

**Determination under Section 190 of the  
Communications Act 2003 and Direction under  
Regulation 6(6) of the Telecommunications  
(Interconnection) Regulations 1997 for resolving a  
dispute between Orange Personal Communications  
Services Ltd (“Orange”) and British  
Telecommunications plc (“BT”) concerning the cost  
sharing arrangements for Customer Sited Interconnect  
 (“CSI”) links connection and rental charges**

Issued by the Director General of Telecommunications

22 December 2003

---

## **Contents**

**The Determination**

**The Direction**

**Explanatory Memorandum**

**Chapter 1 Summary**

**Chapter 2 Background**  
Introduction  
CSI links costs sharing arrangements

**Chapter 3 History of the dispute**

**Chapter 4 Responses to the draft Determination and draft Direction and the Director General's comments**

**Chapter 5 The Director General's decision**  
Scope of the Director General's investigation  
Relevant markets and the position of the parties to the dispute  
Legal and analytical framework  
Application of cost recovery principles to CSI connection and rental charges  
Financial effects of current CSI cost sharing arrangements  
Sensitivity analysis  
The Director General's decision

**Chapter 6 Retrospective rebate of CSI charges**

**Glossary**

---

---

**DETERMINATION UNDER SECTION 190 OF THE COMMUNICATIONS ACT 2003  
FOR RESOLVING A DISPUTE BETWEEN ORANGE PERSONAL  
COMMUNICATIONS SERVICES LTD (“ORANGE”) AND BRITISH  
TELECOMMUNICATIONS PLC (“BT”) CONCERNING THE COST SHARING  
ARRANGEMENTS FOR CONNECTION AND RENTAL CHARGES FOR CUSTOMER  
SITED INTERCONNECT LINKS**

**WHEREAS:**

- (A) Section 188(2) of the Communications Act 2003 (the “Act”) provides that where there is a dispute between different communications providers relating to the provision of network access, and Ofcom have decided pursuant to section 186(2) of the Act that it is appropriate for them to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom make for resolving the dispute must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based. Section 190 sets out the scope of Ofcom’s powers on resolving a dispute;
  - (B) By virtue of section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003, the Director General of Telecommunications (the “Director”) is entitled to exercise Ofcom’s dispute resolution powers under sections 185 to 191 of the Act until Ofcom assumes those powers at a later date;
  - (C) On 21 July 2003, Orange wrote to the Director asking him to resolve a dispute between Orange and BT relating to the cost sharing arrangements for Customer Sited Interconnect (“CSI”) links;
  - (D) On 29 August 2003, the Director decided pursuant to section 186(2) of the Act that it was appropriate for him to handle the dispute and he informed the parties of this decision;
  - (E) In order to resolve this dispute, the Director has considered, among other things, the information provided by the parties and the relevant duties set out in section 4 of the Act;
  - (F) An explanation of the background to the dispute and the Director’s reasons for making this Determination are set out in the explanatory statement accompanying this Determination;
  - (G) The Director issued a draft of this Determination and the explanatory statement on 19 November 2003 and responses were invited by 4 December 2003.
-

---

**NOW, THEREFORE, PURSUANT TO SECTION 190 OF THE ACT, THE DIRECTOR MAKES THE FOLLOWING DETERMINATION:**

1. BT and Orange shall share the connection charges for CSI links according to an estimate of the traffic volumes owned by each party to be carried over the CSI links.
  2. As soon as reasonably practicable after the date of publication of this Determination, BT shall propose a methodology to enable it to recover a proportion of the amount BT pays towards the connection and rental charges for CSI links in respect of traffic other than NTS traffic carried over CSI links for which BT acts as a Transit Communications Provider. If appropriate, the methodology proposed by BT may be on the basis of an amendment to the existing Transit Charge or a supplemental Transit Charge to be payable by the appropriate Originating Communications Provider.
  3. The cost-sharing arrangements specified in paragraph 1 above and the cost-recovery measures specified in paragraph 2 above shall be implemented at the same time. BT shall use its best endeavours to ensure that these arrangements are implemented within 4 months from the date of publication of this Determination. If there is a failure to reach agreement between BT and the rest of the industry on the appropriate cost recovery measures specified in paragraph 2 above within 4 months from the date of publication of this Determination, any party concerned may subsequently refer the matter as a dispute for resolution by Ofcom.
  4. Except as otherwise agreed between the parties, no rebate shall be payable by BT to Orange in respect of the connection charges for CSI links paid by Orange to BT between 25 July 2003 and the date of implementation referred to in paragraph 3 above.
  5. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination and as follows:
    - (a) "Customer Sited Interconnect" or "CSI" means a means of interconnection with BT's network where the interconnection occurs within the premises of the communications provider interconnecting with BT;
    - (b) "NTS" means Number Translation Services;
    - (c) "Originating Communications Provider" means the communications provider on whose network the call originates;
    - (d) "Terminating Communications Provider" means the communications provider on whose network the call terminates;
    - (e) "Transit Charge" means the charge payable by an Originating Communications Provider to the Transit Communications Provider for the
-

---

conveyance of the call to the Terminating Communications Provider's network;

- (f) "Transit Communications Provider" means the communications provider which conveys a call between the Originating Communications Provider's network and the Terminating Communications Provider's network.

6. For the purpose of interpreting this Determination:

- (a) headings and titles shall be disregarded; and
- (b) the Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.

7. This Determination shall take effect on the day it is published.

8. This Determination is binding on BT and Orange in accordance with section 190(8) of the Act.

**HEATHER CLAYTON**  
**DIRECTOR OF INVESTIGATIONS**

22 December 2003

---

**DIRECTION UNDER REGULATION 6(6) OF THE TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS 1997 RELATING TO A DISPUTE BETWEEN ORANGE PERSONAL COMMUNICATIONS SERVICES LTD (“ORANGE”) AND BRITISH TELECOMMUNICATIONS PLC (“BT”) CONCERNING THE COST SHARING ARRANGEMENTS FOR CONNECTION AND RENTAL CHARGES FOR CUSTOMER SITED INTERCONNECT LINKS**

**WHEREAS:**

- (A) Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 (the “Regulations”) provides that where there is a dispute concerning interconnection between organisations, the Director General of Telecommunications (the “Director”) shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request;
  - (B) The Regulations have been repealed as of 25 July 2003 by Schedule 19 of the Communications Act 2003 (the “Act”). The Director’s dispute resolution powers under Regulation 6(6) of the Regulations have been replaced by new dispute resolution powers under sections 185 to 191 of the Act. However, paragraph 22 of Schedule 18 of the Act has maintained in force the Director’s powers under Regulation 6(6) of the Regulations in certain circumstances;
  - (C) On 21 July 2003, Orange wrote to the Director asking him to resolve a dispute between Orange and BT relating to the cost sharing arrangements for Customer Sited Interconnect (“CSI”) links. Part of the dispute referred to the Director by Orange related to the grant of a rebate to Orange in relation to connection charges for CSI links paid by Orange to BT since 1 April 1998;
  - (D) On 29 August 2003, the Director informed the parties that he had decided to consider the part of the dispute relating to the period from 25 July 2003 using his new dispute resolution powers under the Act, but that he would consider Orange’s request for retrospection for the period from 1 April 1998 to 24 July 2003 using his powers under Regulation 6(6) of the Regulations.
  - (E) In resolving a dispute under Regulation 6(6) of the Regulations, the Director has a duty to encourage and secure adequate interconnection in the interests of all users in a way which provides maximum economic efficiency and gives maximum benefit to end-users;
  - (F) The Director has considered, inter alia, the information provided by the parties and the matters set out in Regulation 6(8) of the Regulations. The principle points are summarised in the explanatory statement attached to this Direction;
  - (G) The Director issued a draft of this Direction on 19 November 2003 and responses were invited by 4 December 2003;
-

**NOW, THEREFORE:**

**PURSUANT TO REGULATION 6(6) OF THE INTERCONNECTION REGULATIONS, AND HAVING CONSIDERED THE VIEWS OF THE PARTIES AND THOSE MATTERS SET OUT IN REGULATION 6(8) OF THOSE REGULATIONS, THE DIRECTOR MAKES THE FOLLOWING DIRECTION TO RESOLVE THE DISPUTE BETWEEN ORANGE AND BT:**

1. Except as otherwise agreed between the parties, no rebate shall be payable by BT to Orange in respect of the connection charges for CSI links paid by Orange to BT between 1 April 1998 and 24 July 2003.
2. Words or expressions used in this Direction shall have the same meaning as in the Regulations, except as otherwise stated in this Direction and as follows:
  - (a) "Customer Sited Interconnect" or "CSI" means a means of interconnection with BT's network where the interconnection occurs within the premises of the interconnecting with BT.
3. For the purpose of interpreting this Direction:
  - (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

**HEATHER CLAYTON  
DIRECTOR OF INVESTIGATIONS**

22 December 2003

---

## Explanatory Memorandum

### 1. Summary

1.1 The Director General of Telecommunications (the “Director General”) has issued a Determination under Section 190 of the Communications Act 2003 (the “Act”) and a Direction under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 (the “Interconnection Regulations”) for the resolution of a dispute between British Telecommunications plc (“BT”) and Orange Personal Communications Service Ltd (“Orange”) concerning cost sharing arrangements for Customer Sited Interconnect (CSI) links connection and rental charges. The Determination sets out the decision the Director General has made to resolve the dispute from 25 July 2003 and the Direction sets out the decision the Director has made to resolve the dispute for the period from 1 April 1998 to 24 July 2003.

