



Draft determination to resolve a dispute between BT and Telewest about geographic call termination reciprocity agreement

Consultation document

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indicated by “[X]”**

Consultation

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Section 1

Draft Determination

[Draft] Determination under Sections 188 and 190 of the Communications Act 2003 for resolving a dispute between the Telewest companies listed at Annex 1 to this Determination ('Telewest') and British Telecommunications plc ('BT') about geographic call termination reciprocity agreement.

WHEREAS:

- (A) Section 188(2) of the Communications Act 2003 (the "Act") provides that where there is a dispute between different communications providers, and Ofcom has decided pursuant to section 186(2) of the Act that it is appropriate for it to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes 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 of the Act sets out the scope of Ofcom's powers on resolving a dispute, which may include, in accordance with section 190(2) of the Act, a declaration setting out the rights and obligations of the parties to the dispute;
- (B) Following the review of fixed geographic call termination markets, the Director General of Telecommunications imposed SMP Condition BC1 on Telewest and other operators on 28 November 2003 pursuant to which Telewest is required to grant Network Access on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct ("SMP Condition BC1");
- (C) On 3 August 2005, BT issued an Operator Charge Change Notice ("OCCN") to Telewest which proposes a reciprocity agreement setting out the proposed charges payable by BT for calls passed from BT's network for termination on Telewest's network for the period commencing 1 October 2005 and ending 30 September 2009 ("the Proposed Reciprocity Agreement");
- (D) Telewest subsequently rejected the OCCN and, on 8 November 2005 proposed an alternative basis for the calculation of the charges payable by BT for calls terminated on Telewest's network to be included in the Proposed Reciprocity Agreement ("the Telewest Proposal");
- (E) On 23 January 2006, BT wrote to Ofcom referring a dispute between BT and Telewest relating to the Proposed Reciprocity Agreement, as BT and Telewest had failed to reach commercial settlement as to the terms of the Proposed Reciprocity Agreement;
- (F) On 3 February 2006, Telewest wrote to Ofcom referring a dispute between Telewest and BT relating to the Proposed Reciprocity Agreement, as BT and Telewest had failed to reach commercial settlement as to the terms of the Proposed Reciprocity Agreement;
- (G) On 17 February 2006, after holding discussions with the parties, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the parties of this decision;

- (H) In order to resolve this dispute, Ofcom has considered, among other things, the information provided by the parties and the relevant duties set out in sections 3 and 4 of the Act;
- (I) Ofcom issued a draft of this Determination and the explanatory statement on [] and responses were invited by [];
- (J) An explanation of the background to the dispute and Ofcom's reasons for making this Determination are set out in the explanatory statement accompanying this Determination;

NOW, THEREFORE, PURSUANT TO SECTIONS 188 AND 190 OF THE ACT, OFCOM MAKES THE FOLLOWING DETERMINATION:

1. It is hereby declared that, should Telewest provide Network Access to BT on the terms set out in the Telewest Proposal, such provision would not be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.
2. It is hereby declared that, should Telewest provide Network Access to BT on the terms set out in the OCCN, such provision would be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.
3. Words or expressions used in this Determination shall have the same meaning as in the Act and in the final explanatory statement and notification of the Director General of Telecommunications dated 28 November 2003 in relation to the review of fixed geographic call termination markets, except as otherwise stated in this Determination.
4. 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.
5. This Determination shall take effect on the day it is published.
6. This Determination is binding on BT and Telewest in accordance with section 190(8) of the Act.

DAVID STEWART

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003.

[] June 2006

Annex 1

Telewest companies which are parties to this dispute

	Operator	Registered Number	Registered Address
1.	Telewest Limited	03291383	Export House Cawsey Way Woking Surrey GU21 6QX
2.	Eurobell (West Kent) Limited	02886001	Export House Cawsey Way Woking Surrey GU21 6QX
3.	Eurobell (Sussex) Limited	02272340	Export House Cawsey Way Woking Surrey GU21 6QX
4.	Eurobell (South West) Limited	01796131	Export House Cawsey Way Woking Surrey GU21 6QX

