination point for all of the telephone directory information in the UK.

2.19 BT supplies access to OSIS to DIPs on terms set out in its licence arrangements. Licensees to OSIS receive twice yearly ‘refreshes’ of the database via CD-Rom and update files via file transfer 6 days a week containing all amendments, deletions and additions to the records within OSIS. BT charges OSIS licensees according to a published price list. The price paid to BT is based on the use the licensee in question makes of the OSIS data to provide retail directory information services (DIPs of voice DQ services will pay amounts to BT based on the number of searches they make of the OSIS data; and DIPs of paper directories will pay amounts to BT based on the number of paper directories distributed). The division within BT that maintains OSIS (called “BT Directories”) accounts for transfer charges in respect of its own use of the OSIS data to provide BT’s retail directories and voice and on-line DQ services.

2.20 OSIS licensees include providers of:

- voice DQ services;
- on-line DQ services;
- paper A to Z listings directories;
- classified directories; and
- companies (known as tele-appenders) who provide large-scale search facilities, e.g. organisations such as Equifax obtain data from OSIS and use this to run searches on a large number of subscribers at the same time for, say, marketing companies requiring contact numbers.
2.21 DIPs providing classified business searches do not solely rely on the data provided by OSIS to carry out searches by business classification. This is because, although BT provides certain ‘business description’ data, this is not always considered a suitable and reliable means of classifying businesses for search purposes. Many DIPs will, therefore, buy business classification data separately to allow them to conduct such searches. DIPs providing business classification data will also need to contact the specific business to discuss how they should be classified.

The legal and regulatory framework

EU Obligations

2.22 In 2002, a package of EC directives was adopted to establish a harmonised single framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services.

2.23 This single regulatory framework for all transmission networks and services in the converging telecommunications, media, and information technology sectors was set out in five new EC harmonising directives which are designed to achieve that framework:

- the Privacy Directive; and
- the Universal Service Directive.

2.24 Specifically, the Universal Service Directive requires that Member States must ensure in relation to the provision of directories and DQ services, that:

- at least one comprehensive (universal service) directory is available to all end-users (Article 5(1)(a));
- at least one comprehensive (universal service) DQ service is available to all end-users (Article 5(1)(b));
- where appropriate, specific measures are taken for disabled end-users in order to ensure access to and affordability of directories and DQ services equivalent to that enjoyed by other end-users (Article 7(1));
- subscribers to publicly available telephone services have the right to an entry in the comprehensive (universal service) directory (Article 25(1));
- all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available DQ services and directories, the relevant information in an
agreed format on terms which are fair, objective, cost oriented and non-discriminatory (Article 25(2));

- all end-users with a connection to the public telephone network can access operator assistance services and the comprehensive (universal service) DQ service (Article 25(3)); and

- there are no regulatory restrictions which prevent end-users in one Member State from accessing directly the DQ service in another Member State (Article 25(4)).

2.25 These obligations are limited by the need to respect the wishes of consumers not to be listed or to verify, correct or withdraw that data if they wish.\textsuperscript{17} Opting out of a public subscriber directory or verifying, correcting or withdrawing personal data from it must be free of charge.

2.26 The relevant legal provisions are set out in full in Annex 8.

**UK Obligations**

2.27 The EC directives discussed above were implemented into UK law mainly through the Communications Act 2003 (the “\textit{2003 Act}”). The relevant provisions of the 2003 Act entered into force on 25 July 2003.

2.28 The 2003 Act does not specify detailed rules conferring the rights of end-users or imposing the corresponding obligations on undertakings as established by the Universal Service Directive. Instead, the 2003 Act confers certain powers on Ofcom to enable it to make rules to achieve these objectives.

2.29 The obligations set out in the Universal Service Directive are transposed into UK law through the following national measures:

- Sections 45(4), 65 and 67 of the 2003 Act;

- the Electronic Communications (Universal Service) Regulations 2003;

- The Electronic Communications (Universal Service) Order 2003 (the “Universal Service Order”);

- General Conditions 8 and 19 (“\textit{GC8}” and “\textit{GC19}”); and

- Condition 7 applicable to British Telecommunications plc in the Universal Service Notification (“\textit{USC7}”).

2.30 In addition, the obligations under the Privacy Directive are transposed into UK law by the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“\textit{Privacy Regulations}”).

2.31 The Universal Service Order imposes an obligation on Ofcom to ensure the requirements of the Universal Service Directive are met (and does not impose direct

\textsuperscript{17} More specifically, the obligations under the Universal Service Directive are limited by the need for Member States to respect the requirements of Article 12 of the Privacy Directive which requires that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and to verify, correct or withdraw such data.
Telephone directory information obligations and regulations

obligations on the industry). It is our role to impose those obligations through General Conditions and universal service conditions.

2.32 GC8 relates to the provision of operator assistance, directories and DQ services.

2.33 GC19 relates to the provision of telephone directory information by Communications Providers to DIPs.

2.34 USC7 requires BT to maintain and supply a directory information database and directories.

2.35 In practice, the UK regime operates through BT acting as a central dissemination point for the directory information of all subscribers to telephone services in the UK. In so doing, BT also supplies directories to consumers and provides access to the contents of its database to other DIPs.

2.36 The full text of GC8, GC19 and USC7 is set out in Annex 8\(^\text{18}\).

The **KPN** judgment and Ofcom’s resolution of The Number/Conduit disputes

2.37 The relevant legal and regulatory framework for the provision of directories and DQ services has been considered at a Community level by the European Court of Justice ("ECJ") in its judgment on 25 November 2004 in Case C-109/03, **KPN Telecom BV v. OPTA** ("**KPN**"); and at UK level by Ofcom in its consideration of the two disputes discussed above.

The ECJ's judgment in **KPN**

2.38 This judgment was a preliminary ruling as to what ‘relevant information’ had, as a minimum, to be supplied to ensure the provision of directories and DQ services in accordance with EC Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment. That directive has now been repealed and, so far as is material, been replaced by Article 25(2) of the Universal Service Directive.

2.39 In summary, the ECJ decided that ‘relevant information’ comprised the name, address and telephone number of subscribers who have not expressly objected to being listed in a published directory. The ECJ also decided that only costs which related to the additional costs of making such data available to the requesting parties could be recovered by **KPN**. The provision of other data, including end-user information, (not being ‘relevant information’) was held by the ECJ to be, in effect, unregulated, so that if such data was supplied even though not required by the EC directive, any additional costs (e.g. for compilation) may be invoiced to requesting parties.

2.40 In relation to the provision of ‘relevant information’ the ECJ held that the directive\(^\text{19}\) did not seek complete harmonisation of all the criteria that may appear necessary to identify subscribers, and that Member States may require in light of specific national circumstances that certain ‘additional data’ ought to be made available (but that this

\(^{18}\) Specific measures for disabled end-users are provided by means of GC 15 and USC 4. These provisions are outside the scope of the present discussion.

had not occurred in the KPN case). The nature of what may constitute appropriate required additional information in the light of specific national circumstances is considered further in section 4 below.

**Ofcom’s findings in The Number/Conduit Determinations**

2.41 Ofcom has today issued two determinations under sections 188 and 190 of the 2003 Act for resolving two disputes: the first between The Number and BT; and the second, between Conduit and BT.

2.42 The primary issue arising in these disputes is whether charges paid by The Number and Conduit to BT for the supply of the contents of BT’s OSIS database are consistent with BT’s regulatory obligations.

2.43 There are two regulatory rules relevant to these disputes:

i. BT is required under USC7 to supply on request the contents of its OSIS database in machine readable form to any person seeking to provide publicly available directory enquiry services, such as those provided by The Number and Conduit; and

ii. separately, Communications Providers are required under GC19 to supply on reasonable request certain directory information for the purposes of the provision of certain services, again such as those provided by The Number and Conduit.

2.44 Under both of these regulatory rules, BT must supply the information on terms which are (among others) cost oriented and in a format agreed between the parties.

2.45 Ofcom concluded that:

a) USC7 is, in effect, unlawful. The reason for this was essentially that USCs may be imposed only in order to secure compliance with Community obligations and, in particular for present purposes, the obligation in Article 5(1) of the Universal Service Directive and as USC7 fails to impose an obligation on any undertaking (and, in particular, on BT as a designated provider) to guarantee that Article 5 Universal Service Directive services are made available then Ofcom was not empowered to impose USC7. Accordingly, we consider that USC7 should be revoked following the statutory process under the 2003 Act. Ofcom should now consider what, if any, obligations are required in the future to ensure that the relevant universal services are delivered\(^{20}\). This issue is further considered in Section 3 of this document.

b) BT is only required to provide information about the following subscribers:

- BT’s own subscribers of publicly available telephone service (PATS)\(^{21}\);

---

\(^{20}\) In accordance with Ofcom’s regulatory principles we will only regulate to ensure that the objectives set out in the Universal Service Directive are satisfied. In other words, we will only regulate if a universal service obligation will not satisfactorily be met through normal market conditions.

\(^{21}\) PATS means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in national or international numbering plan, and in addition may, where relevant, include one or more of the following services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services.
• subscribers contracting with other Communications Providers for the supply of PATS to the extent that those subscribers have been assigned telephone numbers originally allocated to BT; and

• In relation to the above subscribers, the information that BT must provide – the defined ‘Directory Information’ within GC19 – consists of the name, address and telephone number of the subscriber.

2.46 These conclusions mean that BT has, under the terms of GC19, only been obliged to provide a sub-set of the data actually provided to The Number and Conduit in the form of OSIS.

2.47 We have also accepted that, in order to resolve these disputes, we must set the cost oriented charges for the provision of the BT GC19 data set for the period since 25 July 2003.

2.48 We consider that, in light of KPN, only certain costs can be recovered. We have concluded that BT should not recover any costs of gathering relevant information from subscribers of its own voice telephony services in setting a charge for the BT GC19 data set.

2.49 However, BT is also obliged under GC19 to provide information about the subscribers of other Communications Providers who are using telephone numbers that were originally allocated to BT. Ofcom considers that BT would not otherwise collect this information (i.e. it has no contractual relationship with these subscribers so requires no information about them), and would have no other means of recovering these costs if it was not permitted to do so through charges for the GC19 data set.

2.50 As such, whilst BT can only recover the costs of making the BT GC19 data set of its own subscribers available to requesting parties, it may recover the costs of gathering, collating and making available GC19 data of subscribers of other Communications Providers who are using numbers originally allocated to BT.

2.51 We have assessed which of the costs BT has incurred in providing OSIS are relevant to its provision of the BT GC19 data set and concluded that only costs associated with:

2.51.1 transmitting the data to requesting parties;

2.51.2 managing the commercial relationship with those parties; and

2.51.3 allowing new customers access to the data

should be recoverable from charges for the BT GC19 data set.

2.52 We have also included additional labour costs (covering annual leave, illness, maternity cover etc) and the costs incurred by BT in ensuring that the GC19 data it provides to DIPs is used in accordance with contractual arrangements, thereby ensuring that BT complies with its data protection obligations.

2.53 These charges will apply in future regardless of whether the BT GC19 data set continues to be provided as an integral part of OSIS or is provided on a stand-alone basis. BT will need to comply with the terms of GC19 in setting charges and the principles we have established in terms of cost recovery should be followed.
Section 3

Meeting directory and directory enquiries access requirements

Introduction

3.1 Following Ofcom’s consideration of the lawfulness of USC7 (as set out in The Number/Conduit Determinations), Ofcom’s aim in this Section is to review the directories and directory information services sector to determine whether we need to continue to regulate to secure UK compliance with the Universal Service Directive in relation to the availability of directories and DQ services.

3.2 In accordance with the approach set out in the Universal Service Directive and in line with Ofcom’s regulatory principles (in this context), we will only regulate if required to achieve the objectives set out in the Universal Service Directive. In this case, we will only regulate designated Communications Providers if a universal service obligation will not satisfactorily be met through normal market conditions. Accordingly, we will consider whether comprehensive directories and DQ services are available to all end-users at an affordable price and of an appropriate quality under normal market conditions to satisfy the requirements of Article 5 of the Universal Service Directive.

3.3 Specifically, this Section is structured to consider and invite stakeholders’ views on a number of questions relating to:

- Our proposal to revoke USC7;
- Whether existing directories (printed and electronic) fall within the ‘universal service’ criteria relevant to directories, including any future implications on PATS providers’ obligations under GC8.2; and
- the application of the ‘universal service’ criteria to DQ services, including any future implications on PATS providers’ obligations under GC8.1(b).

Proposed revocation of USC7

The effect of, and Ofcom’s reasons for making, this proposal

3.4 The process for revoking a universal service condition is set out in the 2003 Act. Our proposal is to follow this process by publishing a notification in the form set out in Annex 5.

3.5 We make this proposal because USC7 is unlawful. We consider this is the case as USCs may be imposed only in order to secure compliance with Community obligations and, in particular for present purposes, the obligations in Article 5(1) of the Universal Service Directive. As USC7 fails to impose an obligation on any undertaking (and, in particular, on BT as a designated provider) to guarantee that

---

22 See statement of regulatory principles [http://www.ofcom.org.uk/about/sdrp/](http://www.ofcom.org.uk/about/sdrp/)

23 Section 48(1) of the 2003 Act prescribes that the way in which USC7 is to be revoked is by the publication of a notification stating that USC7 is revoked.
Article 5 Universal Service Directive services are made available then Ofcom was not empowered to impose USC7. In other words, we consider that there is no enabling power to impose a USC in these circumstances as it has not been exercised for securing compliance with the obligations set out in the Universal Service Directive. Ofcom’s more detailed reasons as to why USC7 cannot be regarded as a specific obligation on a person designated to provide a universal service under the Universal Service Directive, both as a matter of Community law and under the 2003 Act, are set out in Section 5 of the The Number/Conduit Determinations.

3.6 The effect of this proposal is that BT would no longer be required to maintain a database containing “Directory Information of all Subscribers who have been allocated Telephone Numbers by any Communications Provider”. Nor would BT be required to make available (on regulated terms):

“(a) to any Communications Provider subject to paragraph 8.2 of General Condition 8 for the purpose of allowing that Communications Provider to comply with that paragraph, such Directories as BT compiles which comply with the requirements of that General Condition; and

(b) to any person seeking to provide publicly available Directory Enquiry Facilities and/or Directories, the contents of the database, in machine readable form.”

3.7 In the remainder of this section and latter sections of this paper we will consider the implications of removing USC7. We will consider the nature of the market in the absence of regulation and consider the requirements, if any, for further regulation.

3.8 Before we may revoke USC7, the 2003 Act requires us to consult publicly on our proposal.24

3.9 Accordingly, we have decided to publish a statutory notification under section 48(2) of the 2003 Act. This notification is set out in Annex 5 of this document.

3.10 We are inviting written views and comments specifically on this proposal, which should be made to us no later than by 5pm on 19 May 2008 in the format and manner specified in Annex 1 to this document.

**Question 3.1:** Do you agree with Ofcom’s proposed revocation of USC7? If you disagree, what are your reasons for this view?

**The provision of directories**

3.11 Article 5(1)(a) of the Universal Service Directive requires that Member States shall ensure that at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year. This requirement has been transposed into UK law by means of the Universal Service Order.

---

24 Specifically, section 48(2) of the 2003 Act requires Ofcom to publish a notification: stating that it is proposing to revoke USC7 as specified in the notification; setting out the effect of that revocation; giving its reasons for making the proposal; and specifying the period within which representations may be made to Ofcom about its proposal, which period must end no less than one month after the day of the publication of the notification.
3.12 We must only take action when required and place a regulatory condition on designated Communications Providers if we believe that a universal service obligation will not satisfactorily be met through normal market conditions.

3.13 Accordingly, we are asking a number of questions to determine whether the requirements of Article 5(1)(a) of the Universal Service Directive are met by normal market conditions:

3.13.1 Do existing directories (both printed and electronic) meet the requirements for a comprehensive directory required under the Universal Service Directive?

3.13.2 Will market conditions ensure the provision of (at least one) comprehensive printed telephone directory service covering the UK without regulatory intervention?

3.13.3 Will market conditions ensure the provision of (at least one) comprehensive electronic directory covering the UK without regulatory intervention?

3.14 Also relevant to this, is the question of whether there is, and is likely in future to be, a functioning wholesale telephone directory information market (regulated or unregulated) which is discussed in Section 5.

3.15 In dealing with this we consider whether normal market conditions are adequately fulfilling the following ‘universal service’ criteria for printed and/or electronic directories (which can be derived from the Universal Service Directive (and the Universal Service Order)):

- comprehensiveness;
- affordability;
- quality; and
- availability.

Comprehensiveness

3.16 The Universal Service Order provides that “[a]t least one comprehensive directory shall be made available to end-users in a form approved by OFCOM, whether printed or electronic, or both, and it shall be updated at least once a year.”

3.17 There is no definition of the word “comprehensive” in the Universal Service Order. However, the Universal Service Order prescribes that the directory shall comprise, subject to the Privacy Regulations, the details of all subscribers of PATS and their telephone numbers, including fixed and mobile telephone numbers. The Universal Service Directive’s preamble notes the policy aim across the Community is that “[u]sers and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed and mobile numbers) and want this information to be presented in a non-preferential fashion.” In other words, the reference to the word “all” appears to suggest that the directory must list every telephone number of a PATS subscriber throughout the UK

---

25 Article 5 of the Universal Service Directive reads in similar terms.
26 Recital 11 of the Universal Service Directive.
for it to be comprehensive. However, this is subject to the right of a subscriber to choose whether to be listed in a directory.