1.2 Orange referred this dispute to the Director General on 21 July 2003. The Director General considered the submissions made by BT and Orange in respect of the issues involved and issued a draft Determination and a draft Direction on 19 November 2003 (<http://www.oftel.gov.uk/publications/licensing/2003/csi1103.pdf>).

1.3 The Director General acknowledged in the draft Determination that as well as his favored option, there was also a possible alternative means of resolving this dispute. The Director General therefore consulted on both his preferred option and an alternative option as set out below:

(i) That CSI connection charges shall be shared between BT and Orange according to estimated traffic volumes owned by each party using the links. In addition, BT shall propose an appropriate methodology for the recovery of costs of paying CSI connection and rental charges for the termination of non-BT transit traffic from the appropriate originating communications provider, on the basis, where appropriate, of an amended or supplemental transit charge. The effective date of implementation of both cost sharing arrangements for CSI connection charges and the methodology for the recovery of a proportion of the amount paid by BT in respect of CSI connection and rental charges to take account of the transit traffic carried by BT over the CSI links, should be the same, unless there are demonstrable reasons why this would not be practical or desirable. BT shall use its best endeavours to ensure that these arrangements are implemented within 4 months. This was the Director General’s preferred option.

(ii) That the costs of changing current charging arrangements outweigh the benefits that would result from the change and BT should not be obliged to adjust these arrangements.

---



---

1.4 The Director General also recognised that the resolution of this dispute potentially impacted on the wider industry. The Director General was aware that the effect of amending CSI charging arrangements to better reflect appropriate principles of cost recovery, in the context of resolving a dispute between two parties, would result in a material change to CSI charging arrangements for the industry as a whole. In the course of considering this dispute between Orange and BT, the Director General attempted to establish the direct costs to industry of such a change, and the will to implement that change to existing charging arrangements. For this reason, and in the interests of transparency, the Director General extended the consultation beyond the parties to the dispute to include the rest of the industry.

1.5 Comments were received from a number of parties in response to the draft Determination and have been taken into account in making a final Determination and a final Direction. Following consideration of the responses to the draft Determination, the Director General has decided to implement option (i) above as outlined in the draft Determination.

1.6 Details of the responses to the draft Determination, together with the Director General's considerations and his reasons for making this Determination and this Direction, are set out in Chapters 4 to 6. To summarise, the Director General considers that current arrangements for CSI connection and rental cost sharing may lead to inefficient pricing signals and should be amended to better reflect principles of efficient cost recovery.

1.7 The scope of the dispute between BT and Orange also concerned a request for retrospective rebate of CSI connection charges (on the part of Orange) and/ or retrospective rebate of CSI rental costs paid in terminating Orange-originated transit traffic (on the part of BT). The Director General determines that no such retrospective rebate shall apply.

1.8 Having considered the facts specific to this dispute, the Determination and the Direction, in the opinion of the Director General, represent a fair balance between the interests of the parties in this case, having regard to the Director General's wider duties under section 4 of the Act, including his duties to promote competition and to encourage the provision of network access and service interoperability for the purpose of securing efficiency and sustainable competition in the market for electronic communications networks and the maximum benefit for consumers.

---

## **2. Background**

### **Introduction**

2.1 Orange interconnects its network with the BT network using Customer Sited Interconnect (CSI). CSI involves BT providing a transmission line from the BT switch to that of Orange and BT connects to Orange's network in the building containing the Orange switch. BT makes two distinct types of charges for CSI – an initial one-off charge for the costs of connection of the interconnect line and intra-building circuits and periodic charges for the rental of the line and intra-building circuits provided by BT. CSI is also purchased from BT by communications providers other than Orange.

2.2 Communications providers may also interconnect with the BT network using In Span Interconnect (ISI) where interconnection occurs at a point between BT's premises and the communication provider's premises. For the avoidance of doubt, this dispute relates to the terms and conditions on which CSI is provided only, and does not relate to ISI.

2.3 It should also be noted that in relation to cost sharing arrangements for CSI links, this dispute does not relate to Number Translation Service (NTS) traffic, for which separate traffic ownership rules apply.

### **CSI links connection and rental cost sharing arrangements**

#### ***Connection charges***

2.4 Before the Director General made his Determination and Direction, Section 9 of Schedule 130 of BT's Standard Interconnect Agreement (SIA) set out that the one-off charges for connection of the line and intra-building circuits for CSI are paid in full by the interconnecting communications provider.

#### ***Rental charges***

2.5 Section 9 of Schedule 130 of BT's SIA also provides that periodic rental charges for CSI are shared between BT and the interconnecting communications provider in proportion to the call volumes originated by each communications provider. Traffic ownership rules are set out in Table A of Appendix D to Annex A of BT's SIA and, in the case of non-NTS traffic, traffic ownership rests with the originating provider.

---

---

### 3. History of the dispute

3.1 A dispute between Orange and BT concerning CSI links and cost-sharing arrangements was referred to the Director General by Orange on 31 December 1998. In a direction resolving that dispute dated 15 October 1999<sup>1</sup>, and having effect from 1 April 1998, the Director General determined that:

1. the charges that BT makes for the connection of the interconnect link and intra-building circuits in providing CSI shall be shared between BT and Orange;
2. BT and Orange shall negotiate to establish the exact means of sharing the costs between themselves and amend the BT / Orange interconnection agreement accordingly;
3. if BT and Orange are unable to establish an agreed method of sharing the costs by 31 March 2000, they may refer the matter to the Director General for resolution.

3.2 In the Explanatory Memorandum to that direction the Director General also noted that an industry group was at that time reviewing CSI charging arrangements. The Director General considered that, rather than mandating the exact cost sharing arrangements, it would be preferable to allow the industry to reach a decision on the most appropriate charging arrangements. Following his direction of 15 October 1999, no agreement was reached between Orange and BT by 31 March 2000 and the issue was only referred back to the Director General in October 2000 following the issue of a Network Charge Change Notice (NCCN) by BT.

3.3 On 4 August 2000 BT issued a NCCN proposing a change to traffic ownership rules for non-NTS transit traffic - a transfer of ownership of such traffic to terminating providers. The NCCN addressed both connection and rental cost sharing for CSI links and was issued in parallel to a further NCCN that addressed traffic ownership rules concerning NTS transit traffic. A number of communications providers rejected both NCCNs and BT referred a dispute to the Director General on 23 October 2000.

3.4 On 27 June 2001, the Director General issued a determination resolving the dispute<sup>2</sup>. The Director General stated in the explanatory memorandum that the responsibility for interconnection links for non-NTS transit traffic should not transfer as proposed in BT's NCCN, but noted that an alternative proposal by BT in terms of it charging a supplementary transit charge to cover the costs of terminating non-NTS transit traffic may be worth exploring. Having rejected BT's proposals in this NCCN, the Director General's decision had the effect of maintaining current contractual obligations for CSI cost sharing arrangements.

---

<sup>1</sup> A Direction Relating to a Dispute Between BT and Orange Concerning the Sharing of Costs For Customer Sited Interconnect, 15 October 1999.

<sup>2</sup> Determination Under the Provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a Dispute Between British Telecommunications plc ("BT") and a Number of Operators Regarding a Proposal To Charge For NTS Links from 1 January 2001, 27 June 2001.

---

3.5 In October 2002, Orange again raised the issue of charging arrangements for CSI links with BT. As far as the Director General is aware, Orange is the only communications provider to have had active discussion with BT on the subject since the 2001 Direction. Despite on-going commercial negotiations between Orange and BT since October 2002, this issue has not been resolved by commercial agreement. Bilateral negotiations have failed and Orange has referred this matter to the Director General on 21 July 2003.

3.6 Following initial representations from both Orange and BT, the Director General published the scope of the dispute in Oftel's Competition Bulletin on 29<sup>th</sup> August:

'To determine:

The methodology for the apportionment of CSI link connection and, to the extent that this also involves re-consideration of the current method of apportioning CSI link rental charges, CSI link rental charges, for all types of traffic carried over CSI links, without determining the level of the charges. The Director General will consider whether or not any decision should be applied retrospectively.

For the avoidance of doubt, Oftel's investigation into this dispute will also consider the possible impact that any changes to the current method of apportioning rental and connection charges for CSI links will have on the process set out in BT's Standard Interconnect Agreement of refunding a proportion of the rental charges already paid in the event a CSI circuit is ceased.'

3.7 In the course of the investigation into this dispute, the Director General was aware that the implications of resolving this dispute between two parties may impact on the interconnection arrangements between BT and other communications providers. Before making his draft Determination and draft Direction, therefore, as well as publication on Oftel's website, a copy of the competition bulletin for this dispute was sent to a number of communications providers to solicit a range of views or comments on the issues in relation to CSI costs sharing. Only limited response was received from three communications providers. Energis commented that they were interested in the resolution of this dispute to the extent that the Director General was considering the issue of the retrospective rebate owed by BT for CSI connection charges payable since 1 April 1998. Both Easynet and O2 commented that they were interested in the Director General's approach to resolving this dispute.

3.8. The Director General considered the submissions made by BT and Orange in respect of the issues involved and issued a draft Determination and a draft Direction on 19 November 2003. (<http://www.oftel.gov.uk/publications/licensing/2003/csi1103.pdf>).