Section 2

Summary

1. Ofcom has published a draft determination under Section 190 of the Communications Act 2003 ('the Act') to resolve a dispute between a number of Telewest companies ('Telewest') and British Telecommunications plc ('BT').
2. This dispute relates to the proposed charges payable by BT for the termination of fixed geographic calls on Telewest's network.
3. BT and Telewest had entered into a reciprocity agreement for geographic call termination, effective from 1 October 2001. That reciprocity agreement ran until 30 September 2005 and has now expired.
4. On 3rd August 2005, BT issued an Operator Charge Change Notice (OCCN) proposing a new reciprocity agreement for geographical call termination for the period 1 October 2005 to 30 September 2009. The OCCN also proposes changes to current geographic call termination charges as a result of the agreement and proposes a formula for future charge changes throughout the four-year period of the reciprocity agreement, effective as from 1st October 2005. The proposals contained in the OCCN were rejected by Telewest. Subsequent proposals were put forward by Telewest which were rejected by BT.
5. BT referred a dispute between BT and Telewest to Ofcom on 23 January 2006. On 3 February 2006, Telewest also referred a dispute to Ofcom in connection with the same issues.
6. In accordance with Section 186(4) of the Act, Ofcom decided that it was appropriate for it to handle the dispute, by reference to both parties' submissions. Ofcom informed the parties of its decision and published a Competition Bulletin setting out the scope of the dispute on 17 February 2006.
7. The background to the issues in dispute is set out in section 3. The history of the dispute is set out in section 4.
8. In arriving at its proposed decision, Ofcom has considered submissions made by the parties. The parties' positions are set out in section 5.
9. Ofcom's proposed decision is set out in section 6. Ofcom proposes to determine that:
 - Should Telewest provide Network Access to BT on the terms set out in the Telewest Proposal, such provision would not be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.
 - Should Telewest provide Network Access to BT on the terms set out in the OCCN, such provision would be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.
10. Ofcom's proposals for resolution of this dispute may have an impact on electronic communications providers (ECPs) other than the parties to the dispute, namely on those ECPs that have commercial arrangements with BT for transit and termination of calls on Telewest's network.

11. As Ofcom's proposals may have an impact on ECPs other than the parties to the dispute, Ofcom has decided to publish its proposals for wider consultation. Comments are requested on Ofcom's proposals by 2 June 2006. Details of the consultation are set out in Annex 1 of this document. Ofcom will take responses into account when making its final decision.

Section 3

Background

Call termination

12. This dispute relates to the proposed charges payable by BT for the termination of fixed geographic calls on Telewest's network.
13. Communications providers ("CPs") buy call termination services from each other in order to provide their customers with end-to-end calls between different networks. In the case of this dispute, BT pays Telewest for termination of calls on Telewest's network.
14. The network to which the caller is connected is called the 'originating network'. Not all originating networks have a direct connection to all terminating networks. Some CPs who originate traffic therefore pass calls for termination via BT's network, purchasing a transit service from BT to do so. The total charge payable to BT by those CPs for transit and termination on Telewest's network therefore reflects the level of Telewest's termination charge.

SMP in fixed geographic call termination

15. On 28 November 2003 Ofcom published the findings of its Review of fixed geographic call termination markets¹ ("the Market Review").
16. In the Market Review, Ofcom found that the provision of fixed geographic call termination services on each CP's network constitutes a separate market. The Market Review designated each of the CPs as having significant market power ("SMP") in the markets for fixed geographic call termination on their own networks and imposed certain SMP conditions on those CPs as set out in the notification which accompanied that review.
17. BT and Kingston were designated² as having SMP in the market for fixed geographic call termination on their respective networks.
18. Other relevant CPs³ ("OCPs"), including Telewest, were also designated as having SMP in the market for fixed geographic call termination on their respective networks.
19. Those OCPs are consequently subject to SMP Condition BC1⁴ which requires them to provide Network Access (in this case, fixed geographic call termination) on terms, conditions and charges that are fair and reasonable. This condition ensures that these OCPs are not able to exploit the SMP they enjoy in respect of fixed geographic call termination on their own networks by the imposition of excessive charges, the harmful effects of which would ultimately be borne by consumers.

¹ Review of fixed geographic call termination markets Identification and analysis of markets, determination of market power and setting of SMP conditions: Final Explanatory Statement and Notification, 28 November 2003

² Under Schedule 1 (BT) and Schedule 2 (Kingston) of the Notification set out at Annex B to the Market Review.

³ The CPs named under Annex A to Schedule 3 of the Notification to the Market Review.

⁴ As set out at part 2 of Schedule 3 of the Notification to the Market Review.