3.18 The comprehensiveness of the data underlying the service is presently guaranteed by the comprehensiveness of the database on which they are based (that is, OSIS). The continued maintenance of OSIS or a similar database is discussed in Section 5. However, for the purpose of this discussion we can consider that the provision of comprehensive input data is available.

3.19 One additional aspect of comprehensive is the ‘local’ nature of the printed directory provided to most households. While access to other regional directories is available (by order and at a price) in effect the comprehensive provision of a directory service is usually achieved by a combination of the printed directory, on-line electronic directories and DQ services.

3.20 The Universal Service Order also requires at least annual updating of the directories. This is currently being undertaken in compliance with GC 8.3 and USC 7.1 (which requires the BT database to be updated on a regular basis).

Affordability

3.21 The Universal Service Order requires that universal services (including directories) should be offered at prices that are affordable for all end-users and uniform throughout the UK (unless Ofcom determines otherwise). The Universal Service Order does not define what is meant by the term “affordable”. However, the Universal Service Directive’s preamble defines an “[a]ffordable price” to mean “a price defined by Member States at national level in the light of specific national conditions, and may involve setting common tariffs irrespective of location or special tariff options to deal with the needs of low-income users. Affordability for individual consumers is related to their ability to monitor and control their expenditure.”

3.22 As noted above, BT and KCOM currently supply their local directories free of charge to all end-users. Equally, online directories are available with free access (excluding the cost of internet access). While BT offers additional in and out of local area directories at a cost of £6.76 per directory, this is relatively rarely exercised with subscribers preferring DQ services or electronic on-line services. There is, therefore, no evidence to suggest that affordability is an issue for directories.

Quality

3.23 Printed and on-line directories are derived from a comprehensive database which is regularly updated by through updates received from Communications Providers who are managing individual subscribers.

3.24 While record error inevitably occurs there is no apparent systemic problem of information accuracy and neither is there evidence of consumer discontent with the quality of directory services.

27 Recital 10 of the Universal Service Directive
28 Ofcom Contact Centre received only 9 complaints on directory accuracy in the 12 months up to 31 October 2007.
Availability

3.25 At present, PATS subscribers have access to both the printed directories supplied by BT and KCOM and the electronic on-line directories supplied by a number of providers. While, the printed directories provided automatically by BT and KCOM are 'local' only, other directories are available on request and all subscribers have potential access (if they have and use an internet connection) to 'free' on-line directories. Clearly for subscribers without internet access non-local directory availability is time constrained by the need to request additional volumes (though of course the universal availability of DQ services does also appear to address any immediate needs).

Question 3.2: Ofcom considers that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability. Do you agree with this assessment? If not, please provide a detailed response as to which criteria is not fulfilled and in what way.

The market provision of a printed directory

3.26 Given the points noted above, we think the evidence suggests that the existing printed directories meet the criteria set out in the Universal Service Directive (and Universal Service Order). The key question is, therefore, whether we should expect that BT and KCOM will continue to provide printed directories, without the requirement of a universal service condition.

3.27 There are two types of printed comprehensive directories delivered in the UK. BT delivers around 170 local editions of its directory, the 'Phone Book', which together cover all of the UK except for the Hull area. KCOM publishes a directory in the Hull area, the 'Hull White Pages'. We discuss these two in turn below.

BT's Phone Book

3.28 The Phone Book is now a bundled product containing both a comprehensive directory for residential and business numbers in an A-to-Z format and also classified advertising sections, in which entries are organised under business classifications such as 'plumbers' or 'taxis'. BT began to include classified advertisements in some local versions of the Phone Book in 2002, and by 2005 all 170 local versions contained classified advertising sections.

3.29 We are interested in whether BT has an incentive to continue to produce the comprehensive directory part of the Phone Book. In order to consider this, we first consider the Phone Book as a whole.

3.30 Based on confidential information provided by BT, it is clear that the Phone Book is currently profitable and likely to remain so for the foreseeable future. This is consistent with the report by the Competition Commission in December 2006 of its investigation into the Classified Directory Advertising Services market, primarily regarding the position of the market leader Yell. In that report, the Competition Commission estimated that Yell has around 75 per cent of the UK advertising revenues for major classified directory advertising services. The Competition Commission found that Yell had market power and this could lead to Yell setting excessive prices. The remedies the Competition Commission imposed included a price control on Yell's rate card.

29 Free subject to the cost of access to the internet.
30 http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/521.pdf. The Competition Commission estimated that Yell has around 75 per cent of the UK advertising revenues for major classified directory advertising services. The Competition Commission found that Yell had market power and this could lead to Yell setting excessive prices. The remedies the Competition Commission imposed included a price control on Yell's rate card.
Commission says that BT is becoming a more significant operator in the classified advertisement market, and its market share had grown rapidly since 2002.

3.31 It is possible that if the requirement to publish the A-Z directory listing were removed, BT may choose to publish only the classified advertising section of the Phone Book. However, we consider that there are a number of commercial reasons why BT would not. Firstly, BT obtains revenue from producing the A-Z section from the Wholesale Line Rental (WLR) charge and also from selling advertising in the A-Z section (e.g. bold/super bold listings, separate page listings etc). Secondly, the bundling of the A-Z part of the Phone Book and the classified advertisements is likely in part to increase classified advertisements revenues as it is the main unique selling point of the Phone Book as a vehicle to place advertising in. The A-Z sections of the Phone Book may help to give the Phone Book as a whole greater prominence and make it more attractive for businesses to advertise in the classified section.

3.32 Even if BT continues to produce a bundled Phone Book, there are other risks that could threaten the continued provision of the printed directory. BT may stop delivering the Phone Book to certain geographical areas or to non-BT subscribers; or it may stop updating/issuing it on a 12 monthly basis.

3.33 As BT considers the profitability of the Phone Book as a whole, rather than in relation to specific local areas, we cannot easily consider profitability by area. However, we can compare the average profitability per directory of all directories with delivery costs per directory by area. BT has supplied Ofcom with information on the delivery costs of the Phone Book for different areas, and these vary significantly between different areas. However, even for the areas with the highest delivery costs, these costs are significantly less than the average profit per directory. There may also be benefits from increased classified advertising revenue from providing near-universal geographical coverage. Some businesses, such as insurance companies, seek national coverage for their advertisements.

3.34 BT's delivery to non-subscribers was based on a commercial decision related to the economics of delivery and the contractual demands of entering the classified advertising market. In particular, with respect to the classified market in any given Phonebook district BT is contractually bound to its classified customers to deliver to at least 95% of all households.31 Given the need to compete for advertisers with the universal coverage of Yellow Pages and Thomson, it seems highly unlikely BT would move back to subscriber delivery only.

3.35 Another concern may be that without the requirement to produce a new directory every 12 months, BT may only update the Phone Book over a longer period than 12 months. This may be a particular a concern because BT only used to update the Phone Book every 18 months. However, classified advertising revenue is the most important source of revenue for the Phone Book. The other two major classified directories, Yellow Pages and Thomson Local, both use an annual publication cycle.32 An annual publication cycle is therefore the norm for the classified directories market, and BT is therefore likely to have commercial reasons to retain an annual production cycle.

---

31 For practical reasons of access bulk mailings are not able to ensure 100% delivery to all households (for example access to high security blocks of flats can be problematic). BT is examining its approach to bulk delivery to such households but remains committed to free delivery of the Phonebook either by bulk mail or where that is not possible direct mail on request.

32 As confirmed in Thomson’s and Yell’s submissions to the Competition Commission.
3.36 On balance, we believe that the evidence we have seen so far suggests that BT is likely to continue to deliver a bundled Phone Book that includes both A-Z and classified advertisements in the future, and that it will do so every 12 months.

KCOM’s Hull White Pages

3.37 KCOM publishes a comprehensive ‘A to Z’ business and residential directory for its area, known as Hull White Pages. This is published separately from its classified advertising directory, Hull Colour Pages. KCOM does not produce separate management accounts for its White Pages, rather this is subsumed in KCOM’s directory publishing business (which includes the production of both). Based on confidential information provided by KCOM, the directory publishing business as a whole appears profitable.

3.38 Clearly BT and KCOM are able to offer a self-financing printed directory service which delivers net returns to their company thereby ensuring that the market satisfies the need for a directory to be made available to all end users. The continuation of these services does appear reasonably certain for the foreseeable future with or without the obligation under USC7.

Conclusion on printed directories

3.39 In conclusion, we believe that the commercial market conditions relating to the provision of a printed local directory are currently sufficient to ensure the continued free provision and maintenance of printed directories which satisfy the relevant universal service criteria outlined above. We will continue to monitor the market to ensure that this analysis remains valid.

Electronic Directory

3.40 There are two forms of electronic directory: internet based; or directly provided via CD-Rom.

3.41 There are a small number of comprehensive internet directories, which allow users to search for a particular individual or business if the name and address area are known. Both the two main DQ providers, The Number and BT, offer such internet directories. These internet directories use the OSIS database for their searches.

3.42 Internet directories are usually offered free to users, funded by advertising, paid-for classified links and links to directory related value added charged services.

3.43 We have conducted some high-level research on the finances of the electronic directory providers. While we have not sought to understand the business models in detail it is clear given their development to date (without any regulatory requirement), and the apparent continued viability of the companies that the industry is relatively robust. Based on the evidence we have seen so far, we do not expect there to be a risk to provision in the future.

3.44 The provision of the CD-Rom based directories are offered entirely on a commercial basis largely to business customers.

33 The other on line providers that Ofcom is aware of are i-CD Publishing (UK) Ltd (www.192.com) and simunix Ltd (www.ukphonebook.com).
General Condition 8

Appropriateness of continuing the existing regulatory obligation

3.45 GC8.2 requires that Communications Providers who assign telephone numbers to subscribers must also provide their subscribers with a printed directory. GC8.3 requires Communications Providers who produce a printed directory to produce it annually and to respond to Ofcom’s requirements on format. GC8.3, inter alia, allows Communications Providers to recover the cost of the provision of a local and additional telephone books.

3.46 In practice, these obligations are satisfied by the annual delivery of directories provided by BT and KCOM free of charge to all end-users.

3.47 With the removal of USC7 there is no guaranteed availability of a printed directory for Communications Providers who do not themselves produce a directory. While the existing arrangement could continue under contractual agreements between BT and individual Communications Providers, it is not clear why any regulatory obligation is needed or desirable when access to directories is expected to be provided in any event (that is, under existing market conditions). In effect, the obligations placed on Communications Providers by GC8.2 are satisfied by BT and KCOM alone providing the required directories and, as discussed above, we consider it unlikely that BT or KCOM would change their current behaviour in the absence of the regulation.

3.48 In addition, GC8.2 requires the provision of a printed directory only which places an additional burden on Communications Providers given that the Universal Service Directive/Universal Service Order requirement is for provision of either a printed or electronic directory. In addition to the provision of the printed directory, the Universal Service Order’s requirement for directories is further supported by the independent (and non-mandated) electronic directory market. As discussed above, the limited nature of the printed directory in terms of the comprehensiveness of information ensures that the provision of a directory information service to a household is a combination of both printed and electronic and DQ services.

3.49 Based on the evidence we have seen so far, we think it is appropriate to remove the GC8.2 obligation, given:

3.49.1 the apparent robustness of the existing market conditions for the provision of directories;

3.49.2 the inherent limits of a printed directory and its relationship with other directory services which are provided by general market conditions;

3.49.3 the revocation of USC7; and

3.49.4 the resultant inappropriateness of maintaining the obligation on all Communications Providers to provide a directory where actual delivery is currently provided by two Communications Providers.

3.50 In this context, we consider that it would also not be appropriate to retain the other conditions relating to a printed directory – specifically GC8.3 and the related element of GC8.4, particularly as our analysis suggests that the 12 month production cycle is likely to continue to be met under normal market conditions.
3.51 As noted above we will continue to monitor the market to gather more evidence and to test whether this analysis remains valid. Should market circumstances change we retain the ability to re-impose a directory obligation to ensure the continued provision of directories in the future in accordance with the requirements of the Universal Service Directive (and Universal Service Order).

3.52 With the removal of the Directory obligation under GC8.2 we will also need to remove the obligations in Annex 4 to General Condition 14: Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services, which requires Communications Providers to make it clear as part of the sales process if the Communications Provider is unable to supply a Directory.

A full version of a proposed revised GC8 is set out at the end of this section and in the Modification notice in Annex 6. The modification to Annex 4 of GC14 is set out in Annex 6.

**Question 3.3:** Do you agree with Ofcom’s analysis? If you do not agree please provide your reasons.

**Access to DQ services in the future**

**The ‘universal service’ criteria for DQ services**

3.53 We next deal with the ‘universal service’ criteria in relation to DQ services. As with the case for universal service directories, we will consider whether existing services meet the universal service criteria and consider the robustness of the market in terms of continued provision.

**Comprehensiveness**

3.54 The Universal Service Order provides that “[a]t least one comprehensive telephone directory enquiry facility shall be made available to end-users, including users of public pay telephones.” (Article 5 of the Universal Service Directive reads in similar terms.)

3.55 As noted above in paragraph 3.17, there is no definition of the word “comprehensive” in the Universal Service Order. However, paragraph 3.17 above refers to the Universal Service Order which prescribes that the directory facility shall comprise, subject to the Privacy Regulations, the details of all subscribers of PATS and their telephone numbers, including fixed and mobile telephone numbers.

3.56 As with directories, the comprehensiveness of the DQ service is presently guaranteed by the comprehensiveness of the database on which they are based, currently the BT OSIS database. To further ensure that DQ services will continue to utilise a comprehensive database, the Code of Conduct of PhonePayPlus (formerly ICSTIS, the regulatory body which covers all premium rate charged telecommunications services including DQ) includes a requirement on all DQ service providers that market themselves as providing numbers for the generality of end-
Affordability

3.57 This criterion involves similar considerations to those set out above in relation to universal service directories. In this context, we have particular regard to Article 3(2) of the Universal Service Directive, which requires the determination of the most efficient and appropriate approach for ensuring the implementation of universal service obligations, so that market distortions are minimised – most notably, the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

3.58 In other words, we need to consider also the typical cost of an individual call to a DQ service. In this regard, we note that DQ service providers have a range of call pricing structures which result in certain complexity to understanding and calculating the cost of calls. In addition, costs normally vary by DQ service provider and by the network from which calls are made (both fixed line and mobile networks).

3.59 The different pricing structures employed by DQ service providers include:

- a flat fee for the entire call regardless of length;
- an initial connection charge (which includes first minute of call), together with a pence-per-minute charge for the remainder of call (charged per second);
- an initial connection charge (which does not include first minute of call), together with a pence-per-minute charge for entire call (charged per second);
- no connection charge at all, but a pence-per-minute charge for entire call (charged per second); or
- free at point of use (implicitly included in other charges) or advertising supported.

3.60 The Universal Service Directive requires that DQ services are available “at an affordable price”. As noted in paragraph 3.21, this means a price defined by Member States at national level in accordance with national conditions and is related to the end-users’ ability to monitor and control their expenditure.

3.61 Prior to full liberalisation of the DQ market in August 2003, the cost of calling 192 from a BT line was 40p, which entitled the caller to request two numbers. Ofcom’s most recent research on the DQ market found the average cost of calling a DQ service from a BT fixed line was 54p. The cost of calling all but one of the services was in the range 29p to 66p, with the other DQ provider charging £1.71. On other fixed lines, the cost of an average call ranged from 27p to 60p. From mobiles, most calls lie in the range 60p to 70p, though there are some extremes with eight DQ providers charging £1.00 per call or more.

34 7.8.1 (a) of the Code of Practice says “In respect of a DQ service which is held out as providing numbers for the generality of end-users in the United Kingdom (or a part of the United Kingdom), that service must be provided using sources which include up-to-date information about all end-users in the United Kingdom (or that part of the United Kingdom) in relation to whom directory information can be obtained under General Condition 19.1 of the General Conditions of Entitlement (as amended by Ofcom from time to time).”
Since Ofcom’s most recent report on the DQ market, the charges of the two main DQ services have increased significantly. As at June 2007, the cost of an average duration call to 118 118 from a BT fixed line is around 80p, compared to 60p in November 2005.\(^{35}\) The price of a call to 118 500 is 66p, compared to 53p.\(^{36}\) For those DQ services that compete on price and quality (which represent a small share of the total DQ market), competitive pressures to keep prices down are likely to be strong. The lowest prices available have been fairly stable since liberalisation, and there remain a large number of DQ services with prices in the range 30p to 35p. These prices are below the 40p price of calling 192 that existed prior to liberalisation.

As well as the cost of an individual call to a DQ service, total expenditure on DQ services by customers is also relevant to affordability. According to the March 2006 report, 86% of adults said that they call a telephone DQ service less often than monthly. At the average cost from a BT fixed line of 54p per call, this would represent a maximum annual expenditure for the large majority of adults of less than £6.50, and just over half that for the cheapest services. If we consider a more expensive DQ service and assume a charge of £1.00 per call, then this would imply an annual expenditure of less than £12 for 86% of adults. Annual expenditure of £24 (for two adults) would represent less than 4% of the average total household expenditure on telecommunications (including fixed line, mobile and internet) in the UK, which was about £1111.80 per year in 2006.\(^{37}\) This indicates that for the large majority of people, DQ services are a very small part of their total expenditure on telecommunications.