3.9 The Director General acknowledged in the draft Determination that as well as his favored option, there was also a possible alternative means of resolving this dispute. The Director General therefore consulted on both his preferred option and an alternative option as set out below:

---

(i) That CSI connection charges shall be shared between BT and Orange according to estimated traffic volumes owned by each party using the links. In addition, BT shall propose an appropriate methodology for the recovery of costs of paying CSI connection and rental charges for the termination of non-BT transit traffic from the appropriate originating communications provider, on the basis, where appropriate, of an amended or supplemental transit charge. The effective date of implementation of both cost sharing arrangements for CSI connection charges and the methodology for the recovery of a proportion of the amount paid by BT in respect of CSI connection and rental charges to take account of the transit traffic carried by BT over the CSI links, should be the same, unless there are demonstrable reasons why this would not be practical or desirable. BT shall use its best endeavours to ensure that these arrangements are implemented within 4 months. This was the Director General's preferred option.

(ii) That the costs of changing current charging arrangements outweigh the benefits that would result from the change and BT should not be obliged to adjust these arrangements.

3.10 Comments were received from a number of interested parties and have been taken into consideration in making this final Determination and final Direction.

---

## **4. Summary of the responses to the draft Determination and draft Direction and the Director General's comments**

4.1 Comments were received from BT, Orange, Energis, Cable and Wireless, the UK Competitive Telecommunications Association (UKCTA), Easynet and O2. Non-confidential versions of the full responses can be found at:

[www.oftel.gov.uk/publications/responses/2003/csi1103/index.htm](http://www.oftel.gov.uk/publications/responses/2003/csi1103/index.htm)

### **General Comments**

4.2 BT was supportive of the views expressed by the Director General in his explanatory memorandum and believed they represented a fair assessment of a complex and long running issue. BT considered that option 1 would better reflect the appropriate principles of cost recovery and provide better pricing signals to the market.

4.3 Orange agreed with the Director General's methodology used to calculate CSI connection cost sharing which is consistent with the formula established in respect of CSI rental cost sharing. However, Orange reiterated its view that it did not believe it was appropriate for BT to seek to revisit the issue of CSI transit rental charges in light of the 2001 NTS Direction. Orange submitted that it did not agree with the Director General's analysis with regards to the retrospective rebate of CSI connection charges or with the Director General's methodology used to calculate the costs to BT of terminating transit traffic via CSI. The Director General considers these issues in more detail below.

4.4 Energis and UKCTA submitted that they were concerned that the proposals in the draft Determination raised some crucial policy issues with far-reaching implications for interconnection. Energis and UKCTA were concerned that many companies affected by the draft Determination may be unaware of its implications. Energis argued that the Director General should therefore implement option 2 in his draft Determination, that is, retaining the status quo, until at least the industry had reasonable opportunity to consider the issues in full. Easynet also expressed support for UKCTA's views. The Director General also considers these issues in detail below.

4.5 O2 submitted that it supported the Director General's proposal that CSI connection charges should be shared between BT and Orange.

### **Issues raised by respondents and the Director General's comments**

#### ***Cost sharing for CSI connection charges***

4.6 BT, Orange and O2 expressed support for the Director General's view that CSI connection charges should be split according to ownership of the traffic using the link. Energis argued that the Director General should maintain the status quo with respect to CSI cost sharing, on the basis that the knock-on effects as identified by the Director's draft Determination would result in major modifications to the interconnection regime.

---

---

### ***Cost recovery for CSI connection and rental charges for transit traffic***

4.7 BT expressed support for the Director General's view as set out within the Draft Determination.

4.8 Orange considered that the present anomalies existing in the cost-recovery of non-NTS transit traffic via CSI would most appropriately be addressed in the composition of BT's transit conveyance rates. However, Orange argued that the methodology employed by the Director General to calculate the effects of these anomalies was flawed. Orange argued that, critically, the Director General's methodology relied on information provided by BT, the dominant provider in bilateral CSI relationships. Orange believed that this gave BT an unacceptable advantage and consequently the methodology would prove unworkable in practice. Orange believed as a matter of principle that any solution should be transparent to both parties in its implementation.

#### ***The Director General's comments***

4.9 The Director General remains of the view, as expressed in the draft Determination, that the costs of CSI connection and rental for the termination of transit traffic are most appropriately borne by the originating provider through the charges payable for a transit service. The Director General notes Orange's concerns with respect to the asymmetry of information and resulting issues of transparency in the implementation of any revised cost-sharing arrangements. In reaching his decision, the Director General has relied on information sought under formal information gathering powers. While such transparency is unavailable to communications providers purchasing services from BT, the Director General would urge BT in discussing and proposing revised arrangements for CSI cost recovery to share information in as transparent a manner as possible and as far as the limits of commercial confidentiality will allow. Ultimately, however, if communications providers are unwilling to accept the methodology employed by BT in making its proposals due to lack of available information, they may refer a dispute on the matter to Ofcom for resolution.

#### ***Scope of the dispute***

4.10 Energis expressed its view that the scope of the dispute (as written and published in Oftel's Competition Bulletin) did not draw attention to the fact that a re-evaluation of cost recovery for more than CSI services was being debated. Energis stated that the draft Determination presented cost apportionment proposals that not only affected purchasers of CSI connection, but also originating providers transiting non-NTS traffic via BT.

4.11 Energis stated its concern that other originating providers would fail to note there was a potential linkage between this determination on CSI link charges and non-NTS transit charges. Energis believed that wider cost apportionment arguments had not been discussed with parties outside the dispute. Energis believed that it was not

---

appropriate to modify interconnection charges that affect services that are not subject to the scope of the dispute, when resolving a dispute concerning CSI connection charge cost sharing.

4.12 Energis believed that the reapportionment of costs as proposed by the Director General in the draft Determination needed to be subject to a wider review. Energis therefore believed this issue should be subject to a full policy consultation process.

4.13 UKCTA argued that the Director General was able to deviate from the four month deadline for the resolution of disputes in 'exceptional circumstances', or alternatively, to roll consideration of the dispute into a market review. UKCTA believed that the dispute raised wider issues that were worthy of a more extensive debate and analysis and urged the Director General to take whatever time was necessary to allow for this.

#### *The Director General's comments*

4.14 The Director General notes concerns expressed by Energis and UKCTA that the implications of resolving this bilateral dispute between Orange and BT over CSI cost-sharing may lead to a wider impact on interconnection charges faced by originating providers. The Director General's draft Determination addressed this issue in a public consultation, noting the implications and setting out his view on the appropriate way forward.

4.15 The Director General's decision requires that connection costs for CSI links should be shared between the parties on the basis of traffic ownership. In making this decision, however, the Director General has realised the implications of this change to cost-sharing arrangements in terms of cost recovery for terminating transit traffic. In resolving the dispute, the Director General has set out his analysis, on the basis of established principles of cost recovery, of how he believes the issues should be best resolved. The effect of the Director General's decision, though, is to require BT to propose an appropriate solution to the industry. His decision does not impose a change to interconnection terms and conditions in relation to the payment of BT's transit charges.. The Director General expects BT to discuss its proposals and any alternatives put forward by the industry in full, and to enter into reasonable negotiations in respect of any such proposals. If there is failure to agree on appropriate cost recovery mechanisms then any party may refer the matter as a dispute for resolution by Ofcom.

#### ***Transit ownership***

4.16 Energis noted that the Director General's 2001 NTS Direction did not mandate any provision in relation to non-NTS transit traffic. Energis argued that BT has not issued any subsequent NCCN in relation to the ownership of non-NTS transit traffic nor has BT challenged the Director General's 2001 Direction. Consequently, Energis argued, BT continues to have ownership and therefore the associated costs of non-NTS transit traffic. Energis believed that BT was now using its dispute with Orange as a vehicle to re-open the debate on traffic ownership.

---



---

*The Director General's comments*

4.17 The Director General's decision does not alter traffic ownership rules but amends cost-recovery for CSI connection to reflect traffic ownership. This is on the basis that the resulting methodology better fits with economic principles of cost recovery. BT continues to have ownership and therefore should bear the associated costs of non-NTS transit traffic. The Director General proposes, however, that BT should recover the associated costs of terminating non-NTS transit traffic from the appropriate source, i.e. the originating provider, rather than the terminating provider.

***BT's recovery of costs generated in terminating transit traffic via CSI***

4.18 Orange, Energis and UKCTA submitted doubts that BT is currently unable to recover the costs of CSI links terminating transit traffic in its current transit charges. Energis believed that the costs included within the transit cost stacks will have been discussed at the time of the Interconnection and Accounting Separation (ICAS) regime and Long Run Incremental Cost (LRIC) modelling. Energis argued that assuming, as BT claims, the costs of interconnection links have not been apportioned within BT's transit charges, BT had the chance to raise this issue in 2000/1 during the review of Oftel's Network Charge Controls. As Energis believed no such action was taken, it therefore assumed that BT was accordingly content with the approach of the ICAS methodology.

4.19 Orange argued further that if BT's current transit charges failed to adequately recover the costs of terminating transit traffic via CSI, there may be concerns that BT had benefited from reinforcing its dominance in transit markets by capturing a higher market share than would otherwise be the case. Orange argued that either BT's transit charges are below cost and would therefore raise competition concerns, or are above cost and therefore BT cannot be said to be suffering detriment from current charging arrangements.

*The Director General's comments*

4.20 As set out in the draft Determination, the Director General notes that the charge for BT's Single Transit service is regulated in a basket of services to which a cap of RPI-X applies<sup>3</sup>. The cost base considered by the Director General when setting the value of X for this basket does not include an allowance for recovery of interconnection circuit costs. The charges for BT's other transit services are constrained by 'safeguard' caps of RPI+0%. The Director General did not derive the safeguard caps from a detailed examination of costs.