20. BT is subject to SMP Condition BA1⁵ which, similarly, requires it to provide Network Access (in this case, fixed geographic call termination) on terms, conditions and charges that are fair and reasonable.
21. In addition, BT is subject to SMP Condition BA3⁶, which requires it to base its charges for fixed geographic call termination on efficiently incurred long run incremental costs, and SMP Condition BA4⁷, which imposes a charge control on BT's fixed geographic call termination charges⁸.
22. In seeking to comply with these obligations and similar obligations in place prior to changes in regulatory rules introduced in 2003, BT publishes a Carrier Price List ("CPL"). Among other things, this sets out at section B1, part 1.01 the charges for "BT Telephony Calls to the BT System" – i.e. the charges BT applies to OCPs for terminating fixed geographic calls on the BT network. Different pence per minute charges are applied to each call depending on the time of day the call is made and the level within the BT network that the call is handed over to BT by the OCP:
- a. The "Call Termination Local Exchange" rate applies to calls handed by the OCP to BT at the local exchange for the network termination point relevant to that call;
 - b. The "Single Tandem Call Termination" rate applies to calls handed by the OCP to BT at the tandem exchange connected to the relevant local exchange for that call; and
 - c. The "Double Tandem Call Termination" rate applies to calls handed by the OCP to BT at other tandem exchanges within the BT network with different charges applying dependent on the radial distance between the tandem exchange to which the call is handed and the tandem exchange connected to the relevant local exchange for that call:
 - i. "Double Tandem (short)" rates apply when the radial distance is less than 100km;
 - ii. "Double Tandem (medium)" rates apply when the radial distance is between 100km and 200km; and
 - iii. "Double Tandem (long)" rates apply when the radial distance is greater than 200km.

Reciprocal charging

23. Charges for fixed geographic call termination on non-BT networks have since 1997 been calculated on the basis of a principle of reciprocal charging. Under this principle, terminating OCPs' charges for fixed geographic call termination services are based on BT's equivalent regulated, cost-oriented charges.

⁵ As set out at part 2 of Schedule 1 of the Notification to the Market Review.

⁶ As set out at part 2 of Schedule 1 of the Notification to the Market Review.

⁷ As set out at part 2 of Schedule 1 of the Notification to the Market Review.

24. Ofcom considered in the Market Review and in subsequent decisions⁹ that this reciprocal arrangement addresses the potential effects of SMP in fixed geographic call termination markets.
25. The terms of the proposed reciprocal charging agreement, as contained in the OCCN of 3 August 2005, have been the subject of negotiation between BT and the OCPs in a similar manner to the terms of the previous reciprocal charging agreement which ran from 2001 until 2005. At the time BT referred this dispute to Ofcom, BT stated that 3 OCPs other than Telewest had not signed the OCCN but were likely to sign in the near future. BT have since confirmed that the 3 OCPs other than Telewest have now signed the agreement.
26. Under the proposed reciprocal charging agreement, fixed geographic call termination charges are calculated according to a formula which is based on BT's regulated termination charges, but which takes into account differences between BT's network and OCPs' networks.

How the current reciprocity agreement works

27. The proposed reciprocity agreement distinguishes between OCPs with single-switched status (Single Switched Operators or "SSOs") and OCPs with multi-switched status (Multi Switched Operators or "MSOs"). Single switched termination calls are calls that terminate on an end-user's network termination point connected directly to the switch where BT hands over a call to the OCP. Multi-switched calls are calls that terminate on an end-user's network termination point that is connected to a different OCP switch from that where BT hands over the call.
28. Under the proposed agreement, OCPs with more than a certain proportion of multi-switched calls can apply for MSO status. BT will then pay these MSOs a higher termination charge for any multi-switched calls to reflect the additional work undertaken in OCP networks to terminate such calls. All other OCPs receive termination payments for all calls received based on the single switched call charge.
29. This single switched call charge (charge "A") is calculated as a weighted average of BT's "Single Tandem Call Termination" and "Local Exchange Call Termination charges"¹⁰. The weights applying to this calculation mirror the mix of geographic call termination traffic sent from the OCP to the relevant BT tandem and local exchange switches and also take account of any relevant local exchange Carrier Pre-Select (CPS) traffic the OCP may receive from BT. Specifically, the proportion sent by the OCP to BT's local exchange (the "X ratio") and tandem switches (1-X) are the weights applied to the relevant BT call termination charges in the CPL in calculating charge A. These proportions are calculated on the basis of a sample of traffic each May, and then applied to the charge which is applied in October. Thus the X ratio is dynamic (with a slight time lag) and personalised to each network (e.g. Telewest) depending on how that network interconnects with the BT network.

⁹ See Ofcom's Resolution of a dispute between BT and Telewest about reciprocal charging arrangements for call termination rates, 16 April 2004.

¹⁰ These charges form part of the NCC charge controls. The daytime rates for April 2005 were: 0.2514ppm for DLE termination and 0.3555ppm for ST termination.