We should also consider whether there may be a smaller group of customers for whom affordability may be an issue. The latest DQ research found that only 4% of adults use a DQ service at least once a week. A small proportion of these heavy uses may be those users who are unable to use a printed directory, for whom there are special arrangements (such as for disabled users). This service is provided free to these users and therefore no issue of affordability arises.

To consider an extreme case of high usage, we assume a fairly high cost DQ call of £1 and assume the service is used twice a week. This would give an annual cost of just over £100. This represents 14% of average household expenditure on telecommunications. We can also compare this to income for those on low incomes. The poorest 10 per cent of households had real disposable household income of about £9,300 per annum in 2004/05.\(^{38}\) £100 represents less than 1.1% of this. This illustration is fairly extreme, as it would be possible to mitigate this cost very considerably by using a cheaper DQ service. It is likely that very frequent users, and particularly those on low incomes, would be more sensitive to the price of DQ services and so be more likely to select one of the cheaper DQ services.

In summary, for the large majority of people, DQ services represent a very small or negligible part of their total expenditure on telecommunications, suggesting that they are affordable for these people. Even for the small minority of frequent users, the proportion of total spend on DQ services is fairly small.

---

\(^{35}\) As at June 2007, The Number’s website says “Calls to 118 118 cost 14p per minute (charged per second) with a one off 69p charge from most landlines”. Average call duration is 45 seconds.

\(^{36}\) As at June 2007, BT’s 118 500 website says “Calls to 118 500 cost 42p per minute or part of a minute with a 24p connection charge from BT landlines (excluding BT payphones). Mobiles and other networks may vary. Prices correct at time of publication (March 2007).”


Quality

3.67 Other than the requirement of comprehensiveness, the Universal Service Order (like Article 5 of the Universal Service Directive) does not specify a particular level of service quality for DQ services. However, as for directories, Ofcom considers that a universal DQ service should achieve a certain level of accuracy for it to be of an acceptable quality.

3.68 Since liberalisation in 2003, Ofcom has carried out three separate exercises to measure the accuracy of telephone DQ services. In Ofcom’s most recent report on this subject (Evaluation of Directory Enquiry services, published March 200639), the level of ‘general accuracy’40 had increased to 95% from 91% in November 2004. In only 1% of calls was the number offered neither the exact number nor an acceptable alternative.

3.69 We remain responsive to DQ complaints but it appears from reduced public concern in this area41 that the current level of service is now generally acceptable. We continue to monitor consumer opinion on DQ services through the residential tracking survey, complaints received by the Ofcom Contact Centre and monitoring pricing levels.

Availability

3.70 Ofcom understands that today there are about 100 DQ service providers offering services.42

3.71 DQ providers need to develop a commercial arrangement with network operators to ensure that the DQ services are available through all Communications Providers’ networks. GC8.1(b) ensures that at least one 118 service is made available to every subscriber but in practice Ofcom’s research indicates that at least the two largest DQ providers (BT and The Number) are available on most networks and for the majority of customers there is a wide choice.

3.72 Critical to the availability of the services to the end-users is that the PATS providers allow access to 118 XXX services. This supports the continuation of a requirement on Communications Providers to ensure access.

General Condition 8.1(b)

Requirement for regulatory involvement in the provision of DQ services

3.73 As with the electronic directories, the proliferation of DQ services has largely arisen naturally from market conditions rather than simply as a result of regulatory requirements. While GC8.1(b) ensures access for every subscriber by requiring Communications Providers to provide access to at least one DQ service, in effect companies have entered the market to exploit a perceived opportunity. Ofcom has

39 http://www.ofcom.org.uk/media/news/2006/03/nr_20060327
40 The term ‘general accuracy’ describes the scenario where a request results in the correct number being given and, in the case of business requests, the number reaches the requested business but not necessarily the requested department.
41 Ofcom received a total of only 75 complaints on accuracy or service with respect to DQ Oct 06 – Oct 07 where in the same period approximately 300 Million directory enquiry calls had been made.
42 There are around 130 118XXX services listed (though a number of these are controlled by the same provider).
considered the profitability of the two main providers in more detail and they appear profitable.

3.74 However, we have noted that the overall size of the DQ market has been falling for some time, and has shrunk considerably since 2002. Ofcom’s research has found that there are a number of reasons for this including price and the impact of ‘free’ electronic directories.

3.75 It is not yet clear whether the fall in use of the service will continue. However, while market consolidation is possible, given the number of providers and the expected ongoing basic demand for service, we do not foresee any fundamental threat to the continuation of the DQ services.

3.76 Despite this, we believe that it remains appropriate for GC8 to continue to mandate Communications Providers to ensure access to a DQ provider. This requirement ensures that every Communications Provider will develop at least one arrangement with a DQ provider to ensure that access to such services is universally available. In its absence there remains a risk that the end-users of a particular Communications Provider may be deprived of a DQ service due to a commercial decision of their service provider.

**Question 3.4:** Ofcom considers that the DQ market is robust and delivering the level of service required by the Universal Service Directive. It also considers that it is appropriate to maintain the condition on Communications Providers to ensure access to a DQ service to ensure that the universality of provision is maintained. If you do not agree please provide your reasons.

**Related special measures for disabled users**

3.77 The Universal Service Order provides that special measures shall be taken in the UK to ensure access to and affordability of certain services for end-users with a disability equivalent to those enjoyed by other end-users. The access element relevant in this context concerns universal service DQ services in a form appropriate to meet the needs of end-users with a disability who are unable to use a telephone directory in a form in which it is generally available to other end-users.

3.78 PATS providers are already required under GC15 to ensure that those disabled persons who are unable to use a printed directory can access, free of charge, a DQ service in a form which is appropriate to meet their needs. This service must include an onward call connection service. We are not considering these services under this review.

**Revised General Condition 8**

3.79 The proposed revised GC8 is set out below:

**8. OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIES**

8.1 The Communications Provider shall ensure that any End-User can access:

(a) operator assistance services; and
(b) a Directory Enquiry Facility containing Directory Information on all Subscribers in the United Kingdom who have been assigned Telephone Numbers by any Communications Provider, except those Subscribers who have exercised their right...
to have their Directory Information removed, except where such services or facilities have been rendered inaccessible to a particular End-User by the Communications Provider at the End-User’s request or for the purposes of debt management.

8.2 The Communications Provider may charge End-Users a reasonable fee for making available a Directory Enquiry Facility and may charge its Subscribers a reasonable fee for inclusion of Directory Information in a Directory or as part of a Directory Enquiry Facility.

8.3 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

8.4 For the purposes of this Condition, “Communications Provider” means a person who provides Publicly Available Telephone Services (except Public Pay Telephones).

**Question 3.5:** Do you agree with the redrafting of GC8 as set out above? If you do not agree please provide your reasons.
Section 4

Access to telephone directory information

Introduction

4.1 This Section will consider the options for enhancing GC19 to support more fully the market needs for the adequate exchange of information. Specifically, it will consider whether and how the range of telephone directory information should be extended; and the persons to whom access to the telephone directory information should be granted.

4.2 Regardless of the approach ultimately taken with respect to the maintenance of a central database, Ofcom considers that it is important to ensure that GC19 is reformed to ensure its effectiveness as an alternative source for DIPs of regulated access to telephone directory information that is fit for purpose, even if the telephone directory information would only be available to DIPs following individual requests to each Communications Provider rather than via a central database similar to BT’s OSIS database.

4.3 In any event, Ofcom considers that an alternative source of information would be required as a first step to any consideration by Ofcom of having similar information available centrally. The mechanism established under GC19 is central to safeguard each end-user’s rights of inclusion and access to a comprehensive directory and/or DQ service.

4.4 In particular, this section will:

- consider how to clarify the “rights of access” to data falling under GC19;
- consider an approach to restructuring the burden of the obligation to better align the retail relationship with end-users and the requirement to provide information; and
- consider how the scope of telephone directory information should be extended, including data protection and privacy issues.

Persons having ‘rights of access’ to telephone directory information

4.5 GC19.1 currently provides that a relevant Communications Provider\(^{43}\) “...shall meet all reasonable requests from any person to make available the Directory Information of...for the purposes of the provision of Directories and Directory Enquiry Facilities”.

4.6 Therefore, any consideration as to having ‘rights of access’ under GC19 involves establishing whether the information has been requested:

- from any person (which includes a body of persons corporate or unincorporated\(^{44}\)); and

---

\(^{43}\) That is to say, a person who provides an Electronic Communications Network or an Electronic Communications Service and has been “Allocated Telephone Numbers in accordance with GC17”.

\(^{44}\) See Schedule 1 to the Interpretation Act 1978, which applies pursuant to paragraph 2(d) of Part 1 of the Schedule to the GC notification. As explained in The Number/Conduit Determinations, Ofcom
for the purposes of the provision of:

- ‘Directories’, that is to say “…a printed document containing Directory Information on Subscribers of Publicly Available Telephone Services in the United Kingdom which is made available to members of the public”; and

- ‘Directory Enquiry Facilities’, that is to say “…Directory Information provided by means of a Public Telephone Network”.

4.7 In The Number/Conduit Determinations, Ofcom gave guidance that it considered that eligible persons should include both:

- intermediate suppliers (such as those persons simply gathering, maintaining, compiling or otherwise operating databases containing telephone directory information, such as data aggregators), who do not themselves provide either directories or DQ services to end-users; and

- business classified directories providers.

4.8 Our view is that GC19 be modified to clarify that any person seeking to provide relevant directory information services has, on request, ‘rights of access’ to such information falling under GC19. Persons with rights of access would include any DIPs and intermediate suppliers of telephone directory information (that is to say any person in the business of providing or intending to provide telephone directory information to any directory information provider referred to above by operating and making available a database containing such information, but who does not itself necessarily provide such directories or DQ services to end-users). This would include:

- business classified directories providers; and

- DQ providers providing onward connection services (that is a search for numbers on the basis of user provided name and address details with an onward connect facility to the desired number rather than necessarily providing the number to the caller).

4.9 We anticipate that stakeholders may raise concerns about the potential scale of the burden of complying with GC19 obligations (e.g., taking into account that the information will likely be provided on, among other things, cost oriented terms), since the above description of a publicly available directory could potentially encompass a wide variety of publications. However, we consider that the clarification is unlikely to lead to a substantial increase in information requests to individual Communications Providers under GC19 as the point of main supply of this basic level of telephone information will remain the consolidated database (OSIS at present) (see section 5).

Question 4.1: Do you agree with Ofcom’s view that GC19 should be modified so as to clarify persons having ‘rights of access’ as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

takes the view that, in light of the reference in Article 25(2) of the Universal Service Directive to ‘undertakings’, the word ‘person’ should be interpreted broadly and that certain guidance provided by the ECJ on the meaning of an ‘undertaking’ for the purposes of EC competition law is likely to be relevant also in this context. For instance, any entity engaged in an economic activity, regardless of its legal nature, can be interpreted as being an ‘undertaking’.
Question 4.2: Do you have any other comments about 'rights of access'?

Responsibility for provision of information

4.10 At present, the primary responsibility for the provision of information to those with the right of access under GC19 rests with the Communications Provider which was originally allocated the telephone number. In accordance with GC19.2, any Communications Provider who has subsequently been authorised (either directly or indirectly) to use a telephone number assigned to another Communications Provider has only the responsibility to provide information to either:

“(a) the person who was originally allocated such Telephone Numbers; or

(b) if different from the above, the person who authorised the use of such Telephone Numbers by it”.

4.11 While there is no ambiguity in this approach, Ofcom considers that it has a number of disadvantages. It maintains responsibility unnecessarily on the original organisation that the number was allocated to and that responsibility becomes increasingly complex to manage as number portability increases. Further, as the ‘new’ Communications Provider takes over the retail relationship with the customer, it will enter into a contract with that customer for the supply of PATS and, in so doing, hold and collect directory data. Accordingly, Ofcom considers that a more direct linkage between the Communications Provider with the contract with the subscriber and the provision of the telephone directory information to those with rights of access to such information would be desirable.

4.12 We also believe that a more direct linkage would better reflect the alignment in incentives between subscribers who want an appropriate listing, Communications Providers who want to ensure that their customers’ desires are met and DIPs who want the information. Unnecessary intermediaries do not contribute to this alignment.

4.13 We appreciate that any change in responsibilities may lead to some smaller Communications Providers having to manage the possibility of direct third party approaches for information for the first time (rather than rely on simply passing information back to the organisation which had originally requested the number allocations). In addition, there may be added complexity for DIPs in identifying, contacting and contracting with the smaller Communications Providers. However, in practice we consider that BT OSIS is likely to remain the main consolidator of GC19 data and in general the sole party contacting Communications Providers for this basic data. Accordingly, Ofcom considers that any real additional burden from this change on Communications Providers and DIPs is likely to be relatively small and that it could, for the most part, be addressed by formal commercial delegation of the GC19 responsibilities to a third party database holder.

4.14 We propose, therefore, that responsibility under GC19 for the provision of information directly rest with the current controller of the telephone number (i.e., irrespective of whether the number was obtained directly or through assignment) and that where the telephone number has been assigned the original Communications Provider allocated the number will no longer have responsibility for the provision of information related to it.
**Question 4.3:** Do you agree with Ofcom’s view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19 incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

**The scope of telephone directory information**

**The two main issues**

4.15 In reviewing what specific information should be provided (on reasonable request) under the terms of GC19, two key questions arise:

- firstly, about whom should the information be provided?
- secondly, what specific information should be covered by GC19?

4.16 We need to consider these questions in the light of the Universal Service Directive and the Privacy Directive to determine the intent of these directives and the implications for our approach to amending GC19.

4.17 Article 25(1) of the Universal Service Directive states that subscribers to PATS have the right to an entry in a comprehensive directory. Article 5(2) of the Universal Service Directive requires that directories shall comprise all subscribers of PATS subject to the provisions of Article 12 of the Privacy Directive which requires that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and to verify, correct or withdraw such data.

**Issue 1: About whom should the information be provided?**

4.18 At present, Communications Providers are only required to provide ‘Directory Information’ about any person (private individuals or businesses) who is a party to a contract for the supply of PATS to whom a telephone number(s) has been assigned (i.e. the subscriber).

4.19 The existing regulations exclude information on persons we might consider central to the development of a comprehensive database, namely:

- actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves; and
- persons who are parties to a contract with the relevant Communications Provider for the supply of public Electronic Communications Service (other than PATS) to whom ‘Telephone Numbers’ have been assigned by the relevant Communications Provider.

4.20 While we have made declarations to that effect in the Number/Conduit Determination, by interpreting and applying the existing regulation, we acknowledge that the absence of such data from GC19 may raise policy concerns.

4.21 Our emerging view is that other information about the telephone number of the subscriber appears necessary, in the light of specific UK circumstances, to enable users of a telephone directory or directory enquiry service to identify the subscriber or, if different, the end-user of a telephone number that they are looking for.
4.22 **End-user versus subscriber.** A significant amount of directory information is affected by this difference. Circumstances where this may be an issue are:

- **Residential:** legal capacity issues (such as minors or persons of unsound mind for which parents or guardians enter into valid contracts of service) or pragmatic realities (such as married couples or partners, where one person enters into the contract on the others' behalf for convenience or otherwise); and

- **Businesses:** some companies/organisations outsource their needs in relation to obtaining telephone services to external contractors. In those instances, although a company or organisation (say local council) is using telephone numbers assigned for such services, the actual subscriber is the external contractor, who is procuring the supply of such services by entering into a contractual relationship with the telephony provider; or a single organisation centrally contracting for a variety of numbers which are allocated to individually named department/sections. As ICTIS research (29 March 2006\(^{45}\)) shows 87% of calls to DQ services are for business numbers, this ambiguity would clearly be of concern.

4.23 Our view is that it is critical for directory information to be relevant to the user of the directory service and, therefore, it is necessary for the details of the end-user directly associated with the telephone number (as confirmed by the subscriber) to be provided. We would recommend modifying the condition to require the provision of this additional information.

**Question 4.4:** Do you agree with Ofcom’s view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

4.24 The other issue that affects the scope of data under GC19 is that it (when read together with the definition of ‘Directory Information’) concerns primarily “the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of [PATS]”. The meaning of PATS results in the exclusion of certain services and may therefore exclude:

- personal numbering services enabling end-users using ‘070’ telephone numbers to be called or otherwise contacted by other persons, but without the ability to make calls themselves;

- special services (e.g. freephone) where end-users receive calls only by way of number translation services of ‘virtual’ telephone numbers (e.g. ‘0844’, ‘0845’, ‘0870’ and ‘0871’);

- broadband only VoIP services;

- premium rate services (e.g. ‘090’ and ‘091’ numbers); and

\(^{45}\)http://www.ofcom.org.uk/research/telecoms/reports/numresearch/dq1105/
• other one-way services as a result of specific restrictions in the National Telephone Numbering Plan\textsuperscript{46}, such as services comprising ‘National-Dialling-Only Numbers’ (see the Plan at Part B3.1.5).

4.25 Non-geographic numbers are an accepted and important component of businesses communication in the UK. Such numbers are often the primary public access number and it is reasonable to consider the provision of such numbers a central element of a comprehensive directory service\textsuperscript{47}.

