



# Waiver of BT's price notification requirements for certain of BT's WES, WEES and BES prices

Notification of a proposal to give consent to affect the  
operation of BT's price notification requirements

Consultation

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Closing Date for Responses: 23 January 2009



# Contents

Section	Page
1 Summary	1
2 Review of waiver request and Ofcom's proposals	2
Annex	Page
1 Responding to this consultation	12
2 Ofcom's consultation principles	14
3 Consultation response cover sheet	15
4 Consultation questions	17
5 Draft Notification – proposed consent	18
6 Ofcom's letter to industry of 11 October 2004	22
7 BT's proposed price changes	25

## Section 1

# Summary

- 1.1 This document sets out Ofcom's proposal to give consent to BT to introduce the price changes set out in Annex 7 without requiring BT to comply with the obligation to provide 90 days' advance written notice.
- 1.2 We invite comments from the industry on whether it would be appropriate for Ofcom to accept BT's request and to give the proposed consent set out in Annex 5 of this document. Stakeholders have until Friday 23 January 2009 to provide their views.
- 1.3 BT requested on 7 January 2009 that Ofcom give consent to introduce the price changes set out in Annex 7 affecting certain of its Backhaul Extension Services (BES), Wholesale Extension Services (WES), and Wholesale End to End Services (WEES) products without it having to comply with the 90 days' advance written notification obligation on this occasion only.
- 1.4 As a result of regulation imposed on BT following the last review of leased lines markets<sup>1</sup>, BT is obliged, pursuant to Significant Market Power (SMP) condition HH6, to send to Ofcom and to every person with which it has entered into a certain contract (known as an 'access contract') a written notice at least 90 days in advance of introducing price changes to WES, WEES and BES products.
- 1.5 This consultation deals with BT's request in a manner consistent with the procedure set out by Ofcom in a letter to industry of 11 October 2004 for dealing with requests for notification waivers. The letter is reproduced in Annex 6.
- 1.6 Ofcom may under SMP condition HH6 give consent in writing to affect the operation of the price notification requirements. However, before doing so, Ofcom must be satisfied that the giving of such consent would be objectively justified, non-discriminatory, proportionate and transparent, in accordance with Section 49(2) of the Communications Act 2003 (the Act). In addition, Ofcom must publish a notification setting out its proposals to give consent and must provide an opportunity for interested parties to comment on the matter.
- 1.7 For the reasons set out in Section 2 of this document, Ofcom considers that the criteria set out in Section 49(2) of the Act are likely to be met in this instance and proposes to accept BT's request for consent, subject to any representations duly made to Ofcom during this consultation. In reaching this initial view, Ofcom has considered and acted in accordance with its duties under sections 3 and 4 of the Act.
- 1.8 Ofcom considers that the exceptional circumstances of BT's request mean that it is appropriate to depart from the standard one month consultation period for consents normally required by section 49 of the Act and instead to consult for 5 working days. Ofcom has the power to do so under section 49(6) of the Act and has in the aforementioned letter to industry advised of its intention to make use of shorter consultation periods when considering requests for price notification waivers, due to the need for urgency in such cases.

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<sup>1</sup> See the regulatory Statement of 8 December 2008 entitled *Business Connectivity Market Review, review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets*: <http://www.ofcom.org.uk/consult/condocs/llmr/statement>

## Section 2

# Review of waiver request and Ofcom's proposals

## Introduction

- 2.1 In this Section, we consider the matter of whether Ofcom should give consent to BT's request to waive the 90 days advance written notice it is required to give in relation to amended charges for some of its WES, WEES and BES services.
- 2.2 We first consider the obligations relevant to this waiver request and imposed on BT as a result of the leased lines market review Ofcom completed in December 2008.
- 2.3 Secondly, we set out the background to this consultation, which covers the details of BT's request and a letter that Ofcom received on 28 November from one Communication Provider (CP) concerning the matter reviewed in this document.
- 2.4 Thirdly, we discuss Ofcom's letter to industry of 11 October 2004 setting out how Ofcom would approach a request for consent to notification waivers.
- 2.5 We then review how we consider that such waiver meets the criteria set out in Section 49(2) of the Act, before discussing the notification of Ofcom's proposal to give consent.

## The leased lines market review

- 2.6 On 8 December 2008, Ofcom published the regulatory Statement entitled *Business Connectivity Market Review, review of retail leased lines, wholesale symmetric broadband origination and trunk segments*<sup>2</sup> (the BCMR Statement). This Statement completed the review of retail and wholesale leased lines markets in the UK, with the exception of the market for high bandwidth alternative interface symmetric broadband origination (AISBO) services in Hull.
- 2.7 In the BCMR Statement Ofcom defined, among others, a market for low bandwidth AISBO in the UK excluding the Hull area, for services provided at speeds up to and including 1 Gbit/s. Ofcom found that BT had Significant Market Power (SMP) in this market and imposed a set of SMP conditions on BT.
- 2.8 SMP Condition HH1 requires BT to provide Network Access on reasonable request from Third Parties and where Ofcom directs it to do so. WES, WEES and BES are high speed, point-to-point data circuits that are permanently connected and available 24 hours a day, 365 days a year. These services are part of the AISBO market.
- 2.9 WES are types of Network Access services that enable a CP to provide a secure link between a third party customer site and the CP's network at a CP's site.
- 2.10 WEES are end to end wholesale network services that enable a CP to provide a secure link between two third party sites.

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<sup>2</sup> <http://www.ofcom.org.uk/consult/condocs/bcmr08/bcmr08.pdf>

- 2.11 BES are types of Network Access services that enable Local Loop Unbundling (LLU) operators to provide a secure link between their Digital Subscriber Line Access Multiplexer (DSLAM) equipment at BT's Main Distribution Frame (MDF) site and a site within an LLU operator's applicable system connected to an appropriate BT node.
- 2.12 SMP Condition HH6 requires BT to publish its charges for AISBO products by sending to Ofcom and all purchasers of the products "a written notice of any amendment to the charges, terms and conditions on which it provides Network Access ... not less than 90 days before any such amendment comes into effect for existing Network Access".
- 2.13 BT is therefore required to provide 90 days' advance written notice of any changes that it wishes to make to its prices for WES, WEES and BES products. The exception to that requirement is a case in which Ofcom has, pursuant to its powers under those SMP Conditions, given consent in writing to affect the operation of the price notification requirements after consulting duly on such a proposed consent in accordance with section 49 of the Act.