4.21 Under current arrangements, BT recovers costs of supplying CSI links via its CSI charges for connection and rental. In 2000/01 BT did not face the cost of any CSI

---

<sup>3</sup> See [http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband/fixednarrowbandstatement.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband/fixednarrowbandstatement.pdf), Chapter 5

---

connection charges but was liable to pay rental charges for CSI links terminating transit traffic. The Director General's analysis in the draft Determination concluded that, to a large extent, these effects netted out financially to BT.

4.22 Under the Director General's proposed changes for CSI charging, however, BT will become liable for an additional set of costs (i.e. CSI connection charges for traffic it sends for termination). Where BT originates traffic it will be liable to meet these costs from the retail price of the call. Where an alternative provider originates this traffic the Director General believes that this cost should be recoverable from the originating provider in the transit charge it pays. Where this cost, or the rental cost of the CSI link terminating the traffic is not already recovered through BT's transit charges, BT should seek to amend its charges to do so. In effect, the Director General is proposing that the costs of CSI links terminating transit traffic should be recovered from the originating provider (through transit charges) rather than the terminating provider (through CSI charges).

4.23 The Director General believes that appropriate cost recovery reflected in amended CSI charging arrangements is the best mechanism by which to ensure there is no inappropriate under or over recovery of transit costs by BT. BT's single transit charge remains subject to the appropriate RPI-X charge control. BT's other transit services are subject to a safeguard cap of RPI+0 because it is expected that competition, or the realistic threat of competition in such services, will cause sufficient pressure to maintain prices at the competitive level.

### ***Redistribution of costs***

4.24 Energis argued that the Director General had not completed its analysis in relation to cost causation. Energis believed the Director General appeared to have arrived at the view that as originating providers obtain the retail reward for calls they originate, they should therefore be responsible for the costs. Energis believed, however, that this analysis only considers part of the overall chain involved in the delivery of the call. Energis states that a thorough investigation of cost recovery needs to take into consideration all of the parties participating in the delivering of the call.

4.25 Energis argued that if Orange shares CSI connection costs with BT then the costs associated with call termination to Orange's network will decrease. If this is the case then Energis argues Orange's charge for call termination should also decrease by the same proportion. Energis put forward that failure to reduce call termination charges would lead to a 'regulatory windfall' for Orange. Energis argued further that given mobile providers had Significant Market Power (SMP) in call termination services, there is little prospect of this windfall reduction being competed away. Energis believed that if Orange's CSI costs have decreased then so its charges for call termination should also be decreased.

4.26 UKCTA echoed Energis' argument that the Director General's proposal would provide Orange (or any other provider with a CSI link to BT) with a 'regulatory win' in

---

---

that its margin on call termination immediately increases as a result of the reduced cost of a CSI link. UKCTA argued that since Orange's mobile termination rates are controlled as a result of earlier decisions by the Director General (and likely to continue to be so as a result of the mobile termination market review), it is necessary for the Director General to consider the impact of his decision in this dispute in relation to the termination rates charged by Orange.

#### *The Director General's comments*

4.27 The Director General does not agree with Energis and UKCTA's analysis. The LRIC model used for the purpose of calculating mobile providers' costs of wholesale call termination does not include costs associated with the provision of interconnection circuits<sup>4</sup>. The costs of interconnection circuits are therefore recoverable from charges made to mobile providers' own retail customers in markets in which competitive pressures exist. To the extent that Orange may enjoy any 'regulatory windfall' as a result of the Director General's decision, therefore, the Director General would expect any such windfall to be competed away.

4.28 In any event, the Director General considers it unlikely that any such 'windfall' actually exists. While Orange may no longer be liable for the CSI costs of traffic terminating on its network, as an originating provider it will be liable to pay the CSI costs of traffic it own originates and sends for termination via transit. In terms of net effect, the Director General's analysis in considering this dispute suggests that the overall impact would have been revenue negative to Orange if these arrangements had been in effect from the financial year 1998/99.

#### ***Incentive to minimise costs***

4.29 Energis noted that the Director General stated in the draft Determination that originating providers do not have appropriate incentives to minimise their costs. Cost minimisation implies that originating providers should be incentivised to directly interconnect with terminating providers instead of transiting traffic if volumes justify this. Energis considered the Director General's view that the manner in which to trigger this behaviour was to make originating providers pay for CSI connection and rental charges generated by transit traffic. Energis argued that the Director General's reasoning does not take into consideration that the only decision the originating provider makes is whether to interconnect directly or to transit. It is the terminating provider and transit provider that choose the method of interconnection between them. Energis stated that while it is true that the originating provider obtains the retail benefit of these calls, the originating provider is not empowered to minimise costs in the choice of interconnecting circuit for termination.

---

<sup>4</sup> The cost model for wholesale mobile termination is available at [http://www.oftel.gov.uk/publications/mobile/ctm\\_2002/april02\\_model.zip](http://www.oftel.gov.uk/publications/mobile/ctm_2002/april02_model.zip)

---

*The Director General's comments*

4.30 As noted in the draft Determination, the Director General considers that BT, as a transit provider, is currently liable for payment of CSI rental charges for terminating transit traffic originated by other communication providers. BT currently therefore faces an incentive to minimise the costs of CSI rental. However, it faces this same incentive as an originator of its own traffic under the proposed amendments to CSI charging arrangements for both CSI rental and CSI connection. At present, other originating providers are not facing appropriate pricing signals associated with terminating traffic from their own network via BT. Although at the level of an individual call an originating provider cannot choose the terminating provider or the interconnect link to terminate that call, at an aggregated level originating providers should be faced with appropriate pricing signals when deciding whether to send traffic via a transit provider or to directly interconnect with terminating providers. This would be achieved by making originating providers pay for the CSI costs they generate through transiting traffic via BT.

***Willingness to interconnect***

4.31 Energis submitted that, historically, mobile providers have been reluctant to interconnect with fixed providers, preferring traffic to be transited via BT. The fact that terminating providers do not wish to interconnect with originating providers needs to be taken into consideration.

*The Director General's comments*

4.32 In respect of Energis' concerns that terminating providers may be reluctant to directly interconnect with originating providers, the Director General notes that on 28 November 2003 he issued a Final Explanatory Statement and Notification in relation to a Review of Fixed Geographic Call Termination Markets<sup>5</sup>. In this statement the Director General notified his decision that each provider of fixed geographic call termination should be required to provide call termination (network access) to all communications providers if reasonably requested to do so (and on reasonable terms). In a statement of 19 December 2003 in relation to a Review of Mobile Wholesale Voice Termination Markets<sup>6</sup> the Director General proposed an obligation on mobile providers of 2G call termination services to supply network access on reasonable terms.

***Practicalities of implementation***

4.33 Energis submitted that there are significant billing practicalities to consider if a change to transit charges is proposed. Energis argued that BT needs to be in a position to be able to identify whether traffic it is terminating is own originated or transit. Energis added that while it has not conducted a detailed analysis of how billing might work in practice, it considers that identification of Carrier Pre-Selection (CPS) and Number Portability (NP) calls may present difficulties. Energis also believed that where a

---

<sup>5</sup> [http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband/Eureviewfinala1.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband/Eureviewfinala1.pdf)

<sup>6</sup> [http://146.101.202.226/legacy\\_regulators/oftel/mobile\\_call\\_termination/](http://146.101.202.226/legacy_regulators/oftel/mobile_call_termination/)

---

---

terminating provider and the transit provider have both CSI and ISI links between them, the matter would be further complicated. Energis argued that originating providers will also require billing system modifications that enable reconciliation of the transit bill. Design and delivery of such billing systems must therefore be taken into account when deciding an appropriate implementation date to any change.

4.34 BT submitted that the transit cost recovery methods suggested by the Director General in the draft Determination could potentially offer a straightforward mechanism for cost recovery using BT's existing systems. BT did not anticipate significant ongoing costs as many of the expected features of any new product would naturally fit into normal operational procedures. While BT believed other charging methods may involve varying levels of cost, it considered indications are that, for BT, such costs would not be material compared to the value of correcting the cost recovery mechanism. BT stated it would be pleased to pursue these proposals with industry at an appropriate forum.

4.35 C&W expressed concern that costs incurred in implementing a solution may be disproportionate to the solution. Additionally C&W would be concerned if the costs of administering this cost apportionment fell to those parties who do not use CSI but are lumped into interconnect costs more generally, for example through BT's Product Management, Policy & Planning (PPP) charge. C&W argued that in a similar manner to network cost apportionment, administrative costs should be apportioned along lines of cost causation.

#### *The Director General's comments*

4.36 The Director General does not believe, on the basis of comments received in response to the draft Determination, that *per se*, the costs of implementing a practical solution to ensure that CSI cost recovery better reflects underlying cost causation, would outweigh the potential benefits. The full costs of implementing any solution can only be estimated by full discussion of the issues by relevant industry parties. The Director General would therefore encourage BT and the industry to consider implementation costs and appropriate recovery of transit costs when discussing any proposal or alternative option for revised cost-sharing arrangements.

#### ***Retrospection***

4.37 Orange reiterated its view that it is not appropriate for BT to seek to revisit the issue of CSI rental charges for transit traffic in light of the Director General's 2001 NTS Determination. Orange submitted that the 2001 Determination established that no changes should be made in respect of CSI rental charges. Orange added that the Determination, conversely, did not address CSI connection charges and consequently the 1999 Direction remained the primary authority in that respect. Orange claimed that if BT was concerned in respect of non-NTS transit costs it could have, as the Director General suggested in the 2001 Determination, approached this through a review of its transit charges payable by originating providers. Orange stated that BT chose not pursue this matter. Orange argued that the interaction of the two above-mentioned

---

Determinations and the subsequent behaviour of the parties, that is Orange pressing its claim and BT neglecting to challenge the 2001 Determination, gave rise to a legitimate expectation that a retrospective rebate of the CSI connection charges would be applied without any corresponding retrospective rebate of the CSI rental charge.