4.26 Given this, we consider that GC19 (and related definitions, such as ‘Directory Information’) should be modified to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS).

\textbf{Question 4.5:} Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as ‘Directory Information’) to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS)? (A proposed redrafting of the condition and definition is set out at the end of this section). If you disagree, please provide detailed reasons for this view. Or if you disagree in part only (e.g. a reference to public Electronic Communications Service being too wide), how do you suggest that Ofcom should address this matter?

\textbf{Issue 2: What specific information should be covered by GC19?}

4.27 As noted earlier, with the aim of making GC19 fit for purpose in the context of a restructured provision and management of directory information, it is clear that we should review the scope of what specific information should be provided under GC19 for the purpose of supporting the development of comprehensive telephone directories and directory enquiry services.

4.28 In this section, we will consider the existing elements of information required and consider what additional information, in the light of specific national circumstances, might be appropriate to be included within GC19.

\textbf{Current information covered by the condition}

4.29 The current directory information (aside from the telephone number) required for the purposes of GC19 (so-called ‘Relevant Information’ in accordance with the KPN judgment) is:

- the \textit{name of the subscriber}, being the person who is the party to the contract with the provider of the PATS for the supply of such services; and

- the \textit{address of the subscriber}, being that address as supplied by the subscriber in relation to where they want the relevant fixed PATS supplied or – in the case of mobile PATS – the address they supply for the purposes of securing the contract.

\textsuperscript{46} i.e. The National Telephone Numbering Plan, as published by Ofcom from time to time: \url{http://www.ofcom.org.uk/telecoms/ioi/numbers/261701.pdf}

\textsuperscript{47} In the March 07 VoIP Statement non-geographic numbers were regarded at PATS for the purpose of number portability.
Minimum additional information required to be provided under GC19

4.30 It is clear from the ECJ’s ruling in KPN that it is open to Member States to require that data other than the minimum records it identified can be made available to users of directories (or directory enquiry services) where, in the light of specific national circumstances, they appear necessary in order to identify the persons they are looking for.

4.31 In this context, we consider that it is critical that if the directory information set is to provide an adequate service to UK consumers, it should include information on the end-user of a telephone number (as defined by the subscriber) where this differs from the subscriber. Below we discuss what might be the minimum such additional data required.

Name

4.32 As stated in paragraph 4.22, we consider it important that the name of the end-user is associated with a telephone number. This reflects the requirement in the UK to identify persons (companies or, in some cases, individuals) who are the prime users of a telephone number but are not the holder of the telephone contract (i.e. the subscriber) – for example out-sourced telephone services by councils or businesses or large multi-department organisations.

4.33 This is not in itself without ambiguity. For example, for an organisation with multiple departments and individually numbered extensions, the precise definition of the end-user would rest with the subscriber or end-user themselves. However, we believe that it is appropriate that GC19 reflects this end-user specific approach with an additional requirement for an end-user name.

Address

4.34 Similar considerations lead to the requirement for the provision of additional information relating to a user based address data element. If the billing or installation address alone is attached to a specific number this may not bear any useful relation to the purpose for which the number is used and the way in which a consumer might request the number.

4.35 This is further complicated if, as recommended above, we include non-geographic numbers in the condition. A clear example is that of a lost or stolen credit card line – the consumer requesting the number from a DQ service cannot be expected to know the location of the call centre handling such calls or the billing address of the company. The consumer would expect to be able to ask for the lost or stolen credit card number for the relevant bank. Other examples could include information lines, airline booking lines, customer service helplines, etc. To further complicate issues, many companies route calls made to the same number to multiple call centres in different geographic locations. This can be for a variety of reasons including time of day, capacity handling and purpose of call.

4.36 This implies that a simplistic definition of address, at least with respect to the address of businesses and those associated with non-geographic numbers, is not sufficient to enable the preparation of a useful set of telephone directory information. We consider that it would be appropriate for there to be an additional requirement for an end-user address to be included with that information provided by the subscriber for the purposes of locating a telephone number and that “address” should in some
circumstances be read to include other identifiers, e.g., usage related, such as “stolen credit card line”.

4.37 We propose, therefore, to include within the required information to be provided under GC19 the additional information of end-user name and end-user address (as described above). We recognise that this represents an exercise of our regulatory discretion and it is not explicitly required to be included as a result of Article 25(2) of the Universal Service Directive. However, the expansion of the set of required information is possible under Article 25(2) of the Universal Service Directive (as confirmed by the ECJ in KPN) and is justified, in the light of national circumstances, in that it furthers the interests of consumers in enabling the provision of a comprehensive and useful directory and DQ service.

**Question 4.6:** Do you consider that Ofcom should modify GC19 (and related definitions, such as 'Directory Information') such that:
- end-user name and address are also required to be provided; and
- business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?

Any other potential additional information to be included in GC19

4.38 We note that many of the issues described above are currently dealt with in the way the OSIS database is compiled and operated given that OSIS records are customer defined. Ofcom also notes that the OSIS database includes additional data fields other than just name, address and telephone number of the subscriber that enables DIPs to offer meaningful DQ services to consumers.

4.39 We would also like to consider whether it might be appropriate to require the provision of other data in GC19, in light of specific national circumstances.

4.40 In this context, we note that the existence of such circumstances already varies in Member States so that in some countries a person’s occupation (e.g., Germany) has to be provided if known to a Communications Provider, whereas in other countries even an individual’s date of birth or a business’ registered company number has to be made available to the DIP to distinguish between persons that users are looking for but not disclosed as such in the directories or in providing the DQ service to members of the public for data protection and privacy reasons (e.g., Sweden). There may, of course, be other potential identifiers that users of such services may use to identify persons they are looking for, such as:

- titles other than indicating an occupation (e.g. hereditary title, honorific);
- honours (e.g. MBE);
- qualifications (vocational, academic or otherwise) (e.g. BSc, MBA);
- any business, service or activity use description (e.g. carpenter, bookmaker, 24 hour service, Italian Restaurant); and
• information about a specific department or individual/position within a business (e.g. accounts department, Customer Service Director).

4.41 We are reluctant at this time to mandate a broader set of information to be provided under GC19 other than the additional end-user name and address set out above. Clearly, at present DIPs (including OSIS) are able to collect on a commercial basis a wider data set than mandated under GC19. There is no evidence that there is any particular difficulty in obtaining ‘reasonable’ additional data about a subscriber or end-user which is required to support the development of directories, classified directories or DQ services.

**Question 4.7:** Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?

**Data protection and privacy concerns**

4.42 GC19 applies subject to the requirements of the Data Protection Act 1998 ("DPA") and the Privacy Regulations (see GC19.4, which implements Article 25(5) of the Universal Service Directive).

4.43 While it is a matter for the Information Commissioner to enforce such requirements in general terms, we are responsible for enforcing the General Condition and we may be asked by the Commissioner, in connection with his enforcement functions, for advice on technical and similar matters relating to electronic communications as we are responsible for the drafting and interpretation of General Conditions on Communications Providers.

4.44 We will consider three issues with respect to data protection and privacy. They are:

• Communications Provider responsibility;

• Mechanism of choice for ex-directory/unlisted telephone subscriptions (Opt-out or Opt-in) and the data to be provided in the event of such a choice; and

• Directory producer responsibilities.

4.45 In particular, leaving aside the generality of the provisions of the DPA, we note that regulation 18(2)(a) of the Privacy Regulations requires that an individual subscriber’s personal data shall not be included in a directory or DQ service unless that subscriber has, free of charge, been informed by the collector of the personal data of the purposes of the directory or DQ service in which his personal data are to be included. In addition, in accordance with regulation 18(5) where the data of an individual subscriber have been included in a directory, that subscriber shall, without charge, be able to verify, correct and withdraw that data at any time. The protection afforded by the data protection rules extends to the subscriber and not the end-user.
4.46 In this context, it is worth considering the present Guidance\(^\text{48}\) to the Privacy Regulations published by the Information Commissioner provides (at paragraph 7.1 of Part 2):

“…The first requirement outlined above [i.e. regulation 18(2)(a)] is in line with the fair processing requirements of the Data Protection Act. The first data protection principle requires the data controller to be transparent about what they want to use the data for, any intended disclosures to third parties, and any further information which is necessary, taking into account the specific circumstances of the processing so that it is fair (see Legal Guidance paragraph 3.1.7).

To meet the transparency requirements, those collecting information from subscribers which is to be made available in public directories will need to make sure subscribers understand that their information will be made available through a variety of directory products and services that will enable those who know their name and address to obtain their phone number. Where there are a range of ex-directory options, the subscriber should be told about all of them. In summary, subscribers should understand the consequences of choosing particular directory options.

Although subscribers must be given the opportunity to choose whether or not they are listed in a directory, the Regulations do not specify whether subscribers should be required to positively 'opt in' to such inclusion or whether it would be enough for them to 'opt out'. It is the Commissioner's view that it is not unreasonable for inclusion in a directory to be the default position provided that subscribers are made fully aware that this is the case and it is simple and straightforward for them to opt out if they choose.”

**Communications Provider's responsibilities**

4.47 The initial collection of telephone directory information is undertaken by the Communications Provider through their relationship with their subscribers. As noted above “those collecting information from subscribers which is to be made available in public directories will need to make sure subscribers understand that their information” and accordingly the responsibility for the appropriate protection and distribution of this information rests, first and foremost, with the Communications Provider. Communications Providers are responsible for determining whether a subscriber wishes to be listed in a directory (see discussion on opt-out versus opt-in below) and ensuring that only that information agreed (and if necessarily modified/corrected) by the subscriber is passed to directories. Any end-user information provided to the Communication Provider thus will need to be confirmed by the subscriber.

4.48 The Communications Provider must ensure that subscribers have the opportunity to confirm the information being provided under GC19 is accurate and is appropriate for inclusion in a directory.

The consequences of this is that Communications Providers will have the right to withhold some or all of the GC19 data set from requesting persons if their subscribers have indicated (via opting-out or opting-in) that this information should be withheld.

**Question 4.8:** Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.

### Opting-in or Opting-out

Traditionally, fixed line telephone subscribers have understood that they will be listed in a telephone directory unless they actively ‘opt-out’ of such a listing. They are usually presented with three broad levels of opt-out either:

- No printed entry - no record in a printed directory but on provision of identifying information to a DQ provider a telephone number can be provided to an enquirer (but not an address) (in such cases the information about the subscriber is provided to OSIS).

- No printed entry but acknowledgement of existence in DQ services – no record in a printed directory but their name and address and the fact that their telephone number is being withheld is provided to DQ operators (in such cases the information about the subscriber is provided to OSIS); or

- Unlisted – no information is provided to OSIS and the subscriber in not included in a printed directory or DQ service.

This assumption of inclusion is not, however, shared in the mobile area. Mobile subscribers have traditionally assumed that their details are not automatically included in any directory or DQ service. Listing of mobile subscribers, in OSIS, is and has been only undertaken at the request of subscribers i.e. by means of an “opt-in”.

In June 2006, we carried out some internal research to review this situation. This found:

- 94% of UK adults would not like their mobile number to be included in the Phone Book and directory enquiries services;

- only 5% said that they would like their number listed;

- mobile operators have experienced extremely low levels of demand for mobile directory listings; and

- 2% of respondents said that their number was available in both DQ and the Phone Book, and 1% said that it was available in on-line directories.

In light of historical practice and the consumer preference above we have in our guidance to mobile network operators adopted the position that mobile operators are free to offer an “opt-in” approach to directory inclusion, whereby subscribers indicate to their Communications Provider if they want to have a listing rather than the “opt-

---

49 The survey was conducted for Ofcom by BMRB amongst a representative sample of 2,127 UK adults aged 15+.
out” approach of fixed networks. The suitability of this approach has been confirmed by the European Commission⁵⁰.

4.54 We consider that the option selected by a mobile subscriber in not “opting-in”, for data protection purposes, is equivalent to the fixed line ‘unlisted’ option outlined above – that is the mobile subscriber in not opting-in is choosing to have all information with respect to their subscription (name, address and telephone number) withheld (that is, in the circumstance of a GC19 request the DIP would obtain no information about the subscriber).

Question 4.9: Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.

Directory producer responsibilities

4.55 An individual subscriber’s personal data cannot be included in a directory or DQ service unless that subscriber has, free of charge, been given the opportunity to determine whether such of his data as are considered relevant by the producer of the directory or DQ service should be included in the directory or DQ service (see Privacy Regulation 18(2)(b)). In other words, this requirement envisages that the producer of the directory or DQ service taking a view on what personal data of an individual subscriber he considers relevant to include in his directory and DQ service and, in light of that view, give the individual subscriber an opportunity to determine which personal data should be so included.

4.56 The Information Commissioner Guidance (also at paragraph 7.1 of Part 2) continues:

“In line with the second requirement listed above [i.e. regulation 18(2)(b)], given that there is an established competitive market in telephone directory information services and products and in the interests of practicality, the producer of a directory can determine the personal data they believe are relevant to include in a directory insofar as there should be a core list of the minimum information reasonably necessary to run a directory service efficiently. It is the Commissioner’s view, however, that the more data included in a directory differs from that traditionally published in such products, the more information the directory producer is likely to be required to provide to the data subject to enable the processing of that data to be fair.”

4.57 In the UK context, we consider that DIPs can reasonably assume that GC19 and OSIS data comes with approval for inclusion in a directory or DQ service (as the Communications Provider in the first instance has a duty to comply with data protection requirements). The Communications Providers are responsible for ensuring that any changes to that data are updated as soon as practicable. However, where DIPs include additional data on a subscriber/end-user obtained

⁵⁰ The “opt-in” approach for mobiles was discussed with the Commission in the context of infringement proceedings related to directory inclusion for mobile subscribers. The proceedings were concluded with the agreement of the Commission that an “opt-in” model for mobile listings was a satisfactory approach – see Commission Press Release http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/414&format=HTML&aged=0&language=EN&guiLanguage=en
outside GC19 and OSIS they would be obliged to ensure that the inclusion of this data in a directory DQ service is done with the approval of the person concerned.

**Question 4.10:** Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.

**Subscriber responsibilities to protect end-user data**

4.58 We have not, so far, explicitly addressed the need to protect end-user information. In practice end-user information will be provided by the subscriber. Until now, the provision of end-user information to OSIS has been provided by the subscriber on this basis and no data protection issues have arisen in practice. We consider that the change in GC19 will result in two generic cases where the subscriber and the end-user would differ:

a) The end-user has a contractual relationship with the subscriber (e.g. the subscriber is supplying lines or the entire facility) in which case the end-user would have normal contractual options and commercial data protection controls sufficient to protect them from misuse; and

b) The end-user has a formal or informal ‘familial’ relationship with the subscriber (father/husband/daughter/de facto spouse etc). We would not normally expect this to be an area where data protection would be a problem as we would expect that it would be in the interest of the subscriber to protect the end-user’s interest.

4.59 Accordingly, we consider there to be a low risk that end-user data will not have adequate protection through the subscriber relationship. The existing data protection legislation which operates through the subscriber is likely to continue to provide suitable protection to the end-user data. We will continue to monitor this issue, together with the Information Commissioner, to ensure end-users received adequate protection.

**Question 4.11:** Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.

4.60 For completeness, in relation to individual subscribers, we note that the Privacy Regulations also provide that:

- they must be specifically informed about any facilities which enable users of a directory or DQ service to obtain access to their personal data solely on the basis of a telephone number (i.e. the generation of a name or address from a telephone number – so-called ‘reverse searching’) and their express consent must be obtained agreeing to allow the information to be made available on this basis (see Privacy Regulation 18(3)); and

- they must, without a charge, be able to verify, correct or withdraw their personal data at any time (see Privacy Regulation 18(5)).

4.61 Although we have no information presently before us to suggest that the operation of these provisions is likely to cause any difficulties, we nonetheless invite stakeholders’ views on them.
Question 4.12: Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)? We would also be interested to hear your views on whether Privacy Regulation 18(5) is sufficient to protect end-user data.

4.62 Finally, while corporate subscribers fall outside the scope of the DPA, Privacy Regulation 18(4) provides that data relating to a corporate subscriber shall not be included in a directory or DQ service where that subscriber has advised the producer of the directory that it does not want its data to be included in that directory.

Question 4.13: Do you have any comments about the operation of the requirement in Privacy Regulation 18(4) as it applies to GC19?

The regulatory terms of supply

4.63 The plain terms of GC19.3 require that the supply of ‘Directory Information’ in accordance with GC 19.1 or 19.2 is done on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information. These requirements closely reflect the wording in Article 25(2) of the Universal Service Directive, which requires that the ‘relevant information’ must be provided “in agreed format” on “terms which are fair, objective, cost oriented and non-discriminatory”.

4.64 While we considered in The Number/Conduit Determinations that the absence of the word “objective” was not material, we believe that it is desirable that GC19 should follow more closely the wording of Article 25(2) of the Universal Service Directive. On that basis, we propose to modify GC19 to make reference also to the word “objective”.

Question 4.14: Do you agree that GC19 should be modified so as to refer also to the word “objective” in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.

Proposed changes to GC19 and related definitions

Proposed condition changes: 19.1, 19.2 and 19.3 redrafted as below with an additional paragraph inserted after 19.3

19.1 The Communications Provider shall meet all reasonable requests from any person under 19.2 to make available the Directory Information of its Subscribers who have been assigned Telephone Numbers for the purposes of the provision of Directories and Directory Enquiry Facilities.