## **Background to this consultation**

### **BT's request for consent to a change in price publication obligations**

- 2.14 On 24 November 2008, BT issued a set of Access Charge Change Notices (ACCNs) setting out revised lower charges for some of its WES, WEES and BES services, with some of the new proposed charges to take effect immediately<sup>3</sup>. These ACCNs failed to comply with SMP Condition HH6, and, following complaints from some CPs and Ofcom's intervention, were subsequently withdrawn.
- 2.15 On 7 January 2009, BT wrote to Ofcom requesting consent to a waiver of the 90 days notification period required under SMP Condition HH6 for prices of some of its WES and BES products. These were the same modified prices set out in the ACCNs of 24 November 2008, which were published on Openreach's website and notified to its customers and Ofcom.

### **CP letter to Ofcom of 28 November 2008**

- 2.16 On 28 November 2008, one CP wrote to Ofcom demanding that BT complied with the appropriate notification procedure, and, additionally, to raise concerns that, in its view, some of the proposed new prices appeared to fall below cost, and, in particular, below the LRIC floor.
- 2.17 With respect to the procedure BT has to follow in order to introduce new prices, and, in particular, the obligation under SMP Condition HH6, Ofcom asked BT to withdraw the ACCNs issued on the 24 November 2008 as the 90 days notice period had not been adhered to. Subsequently, BT wrote to Ofcom requesting for a waiver of the notification period.
- 2.18 This consultation deals with that request in a manner which is consistent with Ofcom's process for dealing with requests for notification waivers, as set out in the letter to industry of 11 October 2004 discussed below and set out in full in Annex 6.

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<sup>3</sup> These charges were set out in ACCN OR96, OR96a and OR096C, now withdrawn, and provided for reduced connection charges to take immediate effect, while reduced rental charges would have come into effect on the 1 February 2009.

- 2.19 With respect to the second issue, namely concerns that some of the new charges might fall below cost, Ofcom notes that such issue cannot be considered in this consultation, which only deals with the issue of whether it should give consent to a notification waiver. Nevertheless, we would consider any such complaint about the level of the new proposed charges should the CP choose to submit a formal complaint in that respect.

### **Ofcom's policy for dealing with notification waiver requests**

- 2.20 Ofcom wrote to the industry on 11 October 2004 setting out the general approach it proposed to take when dealing with requests for consent to waive or reduce notification periods. The letter is reproduced in Annex 6.
- 2.21 Ofcom identified three scenarios in which it might be asked to consent to reduced notification periods for price changes, namely:
- i) where Ofcom had directed a provider to alter its prices forthwith;
  - ii) where a price notification might be considered to be advantageous to consumers; and
  - iii) where the provider had made an administrative error which requires correction.
- 2.22 In the case of directions to alter prices forthwith, Ofcom advised that it would generally consult on the implementation arrangements (including the reduced notice period) when consulting on the substance of the direction itself.
- 2.23 In the case of price reductions proposed by an SMP provider (such as BT), Ofcom recognised that there was the potential for such price reductions to cause anti-competitive effects where the full notification period was not provided. Ofcom concluded that it would be appropriate to consult with interested parties before consenting to early implementation of price reductions.
- 2.24 In the case of administrative errors, Ofcom advised that where an SMP provider had made a genuine error in maintaining its price list or notifying price changes, Ofcom would conduct a short consultation exercise before considering whether to consent to a reduced notification period.
- 2.25 Ofcom invited the industry to comment on its proposed policy but received no responses on the matter, other than from BT.
- 2.26 This approach has been successfully used twice since then to review separate requests for consent to waive or reduce advance notice periods<sup>4</sup>.

### **Statutory requirements to be met before giving a consent**

- 2.27 Section 49 of the Act applies where Ofcom proposes to give consent to affect the operation of a condition made under section 45 of the Act (including SMP Conditions). In order to give such consent, Ofcom must first satisfy itself that the criteria set out in section 49(2) are satisfied, namely the giving of a consent:

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<sup>4</sup> Ofcom has in the past given consent to BT to reduce or waive the notification period in two instances: in 2005 (WES and BES products) and 2006 (Partial Private Circuits and Radio Base Station Backhaul products), see: <http://www.ofcom.org.uk/consult/condocs/btwesbes/> and [http://www.ofcom.org.uk/consult/condocs/bt\\_waiver/](http://www.ofcom.org.uk/consult/condocs/bt_waiver/)

- i) must be objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- ii) must not discriminate unduly against particular persons or against a particular description of persons;
- iii) must be proportionate to what it is intended to achieve; and
- iv) must be, in relation to what it is intended to achieve, transparent.

### **The rationale for the obligation to provide 90 days advance notice**

- 2.28 In the BCMR Statement, Ofcom's main reason for imposing SMP Condition HH6 was to provide a mean of ensuring all customers of BT wholesale products, which include its downstream divisions and competitors, are able to make the necessary amendments to their retail contracts, terms and conditions of provision in such a way that does not discriminate between end users (in this case, between BT end users and its competitors' end users).
- 2.29 In addition, we set out at paragraph 8.286 of the BCMR Statement how we considered that in the market for low bandwidth AISBO services, the remedies imposed would also have to promote competition in this market. Ofcom concluded that imposing SMP Condition HH6 was consistent with its duties under sections 3 and 4 of the Act in that the conditions encouraged transparency, promoted the interests of the purchasers of AISBO products and promoted long-term competition in the AISBO market<sup>5</sup>.
- 2.30 The 90 days notification requirement on BT with respect to AISBO products was first imposed in the regulatory Statement entitled *Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets*<sup>6</sup> published in June 2004 (the 2003/04 Review). Paragraph 7.94 of the 2003/04 Review explained how Ofcom considered that the notification requirement complied with the duties set out in Section 3 and 4 of the Act by promoting the interests of purchasers of wholesale AISBO by enabling them to adjust their downstream offerings in competition with BT, while also promoting competition by allowing BT's competitors in the provision of AISBO services to make appropriate changes to their products.
- 2.31 Finally, it is also relevant to consider the Guidelines issued by the ERG on Remedies in Electronic Communications Markets<sup>7</sup>. Section 3.2.1 discusses how transparency obligations are in effect accompanying obligations with and to other obligations to make the remedy more effective. In the case of the notification obligation, this can be considered to have a natural linkage to the non discrimination obligation, in that it allows parties to observe the factors (i.e. price and non price terms and conditions of provision) over which discrimination could take place.

