

Annex 4

Notification of modifications to the Universal Services Conditions

NOTIFICATION MODIFYING AND SETTING UNIVERSAL SERVICE CONDITIONS UNDER SECTION 48(1) OF THE COMMUNICATIONS ACT 2003

BACKGROUND

A. The Director General of Telecommunications published on 22 July 2003 a notification setting universal service conditions (the “**Universal Service Conditions**”) applicable to British Telecommunications plc and Kingston Communications (Hull) plc under section 45 of the Act which took effect on 25 July 2003 by way of a notification pursuant to section 48(1) of the Act (the “**2003 Notification**”).

B. On 24 February 2011, Ofcom published a notification under section 48(2) of the Act setting out proposals to modify the 2003 Notification and the Universal Service Conditions set out therein as well as to set new universal service conditions (the “**First Notification**”).

C. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6)(a) of the Act.

D. In the First Notification (and accompanying explanatory statement), Ofcom invited representations on the proposals by 7 April 2011.

E. On 4 May 2011, the Secretary of State made The Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/2010), together with The Electronic Communications (Universal Service) (Amendment) Order 2011 (SI 2011/1209 (collectively, the “**Regulations**”). The Regulations were laid before Parliament on 5 May 2011 and come into force on 26 May 2011.

F. The Regulations have provided for changes to Ofcom’s enabling powers under the Act in order to take forward the proposals Ofcom set out in the First Notification. Whilst the Regulations come into force on 26 May, Ofcom is able to proceed to make decisions in the anticipatory exercise of its new or amended powers, pursuant to section 13 of the Interpretation Act 1978, in order to meet the Community law transposition deadline of 25 May 2011.

G. By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification, with any modifications that appear to Ofcom to be appropriate, where Ofcom has:

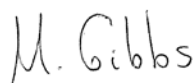
- (i) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
- (ii) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

H. Ofcom received responses to the First Notification and has considered every such representation made in respect of the proposals set out in the First Notification (and the accompanying explanatory statement); and the Secretary of State has not notified Ofcom of any obligation of the United Kingdom for this purpose.

DECISION

1. In accordance with section 48(1) of the Act and pursuant to powers in the Act as amended by the Regulations in reliance on section 13 of the Interpretation Act 1978, Ofcom sets out the modifications made to the 2003 Notification (and the Universal Service Conditions set out therein), as well as sets out new universal service conditions, in the Schedule to this Notification.
2. The effect of, and Ofcom's reasons for making, the decision referred to in paragraph 1 above is set out at in the accompanying explanatory statement.
3. Ofcom is satisfied that the decision referred to in paragraph 1 above satisfy the test in section 47 of the Act. In making that decision, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
4. In this Notification:
 - (i) **"2003 Notification"** has the meaning ascribed in recital A above;
 - (j) **"Act"** means the Communications Act 2003;
 - (k) **"First Notification"** has the meaning ascribed in recital B above;
 - (l) **"Ofcom"** means the Office of Communications;
 - (m) **"Regulations"** have the meaning ascribed in recital E above;
 - (ii) **"Universal Service Conditions"** have the meaning ascribed in recital A above.
5. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
6. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
7. The Schedule to this Notification shall form part of this Notification.

Signed by Marina Gibbs



Competition Policy Director

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

23 May 2011

SCHEDULE

Part 1 of the Schedule to the 2003 Notification—Definitions

- 1 In Part 1 of the Schedule to the 2003 Notification, the following definitions are deleted:

- a) Apparatus;
- b) Content Service;
- c) Director;
- d) Electronic Communications Network;
- e) Electronic Communications Service;
- f) End-User;
- g) National Telephone Numbering Plan;
- h) Public Electronic Communications Network;
- i) Public Electronic Communications Service; and
- j) Public Telephone Network

- 2 In Part 1 of the Schedule to the 2003 Notification, the following definition is inserted:

“Public Communications Network” means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points.

- 3 In Part 1 of the Schedule to the 2003 Notification, the following definition is inserted:

“Ofcom” means the Office of Communications as established under section 1 of the Office of Communications Act 2002;

- 4 In Part 1 of the Schedule to the 2003 Notification, the definition of “Publicly Available Telephone Service” is replaced by the following:

“Publicly Available Telephone Service” means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan

- 5 In Part 1 of the Schedule to the 2003 Notification, the definition of “Telephone Number” is replaced by the following:

“Telephone Number” means, subject to any order of the Secretary of State pursuant to section 56(7) of the Act, any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the purposes listed in section 56(5) of the Act.

- 6 In Part 1 of the Schedule to the 2003 Notification, the term “Public Telephone Network” is replaced by the term “Public Communications Network” in the definitions of “Directory Enquiry Facility”; “Telephony Services”; and “Textphone”.

- 7 In Part 1 of the Schedule to the 2003 Notification, the term “Director” is replaced by the term “Ofcom” in the definitions of “Emergency Organisation”; “General Condition”; and “Relay Service”.
- 8 The term “Director” is replaced by the term “Ofcom” in all instances where it appears in Parts 2 and 3 of the Schedule to the 2003 Notification, namely:
- in relation to BT, in Universal Service Conditions 1.2, 2.1, 2.2, 2.3, 2.5, 3.4, 3.5, 4.4, 6.2, 7.4, 8.2 and 8.3; and
 - in relation to Kingston, in Universal Service Conditions 1.2, 2.1, 2.2, 2.3, 2.5, 3.4, 3.5, 5.2, 6.2 and 6.3.

Universal Service Condition 1 (BT)

- 9 Condition 1.1 of the Universal Services Conditions as they apply to BT is replaced by the following:
- 1.1 At the reasonable request of any End-user, BT shall provide Telephony Services, including the ability to make and receive calls employing voice, facsimile and data communications, at data rates that are sufficient to permit functional internet access, to that End-user at any place in the UK except for the Hull Area, and BT shall ensure that its Electronic Communications Networks are installed, kept installed and run for those purposes.*

Universal Service Condition 9 (BT)

- 10 A new condition, condition 9 of the Universal Services Conditions as they apply to BT, is set and inserted as follows (including subheadings):
- Condition 9: Disposals**
- 9.1 Subject to paragraph 9.2, where BT proposes to make a disposal to another person of a substantial part or all of its local access network assets, it shall inform Ofcom no less than one month in advance of such disposal.*
- 9.2 Paragraph 9.1 does not apply where the proposed disposal is to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010).*

Universal Service Condition 1 (Kingston)

- 11 Condition 1.1 of the Universal Services Conditions as they apply to Kingston is replaced by the following:
- 1.1 At the reasonable request of any End-user, Kingston shall provide Telephony Services, including the ability to make and receive calls employing voice, facsimile and data communications, at data rates that are sufficient to permit functional internet access, to that End-user at any place in the Hull Area, and Kingston shall ensure that its Electronic Communications Networks are installed, kept installed and run for those purposes.*

Universal Service Condition 7 (Kingston)

- 12 A new condition, condition 7 of the Universal Services Conditions as they apply to Kingston, is set and inserted as follows (including subheadings):

Condition 7: Disposals

- 7.1 *Subject to paragraph 7.2, where Kingston proposes to make a disposal to another person of a substantial part or all of its local access network assets, it shall inform Ofcom no less than one month in advance of such disposal.*
- 7.2 *Paragraph 7.1 does not apply where the proposed disposal is to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010).*