30. For MSOs , BT's proposed charge (charge "B") is a weighted average of charge "A" (as above) and the BT Double Tandem (short) rate¹¹. The weights applying to these two charges are set by the proportion of traffic sent from BT to the OCP's network that is multi-switched ("Y" ratio) and the proportion which is single switched (1-Y).

31. Textbox 1 below sets out more formally the calculation of charges A and B.

¹¹ The DT (short rate) charge is also one of the NCC charges, and was 0.6055 (daytime) as of April 2005.

Textbox 1

Rate A – Single Switch Operator rate

- Analyse the Operator's May invoice from BT
- Identify:
 - Total number of minutes sent to BT at local exchange rate
 - CPS local exchange call minutes
 - Total number of minutes sent to BT at single tandem rate
- Calculate X, where:
$$X = \frac{\text{Total number of minutes sent to BT at local exchange rate} + \text{CPS local exchange call minutes}}{\text{Total number of minutes sent to BT at local exchange rate} + \text{CPS local exchange call minutes} + \text{total number of minutes sent to BT at single tandem rate}}$$
- Then for each time of day calculate:
$$\text{Rate A} = (X \times \text{BT Call Termination Local Exchange rate}) + ((1 - X) \times \text{BT Single Tandem Call Termination rate})$$
- Rate A will change whenever the BT CPL rates change
- X will be set for 12 month period from 1 October based on the May call analysis

Rate B – Multi-Switch Operator rate

- Ratio Y is the % of all "relevant minutes" sent by BT to the Operator which are minutes terminated as Multi-Switched Calls
- Ratio Y is checked and calculated twice yearly in May and November.
- If Y falls below lower threshold of 7.5% for two consecutive calculations, then Operator loses MSO status and rate A will apply until Y exceeds 10% as set out above
- $$\text{Rate B} = (Y \times \text{BT DT (short) rate}) + ((1 - Y) \times \text{rate A})$$
- Rate B changes when BT CPL conveyance charges change and when rate A changes in line with recalculation of X
- Y is recalculated twice a year – deadline for data to be provided by Operator is 31 July for May data and 31 January for November data.

Section 4

History of the dispute

32. BT and Telewest had entered into a reciprocity agreement for geographic call termination, effective from 1 October 2001. That reciprocity agreement ran until 30 September 2005 and has now expired.
33. On 3 August 2005, BT issued an OCCN to Telewest which proposes a new reciprocity agreement for geographic call termination setting out the charges payable by BT for calls passed from BT's network for termination on Telewest's network for the period commencing 1 October 2005 and ending 30 September 2009 ("the Proposed Reciprocity Agreement").
34. Telewest subsequently rejected the OCCN and, on 8 November 2005 proposed an alternative basis for the calculation of the charges payable by BT for calls terminated on Telewest's network to be included in the Proposed Reciprocity Agreement ("the Telewest Proposal").
35. On 23 January 2006, BT wrote to Ofcom referring a dispute between BT and Telewest relating to the Proposed Reciprocity Agreement, as BT and Telewest had failed to reach commercial settlement as to the terms of the Proposed Reciprocity Agreement.
36. On 3 February 2006, Telewest wrote to Ofcom referring a dispute between Telewest and BT relating to the Proposed Reciprocity Agreement, as BT and Telewest had failed to reach commercial settlement as to the terms of the Proposed Reciprocity Agreement.
37. On 17 February 2006, after holding discussions with the parties, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the parties of this decision.
38. Following initial representations from both Telewest and BT, Ofcom published the scope of the dispute in its Competition Bulletin on 17 February 2006¹² as follows:

'The scope of the dispute is to determine whether:

- Telewest's proposal as regards the geographic call termination rate charged to BT, namely:
 - a. Single switch termination on the Telewest network to be charged at the prevailing BT single tandem rate; and
 - b. Multi-switch termination on the Telewest network to be charged at the prevailing BT double tandem (short) rate

and;

- BT's proposals contained within the terms of the OCCN

¹² http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_890/

are fair and reasonable.'