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<sup>5</sup> See paragraphs 8.295 to 8.308 of the *Business Connectivity Market Review, Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets*, <http://www.ofcom.org.uk/consult/condocs/bcmr08/>

<sup>6</sup> <http://www.ofcom.org.uk/consult/condocs/llmr/statement/>

<sup>7</sup> *Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework*, May 2006, [http://erg.eu.int/documents/docs/index\\_en.htm](http://erg.eu.int/documents/docs/index_en.htm)



## Would the waiver be objectively justifiable?

- 2.32 In its letter to Ofcom of 7 January 2009, BT requested consent to waive the 90 days notification requirement for certain of its WES, WEES and BES products on the basis that it would like to bring the economic benefits of these reductions to customers at the earliest possible opportunity, especially in view of the current difficult economic climate.
- 2.33 In addition, it also pointed to the fact that, in BT's view, an announcement of significant reduction in connection prices 90 days in advance of such price reductions would be likely to have a chilling effect on the market as customers delay the placement of orders.
- 2.34 With respect to the second point raised by BT, Ofcom is aware of this type of risks when imposing notification obligations<sup>8</sup>. However Ofcom's primary goal when imposing remedies in a wholesale market where BT has been found to have SMP is to address the consequences for downstream markets of BT's market power, and it does not believe that the risk of a chilling effect would generally undermine the imposition of such obligations to provide advance notice.
- 2.35 In order to assess whether the waiver is objectively justifiable, we have firstly looked at the proposed new prices. We consider that these new lower prices would lead to sizeable savings for the industry. We have carried out a simple analysis of the potential savings, based on annual rentals only for certain of BT's WES, WEES and BES services, and we estimate that these savings alone would be in the region of £56M per annum<sup>9</sup>.
- 2.36 On that basis, bringing forward the new prices by three months would represent savings in the region of £14M. Given the competitive nature of the downstream markets involved, we would expect these savings to be quickly reflected in lower retail prices passed on to end users.
- 2.37 In addition, Ofcom has been aware for sometime that end users of Ethernet leased lines have been asking BT to introduce lower prices, and this proposed changes fulfil their demands. WES services are used to provide connectivity to a variety of businesses, but also to schools, the Police and other public services. Public services and private companies alike are in today's economic climate under increased pressure to reduce their costs, and such price reductions would help them to meet these demands.
- 2.38 Similarly, purchasers of BT's BES products have also been asking for sometime for lower prices for their broadband backhaul services, enabling them to provide a cheaper and better retail broadband service to their customers.
- 2.39 Having reviewed all the facts and the evidence available to us, given the significance of the price reductions, and the widespread demand for lower prices BT has been facing for sometime, it would be in our initial view objectively justifiable in this case to

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<sup>8</sup> See for example paragraph 7.88 of the 2003/04 Review.

<sup>9</sup> We have used sales volumes from April 2008 provided by BT and carried out an analysis of cumulative savings for the following services: WES 100 Local Access, WES 100, WES 1000, WEES 100, WEES 1000, BES 100 and BES 1000. This is therefore to be considered a conservative estimate, or lower bound, of the effective savings based on current sales volumes, which we know have increased since April 2009.

allow BT to introduce the new prices set out in Annex 7 without having to comply with a 90 days advanced notice obligation.

**Question 1:** *do stakeholders agree with Ofcom that in this case it would be objectively justifiable to give consent to BT's request for a waiver?*

### **Would the waiver be discriminatory?**

- 2.40 Ofcom considers that it would not be unduly discriminatory to allow BT to introduce the price changes early as they would benefit all purchasers of WES, WEES and BES.

### **Would the waiver be proportionate?**

- 2.41 Section 49(2) of the Act requires that the proposed measure must be proportionate to what it is intended to achieve.
- 2.42 In general, notification obligations are imposed to assist a non discrimination obligation in preventing downstream discrimination between the incumbent's downstream arms and its downstream competitors.
- 2.43 In some cases, the promotion of upstream competition in the relevant wholesale market is also relevant. In such cases, a proportionate measure would need to balance the short term benefits of reduced prices with the long term benefits of competition. One such case would be, for example, when a waiver request from the SMP operator affects 'horizontal' competitors that rely on the SMP operator for upstream SMP products.
- 2.44 In the case reviewed in this document, the policy goals we set out to achieve by requiring BT to provide 90 days' advance written notice of price changes were:
- i) to provide protection to the rest of the industry by enabling other CPs to monitor BT's prices for possible anti-competitive effects and give them sufficient time to adjust their downstream prices to enable competition with BT's own retail leased lines products; and
  - ii) to promote competition between BT and other providers of wholesale AISBO products.
- 2.45 Whether it would be proportionate to allow BT to introduce the WES, WEES and BES price changes without giving the full 90 days' advance written notice depends on:
- i) whether the industry considers that the benefits of having the price reductions introduced earlier outweighs any potential costs of doing so; and
  - ii) whether the industry considers that the benefits of having the price reductions introduced earlier outweighs any potential cost associated with the risk of exit of BT's competitors arising from having to react to price changes from BT without having had adequate time to prepare.
- 2.46 The main benefits we foresee coming from an early implementation of the price changes have been discussed above, and would consist of significant price reductions in downstream markets and, in particular, in the downstream market for Ethernet leased lines and the downstream broadband services market. Our

conservative estimate of such savings, based only on rental savings for some WES and BES products, puts them at around £14M for three months.