19.2 Persons eligible to request information are:

- directory information providers, that is, any person in the business of providing or intending to provide to end-users telephone numbers by:
  - a publicly available telephone directory, whether printed or electronic; or
- a publicly available telephone directory enquiry service.

- intermediate suppliers of telephone directory information, that is any person in the business of providing or intending to provide telephone directory information to any directory information provider by operating and making available a database containing such information.

19.3 Where the Communications Provider is requested to supply Directory Information in accordance with paragraphs 19.1 or 19.2, it shall do so on terms which are fair, objective, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information. The Communications Provider shall comply with any direction made by Ofcom from time to time with respect to the format to be applied to the information.

19.4 Where, in accordance with Data Protection legislation, the telephone number must be withheld, no Directory Information need be provided other than an explanation that the Directory Information may not be supplied.

(existing paragraphs 19.4 and 19.5 to be renumbered 19.5 and 19.6)

The definition of directory, directory enquiry facilities and directory information modified as follows:

“Directory” means a printed or electronic document containing Directory Information related to an assigned telephone number as agreed with the Subscribers of Publicly Available Telephone Services or other Electronic Communications Services offering non-geographic numbers in the United Kingdom which is made available to members of the public;

“Directory Enquiry Facility” means Directory Information provided by means of a Public Telephone Network, or the provision of onward connection services using Directory Information;

“Directory Information” means the name and address of the subscriber, and where different, end-user associated with a Telephone Number as provided by the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services or other Electronic Communications Services offering non-geographic numbers

- “end-user name” can include any subscriber defined individual or business name intended to support the identification of the end-user in a Directory or through a Directory Enquiry Facility; and

- “end-user address” shall be:
  - the address of the end-user as confirmed by the subscriber; or
  - a functional description, provided by the subscriber, of a business or non-geographic number where a physical address will not be useful for the identification of the number in a Directory or through a Directory Enquiry Facility.
**Question 4.14:** Do you agree with the proposed redrafting of GC19 and related definitions as set out above and discussed through this section? If you disagree, please provide detailed reasons for this view.
Section 5

Wholesale telephone directory information management

Introduction

5.1 In Section 3, we set out why we think that directories and DQ services are likely to continue to be available in the future through normal market conditions. This conclusion was based on the assumption that there would continue to be a source of comprehensive wholesale directory information available to DIPs on reasonable terms. Given our proposal to revoke USC7, this Section reviews what, if any, action is required to ensure the future availability of comprehensive wholesale directory information.

5.2 In this section, we discuss the policy options available to secure the provision of a comprehensive database of directory information and seek stakeholders’ views on those options.

Robustness of current model for wholesale directory information

5.3 The UK currently has a single database (the BT OSIS database as described in section 2 above). With the proposed revocation of USC7, there are a number of risks to the continuation of the current UK model for wholesale directory information:

- BT may cease to maintain OSIS;
- BT may cease to keep OSIS comprehensive; and
- Even if BT continues to maintain a comprehensive central database, the terms on which it is made available to other DIPs could distort competition in DQ services and directories.

5.4 We consider these concerns in turn below, before turning to other possible models for the delivery of wholesale directory information.

BT’s maintenance of a central database

5.5 The first major risk to the current model is that BT will no longer maintain a central database on the grounds of commercial viability.

5.6 During the course of The Number/Conduit Determinations, Ofcom built up an understanding of the finances of OSIS as they currently stand. We consider that running OSIS is currently profitable and is likely to be profitable in the future provided there are no major changes to the revenue received from DIPs or the charges paid to Communications Providers.

5.7 As the provision of OSIS is expected to remain a profitable activity for BT, we consider that this should provide a commercial incentive for BT to continue to maintain it. This is reinforced by the fact that OSIS represents a relatively small part of the directory information value chain, and aside from other sales, supports BT’s profitable downstream activities in DQ services and directories markets.
5.8 In the event that a significant number of DIPs cease to buy services from OSIS, for example, because a competing database was established or because they chose to obtain directory information directly from Communications Providers using GC19, then the finances of OSIS could be changed very significantly. However, given the evident desire by DIPs to continue to utilise the OSIS database (probably due to the costs of establishing an alternative) we do not consider this to be a significant threat to OSIS’s continued viability.

5.9 Accordingly, Ofcom considers that BT will continue to maintain the database for the foreseeable future.

Future comprehensiveness of OSIS

5.10 Another risk is that BT will cease to keep OSIS comprehensive. In particular, there may be a risk that BT will stop gathering data from the smallest Communications Providers. If a Communications Provider only has a small number of customers, there is a risk that BT may not regard it as cost effective to gather information from that Communications Provider.

5.11 Whether BT is likely to maintain the comprehensiveness of OSIS will depend in part on whether DIPs are willing to pay for it to be comprehensive. Given our understanding of the finances of OSIS gained though the disputes, we believe the incremental costs of making OSIS comprehensive are fairly small relative to its total costs. A large proportion of the costs of maintaining OSIS relate to fixed systems costs or the costs of the processing the data of BT’s own subscribers. While BT does incur some additional costs in establishing and managing a contractual relationship with each Communications Provider and also in buying the data, for a Communications Provider with few customers these costs will be small costs compared to the overall costs of OSIS. The additional costs for DIPs of having comprehensive data will therefore be fairly small. Provided the revenue benefits of having comprehensive data outweigh these costs, then they should be prepared to pay for OSIS to be comprehensive.

5.12 On the other hand, it may be worth considering whether DIPs would be prepared to pay for a non-comprehensive database. They would then be faced with either offering a directory service with some basic information gaps (less attractive to customers) or establishing their own independent relationships with the Communications Providers whose information is not collected by BT. This latter option may not be cost effective compared to encouraging BT to maintain a comprehensive database. This reduced value of the database would equally apply to BT itself in support of its own PhoneBook and DQ services.

5.13 For DQ providers, the attractiveness of a comprehensive database is likely to be increased by regulation. PhonePayPlus (formerly ICSTIS) is the regulatory body for all premium rate charged telecommunications services. It maintains and enforces a Code of Practice which contains the rules governing the content and promotion of premium rate services. This includes a requirement on all DQ providers that market themselves as providing numbers for the generality of end-users in the UK to have an up-to-date and comprehensive set of directory information.51 If OSIS ceased to be

51 7.8.1 (a) of the Code of Practice says “In respect of a DQ service which is held out as providing numbers for the generality of end-users in the United Kingdom (or a part of the United Kingdom), that service must be provided using sources which include up-to-date information about all end-users in the United Kingdom (or that part of the United Kingdom) in relation to whom directory information can
comprehensive, then DQ providers using it would not be able to market themselves as covering the generality of the UK. BT itself, as one of the two main DQ providers, would also have to make this clear in its marketing.

5.14 Given the above, we consider that there is considerable internal and external pressure on BT to continue to maintain a comprehensive database.

**Question 5.1:** Do you consider that BT will have sufficient commercial incentive to maintain the comprehensiveness of OSIS? Or do you consider that Ofcom should consider additional regulation to ensure that it will remain comprehensive?

**Availability of OSIS data to DIPs**

5.15 BT could use its ownership of OSIS to restrict competition in the DQ services and directories markets. Ultimately this could damage consumer interest through higher prices for DQ services and electronic directories.

5.16 The ways in which BT could restrict competition in DQ services and the provision of directories include:

- Stopping the supply of wholesale directory information to other DIPs;
- Charging high prices for wholesale directory information, or changing the price structure in a way that is detrimental to competitors; and
- Imposing unreasonable licensing terms for the supply of directory information.

5.17 In the event that BT took such action, it is possible that some DIPs would set up a competing database of wholesale directory information. However, this is likely to take time and it may not be efficient to have two competing databases. There is, therefore, a significant risk that consumers will face higher charges for DQ services if BT were to restrict access to OSIS.

5.18 While we recognise these risks, it does not necessarily follow that there is a need for ex ante regulation of BT to ensure OSIS is available. BT, just like any other operator, is, of course, subject to the EU and UK competition provisions and will be subject to enforcement action if evidence of anti-competitive behaviour is uncovered.

**Other possible models for wholesale directory information**

5.19 The current UK model is of a single central database of wholesale directory information. While other organisations and DIPs perform separate data enhancement tasks and combine the OSIS data with that from other sources, the core of all DQ services and directories is BT’s OSIS database.

5.20 Another possible model for wholesale directory information would be one involving more than one wholesale directory information database. Consumers and/or DIPs could potentially benefit from greater competition between database operators (for example, greater incentives for cost efficiencies and incentives to innovate, driven by competitive pressures). However, the benefits of greater competition would come at the cost of additional transactions and duplication compared to one central database.
5.21 When imposing USC7 on BT in 2003, Oftel stated that it considered requiring access to OSIS to be the most proportionate and effective way to ensure that DIPs were in practice able to access information to compile directories and make services available.52

5.22 However, there are no constraints on other organisations setting up databases to compete with OSIS. GC19 ensures that potential competitors would be able to obtain access to directory information from all Communications Providers. The fact that the UK currently has a single database rather than another model is therefore partly the result of commercial decisions by third parties that it would not be efficient to build their own competing comprehensive databases.

5.23 It is possible in the future that a company other than BT may begin to aggregate wholesale directory information. This could be in the limited form of a DIP obtaining data direct from Communications Providers under GC19 rather than buying data from OSIS, or could even take the form of a competing comprehensive wholesale directory information aggregator.

5.24 If there were two companies buying directory information direct from Communications Providers, this could result in a completely different industry structure than exists today. If the new aggregator made its wholesale directory information database available to all DQ services and directories, then this could result in two competing databases. If the new wholesale directory information aggregator did not make its database available to all DQ services and directories (for example, if it were itself a DQ provider), then the industry structure could tend towards two competing integrated directory information retailers, each collecting directory information directly from Communications Providers.

5.25 While it is possible that there may be significant changes to the industry structure in the future, there are a number of factors that might suggest that a new database is unlikely to be set up in the immediate future:

- First, no new entry has occurred since the current regulatory regime was established in 2003, despite the existence of GC19 which requires Communications Providers to make directory information available. This suggests that it is more commercially attractive to buy data from OSIS than to aggregate directory information independently. However, it is possible that the clarity provided by The Number/Conduit Determinations (for example, on the price for GC19 data) and this policy review may change this.

- Second, the fact that BT is itself the largest user of OSIS data may discourage entry. BT uses OSIS data for its printed directories and DQ services, both of which are profitable activities which we believe BT has a commercial incentive to continue in the future. It is possible that when faced with competition from a new aggregator, BT may find it more profitable to cease operating OSIS and buy wholesale directory information from the new entrant. However, this would only be possible if the new entrant made the data available to BT and would only make sense for BT if it was more profitable to buy the data. In assessing which was the most profitable way of obtaining the data, it would only be the costs of maintaining OSIS that were relevant, even if the past sunk costs in the OSIS system were not recovered. This would make it more difficult for a new entrant to offer a more compelling offering than OSIS.

• Third, in a selection of six EU Member States that we considered, the most common model for wholesale telephone directory information was the centralised database, which is used in Germany, Ireland, Italy and Spain.

  o In Germany, the centralised database is operated by the incumbent Deutsche Telekom. However, DIPs may still source information directly from Communications Providers, such as for data verification and enhancement.

  o Italy mandated Telecom Italia to operate a central database in 2002, in large part on the basis that continued fragmentation would lead to high transaction costs and raise barriers to entry in the directory/DQ market.

  o In Ireland, the centralised database is run by the regulator Comreg, whereas in Spain the centralised data is managed but not actually operated by the regulator CMT.

  o In contrast, France and the Netherlands have not adopted a model for using a centralised database. It is our understanding that neither France nor the Netherlands have plans to introduce or otherwise pave the way for a centralised database. The Dutch incumbent, KPN, needs to compile a comprehensive directory information database to produce directories and a DQ service, but this is not available to third parties. However, much of this information in the Netherlands has traditionally been provided via supplementary, commercial arrangements. In France, directory publishers collect information from each operator.

5.26 In the event that there were significant changes to the provision of wholesale directory information services in the future, we may need to review the industry structure to ensure that the requirements of the Universal Service Directive continue to be met in the way that is in the best interests of consumers. However, given the current arrangements, we consider our policy options below.

Policy Options

5.27 As stated earlier, we consider that access to comprehensive wholesale directory information on reasonable terms is essential for the requirements of the Universal Service Directive for directories and DQ services to be met under normal market conditions.

5.28 We therefore need to consider whether it is appropriate to take action to ensure the continued access to wholesale directory information on reasonable terms. Given the current industry structure, we see three main options:

• **No change:** Currently, BT is making comprehensive OSIS data available to competing DIPs. We believe BT has a commercial incentive to continue to maintain a comprehensive OSIS database. Given this current position, one option is for us to maintain the status quo. There is a risk that BT may cease to make OSIS data available to DIPs on reasonable terms. However, we can use our competition powers in the event that we believe BT to be behaving in an anti-competitive manner.

• **Impose new regulatory conditions on BT to make OSIS available to all DIPs:** If we were concerned by the difficulty of bringing ex post competition enforcement action in relation to the provision of wholesale directory information, then it may be worthwhile to consider the imposition of new regulatory conditions. This might
be achieved through the imposition of significant market power ("SMP") conditions in an appropriately defined market or through access-related conditions. However, the introduction of such measures would require detailed review in order to ensure that the stringent requirements, including European Commission approval in certain circumstance, for such ex ante conditions are met.

- **Establish a new database:** We could establish a new central database, for example through a tender process.

5.29 We are not attracted to the last option. Given that no commercial entity has chosen to establish a new database, it is likely to be inefficient for us to do so. It could involve a significant duplication of resources given that BT already has a functioning central database. It could also result in considerable disruption for DIPs given the established nature of the OSIS database and current system.

5.30 Subject to responses to this consultation, we, therefore, see the choice primarily between the first two options, whilst noting that the second option is not straightforward. The following section provides an overview of Ofcom's legal powers to require BT to make OSIS available to all DIPs.

**Ofcom's legal powers to require BT to make OSIS available to all DIPs**

**Sectoral regulation**

5.31 From an initial legal analysis, there are only two types of conditions that we might consider imposing, if the necessary pre-requisites are satisfied, to secure access to a central database in the UK of telephone directory information (such as OSIS), which are:

- an access-related condition, under section 73 of the 2003 Act;
- SMP service conditions, under one or more of sections 87 to 89 of the 2003 Act.

5.32 As regards access-related conditions, there is a question of whether these are applicable to maintaining a central database comprising directory information. The key question to consider is whether the condition would relate to the provision of network access and service interoperability.

5.33 In addition, we may only impose access-related conditions if they are for the purpose of securing the objectives of efficiency, sustainability and the greatest possible benefit and if it appears to us that they are appropriate for this purpose.

5.34 As to imposing an SMP services condition, the permitted subject-matter is wide-ranging as set out in section 87 of the 2003 Act, including obligations of transparency, non-discrimination, access and price control. To be able to impose such conditions, we would need to consider whether the provision of a central directory information database is an associated facility by reference to a public electronic communications network. If not, we may impose a SMP services condition about network access in exceptional cases upon the approval of the European Commission under section 89 of the 2003 Act.

5.35 We may also, pursuant to section 46(7) of the 2003 Act, be able to apply SMP services conditions on a particular person who is either a Communications Provider or a person who makes associate facilities available, whom Ofcom has determined to
be a person having SMP in a specific market for ECN, ECS or associated facilities. In other words, we would need to carry out a market analysis in relation to the delivery of directory and/or DQ services to establish whether the provision of a central directory information database would constitute a relevant market and, if so, whether the provider has SMP by enjoying a position which amounts to dominance in that market.

**Competition law remedies**

5.36 Part 5 of the 2003 Act confers certain competition functions on Ofcom. Specifically, in relation to commercial activities connected with communications matters, we can apply the Competition Act 1998, concurrently with the Office of Fair Trading (“OFT”) (and Articles 81 and 82 of the EC Treaty).

5.37 We may also make market investigation references to the Competition Commission in relation to the communications sector. The purpose of these investigations is to inquire into markets where it appears that the structure of the market or the conduct of the suppliers or customers is harming competition.

5.38 When making a reference, we must have reasonable grounds for suspecting that one or more features of a market prevents, restricts or distorts competition in relation to the supply or acquisition of goods or services in the UK (or a part of the UK).

**Question 5.2:** Do you consider that there is no need for further regulation on the maintenance and management of BT’s OSIS database and it is sufficient to rely on existing market incentives on BT and the option of drawing on ex post competition powers when competition issues are raised? Or do you consider that regulated access to BT’s OSIS database is necessary in order to achieve Ofcom’s policy objective? Or do you think that there are other options that Ofcom should consider? Please state your reasons.

**Question 5.3:** Do you have any other comments on assessments made or the matters affecting the issues discussed in this Section concerning access to a UK central database?
Section 6

Statutory duties under the Communications Act 2003

6.1 The proposed policy initiatives outlined in this document together with the modifications to the General Conditions and the revocation of USC7 need to be made in accordance with our statutory duties in the 2003 Act. This consideration is set out below.