4.38 BT noted that retrospection in relation to both CSI connection and transit payments could potentially be of significant financial benefit to BT. BT recognised, however, the pragmatic nature of the Director General's proposal that no retrospection should apply and the fact that it removes the need for detailed retrospective calculations.

4.39 C&W disagreed with the Director General's view not to apply his decisions retrospectively. C&W argued that unless there was compelling evidence in this case to demonstrate that BT made every effort to conclude negotiations swiftly and that delays were entirely caused by Orange, it was surely in the interest of competition and consumers to ensure that providers with SMP are not given incentives to delay the conclusion of negotiations.

#### *The Director General's comments*

4.40 The Director General does not agree with Orange's arguments in relation to the legitimate expectation of the parties. It is clear from the outset of this dispute in 1998 that BT had consistently argued that CSI connection could not be considered in isolation from rental charges payable by BT when terminating transit traffic. The explanatory note to the 1999 direction reflects this position. The imposition of retrospection in this case to CSI connection only would result in a material under-recovery by BT of costs associated with terminating transit traffic via CSI. Given the history of this dispute and BT's position throughout that transit termination costs must be considered, it would not represent a fair balance between the interests of both parties to apply retrospection to CSI connection cost-sharing and not cost-recovery for terminating transit traffic.

4.41 The Director General agrees in part with C&W's argument that retrospection may give incentives to providers with SMP to negotiate in good faith and to minimise delay, which may ultimately benefit competition and, therefore, consumers. However, retrospection must be considered in relation to the facts of the case at hand and also taking into account the possibility that retrospection also has detrimental effects on competition and competitors in terms of undermining legal and financial certainty. The facts of the current dispute suggest that BT would, in fact, have benefited (in terms of net financial value) by an early resolution of this issue as far back as 1998. In this case there is no compelling evidence to suggest that either party sought to cause undue delay to negotiations or, for that matter, that either party demonstrated every effort to conclude negotiations as swiftly as possible.

#### **Cessation of CSI service**

4.42 In its response to the draft Determination, BT commented that it was considering a proposal that the payment made by BT to communications providers for early cessation

---

---

of existing and new CSI circuits should be shared in line with the connection cost sharing principle outlined in the Director General's decision. BT sought a response to the question whether the Director General would consider such a proposal out of step with the rationale of the draft Determination.

*The Director General's comments*

4.43 BT's suggestion regarding cost sharing for CSI cessation is an additional issue raised in response to the draft Determination. Accordingly the Director General does not propose to mandate whether such a proposal is reasonable or not without having given alternative providers affected by such an issue reasonable chance to comment. Considering the issue on its merits, however, the Director General's initial view would be that rebates for CSI cessation should be shared in line with the share of the connection charge paid when a link was first provided, that is, that however CSI connection charges were apportioned at the time the link was ordered should determine the apportioned share of any cessation rebate due.

---

## 5. The Director General's decision

5.1 This dispute was referred to the Director General by Orange under Section 185 of the Act. In accordance with Section 186(4) of the Act, the Director General decided that it was appropriate to handle this dispute and he published the scope of his investigation on 29 August 2003.

### Relevant market(s) and the position of the parties to the dispute

5.2 Orange is in dispute with BT concerning cost sharing arrangements for CSI link connection and rental charges. In a Final Explanatory Statement and Notification in relation to the Review of Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets<sup>7</sup>, the Director General concluded that CSI links do not fall within one of the specific markets identified. The Director General considers that CSI links constitute a “technical area” which spans various markets. The Director General concludes that the remedies in relation to those markets in which he considers BT to hold SMP should also apply in relation to CSI links.

5.3 In terms of the relevant traffic carried on the CSI links in question, BT is acting as:

- (i) an originating provider of fixed geographic traffic in sending non-NTS traffic to Orange for termination;
- (ii) a transit provider in sending (a) non-BT originated traffic to Orange for termination and (b) Orange originated traffic for termination on other providers' networks; and
- (iii) a terminating provider in receiving Orange originated traffic for termination on the BT network.

5.4 In the Final Explanatory Statement and Notification in relation to the Review of Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets, the Director General concluded that BT has SMP in (a) wholesale call origination which includes the origination of non-NTS traffic; and (b) the transiting of inter-tandem transit traffic and single transit traffic. The Director General therefore proposed that BT has SMP when acting as described in 5.3 (i) and 5.3 (ii).

5.5 In a Final Explanatory Statement and Notification in relation to the Review of Fixed Geographic Call Termination Markets<sup>8</sup> issued on 28 November 2003, the Director General concluded that that all fixed networks that terminate calls on fixed geographic numbers have SMP in the provision of such call termination services. The Director General therefore concluded that BT has SMP when acting as described in 5.3(iii).

---

<sup>7</sup> [http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband/fixednarrowbandstatement.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband/fixednarrowbandstatement.pdf)

<sup>8</sup> [http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband/Eureviewfinala1.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband/Eureviewfinala1.pdf)

---



---

5.6 In terms of the relevant traffic carried on the CSI links in question, Orange is acting as:

- (i) an originating provider of mobile traffic in sending non-NTS traffic for termination on (a) BT's network and (b) other providers' networks via BT;
- (ii) a mobile terminating provider in receiving (a) BT originated traffic and (b) other providers' traffic transited via BT for termination on its network.

5.7 In the Director General's Statement on Mobile access and call origination services market, published on 3 October 2003<sup>9</sup>, the Director General decided that, in the market for wholesale access and call origination on public mobile telephone networks in the United Kingdom no undertaking has SMP, either individually or in combination with one or more other undertakings. Therefore, Orange does not have SMP when acting as an originating provider of mobile traffic.

5.8 In the latest version of the Director General's Review of Mobile Wholesale Voice Call Termination markets, published on 19 December 2003<sup>10</sup>, the Director General proposed that each mobile network in the UK has significant market power in a separate market for voice call termination on its network. The Director General therefore proposed that Orange has SMP when acting as a mobile terminating provider receiving (a) BT originated traffic and (b) other providers' traffic transited via BT for termination on its network.

### **Legal and analytical framework**

5.9 The Director General has based his analysis of the appropriate cost sharing arrangements for CSI links connection and rental charges on certain basic principles of cost recovery. These principles are:

- i. Cost causation (costs should be recovered from those who cause them to be incurred);
- ii. Cost minimisation (costs should be recovered so as to give communications providers an incentive to minimise the costs);
- iii. Distribution of benefits (costs should be recovered from those who benefit);
- iv. Effective competition (costs should be recovered in a way that promotes effective competition);
- v. Proportionality (the outcome should be capable of being implemented and should be the least restrictive method possible);
- vi. Reciprocity (where services are provided reciprocally, charges should also be reciprocal).

---

<sup>9</sup> [http://www.oftel.gov.uk/publications/eu\\_directives/2003/mobileaco1003.pdf](http://www.oftel.gov.uk/publications/eu_directives/2003/mobileaco1003.pdf)

<sup>10</sup> [http://146.101.202.226/legacy\\_regulators/oftel/mobile\\_call\\_termination/](http://146.101.202.226/legacy_regulators/oftel/mobile_call_termination/)

---

5.10 The Director General believes that the use of these basic principles of cost recovery are wholly consistent with his obligations, in particular the Community requirements under section 4 of the Act, the duties set out in Article 8 of the Framework Directive (Directive 2002/21/EC) and his general obligations under administrative law.

5.11 Sections 4(7) and 4 (8) of the Act require the Director General to encourage the provision of network access for the purpose of securing efficiency and sustainable competition in the markets for electronic communications networks and services. This obligation includes ensuring that communications providers are incentivised to minimise costs.

5.12 Section 4 (3)(a) of the Act imposes a requirement on the Director General to promote competition in relation to the provision of electronic communications networks and services. This includes ensuring that, as far as possible, the costs involved in providing electronic communications networks and services are recovered in a way that promotes effective competition.

5.13 Finally, the Director General notes that, in exercising his dispute resolution powers under the Act (which derive from Article 20 of the Framework Directive), he is obliged to act in accordance with the principle of proportionality.

### **Application of cost recovery principles to CSI connection and rental charges**

#### ***CSI connection charges***

5.14 The Director General considers that it is appropriate, based on the principle of cost causation, for CSI connection costs to be shared. Both BT and Orange cause costs to be incurred when the decision is made to interconnect with the other. Cost sharing would also be in line with the distribution of benefits principle as both communication providers benefit from the interconnect arrangement where the traffic is own-originated. In addition, cost sharing would provide BT with an incentive to minimise CSI connection costs as it would face bearing a share of those costs directly.

5.15 The Director General considers that aligning CSI connection charges to the principles which apply to rental charges (that is that the charges should be shared in proportion to the ratio of traffic owned by Orange and BT respectively) represents a practical solution which would be relatively easy to implement. The arrangement is also reciprocal dependant upon the relative volumes of traffic utilising the relevant links.

5.16 Accordingly, the Director General's view is that in order to best fit with efficient principles of cost recovery, CSI connection charges should be shared between BT and Orange in proportion to the ownership of the traffic using those links.