- 2.47 The first potential cost of waiving the notification period can be identified in the costs that purchasers of WES and BES services would have to incur to amend their contracts, terms and conditions of provisions for their retail customers. It can however be argued that such costs would in any case be incurred even if BT had to comply with the 90 days notification period. The absence of an advanced notice requires a speedier implementation of such changes, which might require extra resources, but it is reasonable to assume that such additional costs would be of a much smaller magnitude than the perceived benefits of having lower charges, which would in any case immediately benefit BT's wholesale customers.
- 2.48 The second potential cost of waiving the notification period relates to the second objective of the notification obligation, namely promoting competition to BT in this market.
- 2.49 The notification obligation imposed on BT as a result of the BCMR Statement is intended to promote competition by giving BT's competitors advance notice of changes to allow them to prepare their competitive response. Without adequate notice, given BT's SMP in this market derived from its economies of scope, scale and vertical integration, there would be a risk that end users would switch away from BT's competitors before they could provide their competitive response and offer new contractual conditions to their customers to match, or improve on, those offered by BT.
- 2.50 Once they start to lose customers before being able to respond, it would be more difficult for them to provide a competitive response, as lowering sales volumes would decrease their economies of scale and scope, which are critical for competition in wholesale leased lines markets<sup>10</sup>, as they are in other electronic communications markets Ofcom regulates. This could, ultimately, lead to them exiting the market, and BT strengthening its SMP position, which could in the long term lead to reduced investments and/or increased prices to the detriment of consumers.
- 2.51 In this particular case, however, we consider there are specific circumstances that, in our view, lower the risk of exit and thus mitigate the potential detriment to competition. Therefore, there appears to be less need to allow a notice period to run before the proposed changes take place.
- 2.52 When BT issued its ACCNs on 24 November 2008, the new proposed charges were published on BT's website and went out to all of BT's customers before being withdrawn on 17 December 2008. It is reasonable to assume that during this time OCPs and BT's customers in general would have become aware of what the new prices would look like. As such, OCPs have in effect had already a 2 month period in which to prepare their competitive response and make the necessary arrangements to their contracts to account for the new proposed charges.
- 2.53 Ofcom's initial view is therefore that the industry in general would be likely to regard the benefits as outweighing the total potential costs including the risk of exit of BT's upstream competitors, and the giving of consent would thus be proportionate.

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<sup>10</sup> For a discussion of the importance of economies of scale and scope in wholesale leased lines markets, please see the SMP analysis set out in Section 7 of the BCMR Statement.

- 2.54 We invite stakeholders to provide their views to our assessment and, in particular, any evidence which might contribute to the understanding of the effect of waiving the advance notice requirement.

**Question 2:** *do stakeholders agree with Ofcom that the benefits of having the proposed WES, WEES and BES price changes introduced without advance notification outweigh in this case any potential costs?*

### Is the proposed waiver transparent?

- 2.55 Ofcom considers that the proposed consent would be transparent in that it is clear from it that BT is not required to comply with the 90 days price notification requirements under SMP Condition HH6 in respect of the proposed prices set out in Annex 7 of this document.

### Conclusions

- 2.56 For the reasons discussed in the previous paragraphs, Ofcom's initial view is that the proposed waiver would meet the criteria set out in section 49(2) of the Act.
- 2.57 Ofcom is also satisfied that issuing a consent in these circumstances would appear to be consistent with its obligations under sections 3 and 4 of the Act in that it would further the interests of consumers, by enabling them to access lower prices for their services, and encourage the availability and use of high speed data transfer services throughout the UK by making the price reductions available at an earlier date. Given the mitigating circumstances discussed above, Ofcom also considers that giving consent would not prejudice the promotion of competition.
- 2.58 Ofcom is therefore minded to conclude that it would be appropriate to consent to BT introducing the price changes in Annex 7 from the publication date of any statement to that effect, without giving the required 90 days' advance written notice.
- 2.59 Ofcom is interested in obtaining the views of stakeholders, particularly as to whether the benefits of having the price changes introduced without a notification period would be outweighed by any potential costs deriving from not having a 90 days notification of the proposed changes.

**Question 3:** *do stakeholders agree with Ofcom that it would be appropriate to give consent to BT to waive the 90 days notification period for the new proposed charges for WES, WEES and BES as set out in Annex 7?*

### Notification of Ofcom's proposal to give consent

- 2.60 Before a consent can be given under section 49 of the Act, Ofcom is required by section 49(4) to publish a notification:
- i) stating that there is a proposal to give, modify or withdraw it;
  - ii) identifying the person whose proposal it is;
  - iii) setting out the direction, approval or consent to which the proposal relates;

- iv) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
  - v) giving reasons for the making of the proposal; and
  - vi) specifying the period within which representations may be made about the proposal to the person whose proposal it is.
- 2.61 Section 49(5) requires that the period for making representations must be one month after the day of the publication of the notification unless there are exceptional circumstances, in which case a shorter notification period may be used so long as it is reasonable in the circumstances. A shorter notification period can only be given where the notification is not one that is required to be sent to the European Commission ("the Commission") under section 50(4) of the Act.
- 2.62 Section 50(4) requires that Ofcom send to the Commission a copy of every notification published under section 49(4) with respect to a proposal which:
- “ ...
- (a) relates to the giving of a direction, approval or consent for the purposes of –
    - (i) an access-related condition falling within section 73(2) or (4), or
    - (ii) an SMP services condition,or to the modification or withdrawal of such a direction, approval or consent; and
  - (b) is a proposal which, in Ofcom's opinion, would affect trade between Member States,”
- 2.63 In its letter to industry of 11 October 2004 (see Annex 6), Ofcom recognised that it may not be appropriate for it to consult for one month when considering requests for consent and that it was necessary for Ofcom to take into account its duties under sections 3 and 4 of the Act, in particular the promotion of competition. Ofcom advised that in most cases Ofcom would consult for five working days only, though this may vary according to the significance or complexity of the price change. Ofcom also noted that proposals to implement price changes with shorter than usual notice may be unlikely to affect trade between Member States.
- 2.64 Ofcom considers that there are exceptional circumstances justifying the use of a shorter consultation period in this case. Without a reduced consultation period, and given the time taken to prepare the consultation document and a following statement, there would be little benefit to consumers in consulting on the early introduction of price reductions as any consent would likely be published only marginally before 90 days from the time of the first notice (i.e. 24 November 2008), by which time BT could have introduced the price changes anyway.
- 2.65 Ofcom does not consider that the notification is one that is required to be sent to the Commission under section 50(4) of the Act as, although it relates to the giving of a consent for the purposes of an SMP condition, Ofcom does not consider that the proposal itself would affect trade between Member States.