39. Included within the Proposed Reciprocity Agreement is a defined process for determining whether an OCP achieves and retains MSO status. Essentially, OCPs achieve this status once they demonstrate that a defined percentage of all calls sent by BT to the MSO are multi-switched. The MSO status is removed if for two consecutive sampling periods, the share of multi-switched calls drops below a defined threshold level. The Telewest Proposal effectively removes any thresholds by proposing that any multi-switched traffic it receives should be charged at the "Double Tandem (short) Call Termination" charge in the CPL. Telewest has separately questioned the appropriateness of the MSO thresholds within BT's OCCN and raised concerns that its MSO status could be lost and revenues received fall because what they consider an arbitrary threshold is passed.
40. However, during this investigation BT stated that [X] Ofcom only need consider, in this dispute, Telewest's rejection of the single-switch rate (Ratio X) element of the BT's reciprocity proposals. Telewest has also stated they accept that there is scope for the issue of multi-switch qualification criteria to be resolved commercially between BT and Telewest and accept that the scope of Ofcom's consideration will be confined to the single switch charging issue.
41. On this basis, Ofcom considers that the most practical way forward in resolving the dispute is to focus its assessment on whether the charges set out in BT's OCCN are fair and reasonable as regards the formula for calculating single-switched traffic rates. Ofcom will make no assessment of whether the MSO status thresholds can be considered "fair and reasonable". Given BT's willingness to address Telewest's concerns in this area, Ofcom no longer considers this issue as being within the scope of the dispute.

Section 5

Submissions of the parties

BT's submission

42. In its 23 January 2006 referral to Ofcom, BT provided a history of the failed negotiations with Telewest and submitted the scope of the dispute as that:

- the terms of the 1st October 2005 reciprocal agreement for fixed geographic call termination
- the changes to Telewest's charges as a result of that agreement
- the formula for further charge changes as applicable during the four year period of the agreement, (as proposed in the 3rd August 2005 BT OCCN),

are fair and reasonable.

43. In addition, BT made specific submissions on Ratio-X and MSO status. These are summarised in turn below:.

Ratio X

- *Ratio X is a fundamental part of the current reciprocity agreement, which was originally negotiated with industry over 8 years ago and which has subsequently been supported each time the agreement has been re-negotiated at the end of each four year agreement. The new agreement, as proposed in the 3rd August 2005 OCCN, has again been agreed by the vast majority of CPs.*
- *Ratio X provides a linkage between BT's charges for termination of geographic traffic from an OCP and the termination rate of that OCP. It is a measure of the traffic terminated by BT directly at local exchange switches and traffic routed to BT via its tandem switches. The OCP's terminating rate is then determined using this ratio and BT's Local Exchange and Single Tandem termination rates.*
- *BT's view is that geographic call termination, as described in the Market Review, is equivalent to call termination at BT Local Exchange switches. However, BT ... offered an agreement which is acceptable to the majority of OCPs, to continue the long standing compromise as developed with the OCP community. The use of Ratio X ensures that, should BT's tandem switching layer be fully bypassed (through deep network interconnection), competitive parity would be maintained and consumers would continue to benefit from network efficiencies.*
- *The offer put forward in the OCCN represented the end of a significant period of negotiation with geographic call terminators, of which the vast majority¹³ have now signed the agreement.*
- *BT had concerns with Telewest's statement that constraining the percentage level of Ratio X was in support of their stated objective to route single tandem traffic*

¹³ At the time BT referred this dispute to Ofcom, BT stated that 3 OCPs other than Telewest had not signed the OCCN but were likely to sign in the near future. BT have since confirmed that these 3 OCPs other than Telewest have now signed the agreement.

terminating on BT's network via other operators enabling cost reduction that is unavailable to BT. This objective would raise serious competitive concerns, impact on efficiency drivers, and be at odds with Ofcom's previous views regarding geographic call termination charges.

MSO Status

- *The qualification threshold for MSO status is an important component for BT, given that OCPs have not invested in the necessary information and billing systems to offer an element based termination charge.*

Telewest's submissions

44. In its 3 February 2006 referral to Ofcom, Telewest provided a history of the failed negotiations with BT and submitted the essence of the dispute is Telewest's objections to the structural issues with BT's call termination proposals, that is:
- a) The use of the 'X-ratio' in determining Telewest's single-switch call termination rates, and;
 - b) The arbitrary thresholds proposed by BT to determine MSO status.
45. Telewest submitted that it ceased to develop Local Exchange interconnect with BT several years ago because of the disincentive effects of the X-ratio. Telewest added that given the current balance of its PSTN traffic with BT, it would make commercial sense under the former reciprocity arrangement for Telewest to remove all its existing Local Exchange interconnects. Telewest further submitted that that it is effectively precluded from routing any of its single tandem PSTN traffic to a CP other than BT because to do so would dilute inbound termination rates. Telewest submitted that that the current application of the X-ratio is both anti-competitive and acts as a major distortion to efficient investment decisions.