---

---

### ***CSI connection and rental charges for transit traffic carried by BT over CSI links***

5.17 Cost causation principles suggest that the costs of CSI transit termination should be borne by the originating provider (i.e. the party that causes the traffic to be originated and chooses to terminate that traffic via BT as a transit provider). The full costs of a call transiting BT and terminating via CSI links would consequently be recovered from the retail price charged to the end user originating the call.

5.18 The Director General notes BT's position that where it acts as a transit carrier, the transit rates currently chargeable by BT only include BT's network costs and do not take into account interconnection circuit costs associated with the terminating leg of a transit call. The charge for the 'single transit' service is regulated in a basket of services to which a cap of RPI-X applies. The cost base considered by the Director General when setting the X for this basket does not include an allowance for recovery of interconnection circuit costs. The charges for BT's other transit services are constrained by 'safeguard' caps of RPI+0%. The Director General did not derive the safeguard caps from a detailed examination of costs

5.19 BT, as a transit provider, is liable for payment of CSI rental charges for terminating transit traffic originated by other communication providers. BT currently faces an incentive to minimise the costs of CSI rental. However, it faces this incentive equally as an originator of its own traffic under the proposed amendments to CSI charging arrangements for both CSI rental and CSI connection. At present, other originating providers are not facing appropriate pricing signals associated with terminating traffic from their own network via BT. Although at the level of an individual call an originating provider cannot choose the terminating provider or the interconnect link to terminate that call, at an aggregated level originating providers should be faced with appropriate pricing signals when deciding whether to send traffic via a transit provider or to directly interconnect with terminating providers. This would be achieved by making originating providers pay for the CSI costs they generate through transiting traffic via BT

5.20 The Director General considers that the principles of cost recovery suggest that originating providers should bear a share of the connection and rental costs of CSI links for traffic transited via BT's network.

### ***How to recover the costs of CSI links terminating transit traffic***

5.21 The Director General considers that as for rental charges, connection charges for CSI traffic should be shared in proportion to traffic ownership.

5.22 For transit traffic, BT should be able to recover the costs of CSI connection and rental charges from the originating provider. There are various ways that BT might seek to recover these costs. BT might propose a supplemental transit charge or simply send a periodic bill to the originating provider. BT is in the best position to assess the likely

---

costs of implementing these various solutions. Therefore, the Director General directs that BT will use its best endeavours to ensure that revised cost sharing arrangements are proposed and implemented within 4 months from the date of publication of the determination. If there is failure to reach agreement between BT and the rest of the industry within this timescale, any party concerned may refer the matter as a dispute for resolution by Ofcom.

## **Financial effects of current CSI connection and cost sharing arrangements**

### ***Orange/ BT dispute***

5.23 During his consideration of the issues involved in this dispute, the Director General gathered information using his formal powers under Section 191 of the Act to establish, from 1998, the number of annual new CSI connections, annual revenues from connections and rentals (including rebates due to early cessation), and the annual proportion of call minutes owned by BT and Orange carried on CSI circuits, with volumes and revenues divided into both own-originated and transit-terminated traffic.

5.24 The information gathered has enabled the Director General to estimate the relative effects on the parties in this dispute of existing CSI cost sharing arrangements, taking into account the anomalies associated with transit traffic outlined above.

5.25 The Director General first estimated by how much Orange has 'over-paid' BT by paying the full CSI connection charge as opposed to paying a share of the connection charge based on the traffic ownership rule. The Director General then estimated by how much Orange has 'under-paid' BT by not paying for the rental and connection of the CSI link for traffic which it has originated and terminated via BT as transit traffic, on the assumption that increases to BT's current transit charges would be necessary. The amount of the 'under-payment' was derived by:

- (i) Calculating rental and connection charges relevant to (non-NTS) transit traffic terminated via CSI links;
- (ii) Deriving an average cost per transit call minute terminated by BT via CSI; and
- (iii) Multiplying that average cost per transit call minute by the number of Orange originated transit call minutes.

5.26 The results of the Director General's analysis are set out in the tables below. For reasons of confidentiality, the results of this analysis in relation to Orange specifically are not included in the public version of this document. While analysing the data submitted by BT as part of the investigation, the Director General noticed a significant difference between data for the Financial Year 02/03 and the previous Financial Years. In particular, the data indicated a sharp decrease in the number of new CSI connections. On the Director General's request, BT explained that this significant reduction reflected, in its opinion, the maturity of the connection market where alternative providers were shifting connection from CSI links to ISI links, a shift that had already begun in the Financial Year 01/02.

---

5.27 The Director General understands that this shift from CSI to ISI links is the main source of change in data between Financial Year 02/03 and the previous years. This shift not only has an impact on the number of new CSI connections, but also on the average number of CSI links, the connection revenues and the rental revenues. On the basis of this explanation, the Director General is of the view that the Financial Year 02/03 data can be included in his analysis.

Table 1 Money over-paid by Orange to BT by paying the full CSI connection charge as opposed to paying a share of the connection charge according to the traffic ownership sharing rule.

£ sterling (million)	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
Orange	[...]	[...]	[...]	[...]	[...]

Table 2 Money under-paid by Orange by not paying for the CSI link for terminating the BT transit traffic it originates, on the assumption that increases to BT's current transit charges would be necessary.

£ sterling (million)	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
Orange	[...]	[...]	[...]	[...]	[...]

5.28 The amounts Orange has 'over-paid' and 'under-paid' can be compared by dividing one by the other. Either comparison reveals that although BT was advantaged at the beginning of the period by not paying connection charges and by paying for terminating transit traffic, the trend has reversed in following years. The main reason for the change would appear to be a substantial increase in transit traffic between mobile communication providers.

Table 3: describes the outcomes of a division-based comparison. The percentage figure reflects "payment that should have been made for CSI rental and connection charges for transit traffic divided by amount over paid for CSI connections". A figure below 1 is revenue-positive for BT, and above 1 revenue-negative for BT.

	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
Orange	[...]	[...]	[...]	[...]	[...]

5.29 In terms of net financial value, the Director General calculated the difference between under and over payment for the period 98/99 to 02/03 to be somewhere in the region of £[...] million 'under-payment' by Orange.

### ***Effect on the Industry***

5.30 The Director General has also carried out the same analysis for CSI links across the whole industry for the same period.

Table 4 and 5 set out the financial impact of 'over-payment' and 'under-payment' to BT for the relevant period by all communications providers and split by fixed and mobile providers.

Table 4 Money over-paid by communication providers by paying the full connection charge as opposed to paying a share of the connection charge according to the traffic ownership sharing rule.

£ sterling (million)	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
MOLO	1.5	3.5	4.0	3.8	1.7
Fixed	1.5	3.5	5.7	5.0	1.7
Total	3.0	7.0	9.7	8.8	3.3

Table 5 Money under-paid by communication providers by not paying for CSI links for the transit traffic they generate, on the assumption that increases to BT's current transit charges would be necessary.

£ sterling (million)	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
MOLO	2.1	5.7	10.9	13.2	11.3
Fixed	1.3	2.5	4.2	4.9	3.7
Total	3.4	8.2	15.0	18.1	15.0

Table 6: describes the outcomes of a similar division-based comparison. The percentage figure reflects "payment that should have been made for CSI rental and connection charges for transit traffic divided by amount over paid for CSI connections". A figure below 1 is revenue-positive for BT, and above 1 revenue-negative for BT. The figures are shown split by fixed and mobile providers as well as in total and for Orange alone.

	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
Orange	[...]	[...]	[...]	[...]	[...]
MOLO	1.4	1.6	2.7	3.5	6.7
Fixed	0.8	0.7	0.7	1.0	2.2
Total	1.1	1.2	1.6	2.1	4.5

5.31 The Director General notes that the analysis reveals that some communications providers benefit more than others under the current cost sharing arrangements. For example, fixed providers (as a group) appear to have 'overpaid' the connection costs of CSI links between 98/99 and 00/01. Mobile providers have consistently benefited from current CSI charging arrangements compared to the alternative arrangements proposed by the Director General which would more closely follow cost recovery principles.

### Sensitivity analysis

5.32 As part of the consultation process, some respondents indicated to the Director General that analysis of the costs of CSI links requires careful handling of the data. In particular, respondents drew the Director General's attention to two issues. Firstly that certain types of call minutes may require revised handling in the calculation because of a differentiation between the ownership and the direction of a call or, alternatively, issues relating to billing and/ or data recording (e.g. Indirect Access). Secondly, respondents were concerned that CSI and ISI call minutes should be distinguished as far as possible at all stages of the calculations.

5.33 The Director General's initial view in publishing the draft Determination was that, on the basis of the assumptions used in his methodology for calculating 'under' and 'over-payments' for CSI charges, neither issue was likely to result in a material change to his decision. In response to concerns and in pursuing the Director General's investigation of the issues, however, the Director General required BT to submit additional data in order to test the sensitivity of his initial findings.

5.34 Table 7 below gives an indication of the range of the Director General's findings for 2 different data sets (1<sup>st</sup> data set forming the basis of the Director General's draft Determination and 2<sup>nd</sup> data set which excludes as far as possible at all stages of the calculation any non-CSI call minutes, and takes into account the consequent effects of differential traffic direction and ownership for other traffic types). Both sets of data represent a division based comparison of underpayments to overpayments as described in tables 3 and 6 above.