- 2.66 The proposed consent relates to a waiver of the requirement to provide 90 days' advance written notice of the price changes in Annex 7. Reducing the prices now, rather than at a later date, will not have an effect on trade between Member States as the price reduction would otherwise come into force at the end of the 90 days' advance notice period required by SMP Condition HH6.
- 2.67 In light of the foregoing considerations, Ofcom considers it justified and appropriate to specify the period within which representations may be made to Ofcom about its proposal to give the said consent to BT as 5 working days. In other words, representations on Ofcom's proposed consent set out in Annex 5 should be made by the deadline and in the manner specified in Annex 1 of this document. As regards the effect of the proposed consent and Ofcom's reasons for making this proposal, these are set out above.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 23 January 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/btprice/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [business.connectivity.review@ofcom.org.uk](mailto:business.connectivity.review@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Serafino Abate  
4<sup>th</sup> Floor  
Competition Division  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7781 3333
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Serafino Abate on 020 7783 4559.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in 2009.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

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

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)



## Annex 2

# Ofcom's consultation principles

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

### Before the consultation

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

### During the consultation

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

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

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

**Question 1:** *do stakeholders agree with Ofcom that in this case it would be objectively justifiable to give consent to BT's request for a waiver?*

**Question 2:** *do stakeholders agree with Ofcom that the benefits of having the proposed WES, WEES and BES price changes introduced without advance notification outweigh in this case any potential costs?*

**Question 3:** *do stakeholders agree with Ofcom that it would be appropriate to give consent to BT to waive the 90 days notification period for the new proposed charges for WES, WEES and BES as set out in Annex 7?*

## Annex 5

# Draft Notification – proposed consent

### NOTIFICATION UNDER SECTION 49 OF THE COMMUNICATIONS ACT 2003

**Proposal to give a consent to British Telecommunications plc (“BT”) under SMP services condition HH6, imposed on BT as a result of the analysis of symmetric broadband origination markets listed in the Schedule to the Proposed Consent annexed to this Notification in which BT has been found to have significant market power**

1. OFCOM hereby make, in accordance with section 49 of the Act, a proposal to give a consent under SMP services condition HH6, imposed on BT as a result of the analysis of symmetric broadband origination markets listed in the Schedule to the Proposed Consent set out in the Annex to this Notification in which BT has been found to have significant market power.
2. The proposed consent is set out in the Annex to this Notification.
3. The effect of the proposed consent, and the reasons for making the proposal, are set out in Section 2 of the accompanying Explanatory Statement hereto.
4. In making the proposal set out in this Notification, OFCOM have considered and acted in accordance with their general duties set out in section 3 of the Act and the six Community requirements set out in section 4 of the Act.
5. Representations may be made to OFCOM about the proposal set out in this Notification and the accompanying Explanatory Statement by 5pm on 23 January 2009.
6. In this Notification—
  - (a) **“Act”** means the Communications Act 2003;
  - (b) **“BT”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989; and
  - (c) **“OFCOM”** means the Office of Communications.

**Gareth Davies**

**Competition Policy Director**

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

16 January 2009

Annex

**[Proposed] Consent under Condition HH6 imposed on BT as a result of the analysis of symmetric broadband origination markets listed in the Schedule to this Consent in which BT has been found to have significant market power**

WHEREAS:

- (A) as a result of a market analysis carried out by OFCOM, OFCOM issued a Notification on 8 December 2008 in accordance with section 79 of the Act that BT has significant market power in the symmetric broadband origination markets listed in the Schedule and set certain SMP conditions on BT, such as Condition HH6;
- (B) this Consent concerns matters to which Condition HH6 relates;
- (C) for the reasons set out in the Explanatory Statement accompanying this Consent, OFCOM is satisfied that, in accordance with Section 49(2) of the Act, this Consent is:
  - (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (c) proportionate to what it is intended to achieve; and
  - (d) in relation to what it is intended to achieve, transparent.
- (D) for the reasons set out in the Explanatory Statement accompanying this Consent, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (E) on 16 January 2009, OFCOM published a notification of the proposed Consent in accordance with section 49 of the Act;
- (F) OFCOM has considered every representation about the proposed Consent duly made to it; and

NOW, therefore, pursuant to Condition HH6, OFCOM gives the following Consent:

1. For the purposes of complying with its obligations under Condition HH6, OFCOM consents that BT shall not be obliged to provide an Access Charge Change Notice in respect of the prices (as specified in Annex 7) of the Explanatory Statement accompanying the publication of this Consent) before these amendments come into force on the dates specified in the said Annex 7.
2. For the purposes of interpreting this Consent, the following definitions shall apply:
  - (a) “**Act**” means the Communications Act 2003

- (b) **"BT"** means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
  - (c) **"Notification"** means the Notification referred to in recital (A) of this Consent above, as published on 8 December 2008; and
  - (d) **"OFCOM"** means the Office of Communications
- 3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Notification as appropriate.
- 4. For the purpose of interpreting this Consent:
  - (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
- 5. This Consent shall take effect on the day it is published.
- 6. Annex 7 of the consultation accompanying the publication of this Consent shall form part of this Consent.

**Gareth Davies**

**Competition Policy Director**

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

XX January 2009

## **Schedule**

1. The market for alternative interface symmetric broadband origination at speeds up to and including 1 Gbit/s in which British Telecommunications plc has been found to have significant market power.



## Annex 6

# Ofcom's letter to industry of 11 October 2004

11 October 2004

To BT, Kingston, UKCTA, the 5 MNOs, ISPA, FCS

MICHAEL RICHARDSON

Competition and Markets

Direct line: 020 7783 4157

Direct fax:

[michael.richardson@ofcom.org.uk](mailto:michael.richardson@ofcom.org.uk)

### Consent to reduced price change notice periods

As you will know, providers with SMP are obliged to provide advance notice of changes to prices in wholesale markets, unless Ofcom consents otherwise. The notice period varies from market to market and is generally either 90 days or 28 days. (In retail markets where there is SMP, price changes have to be notified within 24 hours of the change taking effect, so the concept of advance notice does not apply.)