Telewest's initial position on the scope of the dispute

46. On 3 February Ofcom sent a copy of BT's referral to Telewest and requested Telewest's comments on the BT's proposed scope of the dispute. On 8 February, Telewest submitted that the scope of the dispute should also include consideration of whether the Telewest Proposal, namely:
- Single switch termination on the Telewest network to be charged at the prevailing BT single tandem rate; and
 - Multi-switch termination on the Telewest network to be charged at the prevailing BT double tandem (short) rate

might also be interpreted as fair and reasonable.

47. Telewest submitted that these amounts are significantly below the identified costs of call termination, and therefore sees its proposal as a "compromise".

Parties' further representations on scope

48. During this investigation BT stated that [X] Ofcom only need consider, in this dispute, Telewest's rejection of the single-switch rate (Ratio X) element of the BT's reciprocity proposals. Telewest has stated they accept that the issue of MSO status may be resolved commercially between BT and Telewest and accept that the scope of Ofcom's consideration will be confined to the single switch charging issue.

Information sought by Ofcom

49. Following the opening of the investigation on 17 February 2006, Ofcom sought relevant information from BT and Telewest. Specifically, Ofcom used its powers under section 191 of the Act:
- i) On 27 March 2006, requiring BT to provide further information on the application of its methodology as regards the Proposed Reciprocity Agreement and information relating to payments and revenues flowing from fixed geographic call termination services.
 - ii) On 3 April 2006, requiring Telewest to provide estimates of various costs and revenues, as well as information relating to Telewest's network interconnection with BT's network.
50. During the course of the investigation, Ofcom has also met with both Telewest and BT. In reaching its proposed decision, Ofcom has used additional information supplied voluntarily by BT and the complainants, data in the public domain and analysis undertaken by Ofcom. This evidence is set out further in the decision.

Section 6

Ofcom's analysis

Legal framework

51. Sections 185 to 191 of the Act give Ofcom the power to resolve disputes submitted to it. Section 186 of the Act requires Ofcom to resolve disputes referred to it under Section 185 where Ofcom has determined that it is appropriate for it to resolve the dispute. The current dispute relates to obligations imposed under SMP condition BC1 (i.e. Telewest's obligation to ensure that network access is provided on terms, conditions and charges that are fair and reasonable).

52. The obligation in SMP Condition BC1 came into force on 28 November 2003.

Issue to be resolved

53. There are two main issues that Ofcom needs to consider when resolving this dispute:

- whether Telewest's proposal for setting charges for single-switched termination on the Telewest network at the prevailing BT single tandem rate is fair and reasonable; and
- whether BT's proposals contained within the terms of the OCCN for calculating charges for single-switched termination on the Telewest network are fair and reasonable.

Assessment of 'fair and reasonable'

54. In the Market Review, Oftel stated at paragraph 4.15 "*Condition BC1 requires charges to be 'fair and reasonable'. It does not mandate that charges should be based on BT's charges. Any PECN could therefore set other charges if it believed that they were 'fair and reasonable'. But Oftel's view is that charges that were not based on BT's are unlikely to be 'fair and reasonable'. Nevertheless, the Director would need to consider any dispute on its relative merits. In any case, charges would have to be competitively neutral.*"

55. In determining whether or not the charges set out in the OCCN and those set out in the Telewest Proposal are fair and reasonable, Ofcom considers it is appropriate to have regard to the six principles of cost recovery described below, which were developed by Oftel in the context of number portability, endorsed by the Monopolies and Mergers Commission¹⁴ and have subsequently been used by Ofcom in analysing various pricing issues¹⁵.

¹⁴ Telephone Number Portability: A Report on a reference under s13 of the Telecommunications Act 1984 (MMC, 1995).

¹⁵ See for example: 'Determination under Section 190 of the Communications Act 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', 19 November 2003. See also 'Direction concerning ADSL Broadband

56. The six principles of cost recovery are:

- **Effective competition:** the mechanism for cost recovery should not undermine or weaken the pressure for effective competition;
- **Reciprocity:** where services are provided reciprocally, charges should also be reciprocal;
- **Cost minimisation:** the mechanism for cost recovery should ensure that there are strong incentives to minimise costs;
- **Cost causation:** the cost should be recovered from those whose actions cause the costs to be incurred at the margin;
- **Practicability:** the mechanism for cost recovery needs to be practicable and relatively easy to implement.
- **Distribution of benefits:** the costs should be recovered from the beneficiaries especially where there are externalities;

57. Ofcom believes that the use of these basic principles of cost recovery is wholly consistent with its 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 its general obligations under administrative law.