Sections 3 and 4 of the 2003 Act

6.2 We have considered all our duties under section 3 of the 2003 Act, and, in particular, our principal duties under section 3 of the 2003 Act, which are:

a) to further the interests of citizens in relation to communications matters; and

b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

6.3 We have also considered our duties under section 4 of the 2003 Act and, in particular, the six Community obligations which are to:

a) promote competition:

b) contribute to the development of the European internal market;

c) promote the interests of all persons who are citizens of the European Union, and, in particular, in this context, their rights under Article 8(4)(a) of the Framework Directive which ensure access by end-users to universal services, specifically the provision of directories and directory enquiry services;

d) carry out our functions in a manner which does not favour one technology or service over another;

e) encourage the provision of network access and service interoperability; and

f) encourage compliance with the standards necessary to facilitate service interoperability and to secure freedom of choice for consumers.

6.4 We consider that our proposals are consistent with the principal duties under section 3 of the 2003 Act. We consider that our proposals would be likely to further the interests of citizens and consumers because they directly address the delivery of the rights of citizens and consumers by ensuring that they have affordable entry in, and access to, comprehensive directories and directory enquiry services and that such rights are secured through appropriate regulation which will support the competitive delivery of these services.

6.5 We also consider that our proposals are consistent with the six Community requirements. The proposals will: simplify the existing regulatory regime; ensure necessary access to telephone directory information to allow the competitive
provision of directory and directory enquiry services; protect the privacy of European Union citizens; and clarify the responsibilities of Communications Providers to allow them to meet their responsibilities without undue difficulties. The rationalisation of the provision of directory information proposed will also promote service interoperability and, by reducing the complexity in the provision of information, further encourage compliance by Communications Providers and, thus, secure continued access and choice in the services by consumers.

Section 47(2) of the 2003 Act

6.6 We cannot modify the General Conditions unless the modifications meet the tests set out under section 47(2) of the 2003 Act.

6.7 The tests in Section 47(2) of the 2003 Act are that the modifications must be:

a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

b) not such as to discriminate unduly against particular persons or against a particular description of persons;

c) proportionate to what it is intended to achieve; and

d) in relation to what it is intended to achieve, transparent.

Objectively justifiable

6.8 We consider that our proposals are objectively justifiable. The proposed changes are required to ensure the continued delivery of directories and directory enquiry services and are based on a thorough analysis of the market and set at the minimum level of regulatory intervention required to ensure the rights of citizens are delivered.

6.9 We consider that without this level of regulation there would be insufficient certainty as to the rights of directory information access and the responsibility for information provision to ensure that a comprehensive directory or directory enquiry service is delivered. We have, however, considered in detail the level of regulation required to ensure that citizen and consumer rights are protected and, as a consequence, recommended the removal of obligations on organisations which are no longer considered to be necessary.

6.10 As set out in the impact assessment we have reviewed the potential options, costs and benefits and consider that the resultant recommendations are objectively justified.

Discrimination

6.11 We consider that the proposals do not discriminate against any particular person or description of persons as all changes impact equally on all participants in each section of the market. In fact, we have removed regulations where we considered the burden of meeting the obligations fell disproportionately on some Communications Providers. We have considered the potential for market changes to impact on specific geographic areas or groups of consumers and determined that this is not likely under the current market conditions but noted that we will continue to monitor developments in the market to ensure that such circumstances do not arise in future.
Proportionate

6.12 We have reviewed the market and consider that the regulations proposed are the minimum required to protect the rights of citizens and hence proportionate to the outcome intended.

6.13 We have, as a consequence of this review, recommended a reduction in regulation in most cases. Where additional requirements have been proposed (in the case of the requirement for the provision of end-user data) this has been done in order to ensure that the services fully meet the standard required under the EU framework and, after an assessment of potential costs and existing practice, we consider them to be proportionate in impact and cost.

Transparent

6.14 We are satisfied that the regulations and modifications proposed are transparent insofar as the nature, purpose and impact of the regulations and modifications as set out in this document.

6.15 We have also set out fully our consideration of the issues involved and the alternatives considered. We have invited comment on our analysis and our recommendations and summarised the potential implications in our impact assessment.
Next steps

7.1 This document raises a number of issues and policy proposals linked with access to telephone directory information. Subject to (and in light of the nature of) the responses received by Ofcom to this consultation, Ofcom will implement through a statement in mid 2008 the proposed changes to existing General Conditions and Universal Service Conditions and consider what if any further consultation may be required to refine further our approach on any outstanding issues.

7.2 The precise time scale for publishing a further consultation document is dependant upon certain other factors, such as the possible need to carry out further research and analysis. Specifically, as regards access to related universal services, the consultation process could be further complicated if Ofcom decided that it would be necessary to introduce a USC which would require designation of one or more universal service providers for directories or DQ services. This is because we would need to consider what the most appropriate way of proceeding would be in relation to making any regulations (by way of a statutory instrument), including consulting on proposals for any such designation mechanism.
Annex 1

Responding to this consultation

How to respond

A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 19 May 2008.

A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/dirinfo/howtorespond/form as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email markham.sivak@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Markham Sivak
Competition Policy Manager
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7783 4659

A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views.

Further information

A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Markham Sivak on 020 7783 4659.

Confidentiality

A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response coversheet that this is acceptable).
A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex so that non-confidential parts may be published along with the respondent’s identity.

A1.10 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.

A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use in order to meet its legal requirements. Ofcom’s approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/account/disclaimer/

Next steps

A1.12 Following the end of the consultation period Ofcom intends to publish a statement in 2008 and possibly a further consultation document.

A1.13 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom’s consultation processes

A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.

A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A1.16 If you would like to discuss these issues or Ofcom’s consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom’s consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk
Annex 2

Ofcom’s consultation principles

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

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

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

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest. In this case, however, we have decided to allow 12 weeks in consideration of the consultation running over the Christmas/New Year holiday period.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a ‘red flag consultation’ which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.
Annex 3

Consultation response cover sheet

A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.

A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don’t want to be published. We will keep your completed coversheets confidential.

A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at www.ofcom.org.uk/consult/.

A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your coversheet only so that we don’t have to edit your response.
# Cover sheet for response to an Ofcom consultation

## BASIC DETAILS

Consultation title:  
To (Ofcom contact):  
Name of respondent:  
Representing (self or organisation/s):  
Address (if not received by email):

## CONFIDENTIALITY

What do you want Ofcom to keep confidential?  
Nothing  
Whole response  
Part of the response  
Name/contact details/job title  
Organisation  
If there is no separate annex, which parts?

## DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom’s website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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

Name  
Signed (if hard copy)
Annex 4

Questions raised in this consultation

Section 3

**Question 3.1:** Do you agree with Ofcom’s proposed revocation of USC7? If you disagree, what are your reasons for this view?

**Question 3.2:** Ofcom considers that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability. Do you agree with this assessment? If not please provide a detailed response as to which criteria is not fulfilled and in what way.

**Question 3.3:** Do you agree with Ofcom’s analysis [on the removal of the obligations to provide a printed directory]? If you do not agree please provide your reasons.

**Question 3.4:** Ofcom considers that the DQ market is robust and delivering the level of service required by the Universal Service Directive. It also considers that it is appropriate to maintain the condition on Communications Providers to ensure access to a DQ service to ensure that the universality of provision is maintained. If you do not agree please provide your reasons.

**Question 3.5:** Do you agree with the redrafting of GC8 set out above [at the end of Section 3]? If you do not agree please provide your reasons.

Section 4

**Question 4.1:** Do you agree with Ofcom’s view that GC19 should be modified so as to clarify persons having ‘rights of access’ as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

**Question 4.2:** Do you have any other comments about ‘rights of access’?

**Question 4.3:** Do you agree with Ofcom’s view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19 incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

**Question 4.4:** Do you agree with Ofcom’s view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

**Question 4.5:** Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as ‘Directory Information’) to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS)? (a proposed redrafting of the condition and
Question 4.6: Do you consider that Ofcom should modify GC19 (and related definitions, such as 'Directory Information') such that:

- end-user name and address are also required to be provided; and
- business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?

Question 4.7: Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?

Question 4.8: Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.

Question 4.9: Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.

Question 4.10: Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.

Question 4.11: Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.

Question 4.12: Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)?

Question 4.13: Do you have any comments about the operation of the requirement in Privacy Regulation 18(4) as it applies to GC19? We would also be interested to hear your views on whether Privacy Regulation 18(5) is sufficient to protect end-user data.

Question 4.14: Do you agree that GC19 should be modified so as to referring also to the word “objective” in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.

Question 4.15: Do you agree with the proposed redrafting of GC19 and related definitions as set out above [at the end of Section 4] and discussed through that section? If you disagree, please provide detailed reasons for this view.
Section 5

**Question 5.1:** Do you consider that BT will have sufficient commercial incentive to maintain the comprehensiveness of OSIS? Or do you consider that Ofcom should consider additional regulation to ensure that it will remain comprehensive?

**Question 5.2:** Do you consider that there is no need for further regulation on the maintenance and management of BT’s OSIS database and it is sufficient to rely on existing market incentives on BT and the option of drawing on ex post competition powers when competition issues are raised? Or do you consider that regulated access to BT’s OSIS database is necessary in order to achieve Ofcom’s policy objective? Or do you think that there are other options that Ofcom should consider? Please state your reasons.

**Question 5.3:** Do you have any other comments on assessments made or the matters affecting the issues discussed in this Section concerning access to a UK central database?
Annex 5

Notification of proposed revocation of Universal Service Condition 7

Notification of a proposed revocation under section 48(2) of the Communications Act 2003 (the “Act”)

Proposal for revocation of Universal Service Condition 7 of Part 2 of the Universal Service Order notification regarding BT’s maintenance and supply of a Directory Information database and Directories, which is set out in the Schedule to that notification under regulation 4(10) of the Universal Service Regulations 2003 published by the Director General of Telecommunications on 22 July 2003.

1. OFCOM, in accordance with section 48(2) of the Act, hereby states that it proposes to revoke Universal Service Condition 7 regarding BT’s maintenance and supply of a Directory Information database and Directories.

2. The effect of, and OFCOM’s reasons for making, the proposal referred to in paragraph 1 above are set out in Section 3 of the accompanying explanatory statement.

3. In making this proposal, 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.

4. Representations may be made to OFCOM about its proposal set out in this Notification and the accompanying explanatory statement by 19 May 2008.

5. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.

6. In this Notification:

(i) “Act” means the Communications Act 2003 (c. 21);

(ii) “BT” means British Telecommunications plc;

(iii) “OFCOM” means the Office of Communications;

(iv) “Universal Service Condition 7” means Condition 7 (entitled ‘Maintenance and supply of a Directory Information database and Directories’) as set out in Part 2 of the Schedule to the Universal Service Order notification, which condition is to have effect after the commencement of that section as a condition set by OFCOM under section 45 of the Act pursuant to paragraph 7(2) of Schedule 18 to the Act;

(v) “Universal Service Regulations 2003” means The Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003 No. 33); and

(vi) “Universal Service Order notification” means the notification under regulation 4(10) of the Universal Service Regulations 2003, as set out in Annex A to the document entitled ‘Designation of BT and KCOM as universal service providers, and the specific universal service conditions - A statement and Notification issued by the Director General of
Telecommunications on the implementation of the Universal Service Directive’, as published on 22 July 2003.

7. For the purposes of interpreting this Notification:

(i) except in so far as the context otherwise requires, words or expressions shall have the meaning ascribed to them in paragraph 6 above and otherwise any word or expression shall have the same meaning as it has in the Universal Service Order notification and, subject to such meanings, otherwise any word or expression shall have the same meaning as it has in the Act;

(ii) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament; and

(iii) headings and titles shall be disregarded.

Signatory: David Stewart

Position: Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002 (c. 11)

Date: 10 March 2008
Annex 6

Notification of proposed modifications to General Conditions 8, 14 and 19 and associated definitions

Notification of modifications under section 48(2) of the Communications Act 2003 (the “Act”) of General Condition 8, 14 and 19 of Part 2 of the General Conditions and associated definitions of Part 1 of the General Conditions directories, directory information and directory enquiry facilities, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006.

1. OFCOM in accordance with section 48(2) of the Act hereby make the following modifications to General Conditions 8, 14 and 19 of Part 2 of the General Conditions and associated definitions of Part 1 of the General Conditions regarding directories, directory information and directory enquiry facilities.

2. The proposed modifications are set out in Schedules 1, 2, 3 and 4 to this Notification.

3. The effect of, and OFCOM’s reasons for making, the modifications referred to in paragraph 1 above are set out at sections 3 to 5 of the accompanying explanatory statement.

4. OFCOM considers that the modifications referred to in paragraph 1 above comply with the requirements of sections 45 to 50 of the Act, as appropriate.

5. In making the modifications set out in this 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. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.

7. In this Notification:

   (i) “the Act” means the Communications Act 2003;
   (ii) “General Conditions” means as set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended from time to time; and
   (iii) “OFCOM” means the Office of Communications.

8. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

9. For the purpose of interpreting this Notification:

   (i) headings and titles shall be disregarded; and
(ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament

10. The Schedules to this Notification shall form part of this Notification.

Signed by

David Stewart
Competition Policy Director
A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

10 March 2008
Schedule 1

Draft Modification to General Condition 8 of Part 2 of the General Conditions, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006

General Condition 8 on Operator Assistance, Directories and Directory Enquiry Facilities shall be modified as set out below:

Delete the existing paragraphs 8.1- 8.6 and replace with those set out below:

8.1 The Communications Provider shall ensure that any End-User can access:

(a) operator assistance services; and

(b) a Directory Enquiry Facility containing Directory Information on all Subscribers in the United Kingdom who have been assigned Telephone Numbers by any Communications Provider, except those Subscribers who have exercised their right to have their Directory Information removed, except where such services or facilities have been rendered inaccessible to a particular End-User by the Communications Provider at the End-User’s request or for the purposes of debt management.

8.2 The Communications Provider may charge End-Users a reasonable fee for making available a Directory Enquiry Facility and may charge its Subscribers a reasonable fee for inclusion of Directory Information in a Directory or as part of a Directory Enquiry Facility.

8.3 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

8.4 For the purposes of this Condition, “Communications Provider” means a person who provides Publicly Available Telephone Services (except Public Pay Telephones).
Schedule 2

Draft Modification to General Condition 14 of Part 2 of the General Conditions, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006

General Condition 14 on Codes of Practice and Dispute Resolution shall be modified as set out below:

Delete the fourth bullet point of paragraph 14 of Annex 4 to General Condition 14 - Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services which states:

“• provision of a Directory on request;"
Schedule 3

Draft Modification to General Condition 19 of Part 2 of the General Conditions, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006

General Condition 19 on Provision of Directory Information shall be modified as set out below:

Delete paragraphs 19.1, 19.2 and 19.3 and replace with those set out below:

19.1 The Communications Provider shall meet all reasonable requests from any person under 19.2 to make available the Directory Information of its Subscribers who have been assigned Telephone Numbers for the purposes of the provision of Directories and Directory Enquiry Facilities.

19.2 Persons eligible to request information are:

19.2(a) directory information providers, that is, any person in the business of providing or intending to provide to end-users telephone numbers by:

- a publicly available telephone directory, whether printed or electronic; or

- a publicly available telephone directory enquiry service.

19.2(b) intermediate suppliers of telephone directory information, that is any person in the business of providing or intending to provide telephone directory information to any directory information provider by operating and making available a database containing such information.

19.3 Where the Communications Provider is requested to supply Directory Information in accordance with paragraphs 19.1 or 19.2, it shall do so on terms which are fair, objective, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information. The Communications Provider shall comply with any direction made by Ofcom from time to time with respect to the format to be applied to the information.

Additional paragraph 19.4 to be inserted

19.4 Where, in accordance with Data Protection legislation, the telephone number must be withheld, no Directory Information need be provided other than an explanation that the Directory Information may not be supplied.

Existing paragraphs 19.4 and 19.5 to be renumbered 19.5 and 19.6.
Schedule 4

Draft Modification to Definitions of Part 1 of the General Conditions, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003 as amended by the notification made by Ofcom on 30 March 2006

Delete the definitions of Directory, Directory Enquiry Facilities and Directory Information and replace as follows:

“Directory” means a printed or electronic document containing Directory Information related to an assigned telephone number as agreed with the Subscribers of Publicly Available Telephone Services or other Electronic Communications Services offering non-geographic numbers in the United Kingdom which is made available to members of the public;

“Directory Enquiry Facility” means Directory Information provided by means of a Public Telephone Network, or the provision of onward connection services using Directory Information;

“Directory Information” means the name and address of the Subscriber, and where different, end-user associated with a Telephone Number as provided by the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services or other Electronic Communications Services offering non-geographic numbers:

- “end-user name” can include any Subscriber defined individual or business name intended to support the identification of the end-user in a Directory or through a Directory Enquiry Facility; and

- “end-user address” shall be:
  - the address of the end-user as confirmed by the Subscriber; or
  - a functional description, provided by the Subscriber, of a business or non-geographic number where a physical address will not be useful for the identification of the number in a Directory or through a Directory Enquiry Facility.
Annex 7

Impact Assessment

Introduction

A7.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).

A7.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.

A7.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website: [http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

Ofcom’s policy objective Revocation of USC7

A7.4 The determination of the disputes between The Number/Conduit and BT have led to a number of policy issues arising that are considered in this policy review. Ofcom’s policy objectives for this review are twofold:

- To ensure that consumers continue to have reasonable access to directory information; and
- To ensure that the requirements of the Universal Service Directive are met in the UK.