There have been occasions when it has been appropriate to give consent to a reduced notice period, enabling price changes to take effect more quickly than usual. Under the pre July 2003 telecoms regime, Oftel was able to consent to reduced notice periods without consulting interested parties. Under the Communications Act this is not possible, as Ofcom is required to consult for a minimum of 1 month, unless there are exceptional circumstances justifying the use of a shorter period and the proposals do not have an effect on trade between EC Member States. Ofcom is setting out in this letter how it expects to operate under the new regime.

There appear to be a limited set of scenarios when Ofcom might be asked to consent to price changes taking effect more swiftly than is normally permitted.

- Ofcom might direct a provider to alter its prices forthwith, either to offer a price specified by Ofcom or to comply with a formulation, such as a margin squeeze test, under which a range of pricing permutations would be compliant with the direction.
- A price reduction which the provider proposes to introduce at short notice might be considered advantageous to customers (it is much less likely that Ofcom would agree to consult on a price increase being introduced at short notice although, in theory, that is possible).

- The provider may have made an administrative error which needs to be corrected by altering a published price swiftly.

### ***Price changes directed by Ofcom***

In the case of price changes which follow some kind of intervention, Oftel had generally consented (without first consulting) to revised prices being introduced without the usual notice being given. In future Ofcom will generally consult on the implementation arrangements (including a possible consent to a reduced notice period) when it consults on the substance of a direction. Consultation at an early stage should ensure that any issues are addressed and, if appropriate, notice of the price change is given.

### ***Price reductions (and, in theory, increases) which the SMP provider wishes to implement***

Ofcom recognises that price reductions are generally perceived to be advantageous to customers and, as such, that there may be an argument that price reductions should be implemented without delay imposed by regulation. However in the circumstances of a wholesale market where a vertically integrated supplier has SMP, the advantages are not so clear cut, and the reasons for imposing an obligation to give advance notice of price changes generally, which were explained in the relevant market review statements, remain valid. Ofcom does not believe SMP conditions should be modified to permit price reductions without notice. Furthermore, the damaging effects of leakage of advance information between the wholesale and retail arms of the dominant operator may be amplified where the wholesale provider is able to introduce price reductions at very short notice. The potential for anti competitive effects is perhaps even greater where the dominant wholesale supplier introduces a "special offer" with limited duration and at short notice. Ofcom will consult interested parties before consenting to early implementation of price reductions, so that their views on the specific case may be taken into account.

In the circumstances of a proposed consent to a waiver of a 28 day notice period, it would not be appropriate to consult on the proposition for 1 month, and unhelpful even in the context of a 90 day notice period. In such cases Ofcom will take into consideration its duties under Sections 3 and 4 of the Communications Act, in particular the promotion of competition, in deciding whether a case is justified. Ofcom also notes that proposals to implement a price change with shorter than usual notice may not be likely to affect trade between member states. The period for consultation may vary according to the significance or complexity of the proposed price change, but in most of these particular cases, Ofcom will consult for 5 working days only, unless there are particular reasons for allowing a longer period. Ofcom will endeavour to adopt a very concise and standardised format for such consultations, to minimise the time which it will take for interested parties to consider the proposition. Ofcom will also aim to consider responses and publish its consent, or a refusal, within a few days of the consultation period ending unless, the nature of the responses received requires more extended analysis.

In the event that Ofcom believes there may be merit in consenting to a reduced notice period applying to a price increase, it will adopt a similar approach.

***Administrative errors***

Where an SMP provider had made a genuine error in maintaining its price list or in notifying customers of a price change, Oftel generally gave formal consent (without first consulting) to prices being corrected without advance notice being given. Ofcom will conduct a short consultation exercise before consenting to prices being changed without the usual lengthy notice.

***Next steps***

Ofcom is not planning to consult formally on these new processes, and expects to adopt these from now on. However, if you have any comments on how these systems can be made fairer and more efficient, Ofcom would be interested to read these. Please do not hesitate to let me have your views.

Yours sincerely

**Michael Richardson**

**Competition Policy Manager**

## Annex 7

# BT's proposed price changes

### WES/WEES 100MBit/s circuits and above - Connection Charges

(Prices are per end – Note 2)	Operative Date	Until	Connection (£) Exc VAT
WES/WEES 100	08/01/2007	23/11/2008	2,750.00
WES/WEES 100	24/11/2008	17/12/2008	975.00
WES/WEES 100	18/12/2008	31/03/2009	2,750.00
WES/WEES 100	01/04/2009		975.00
WES/WEES 155	08/01/2007		4,500.00
WES/WEES 622	14/06/2007		5,200.00
WES/WEES 1000 (LAN /SAN)	14/06/2007	23/11/2008	5,200.00
WES/WEES 1000 (LAN /SAN)	24/11/2008	17/12/2008	1,997.50
WES/WEES 1000 (LAN /SAN)	18/12/2008	31/03/2009	5,200.00
WES/WEES 1000 (LAN /SAN)	01/04/2009		1,997.50
WES/WEES 1000 Extended Reach	14/06/2007	23/11/2008	6,500.00
WES/WEES 1000 Extended Reach	24/11/2008	17/12/2008	2,500.00
WES/WEES 1000 Extended Reach	18/12/2008	31/03/2009	6,500.00
WES/WEES 1000 Extended Reach	01/04/2009		2,500.00
WES/WEES 2500	14/06/2007		10,000.00
WES/WEES 10000	14/06/2007		14,000.00

### WES/WEES 100MBit/s circuits and above Annual Rental Charges

(Prices are per end – Note 2)	Operative Date	Until	Annual Rental
			(£) Ex VAT (Note 2)
WES/WEES 100	08/01/2007	31/03/2009	2,750.00
WES/WEES 100	01/04/2009		2,300.00
WES/WEES 155	08/01/2007		5,210.00
WES/WEES 622	14/06/2007		8,500.00
WES/WEES 1000 (LAN /SAN)	14/06/2007	31/03/2009	7,500.00
WES/WEES 1000 (LAN /SAN)	01/04/2009		5,000.00
WES/WEES 1000 Extended Reach	14/06/2007	31/03/2009	9,500.00
WES/WEES 1000 Extended Reach	01/04/2009		6,865.00
WES/WEES 2500	14/06/2007		10,750.00
WES/WEES 10000	14/06/2007		13,090.00