58. In determining the appropriate charging methodology for fixed geographic call termination on Telewest's network, Ofcom has taken into account previous statements made by itself and the legacy regulators¹⁶. Ofcom notes that, as discussed in section 3, the SMP obligation on the terminating CP – in this case, Telewest – is that the charges are required to be 'fair and reasonable' and not that the charges are optimal or free of all distortions. Therefore, any dispute brought before Ofcom over geographic call termination pricing is guided by what is considered fair and reasonable.

59. Ofcom considers that the concept of fair and reasonable pricing is that which strikes a good balance in meeting the principles outlined above, whilst recognising that there may be a conflict between some of these objectives.

60. In applying the six principles of cost recovery to the dispute before it, Ofcom has considered in particular the following points.

Effective Competition

61. This principle requires that charges imposed should not undermine the pressure for effective competition. In the present case, Ofcom recognises that the imposition of fixed geographic call termination charges by SMP operators on an incurred costs basis may reduce effective competition at the retail level due to the externality arising in fixed geographic call termination.

Access Migration Services; and a Draft Determination to resolve a dispute between Tiscali, Thus and BT concerning ADSL Broadband Access Migration Services', 9 August 2004.

¹⁶ see footnote 9 above

62. The externality in call termination arises because charges for call termination are included in the originating CP's cost base and are reflected in the retail charge paid by the caller, not the called recipient. The characteristics of call termination that arise which are important in this context are:
- (i) charges for call termination are paid by the customers of other CPs, which will be competing with the terminating CP in retail markets. Consequently, CPs have incentives to set high call termination charges which raise their competitors' costs; and
 - (ii) CPs have weak incentives to minimise costs and charges of call termination because the implications of high charges are faced by the customers of competing CPs.
63. Ofcom considers that the consequence of this is that if all call termination charges were based strictly on incurred costs, there would be a distortion of competition. If one CP, through being more efficient, were able to deliver calls more cheaply than another, the CP benefiting from this efficiency and lower cost would not be the more efficient CP which has reduced termination costs, but the less efficient CP since it is buying the cheaper call termination service. The less efficient CP would therefore gain a competitive advantage, in the sense that it would make smaller outpayments to the more efficient CP and would be able to offer its own customers cheaper calls (than if its prices were based only on its own network costs).
64. Taking into account call origination, and recognising that a CP with lower call termination costs will also tend to have lower call origination costs (because the same network components are involved in each case), the disadvantage that the higher cost CP should have in competing in retail markets (because it is less efficient) would be offset, because it would pay the lower call termination charge. Similarly, the lower cost CP's advantage would be offset, were charges strictly cost based, because it would have to pay the higher call termination charges of the less efficient CP. Ofcom therefore considers that call termination charges for each and every CP should not be based directly on that CPs' actual costs of call termination.
65. Table 1 below summarises the issues above by considering an abstract case of two operators, A and B, and on the following assumptions:
- A's cost of origination and termination is assumed to be equal and denoted as "a".
 - B's cost of origination and termination is denoted as "b".
 - B is more efficient than A, i.e. $b < a$.
 - Reciprocal charges would be based on B's cost of termination (i.e. b), as it is the lower-cost operator.
66. As is shown, a cost-based charge for termination on operator A's network would mean that the effective cost (charge) to the operator B in making a call to the terminating network, A, are (inter alia) the costs of origination on its network (b) plus the costs of termination (a) on the terminating network. As noted in the table, this charging approach will result in A and B having the same call costs, even though B is more efficient, since A will benefit from B's greater efficiency while B will face A's higher costs of termination. As explained above, under an incurred cost-based OCP termination charge, there is an incentive for the OCP to inflate the costs of

termination, since (under a Calling Party Pays system) these costs are faced by the originating operator (the call termination externality).

67. Under a reciprocal charge by contrast, the effective cost of the same call are its own origination costs (as before) plus a charge based on B's regulated charges for termination on B's network.. As a result, B is able to internalise its greater efficiency through achieving lower call costs than A, and the ability of A to inflate the costs of termination is reduced.

Table 1 - Call from Operator A to Operator B

	<i>Charges at incurred cost</i>	<i>Reciprocal charges (equal to b)</i>
Operator A: call from A to B	a + b	a + b
Operator B: call from B to A	b + a	b + b
Effect	A and B have same cost of call in either direction	B's call cost is lower than A, reflecting its greater efficiency

68. The implication of the above is that charges between different fixed-network CPs for call termination should be reciprocal, so that the distortion of competition is removed and competitive neutrality achieved.