A7.5 We believe USC7 is unlawful for the reasons set out in Section 3. Given this, we believe that we have no option but to revoke it. The consequences of revoking USC7 are that BT will no longer be required by Ofcom to maintain a central database of directory information. Nor will BT be required to make available (on regulated terms) wholesale directory information to DQ providers or other directory information providers, or to provide directories to other Communications Providers to enable them to comply with GC8. Arguably, of course, BT’s obligation was not enforceable but up to this point BT has acted in accordance with these requirements.

A7.6 USC7 was one part of the arrangements put in place by Oftel to ensure that consumers had access to a DQ service and a directory. With its removal, there is a risk that consumers will not have adequate access to directory services and that the requirements of the Universal Service Directive will not be met. We therefore consider these risks below and the policy options for addressing them.
Access to related universal service

Access to directories in the future

A7.7 The current arrangements for ensuring the availability of directories involve GC8.2 and USC7. GC8.2 requires all Communications Providers to supply, on request, a printed local directory. USC7 supports this by requiring BT to make directories available to other Communications Providers. With the proposed revocation of USC7, Ofcom has considered three options for ensuring that consumers continue to have reasonable access to directories and that the requirements of the Universal Service Directive on directories are met:

• Option 1: do nothing and maintain GC8.2;

• Option 2: remove GC8.2 and impose a Universal Service Obligation to make directories available to customers by one or more entity; and

• Option 3: remove GC8.2 and rely on normal market conditions to deliver directories without any regulatory requirement to do so.

A7.8 The disadvantage of Option 1 is that, when USC7 is revoked, it could potentially be onerous for Communications Providers to have to supply a printed local directory on request. Other than BT, there are currently no other potential providers of such directories (with the exception of the Hull area) and Communications Providers will not typically have experience of producing such directories. Because of the potential impact on Communications Providers, Ofcom is therefore not attracted to Option 1.

A7.9 Option 2 has the advantage of removing the potentially onerous GC8.2. By imposing a Universal Service Obligation this option would ensure that consumers still had access to a directory by requiring the designated Universal Service entity or entities to provide it. The potential disadvantage is that, if directories are likely to be provided anyway for commercial reasons, then this would involve imposing an unnecessary regulatory condition.

A7.10 Option 3 has the advantage of removing the potentially onerous GC8.2 without imposing any new regulatory requirements. The risk with Option 3 is that, with the removal of GC8.2, printed directories will cease to be universally available. If this were the case, then there would be a danger that the UK would not be compliant with the Universal Service Directive as well as depriving individuals of a service they have come to expect. This would depend on whether electronic directories (e.g. on line directories) were still available and whether the availability of such directories was sufficient to meet the Universal Service Directive. There would be particular concern over whether households without access to the internet had sufficient access to an electronic directory. At Q1 2007, 36% of households did not have the internet at home (although this number is expected to decline over time)\(^{53}\). We believe that at the current time local printed directories are likely to be necessary to satisfy the Universal Service Directive and provide consumers with reasonable access to directory information.

A7.11 The choice between Options 2 and 3 therefore depends on whether we think it likely that printed local directories will continue to be provided in the future once GC8.2 is

\(^{53}\) Ofcom’s The UK Communications Market 2007, Figure 4.72
http://www.ofcom.org.uk/research/cm/cmr07/telecoms/telecoms.pdf
revoked. There are currently two types of printed comprehensive directories delivered in the UK. BT delivers around 170 local editions of its directory, the ‘Phone Book’, which together cover all of the UK except for the Hull area. KCOM publishes a directory in the Hull area, the ‘Hull White Pages’. We are interested in whether BT and KCOM have commercial incentives to continue to produce their comprehensive directories, even without a regulatory obligation. We discuss them in turn below.

**BT’s Phone Book**

A7.12 The Phone Book is now a bundled product containing both a comprehensive directory for residential and business numbers in an A-to-Z format and also classified advertisements, in which entries are organised under business classifications such as ‘plumbers’ or ‘taxis’. BT began to include classified advertisements in some local versions of the Phone Book in 2002, and by 2005 all 170 local versions contained classified advertisements.

A7.13 Based on confidential information provided by BT, it is clear that the Phone Book is currently profitable and likely to remain so for the foreseeable future. This appears consistent with the report by the Competition Commission in December 2006 of its investigation into the Classified Directory Advertising Services market, primarily regarding the position of Yell which is the market leader. In that report, the Competition Commission says that BT is becoming a more significant operator in the classified advertisement market, and its market share had grown rapidly since 2002.

A7.14 It is possible that if the regulatory requirement to publish the A-Z directory listing were removed, BT may choose to publish only the classified advertising section of the Phone Book. However, we consider that there are a number of commercial reasons why BT would not. Firstly, BT obtains revenue from producing the A-Z section from the wholesale line rental (WLR) charge and also from selling advertising in the A-Z section. Secondly, the bundling of the A-Z part of the Phone Book and the classified advertisements is likely in part to increase classified advertisements revenues as it is the main unique selling point of the Phone Book. The A-Z sections of the Phone Book may help to give the Phone Book as a whole greater prominence and make it more attractive for businesses to advertise in the classified section.

A7.15 Even if BT continues to produce a bundled Phone Book, there are other risks that could threaten the continued provision of the printed directory. BT may stop delivering the Phone Book to certain geographical areas, or to non subscribers or that it may stop producing it on a 12 monthly basis.

A7.16 As BT considers the profitability of the Phone Book as a whole, rather than by geographical area, we cannot directly consider the profitability by geographical area. However, we can compare the average profitability per directory of all directories with delivery costs per directory by area. BT has supplied Ofcom with information on the delivery costs of the Phone Book for different geographical areas, and these vary significantly between different areas. However, even for the

54 [http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/521.pdf](http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/521.pdf). The Competition Commission estimated that Yell has around 75 per cent of the UK advertising revenues for major classified directory advertising services. The Competition Commission found that Yell had market power and this could lead to Yell setting excessive prices. The remedies the Competition Commission imposed included a price control on Yell’s rate card.
areas with the highest delivery costs, these costs are significantly less than the average profit per directory. There may also be benefits from increased classified advertising revenue from providing near uniform geographical coverage. The Competition Commission notes that some businesses, such as insurance companies, seek national coverage for their advertisements.

A7.17 BT’s delivery to non-subscribers was based on a commercial decision related to the economics of delivery and entering the classified advertising market. Given the need to compete for advertisers with the universal coverage of Yellow Pages and Thompson, it seems highly unlikely BT would move back to subscriber delivery only.

A7.18 Another concern may be that without the requirement to produce a new directory every 12 months, BT may only update the Phone Book over a longer period than 12 months. This may be particularly a concern because BT only used to update the Phone Book every 18 months. However, classified advertising revenue is the most important source of revenue for the Phone Book. The other two major classified directories, Yellow Pages and Thomson Local, both use an annual publication cycle. An annual publication cycle is therefore the norm for the classified directories market, and BT is therefore likely to have commercial reasons to retain an annual production cycle.

A7.19 On balance, Ofcom believes that BT is likely to have commercial reasons to continue to deliver a bundled Phone Book that includes both A-Z and classified advertisements in the future, and that it will do so every 12 months.

KCOM Communication’s Hull White Pages

A7.20 KCOM publishes a comprehensive ‘A to Z’ business and residential directory for its area, known as Hull White Pages. This is published separately from its classified advertising directory, Hull Colour Pages. KCOM does not produce separate management accounts for its White Pages, rather this is subsumed in KCOM’s directory publishing business (which includes the production of both). Based on confidential information provided by KCOM, the directory publishing business as a whole appears profitable.

Conclusion on future of printed directories

A7.21 BT and KCOM are able to offer a self-financing printed directory service which delivers net returns to their company thereby ensuring that the market satisfies the need for a directory to be made available to all end users. We believe it is likely that comprehensive local printed directories will continue to be provided in the future for commercial reasons without any regulatory requirement. This is based on the assumption that wholesale directory information continues to be available in the future at reasonable cost, which is discussed further below.

A7.22 We therefore believe that Option 3 is the most appropriate option and propose to remove GC8.2 and rely on normal market conditions to deliver directories without any regulatory requirement to do so.

A7.23 We recognise that there is some risk that directories will not be provided in the future. We will monitor this. If circumstances change, for example if BT were to cease to make available universally a printed local directory, then Ofcom would

---

55 As confirmed in Thomson’s and Yell’s submissions to the Competition Commission.
need to assess consumer access to directory information at that time. If Ofcom were concerned that consumers do not have reasonable access to directory information or the Universal Service Directive is not being implemented, then we would consider imposing a regulatory obligation at that time.

**Access to DQ services in the future**

**A7.24** Ofcom does not propose to make any changes in relation to DQ services. Assuming there continues to be access to wholesale directory information at reasonable cost (which is discussed further below), Ofcom believes that the market will continue to satisfy the Universal Service Directive requirements in the future.

**A7.25** There is a risk that DQ services will cease to be provided, but Ofcom regards this risk as being very low, given the number of providers currently and the fact that the main providers appear to be profitable.

**A7.26** A separate risk is that, even though they are available, DQ services may become unaffordable for consumers. For the large majority of consumers, their use of DQ services is very low and affordability issues are very unlikely to arise. This risk is therefore greater for heavy users of DQ services, but is mitigated by competition between DQ services. Heavy users of DQ services are more likely to be aware of the price of DQ services and more inclined to switch to a cheaper service if the price from their current supplier increases.

**Access to telephony directory information**

**Persons having ‘rights of access’ to telephony directory information**

**A7.27** In The Number/Conduit Determinations, Ofcom gave guidance on who had a ‘right of access’ to GC19 directory information from Communications Providers. Ofcom’s guidance was that it considered that those persons with a right to GC19 directory information should include both:

- intermediate suppliers, who do not themselves provide either directories or DQ services to end-users; and
- business classified directories providers.

**A7.28** In this policy review, Ofcom has considered three options:

- Option 1: do nothing and do not change the existing wording;
- Option 2: changing the wording to clarify that any person seeking to provide relevant directory information services has, on request, ‘rights of access’ to such information falling under GC19; and
- Option 3: changing the wording of GC19 so as to restrict access to those who themselves provide retail directory enquiries or directory services.

**A7.29** Option 1 involves no changes. This has the potential disadvantage of leaving some ambiguity in the wording of the condition, notwithstanding the fact that Ofcom has clarified its understanding of the wording in its guidance. In contrast, Options 2 and 3 have the advantage of providing greater clarify to the regulatory framework.
A7.30 Option 2 would clarify the wording of GC19 to make explicit that any person seeking to provide relevant directory information services has, on request, ‘rights of access’ to such information falling under GC19. Persons with rights of access would include any directory information providers and intermediate supplier of telephone directory information (that is to say any person in the business of providing or intending to provide telephony directory information to any directory information provider referred to above by operating and making available a database containing such information, but who does not itself necessarily provide such directories or DQ services to end-users).

A7.31 In providing greater clarity in relation to the parties who may have a “right of access” to GC19 directory information, Option 2 could result in more requests to Communications Providers for GC19 directory information compared to Option 3. This could raise a number of potential concerns:

- **Data protection**: concerns from the Communications Provider that directory information provided will only be used for the provision of directories or DQ services, as an intermediary could on-sell the information to a party with whom the Communications Provider had no contractual relationship;

- **Burden on Communications Providers**: An increase in requests for GC19 directory information from different parties could result in an increased burden on Communications Providers; and

- **Commercial implications for OSIS**: the greater clarity on who has access to GC19 directory information (combined with the other changes that Ofcom is proposing in this policy review) may make it more likely that intermediate suppliers may buy GC19 data directly and effectively compete with OSIS. This could eventually threaten the financial viability of OSIS.

A7.32 On data protection, subject to stakeholder responses to this consultation, Ofcom regards this potential issue as low risk, because we believe it should be possible to address this concern contractually (for example by ensuring contractually that the person supplied with data undertakes to procure the compliance of relevant regulatory and legal obligations when it sells the data onwards).

A7.33 Regarding the burden on Communications Providers, we recognise that this could become onerous if there were many DIPs requesting information directly from Communications Providers. Communications Providers would be required to assess whether the party requesting information is entitled to it and that data protection rules are adhered to. Option 2 potentially imposes additional costs on Communications Providers compared to Option 3. In practice, however, we think that OSIS is likely to remain the main point of supply for wholesale directory information for DIPs.

A7.34 Regarding the potential commercial threat to OSIS, Ofcom recognises this possibility but does not believe this is a valid reason for not extending access to GC19. There are potential advantages for consumers in changing GC19 so that it is easier to establish a rival database that competes with OSIS. While there would be some duplication, the competitive pressures that would result from a second database may tend to lower costs and provide a greater spur to innovation. We therefore do not see this as a potential disadvantage of Option 2, but rather as a potential advantage over Option 3.
A7.35 While Option 3 would impose less of a burden on Communications Providers and not raise any data protection concerns, it has the disadvantage of potentially preventing some wholesale directory information services which ultimately could lead to less retail directory information services for consumers, and it removes the potential threat of a competing database being established. Such a potential threat could be in consumers' interests by exerting pressure on OSIS to ensure costs are reasonable.

A7.36 We think that it is important for the regulatory framework to be as clear as possible and propose to move away from Option 1 to achieve this. We think that, on balance, the potential benefits of Option 2 compared to Option 3 outweigh the additional costs on Communications Providers. We therefore propose to clarify the wording of GC19 to make explicit that any person seeking to provide relevant directory information services has, on request, ‘rights of access’ to such information falling under GC19.

Responsibility for provision of information

A7.37 At present the primary responsibility for the provision of directory information to those with the right of access under GC19 rests with the Communications Provider which was originally allocated the telephone number. In accordance with GC19.2, any Communications Provider who has subsequently been authorised (either directly or indirectly) to use a telephone number assigned to another Communications Provider has only the responsibility to provide information to either:

(a) the person who was originally Allocated such Telephone Numbers; or

(b) if different from the above, the person who authorised the use of such Telephone Numbers by it.

A7.38 In terms of the responsibility for the provision of directory information, Ofcom has considered two options:

- Option 1: do nothing and retain the obligation on the Communications Provider that is currently required to provide GC19 directory information; and

- Option 2: Require the Communications Provider that currently controls the telephone number to provide GC19 directory information (irrespective of whether the number was obtained directly or through assignment), and no longer require the Communications Provider that originally allocated the number to provide the data.

A7.39 The main disadvantage we see with Option 1 (the current approach) is that it will become increasingly complex to manage over time. As number portability increases, it will become increasingly complex for the original organisation to which the number was allocated to have responsibility for directory information. Because of this complexity, we think this option is likely to become increasingly costly to operate over time.

A7.40 In contrast, Option 2 would not become more complex over time. The responsibility would always be with the current Communications Provider. As a Communications Provider takes over the retail relationship with a customer, it will enter into a contract with that customer for the supply of PATS and, in so doing, will hold and
collect directory data. One disadvantage of Option 2 is that it could lead to some smaller Communications Providers having to manage direct third party approaches for directory information for the first time. This could represent a greater burden on these Communications Providers than simply passing the data back to the organisation which had originally requested the number allocations. However, it may be possible for smaller Communications Providers to mitigate this burden through commercial agreements. For example, Communications Providers may be able to delegate responsibility for providing GC19 directory information to a third party.

A7.41 Another disadvantage of Option 2 is that it may become more difficult for directory information aggregators (such as BT with OSIS) to find and establish contractual relationships with all Communications Providers, as the number of Communications Providers with an obligation to provide GC19 directory information to DIPs will increase. This could make it harder for directory information aggregators to compile comprehensive directory information. However, this issue would increase anyway, as more Communications Providers take on direct allocations of numbers. We do not believe we are materially increasing this risk.

A7.42 Despite these disadvantages, we believe that, on balance, Option 2 is better than the current arrangements. If Option 2 is more cost effective to implement than the current arrangements, then this should ultimately feed through to consumers in terms of cheaper directory information. We therefore propose to require the Communications Provider that currently controls the telephone number to provide GC19 directory information.

Inclusion of non-geographic numbers

A7.43 Currently GC19 only relates to PATS numbers. This means that non-geographic numbers (such as ‘0845’ and ‘0870’) are not covered by GC19. Ofcom has considered two options:

- Option 1: do nothing and do not extend GC19 to non-geographic numbers; and
- Option 2: explicitly extend GC19 to cover non-geographic numbers.

A7.44 Compared to Option 1, Option 2 has the disadvantage of imposing an additional regulatory burden on Communications Providers that have end users with these numbers. This may includes some Communications Providers who are not currently under any obligation to provide GC19 data. For example, this may be the case for Number Translation Services. This may result in additional costs to these Communications Providers. However, we believe that this will be unlikely to result in a significant extra burden for the Communications Providers in practice. This is because non-geographic numbers are currently entered into OSIS through commercial arrangements. Additional costs will only be imposed on these Communications Providers if DIPs seek GC19 data direct from them.

A7.45 We believe that the additional burden imposed on some Communications Providers by Option 2 is outweighed by the importance of ensuring that DIPs have access to non-geographic numbers, which are an accepted and important component of business communication in the UK. These numbers therefore represent an important element in a comprehensive directory service.
A7.46 To ensure that DIPs will continue to be able to access directory information for non-geographic numbers in the future, Ofcom is proposing to extend the coverage of GC19 to include non-geographic numbers.