	FY 98/99		FY 99/00		FY00/01		FY 01/02		FY 02/03	
	1st	2nd	1st	2nd	1 <sup>st</sup>	2nd	1st	2 <sup>nd</sup>	1st	2 <sup>nd</sup>
Orange	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
MOLOs	1.4	1.1	1.6	1.4	2.7	2.2	3.5	3.0	6.7	6.7
Fixed	0.8	1.0	0.7	0.8	0.7	0.8	1.0	1.1	2.2	2.9
Total	1.1	1.1	1.2	1.1	1.6	1.4	2.1	2.0	4.5	4.9

5.35 The results of the Director General's sensitivity analysis lead to the confirmation of his initial findings. In total both data sets suggest the same trend in terms of over and under payment. The sensitivity analysis suggests that the first data set may have underestimated the position of fixed providers and over-estimated the position of mobile

providers in terms of relative under-payment. However, mobile providers and Orange specifically have continued to benefit from current CSI cost sharing arrangements over the whole period. Since the Financial Year 01/02, under-payment has increased relative to over-payment substantially for both data sets.

5.36 This analysis reinforces and validates the Director General's understanding of the situation and in his view the need to remedy the situation by removing the anomalies of present CSI cost recovery arrangements.

### **The Director General's preferred option**

5.37 In line with the principles of cost recovery set out above, the Director General is in favour of revising charging arrangements for both CSI connection and the recovery of CSI connection and rental costs for terminating transit traffic. In the draft Determination, however, the Director General consulted on two alternative options. The Director General recognised that changes to charging arrangements incur costs in terms of renegotiating contracts and adjusting prices and billing arrangements and that the benefits of adjusting CSI prices may not outweigh the benefits. The Director General therefore requested that interested parties provide the details of these costs in response to the draft Determination. Following those responses the Director General would conclude on which of the two options to implement:

- (i) That CSI connection charges shall be shared between BT and Orange according to estimated traffic volumes owned by each party using the links. In addition, BT shall propose an appropriate methodology for the recovery of costs of paying CSI connection and rental charges for the termination of non-BT transit traffic from the appropriate originating communications provider, on the basis, where appropriate, of an amended or supplemental transit charge. The effective date of implementation of both cost sharing arrangements for CSI connection charges and the methodology for the recovery of a proportion of the amount paid by BT in respect of CSI connection and rental charges to take account of the transit traffic carried by BT over the CSI links, should be the same, unless there are demonstrable reasons why this would not be practical or desirable. BT shall use its best endeavours to ensure that these arrangements are implemented within 4 months. This was the Director General's preferred option.
- (ii) That the costs of changing current charging arrangements outweigh the benefits that would result from the change and BT should not be obliged to adjust these arrangements.

5.38 In his consideration of the options set out above, the Director General has considered both his legal obligations and the six principles of cost recovery

---



---

***(i) Cost Causation***

5.39 In the Director General's view, Option 1 addresses the distortions in both CSI connections and the costs of transit termination. The Director General considers that this option is more closely aligned with the principle of cost causation. BT would pay a share of CSI connection charges and originating providers would pay a proportion (through an increased or supplemental transit charge) of the CSI costs generated by the transit traffic they originate.

***(ii) Cost minimisation***

5.40 Cost minimisation implies that BT should bear proportionate costs of both CSI rental and connection. Option 1 would most directly implement the principle of cost minimisation.

***(iii) Distribution of benefits***

5.41 The Director General considers that costs should be recovered from the beneficiaries, especially where there may be externalities. Both BT and other communications providers benefit economically from the CSI links connections and rentals when traffic is own-originated. Option 1 is consistent with this principle.

***(iv) Effective Competition***

5.42 The Director General considers that a complete rebalancing or rationalisation of CSI charging arrangements by adopting Option 1 will send the appropriate cost signals in the marketplace. Absent this rebalancing, the Director General believes that sub optimal investment decisions by communications providers may arise and efficient competition may be distorted.

5.43 In the Director General's view, Option 2 would be significantly negative to BT's position as it would remain liable to pay CSI costs associated with terminating transit traffic, without ability to net this off against reduced connection charges. Also, as noted above, Table 6 reveals that some communication providers benefit more than others in the current cost sharing arrangements. Consequently, it appears to the Director General that some communications providers benefit at the expense of others, compared to the Director General's favoured position where CSI charges better reflect cost causality.

***(v) Proportionality***

5.44 Option 1 would appear reasonably practicable to implement. However, in the course of resolving this dispute the Director General has not been able to establish the full costs to industry of amending current cost sharing arrangements for CSI and the implementation costs of any increased or supplemental transit charge. The Director General believes that these costs may not be disproportionately high, but invited

---

responses to the draft Determination from all interested industry parties to establish what these costs might represent.

***(vi) Reciprocity***

5.45 The Director General considers that Option 1 ensures reciprocal cost sharing arrangements depending on the relative share of ownership of traffic.

**The Director General's decision**

5.46 The Director General received little evidence in response to the consultation on which to establish the costs of implementing changes to CSI cost sharing arrangements. However, the Director General does not believe it is likely, on the basis of comments received in response to the draft Determination, that the costs of implementing a practical solution to ensure that CSI cost recovery better reflects underlying cost causation would outweigh the potential benefits.

5.47 Accordingly, having considered both his legal obligations, the six principles of cost recovery set out above and comments made in response to the draft Determination, the Director General determines that:

- (i) BT and Orange shall share the connection charges for CSI links according to an estimate of the traffic volumes owned by each party to be carried over the CSI links;
- (ii) As soon as reasonably practicable after the date of publication of this Determination, BT shall propose a methodology to enable it to recover a proportion of the amount BT pays towards the connection and rental charges for CSI links in respect of traffic other than NTS traffic carried over CSI links for which BT acts as a Transit Communications Provider. If appropriate, the methodology proposed by BT may be on the basis of an amendment to the existing Transit Charge or a supplemental Transit Charge to be payable by the appropriate Originating Communications Provider; and
- (iii) The cost-sharing arrangements specified in paragraph (i) above and the cost-recovery measures specified in paragraph (ii) above shall be implemented at the same time. BT shall use its best endeavours to ensure that these arrangements are implemented within 4 months from the date of publication of this Determination. If there is a failure to reach agreement between BT and the rest of the industry on the appropriate cost recovery measures specified in paragraph 2(ii) above within 4 months from the date of publication of this Determination, any party concerned may refer the matter as a dispute for resolution by Ofcom.

5.48 In summary, in the Director General's view, the main benefits of his decision are:

---

- it supports cost sharing of equipment from which both BT and Orange benefit when traffic is own-originated;
- CSI charging arrangements will better reflect cost causation principles, providing better cost signals to the market and promoting more efficient competition;
- it promotes non-discrimination between competing communications providers due to closer alignment with cost-causation.

## **Chapter 6 – Retrospective rebate of CSI charges**

6.1. The draft Determination and draft Direction set out the Director General's initial view that no retrospection should apply in respect of revised CSI connection charges or CSI charges BT has paid in terminating Orange originated transit traffic on other communications providers' networks, for either the period from 1 April 1998 until 24 July 2003, or 25 July 2003 onwards. Having considered in full the comments received in response to the draft Determination as detailed in chapter 4, the Director General does not propose to amend his conclusions. Accordingly, his decisions are as set out below.

### **Current position regarding CSI charges**

6.2 In the absence of any agreed change to CSI charging arrangements since 1998, current contractual obligations remain the default position until such time as any decision by the Director General directs otherwise. The 1999 Direction required CSI connection charges to be shared between BT and Orange, but for BT and Orange to negotiate the exact means of sharing costs between themselves and to amend the SIA accordingly, referring the matter to the Director General for resolution by 31 March 2000 if agreement could not be reached. Although it is apparent that no agreement was subsequently reached between Orange and BT, no referral on the issue was made to the Director General by 31 March 2000.

6.3 The Director General's 2001 Determination only briefly addressed the issue of (non-NTS) CSI links following a proposal under a BT NCCN that the ownership of non-NTS transit traffic terminating on CSI links should be transferred to the terminating provider. The Director General concluded, however, that ownership of such traffic should not transfer to the terminating provider, in practice upholding the existing contractual position. In its response to the Director General's draft direction in that case, BT commented that an alternative to its proposal that the terminating provider be liable for the costs of CSI links terminating non-NTS transit traffic, would be for it to propose an additional pence-per-minute charge on top of BT's existing transit charge. The Director General noted in his final direction that that proposal merited further exploration by the industry but that, in the meantime, ownership should not transfer. The principles behind that decision (i.e. that cost-causation implies that these costs should properly be borne by the originating provider) are consistent with the Director General's decision in resolving this dispute.

6.4 Absent any change in existing charging arrangements since 1998, therefore, and absent any agreement between the parties on this issue, any retrospective rebate of charges due to a change in the methodology for CSI cost sharing can only be made through the effect of the Director General's decision in resolving this dispute.

### **The Director General's powers to impose retrospection**

6.5 . Orange has requested retrospection back to 1 April 1998. Concerning the period from 1 April 1998 to 24 July 2003, the Director General's decision regarding

---

---

retrospection is based upon his duties and obligations under the Telecommunications (Interconnection) Regulations 1997 (the “Interconnection Regulations”). This is in accordance with paragraphs 22(2) and (3) of Schedule 18 of the Act. Concerning the period from 25 July 2003 to the date of resolution of this dispute, the Director General’s decision regarding retrospection is based upon his duties and obligations under the Communications Act 2003.

### **The case for retrospection**

6.6 Orange argued that BT was required by the Director General’s 1999 Direction to share CSI connection charges with Orange back to 1 April 1998. In the absence of agreement between BT and Orange on the methodology for sharing CSI connection charges, Orange has in fact paid the full amount of CSI connection charges since 1 April 1998. Orange considers that BT should be required to pay Orange a rebate to recover Orange’s overpayment.