### WES/WEES 10Mbit/s Connection and Rental Charges

(Prices are per end – Note 2)	Operative Date	Until	Connection	Annual Rental
			(£) Exc VAT	(£) Ex VAT (Note 2)
WES/WEES 10 (Unmanaged)	02/06/2008	23/11/2008	1,200.00	2,100.00
WES/WEES 10 (Unmanaged)	24/11/2008	17/12/2008	975.00	2,100.00
WES/WEES 10 (Unmanaged)	18/12/2008	31/03/2009	1,200.00	2,100.00
WES/WEES 10 (Unmanaged)	01/04/2009		975.00	2,100.00
WES/WEES 10 – (Local Reach)	02/06/2008	23/11/2008	1,150.00	2,000.00

WES/WEES 10 – (Local Reach)	24/11/2008	17/12/2008	975.00	2,000.00
WES/WEES 10 – (Local Reach)	18/12/2008	31/03/2009	1,150.00	2,000.00
WES/WEES 10 – (Local Reach)	01/04/2009		975.00	2,000.00
WES/WEES 10 Managed	02/06/2008	23/11/2008	1,450.00	2,300.00
WES/WEES 10 Managed	24/11/2008	17/12/2008	975.00	2,300.00
WES/WEES 10 Managed	18/12/2008	31/03/2009	1,450.00	2,300.00
WES/WEES 10 Managed	01/04/2009		975.00	2,300.00

### WES/WEES Main Link Charge

(Prices are per metre of part thereof – Note 2)	Operative Date	Until	Connection	Annual Rental
			(£) Exc VAT	(£) Ex VAT (Note 2)
Main link	14/06/2007	31/03/2009		0.54
Main link	01/04/2009		0.00	0.40

### Wholesale Extension Services Local Access – Connection

(Prices are per circuit)	Operative Date	Until	Connection
			(£) Ex VAT
WES Local Access 10 managed	14/06/2007	23/11/2008	2,000.00
WES Local Access 10 managed	24/11/2008	17/12/2008	1,950.00
WES Local Access 10 managed	18/12/2008	31/03/2009	2,000.00
WES Local Access 10 managed	01/04/2009		1,950.00
WES Local Access 100 managed	14/06/2007	23/11/2008	3,398.00
WES Local Access 100 managed	24/11/2008	17/12/2008	1,950.00
WES Local Access 100 managed	18/12/2008	31/03/2009	3,398.00
WES Local Access 100 managed	01/04/2009		1,950.00
WES Local Access 1000 managed	14/06/2007	23/11/2008	5,700.00
WES Local Access 1000 managed	24/11/2008	17/12/2008	2,500.00
WES Local Access 1000 managed	18/12/2008	31/03/2009	5,700.00
WES Local Access 1000 managed	01/04/2009		2,500.00

### Wholesale Extension Services Local Access – Annual Rental Charges

(Prices are per circuit)	Operative Date	Until	Annual Rental Charges
			(£) Ex VAT
WES Local Access 10 managed	14/06/2007		2,650.00
WES Local Access 100 managed	14/06/2007	31/03/2009	3,072.00
WES Local Access 100 managed	01/04/2009		2,650.00
WES Local Access 1000 managed	14/06/2007	31/03/2009	7,750.00
WES Local Access 1000 managed	01/04/2009		5,000.00

### WES/WEES Resilience Option 1 (Hot Standby) Connection & Rental Charges (Notes 12 & 13)

	Operative Date	Until	CONNECTION (£) Ex VAT	ANNUAL RENTAL
			Is site served by fibre from BT serving exchange?	(£) Ex VAT
WES 100 Resilient Option 1 Connection per end (1)	17/07/2006		8,350.00	5,840.00

WES 1000 Resilient Option 1 Connection per end (1)	17/07/2006		13,400.00	21,600.00
WEES 100 Resilient Option 1 Connection per end (1)	17/07/2006		8,350.00	5,840.00
WEES 1000 (LAN/SAN) Resilient Option 1 Connection per end (1)	17/07/2006		13,400.00	21,600.00
<b>Notes</b>				
1) Both the above prices include Hot Standby Electronics				
Generic Resilience Facility fee per path	20/12/2007		n/a	n/a
Main link per metre or part thereof	20/12/2007	31/03/2009	0.00	0.00
Main link per metre or part thereof	01/04/2009		0.00	0.00
Resilience link per metre or part thereof	20/12/2007	31/03/2009	0.00	0.00
Resilience link per metre or part thereof	01/04/2009		0.00	0.00

### WES Resilience Option 2 - Connection & Rental Charges (Notes 11 & 12)

	Operative Date	Until	Connection	Rental Charge
			(£) Ex VAT	(£) Ex VAT
WES Generic Resilience Facility fee per circuit (all bandwidths)	20/12/2007			800.00
Main link per metre or part thereof	20/12/2007	31/03/2009		0.62
Main link per metre or part thereof	01/04/2009		0.00	0.45
Resilience link per metre or part thereof	20/12/2007	31/03/2009		0.62
Resilience link per metre or part thereof	01/04/2009		0.00	0.45

### WEES Resilience Option 2 - Connection & Rental Charges (Notes 15 & 16)

	Operative Date	Until	Connection	Rental Charge
			(£) Ex VAT	(£) Ex VAT
WEES Generic Resilience Facility fee per circuit (all bandwidths)	20/12/2007			800.00
Main link per metre or part thereof	20/12/2007	31/03/2009		0.62
Main link per metre or part thereof	01/04/2009		0.00	0.45
Resilience link per metre or part thereof	20/12/2007	31/03/2009		0.62
Resilience link per metre or part thereof	01/04/2009		0.00	0.45

### WES - Aggregation Connection and Rental Charges

	Operative Date	Until	Connection	Annual Rental Charge
			(£) Ex VAT	(£) Ex VAT
WES Aggregation Tail 10Mb unmanaged (up to 25km radial)	08/01/2007		2,950.00	1,170.00
WES Aggregation Tail 100Mb managed (up to 25km radial)	08/01/2007		3,800.00	2,750.00