The scope of telephony directory information

A7.47 On the issue of what data GC19 should cover, Ofcom has considered three options:

- Option 1: do nothing and retain the current requirement, which requires a Communications Provider to provide only directory information about the subscriber;

- Option 2: revise GC19 to require the Communications Provider to provide additional directory information including the end-user ‘name’ and ‘address’ as defined by the subscriber, where the end-user is different from the subscriber; and

- Option 3: revise GC19 to require the Communications Provider to provide additional directory information with the ‘user’ and ‘address’ as defined by the subscriber and also with other data, potentially including titles and a business description.

A7.48 Option 1 has the advantage of not extending regulation, but means that the directory information provided may not always be useful, as the subscriber is not always the user of the telephone number. It is the information that relates to the actual user which is useful to DIPs and ultimately to consumers.

A7.49 Options 2 and 3 address this issue, by allowing the inclusion of end-user ‘name’ and ‘address’ to be defined by the subscriber. However, there would be an increased regulatory burden on Communications Providers who would be required to clarify with the subscriber what name and address should be used for directory information. There is a risk that this will impose an extra cost on Communications Providers, who will have to check how the subscriber wants its details to be recorded. In practice, we believe any additional burden will be limited because Communications Providers effectively already do this, as this information is similar to what is passed to OSIS. There may, however, be an additional burden on those Communications Providers that were not previously covered by GC19 but who will be covered as a result of the proposed changes to GC19.

A7.50 The more additional data that was required under Options 2 and 3, the greater the additional burden would be on Communications Providers. However, Communications Providers would be allowed to recover the additional costs of gathering this information.

A7.51 Because of the benefits of ensuring the information provided to DIPs is more useful, Ofcom prefers Options 2 and 3 to Option 1. Ofcom proposes to revise GC19 to require Communications Providers to provide additional directory information with the inclusion of end-user ‘name’ and ‘address’ which are to be defined by the subscriber. We are seeking stakeholders’ views on whether any additional information should be made available under GC19, while recognising that any extra information is likely to impose additional burden on Communications Providers.
Access to wholesale directory information

A7.52 Our assessment that the DQ market and provision of directories will continue in the future to meet the Universal Service Directive requirements was conditional on wholesale directory information being available on reasonable terms. With the proposed revocation of USC7, there is a risk that this will not be the case.

Options for ensuring access to wholesale directory information

A7.53 Ofcom has considered three options for ensuring the availability of wholesale directory information:

- Option 1: do nothing and rely on the future provision of OSIS data on reasonable terms by BT;
- Option 2: the possibility, all be it difficult, of imposing new regulatory conditions on BT to make OSIS available to all DIPs; and
- Option 3: establish a new comprehensive database that makes data available to all DIPs.

A7.54 Option 1 has the advantage of being the least intrusive, requiring no new regulation. However, it has a number of potential disadvantages:

- There is a risk that BT may cease to maintain OSIS. However, subject to their being no fundamental change in the industry structure, we regard this as low risk because we believe that BT has a commercial incentive to maintain OSIS.
- BT may exploit its ownership of OSIS to damage competition in the supply of DQ services and directories. This might include through:
  - Stopping the supply of wholesale directory information to other DIPs;
  - Charging higher prices for wholesale directory information, or changing the price structure in a way that is detrimental to competitors; and
  - Imposing unreasonable licensing terms for the supply of directory information.

A7.55 However, BT, like all other undertakings, is subject to the Competition Act 1998. Ofcom would expect companies to comply with their competition law obligations or be subject to enforcement action.

A7.56 Option 2 would involve imposing new regulatory conditions on BT, subject to the stringent requirements set out in the 2003 Act being satisfied. This might be through an access-related condition or an SMP condition. The advantage of Option 2 over Option 1 is that it more effectively ensures access to wholesale directory information, but this comes at the cost of more regulation. However, the disadvantage is, that it is not certain that the requirements for adopting ex ante regulation can be satisfied.

A7.57 Option 3 would, like the second option, ensure the availability of wholesale directory information to all DIPs. The disadvantages are that it is unlikely that it would be efficient for Ofcom to do this, given that no commercial entity has chosen to establish a new database to date. It could involve a significant duplication of resources given that BT already has a functioning central database and could also
result in considerable disruption for DIPs given the established nature of the OSIS database and current system. We view these disadvantages as significant, making Options 1 and 2 more attractive than Option 3.

A7.58 We have not yet reached a view about the relatively attractiveness of Options 1 and 2 and are seeking stakeholders views on this, although we do see difficulties in seeking to impose ex ante regulations.

Significant changes in industry structure

A7.59 It is possible in future that a company other than BT may begin to aggregate wholesale directory information. This could be in the limited form of a DIP obtaining data direct from Communications Providers under GC19 rather than buying data from OSIS, or could even take the form of a competing comprehensive wholesale directory information database. Equally, the economics of maintaining the database by BT may adversely change.

A7.60 While, at least in the first instance, the outcome could be beneficial, in the event of significant changes, Ofcom may need to review the industry to ensure that the requirements of the Universal Service Directive continue to be met in the way that is in the best interests of consumers. Ofcom will monitor any significant industry developments to ensure the interests of consumers are protected.
Annex 8

Relevant legal and regulatory framework

A8.1 Set out below are relevant extracts from the Universal Service Directive, the Privacy Directive, the Universal Service Order, the Privacy Regulations and the full text of the current General Conditions 8 and 19 and Universal Service Condition 7 plus supporting definitions.

Universal Service Directive

A8.2 Article 5 (entitled ‘Directory enquiry services and directories’) is as follows:

“1. Member States shall ensure that:

(a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;

(b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.

2. The directories in paragraph 1 shall comprise, subject to the provisions of Article 11 of Directive 97/66/EC, all subscribers of [PATS].

3. Member States shall ensure that the undertaking(s) providing the services referred to in paragraph 1 apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.”

A8.3 Article 25 (entitled ‘Operator assistance and directory enquiry service’) is as follows:

“1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a).

2. Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.

3. Member States shall ensure that all end-users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with Article 5(1)(b).

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State."
5. Paragraphs 1, 2, 3 and 4 apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 11 of Directive 97/66/EC.”

The Privacy Directive

A8.4 Article 12 of the Privacy Directive provides:

“1. Member States shall ensure that subscribers are informed, free of charge and before they are included in the directory, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

2. Member States shall ensure that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

3. Member States may require that for any purpose of a public directory other than the search of contact details of persons on the basis of their name and, where necessary, a minimum of other identifiers, additional consent be asked of the subscribers.

4. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to their entry in public directories are sufficiently protected.”

A8.5 The 38th and 39th recitals to the Privacy Directive’s preamble elaborate on the substantive provisions in Article 12 as follows:

“(38) Directories of subscribers to electronic communications services are widely distributed and public. The right to privacy of natural persons and the legitimate interest of legal persons require that subscribers are able to determine whether their personal data are published in a directory and if so, which. Providers of public directories should inform the subscribers to be included in such directories of the purposes of the directory and of any particular usage which may be made of electronic versions of public directories especially through search functions embedded in the software, such as reverse search functions enabling users of the directory to discover the name and address of the subscriber on the basis of a telephone number only.

(39) The obligation to inform subscribers of the purpose(s) of public directories in which their personal data are to be included should be imposed on the party collecting the data for such inclusion. Where
the data may be transmitted to one or more third parties, the subscriber should be informed of this possibility and of the recipient or the categories of possible recipients. Any transmission should be subject to the condition that the data may not be used for other purposes than those for which they were collected. If the party collecting the data from the subscriber or any third party to whom the data have been transmitted wishes to use the data for an additional purpose, the renewed consent of the subscriber is to be obtained either by the initial party collecting the data or by the third party to whom the data have been transmitted.”

The Universal Service Order

A8.6 The Universal Service Order made by the Secretary of State under section 65 of the 2003 Communications Act:

“Universal service obligations

3. The extent to which the things falling within section 65(2) of the Act must be provided, made available or supplied throughout the United Kingdom is set out in the Schedule to this Order.

Guidance on the pricing of universal service obligations

4. The matters set out in the Schedule should be offered at prices that are:

(a) affordable for all end-users; and

(b) uniform throughout the United Kingdom, unless OFCOM have determined that there is clear justification for not doing so.

SCHEDULE

Directories

2.—(1) At least one comprehensive directory shall be made available to end-users in a form approved by OFCOM, whether printed or electronic, or both, and it shall be updated at least once a year.

(2) This directory shall comprise, subject to the provisions of the Telecommunications (Data Protection and Privacy) Regulations 1999, the details of all subscribers of publicly available telephone services and their telephone numbers, including fixed and mobile telephone numbers.

Directory Enquiry Facilities

3.—(1) At least one comprehensive telephone directory enquiry facility shall be made available to end-users, including users of public pay telephones.

(2) This facility shall comprise, subject to the provisions of the Telecommunications (Data Protection and Privacy) Regulations
1999, the details of all subscribers of publicly available telephone services and their telephone numbers, including fixed and mobile telephone numbers.

The Privacy Regulations

A8.7 The Privacy Directive has been implemented by the Privacy and Electronic Communications (EC Directive) Regulations 2003\(^{56}\) (the “Privacy Regulations”), which were made by the Secretary of State under section 2(2) of the European Communities Act 1972 on 18 September 2003 and came into force on 11 December 2003.

A8.8 Regulation 18 provides:

“Directories of subscribers

18.—(1) This regulation applies in relation to a directory of subscribers, whether in printed or electronic form, which is made available to members of the public or a section of the public, including by means of a directory enquiry service.

(2) The personal data of an individual subscriber shall not be included in a directory unless that subscriber has, free of charge, been—

(a) informed by the collector of the personal data of the purposes of the directory in which his personal data are to be included, and

(b) given the opportunity to determine whether such of his personal data as are considered relevant by the producer of the directory should be included in the directory.

(3) Where personal data of an individual subscriber are to be included in a directory with facilities which enable users of that directory to obtain access to that data solely on the basis of a telephone number—

(a) the information to be provided under paragraph (2)(a) shall include information about those facilities; and

(b) for the purposes of paragraph (2)(b), the express consent of the subscriber to the inclusion of his data in a directory with such facilities must be obtained.

(4) Data relating to a corporate subscriber shall not be included in a directory where that subscriber has advised the producer of the directory that it does not want its data to be included in that directory.

(5) Where the data of an individual subscriber have been included in a directory, that subscriber shall, without charge, be able to verify, correct or withdraw those data at any time.

\(^{56}\) S.I. 2003/2426.
(6) Where a request has been made under paragraph (5) for data to be withdrawn from or corrected in a directory, that request shall be treated as having no application in relation to an edition of a directory that was produced before the producer of the directory received the request.

(7) For the purposes of paragraph (6), an edition of a directory which is revised after it was first produced shall be treated as a new edition.

(8) In this regulation, “telephone number” has the same meaning as in section 56(5) of the Communications Act 2003 but does not include any number which is used as an internet domain name, an internet address or an address or identifier incorporating either an internet domain name or an internet address, including an electronic mail address.”

A8.9 As regards the meaning of “subscriber”, regulation 2(1) provides that it “…means a person who is a party to a contract with a provider of public electronic communications services for the supply of such services”. The term “public electronic communications services” is defined as simply as having the meaning given in section 151 of the 2003 Act, that is to say any Electronic Communications Service that is provided so as to be available for use by members of the public. As seen from regulation 18, a distinction is then drawn between individual and corporate subscribers, which terms are defined as follows:

““corporate subscriber” means a subscriber who is—

(a) a company within the meaning of section 735(1) of the Companies Act 1985;

(b) a company incorporated in pursuance of a royal charter or letters patent;

(c) a partnership in Scotland;

(d) a corporation sole; or

(e) any other body corporate or entity which is a legal person distinct from its members;

…

“individual” means a living individual and includes an unincorporated body of such individuals;”

The General Conditions

A8.10 General Condition 8

“8. OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIES

8.1 The Communications Provider shall ensure that any End-User can access:
(a) operator assistance services; and

(b) a Directory Enquiry Facility containing Directory Information on all Subscribers in the United Kingdom who have been assigned Telephone Numbers by any Communications Provider, except those Subscribers who have exercised their right to have their Directory Information removed,

except where such services or facilities have been rendered inaccessible to a particular End-User by the Communications Provider at the End-User’s request or for the purposes of debt management.

8.2 Where the Communications Provider assigns Telephone Numbers to Subscribers, it shall ensure that each of those Subscribers is, on request, supplied with a Directory containing Directory Information on all Subscribers who have been assigned Telephone Numbers in the Subscriber’s local area. Directories containing Directory Information for all other Subscribers outside the local area who have been assigned Telephone Numbers by any Communications Provider must be supplied to the Subscriber on request. Any Directories supplied shall not contain Directory Information for those Subscribers who have exercised their right to have their Directory Information removed.

8.3 A Directory may be produced by the Communications Provider, or by another person. Where a Directory is produced by the Communications Provider, the Communications Provider shall ensure that it is updated on a regular basis (at least once a year). The Director may from time to time direct that a Directory is available in a particular form.

8.4 The Communications Provider may charge End-Users a reasonable fee for making available a Directory Enquiry Facility, local Directory and any additional Directories, and may charge its Subscribers a reasonable fee for inclusion of Directory Information in a Directory or as part of a Directory Enquiry Facility.

8.5 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

8.6 For the purposes of this Condition, “Communications Provider” means a person who provides Publicly Available Telephone Services (except Public Pay Telephones).

19. PROVISION OF DIRECTORY INFORMATION

19.1 Where the Communications Provider has been Allocated Telephone Numbers in accordance with Condition 17, it shall meet all reasonable requests from any person to make available the Directory Information of:
(a) its Subscribers who have been assigned those Telephone Numbers; and

(b) any other End-User assigned a Telephone Number originally Allocated to the Communications Provider,

for the purposes of the provision of Directories and Directory Enquiry Facilities.

19.2 Where the Communications Provider has been authorised (either directly or indirectly) to use Telephone Numbers Allocated to another person, it shall on request supply to:

(a) the person who was originally Allocated such Telephone Numbers; or

(b) if different from the above, the person who authorised the use of such Telephone Numbers by it,

the Directory Information of the Communications Provider’s Subscribers and of any other End-User assigned a Telephone Number from such Telephone Numbers.

19.3 Where the Communications Provider is requested to supply Directory Information in accordance with paragraphs 19.1 or 19.2, it shall do so on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information. The Communications Provider shall comply with any direction made by the Director from time to time with respect to the format to be applied to the information.

19.4 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

19.5 For the purposes of this Condition, “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service.”

A8.12 Part I of the Schedule to the GC notification contains definitions which apply, throughout the Schedule. Part I includes the following definitions of particular relevance to GCs 8 and 19:

“Directory” means a printed document containing Directory Information on Subscribers of Publicly Available Telephone Services in the United Kingdom which is made available to members of the public;

“Directory Information” means, in the case of a Directory, the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services and, in the case of a Directory Enquiry Facility, shall be either such a Telephone Number of the Subscriber or information that such a Telephone Number of the Subscriber may not be supplied;
“Directory Enquiry Facility” means Directory Information provided by means of a Public Telephone Network;

“Subscriber” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services; and

“End-user”, in relation to a Public Electronic Communications Service means:

(a) a person who, otherwise than as a Communications Provider is a Customer of the provider of that service;
(b) a person who makes use of the service otherwise than as a Communications Provider; or
(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service.

Universal Service Condition 7

A8.13 Universal Service Condition 7 reads:

Condition 7: Maintenance and supply of a Directory Information database and Directories

7.1 BT shall maintain a database containing Directory Information for all Subscribers who have been allocated Telephone Numbers by any Communications Provider (‘the database’). BT shall ensure that the database is updated on a regular basis.

7.2 BT shall, in accordance with paragraphs 7.3 and 7.4 below, and on request, make available:

(a) to any Communications Provider subject to paragraph 8.2 of General Condition 8 for the purpose of allowing that Communications Provider to comply with that paragraph, such Directories as BT compiles which comply with the requirements of that General Condition;

(b) to any person seeking to provide publicly available Directory Enquiry Facilities and/or Directories, the contents of the database, in machine readable form.

7.3 BT shall supply the items in sub-paragraph (a) and (b) of paragraph 7.2 above at the reasonable request of the person requesting such items. Without prejudice to the generality of the foregoing, BT may refuse to supply such items if:

(a) the person requesting such items does not undertake to process the data or information contained in them in accordance with any Relevant Code of Practice, and/or

(b) BT has reasonable grounds to believe that the person requesting such items will not comply with Relevant Data Protection Legislation.
7.4 BT shall supply the items in sub-paragraph (a) and (b) of paragraph 7.2 above on terms which are fair, objective, cost oriented and not unduly discriminatory, and in a format which is agreed between BT and the person requesting the information. Where no such agreement is reached, the Director may determine the format to be applied to the information in accordance with his dispute resolution functions.

7.5 In complying with the obligations set out in paragraphs 7.1 to 7.4 above, BT shall:

(a) not unduly discriminate in the treatment of data or information supplied to it by other persons; and

(b) have due regard, in such manner as is appropriate, to any Subscriber who has expressed opposition to inclusion of Directory Information about that Subscriber in a Directory or as part of a Directory Enquiry Facility.

7.6 This Universal Service Condition applies subject to the requirements of Relevant Data Protection Legislation.