6.7 BT, on the other hand, has argued that it has done all it could reasonably be expected to do to reach agreement with Orange and the industry following the 1999 direction (including the issue of an industry wide NCCN in August 2000). For this reason, BT argued, it would not be fair and reasonable to apply retrospection back to 1 April 1998. If retrospective adjustment were deemed appropriate, however, BT has argued that the principles underlying the basis of any retrospective decision should not differ from those applied going forward, that is, taking into consideration the effect of the anomalies outlined above in relation to traffic transited over BT’s network.

6.8 The Director General considers there are two potential options for resolving the issue of the retrospective application of a revised charging methodology for CSI, consistent with his obligations under both the Interconnection Regulations and the Act:

- (i) retrospection back to 1 April 1998 in respect of CSI connection charges (resulting in payment flow from BT to Orange), in tandem with retrospective payment from Orange to BT in respect of CSI connection and rental charges that BT has paid in terminating Orange originated transit traffic on other communications providers’ networks;
- (ii) no retrospection in relation to either CSI connection charges or CSI charges BT has paid in terminating Orange originated transit traffic on other communication providers’ networks.

### **The period from 1 April 1998 to 24 July 2003**

6.9 In considering whether retrospection would be appropriate in this case from the period from 1 April 1998 to 24 July 2003, the Director General has taken into account the criteria set out in regulations 6(1), 6(6) and 6(8) of the Interconnection Regulations and, in particular, the requirement to take account of the interests of users and to resolve disputes in a manner which represents a fair balance between the legitimate

---

interests of the parties. In doing so, he has considered whether the parties have a legitimate expectation that retrospection will apply in this case.

### ***Legitimate expectation***

6.10 The Director General's 1999 direction set out that the connection charges for CSI links should be shared between BT and Orange, effective from 1 April 1998. However, the direction required that BT and Orange negotiate the exact means of sharing these charges and, in the event that agreement could not be reached by 31 March 2001, refer the matter to the Director General for resolution. In the explanatory memorandum to the 1999 direction, the Director General noted that an industry group was reviewing CSI charging arrangements including connection charges. The Director General considered it more appropriate to allow industry to reach a decision on the most appropriate charging arrangements rather than the Director General mandating the exact cost sharing arrangement. No such agreement has been reached.

6.11 The explanatory note to the 1999 direction also recognised the issues that BT had raised in relation to its obligation to pay CSI charges for the termination of other communications providers' transit traffic. In the context of the 1999 dispute, BT argued that the charging arrangements for CSI links contained a number of anomalies and that the issue of CSI connection charges could not be considered in isolation. BT argued that only BT originated traffic should be taken into account in calculating BT's share of CSI charges.

6.12 BT's NCCN issued in August 2000, proposing the transfer of ownership of non-NTS transit traffic to the terminating provider, also addressed this issue. The Director General considered that ownership of this traffic should not transfer to the terminating provider but considered that BT's proposal of a supplementary transit charge could have some merit.

6.13 BT has not objected to the principle of cost sharing for connection charges for CSI links in its negotiations with Orange on this issue since 1998. However, BT has maintained that this issue cannot properly be considered in isolation due to the implications of the anomalies relating to non-BT transit traffic. The resolution of these anomalies is necessarily an industry-wide issue, as any solution would require adjusting the CSI cost-sharing arrangements between all relevant parties. However, in terms of the retrospective rebate of charges due, it would appear to the Director General that there was scope in the negotiations between BT and Orange on the issue of CSI connection charges, for Orange to recognise that the effect of the transit anomalies in terms of transit traffic originated by Orange, would have resulted in payments due to BT that could be offset against those payable by BT in respect of connection charges.

6.14 It is accordingly the Director General's position that, on the basis that the issue of transit traffic termination costs was an issue relevant to the original dispute, any legitimate expectation held by Orange that CSI connection charges would be subject to retrospective recalculation back to 1 April 1998, would be met by a legitimate

---

---

expectation on the part of BT that any solution to the issue of cost-sharing arrangements for CSI connection charges would also take into account the transit anomalies.

### ***The interests of consumers***

6.15 It is not clear to the Director General that the effects of any retrospective decision would provide clear benefits to the consumer, either in terms of increased competitive pressures, direct savings passed on to the end user or sending appropriate signals to the market in terms of setting efficient and effective terms and conditions relating to the provision of interconnection services. In so much as the retrospective application of a decision may encourage parties to engage in commercial negotiation in good faith and provide incentive for parties under regulatory obligations to comply with those obligations, it is not clear that either criteria applies in relation to the facts of this case.

### **The Director General's decision**

6.16 The Director General therefore directs that no retrospection should apply in respect of revised CSI connection charges or CSI charges BT has paid in terminating Orange originated transit traffic on other communications providers' networks for the period from 1 April 1998 until 24 July 2003. There are no clear benefits which flow from the application of retrospection in this dispute and the amounts owed by each party to the other, on the basis of the Director General's estimation, net out to a significant degree. Orange's argument that retrospection should apply only to CSI connection charges on the basis of the 1999 direction would result in a material under-recovery by BT in respect of its transit charges for the relevant period and, given BT's position since the origins of this dispute in 1998 is that the issue of terminating non-BT traffic should be addressed, it would not appear to be a fair balance between the interests of both parties to apply retrospection to one element of cost-recovery, and not the other.

6.17 Given that no agreement has been reached on either issue, however, either bi-laterally or at an industry-wide level, the fact that negotiations have appeared to stall for significant periods of time with either side, at times, failing to push the issue forward, and in the absence of any clear benefits (either to consumers or to the efficient operation of the provision of interconnection services), the Director General's conclusion is that no retrospective rebate should apply for the period from 1 April 1998 to 24 July 2003.

### **The period from 25 July 2003 onwards**

6.18 In considering whether retrospection would be appropriate in this case for the period from 25 July 2003 to the date of resolution of this dispute, the Director General has taken into account his obligations under section 4 of the Act and Article 8 of the Framework Directive and, in particular, the obligation to ensure that users derive maximum benefit in terms of choice, price and quality and the obligation to ensure that there is no discrimination in the treatment of undertakings providing electronic

---

communications networks and services. In doing so, the Director General has also considered whether the parties have a legitimate expectation that retrospection and in what form, will apply in this case and the benefits (or otherwise) to consumers in the application of a retrospective decision.

### ***Legitimate expectation***

6.19 As explained above, it is the Director General's position that, on the basis that the issue of transit traffic termination costs was an issue relevant to the original dispute, any legitimate expectation held by Orange that CSI connection charges would be subject to retrospective recalculation back to 1 April 1998, would be met by a legitimate expectation on the part of BT that any solution to the issue of cost-sharing arrangements for CSI connection charges would also take into account the transit anomalies.

### ***Benefits to consumers***

6.20 It is not clear to the Director General that the effects of any retrospective decision would provide clear benefits to the consumer, either in terms of increased competitive pressures, direct savings passed on to the end user or sending appropriate signals to the market in terms of setting efficient and effective terms and conditions relating to the provision of interconnection services. In so much as the retrospective application of a decision may encourage parties to engage in commercial negotiation in good faith and provide incentive for parties under regulatory obligations to comply with those obligations, it is not clear that either criteria applies in relation to the facts of this case.

### **The Director General's decision**

6.21 The arguments outlined above in relation to the period from 1 April 1998 to 24 July 2003 also apply in relation to the period from 25 July 2003 to the date of resolution of this dispute. The Director General therefore directs that no retrospection should apply in respect of revised CSI connection charges or CSI charges BT has paid in terminating Orange originated transit traffic on other communications providers' networks for the period from 25 July 2003 until the date of resolution of this dispute. There are no clear benefits which flow from the application of retrospection in this dispute and the amounts owed by each party to the other, on the basis of the Director General's estimation, net out to a significant degree. Orange's argument that retrospection should apply only to CSI connection charges on the basis of the 1999 direction would result in a material under-recovery by BT in respect of its transit charges for the relevant period and, given BT's position since the origins of this dispute in 1998 is that the issue of terminating non-BT traffic should be addressed, it would not appear to be a fair and reasonable decision to apply retrospection to one element of cost-recovery, and not the other.

6.22 Given that no agreement has been reached on either issue, however, the fact that negotiations have appeared to stall for significant periods of time with either side, at times, failing to push the issue forward, and in the absence of any clear benefits (either

---



---

to consumers or in the efficient operation of the provision of electronic communications networks or services), the Director General's conclusion is that no retrospective rebate should apply for the period from 25 July 2003 to the date of resolution of this dispute.

---

## Glossary

**Customer Sited Interconnect (CSI)** - a means of interconnection with BT's network where the interconnect occurs within the premises of the communications provider connecting to BT

**In Span Interconnect (ISI)** - a means of interconnection with BT's network where interconnect occurs at a point between BT's premises and another communication provider's premises

**Number Translation Service (NTS)** - the process associated with the routing of a non-geographic number to a network termination point, e.g., the number is translated from its non-geographic format into a geographic or mobile number to enable it to be routed to a geographic location or to a mobile phone.

**Network Charge Change Notice (NCCN)** – Notice issued by BT to other communications providers proposing a change in charges for interconnection services

**Originating Provider** – the communications provider on whose network the call originates, i.e. the communications provider with the line to the customer.

**Terminating Provider** - the communications provider on whose network the call terminates.

**Transit** – A transit service is a conveyance service provided by a network between two points of interconnection. It is, therefore, a service that links two networks that are not in themselves interconnected.

**Transit network** – a network through which a call passes, but which is neither the *originating network* nor the *terminating network* for that call.

---