Distance charge between exchanges metre or part thereof (spoke)	20/12/2007	31/03/2009		0.54
Distance charge between exchanges metre or part thereof (spoke)	01/04/2009		0.00	0.40
WES Aggregation Aggregated Link 9xRJ45 Handover	08/01/2007		15,200.00	9,830.00
WES Aggregation Aggregated Link 1Gb optical Handover	08/01/2007		16,100.00	9,830.00
Distance charge between exchanges (Aggregated link) per metre or part thereof ( > 0m )	20/12/2007	31/03/2009		0.54
Distance charge between exchanges (Aggregated link) per metre or part thereof ( > 0m )	01/04/2009		0.00	0.40

### BES/BES Daisy Chain 100MBit/s and above Connection

(Prices are per end – Note 3)	Operative Date	Until	Connection
			(£) Exc VAT (Note 1)
BES 100	14/06/2007	23/11/2008	2,750.00
BES 100	24/11/2008	17/12/2008	975.00
BES 100	18/12/2008	31/03/2009	2,750.00
BES 100	01/04/2009		975.00
BES 155	14/06/2007		4,500.00
BES 622	14/06/2007		5,200.00
BES 1000	14/06/2007	23/11/2008	5,200.00
BES 1000	24/11/2008	17/12/2008	1,997.50
BES 1000	18/12/2008	31/03/2009	5,200.00
BES 1000	01/04/2009		1,997.50
BES 1000 Extended Reach	14/06/2007	23/11/2008	6,500.00
BES 1000 Extended Reach	24/11/2008	17/12/2008	2,500.00
BES 1000 Extended Reach	18/12/2008	31/03/2009	6,500.00
BES 1000 Extended Reach	01/04/2009		2,500.00
BES 2500	14/06/2007		10,000.00
BES 10000	14/06/2007		14,000.00

### BES/BES Daisy Chain 100MBit/s and above Rental Charges

(Prices are per end – Note 3)	Operative Date	Until	Annual Rental	Daisy chain Annual Rental
			(£) Ex VAT (Note 3)	(£) Ex VAT (Notes 3 & 13)
BES 100	14/06/2007	31/03/2009	2,480.00	2,210.00
BES 100	01/04/2009		1,830.00	1,560.00
BES 155	14/06/2007		4,700.00	4,670.00
BES 622	14/06/2007		8,230.00	7,960.00
BES 1000	14/06/2007	31/03/2009	7,230.00	6,960.00
BES 1000	01/04/2009		5,000.00	4,865.25
BES 1000 Extended Reach	14/06/2007	31/03/2009	9,230.00	N/A
BES 1000 Extended Reach	01/04/2009		6,865.00	N/A
BES 2500	14/06/2007		10,480.00	10,210.00
BES 10000	14/06/2007		12,820.00	12,550.00

### BES/BES Daisy Chain 100MBit/s Term Rental Charges

(Prices are per end – Note 3)	Operative Date	Until	3 year minimum period Annual Rental	5 year minimum period Annual Rental	Daisy Chain 3 year minimum period Annual Rental	Daisy Chain 5 year minimum period Annual Rental
			(£) Ex VAT (Note 15)	(£) Ex VAT (Note 15)	(£) Ex VAT (Note 15)	(£) Ex VAT (Note 15)
BES 100	19/08/2008	31/03/2009	2,108.00	1,984.00	1,878.50	1,768.00
BES 100	01/04/2009		1,555.50	1,464.00	1,326.00	1,248.00



BES 155	14/06/2007		n/a	n/a	n/a	n/a
BES 622	14/06/2007		n/a	n/a	n/a	n/a
BES 1000	19/08/2008	31/03/2009	6,145.50	5,784.00	5,916.00	5,568.00
BES 1000	01/04/2009		4,250.00	4,000.00	4,135.00	3,892.00
BES 1000 Extended Reach	19/08/2008	31/03/2009	7,845.50	7,384.00	n/a	n/a
BES 1000 Extended Reach	01/04/2009		5,835.25	5,492.00	n/a	n/a
BES 2500	14/06/2007		n/a	n/a	n/a	n/a
BES 10000	14/06/2007		n/a	n/a	n/a	n/a

### BES/BES Daisy Chain 10MBit/s Connection and Rental Charges

(Prices are per end – Note 3)	Operative Date	Until	Connection	Annual Rental	Daisy chain Annual Rental
			(£) Exc VAT (Note 1)	(£) Ex VAT (Note 3)	(£) Ex VAT (Notes 3 & 13)
BES 10	02/06/2008	23/11/2008	1,200.00	1,830.00	1,560.00
BES 10	24/11/2008	17/12/2008	975.00	1,830.00	1,560.00
BES 10	18/12/2008	31/03/2009	1,200.00	1,830.00	1,560.00
BES 10	01/04/2009		975.00	1,830.00	1,560.00

Main Link Charges					3 year minimum period Annual Rental	5 year minimum period Annual Rental
(Prices are per metre of part thereof – Note 2)	Operative Date	Until	Connection	Annual Rental	Annual Rental	Annual Rental
			(£) Exc VAT	(£) Ex VAT (Note 2)	(£) Ex VAT (Note 2 & 15)	(£) Ex VAT (Note 2 & 15)
Main link per metre or part thereof (>0m up to 25,000 metres )	19/08/2008	31/03/2009	0.00	0.54	0.46	0.43
Main link per metre or part thereof (>0m up to 25,000 metres )	01/04/2009		0.00	0.40	0.34	0.32

Resilient Option 2 (Notes 9 & 10)					3 year minimum period Annual Rental Charge	5 year minimum period Annual Rental Charge
Description	Operative Date	Until	Connection	Annual Rental Charge (£) Ex VAT (Note 2)	Annual Rental Charge (£) Ex VAT (Note 2 & 15)	Annual Rental Charge (£) Ex VAT (Note 2 & 15)

Backhaul Extension Services Generic Resilience Facility fee per circuit (all bandwidths)	20/12/2007		N/A	800.00	800.00	800.00
Main link per metre or part thereof	19/08/2008	31/03/2009	N/A	0.62	0.53	0.50
Main link per metre or part thereof	01/04/2009		N/A	0.45	0.38	0.36
Resilience link per metre or part thereof	19/08/2008	31/03/2009	N/A	0.62	0.53	0.50
Resilience link per metre or part thereof	01/04/2009		N/A	0.45	0.38	0.36