Reciprocity

69. In a statement issued by Oftel in July 1997, *Network Charges from 1997* ("the 1997 Statement"), the Director General supported the principle of reciprocal charging for Operators' call termination charges. This principle required that Operators' charges were calculated on a reciprocal basis to BT's own call termination charges, taking into account the different network topologies. BT's own charges were regulated under the Network Charge Controls from 1997. The aim of reciprocity was to ensure competitive neutrality between BT and OCPs and to remove the distortive effects of the call termination externality.
70. Ofcom considers that this, together with the above, illustrates that, in order for competitive neutrality to be achieved, fixed termination charges should be set on a reciprocal basis. In the absence of reciprocity, higher cost OCPs are imposing a cost on lower cost OCPs, which is then masked by the lower costs of origination of the lower cost networks.

Cost minimisation

71. In respect of the principle of cost minimisation, Ofcom considers that by divorcing OCPs' call termination charges from a measurement of their costs and using instead BT's charges, they would also be given strong incentives to minimise costs. Where OCPs are more efficient than BT, they are rewarded through greater profit margins, which provides the incentive to achieve greater productive efficiency.
72. Furthermore, BT's position as the largest and only ubiquitous operator offers a natural benchmark for the efficient operator. Given the presence of market power and consequent dilution of incentives for productive efficiency, it is uncertain whether

networks are providing the service at costs consistent with a competitive market. The use of benchmark charges that are set by reference to the efficient level of costs can be used in order to ensure that prices reflect efficient costs.

Cost causation

73. Setting OCP charges on the basis of BT's cost-based charges also takes account of the principle of cost causation. In this context, BT, as the originating operator (calling party), is causing the costs of termination on Telewest's network to be incurred, and thus should be the party responsible for bearing the costs. In addition, this charging approach also meets the goal of ensuring charges reflect efficiently incurred costs.

Practicability

74. In this context, the practicability of a pricing proposal relates to whether the proposal can be easily implemented, and without exhausting disproportionate resources on the part of BT, OCPs and the regulator. This is especially important in the case of OCP termination, due to the large number of OCPs. Thus a desirable feature of pricing proposals in this area is that they resolve the transaction costs that would arise from multiple negotiations, as well as the regulatory costs arising from the assessment of each individual OCP's charging proposal in the event of a dispute.

Distribution of benefits

75. A key focus of this principle is to ensure that all benefits, including positive externalities, are taken into account. In this context, however, there are no relevant positive externalities to be reflected in the charges¹⁷. This should be contrasted with the existence of the call termination externality, which, as discussed, is a negative externality which undermines competitive neutrality. For this reason, Ofcom does not consider further this particular pricing principle in this context.

Conclusion

76. In light of the regulatory objectives set out above, and the particular economic characteristics of this market, Ofcom considers that the general approach of reciprocity based on BT's charges as a guide to charges for OCP termination is fair and reasonable. Reciprocity in this case is consistent with the principles of effective competition and cost minimisation whilst taking account of cost causation through the link to BT's cost-based charges.

Application of the principles to this dispute

77. This section considers more specifically the two proposals before Ofcom, and addresses the question of which, if any, of the two proposals is fair and reasonable in light of the five applicable principles outlined above, namely:

- Reciprocity;

¹⁷ Network externalities on fixed networks (the benefits to existing subscribers from being able to call and be called by an additional subscriber) are addressed through other means than termination charges, such as Universal Service obligations. Calling externalities (the benefits to a call recipient from being called) are generally assumed to be sufficiently internalised.

- Effective competition;
- Cost minimisation;
- Cost causation; and
- Practicability.

Is BT's proposal fair and reasonable?

Reciprocity

78. Ofcom considers that BT's proposals, as far as SSO charges are concerned, broadly comply with the second of the four approaches to reciprocity identified by the Director General in the 1997 Statement¹⁸. The Director General identified this approach as one of two preferred options out of the four considered as it reflected most closely the economic arguments underlying competitive neutrality. This approach involves calculating a single charge for OCP call termination as a weighted average of BT's local exchange segment and single tandem segment charges, using actual volumes of OCP to BT traffic to compute the weights. Furthermore, the approach recognises the topological differences between the networks of BT and the OCPs since call termination on OCP networks can be characterised as corresponding to two interconnection services on BT's network: local exchange segment and single tandem segment. OCP call termination charges should therefore be a combination of BT's charges for these two services.

Effective competition, cost minimisation and cost causation

79. As discussed at paragraphs 61 onward, the principle of effective competition suggests that OCPs' termination should not be based on their costs, but rather on a reciprocal basis with BT – i.e. on BT's regulated charges. Ofcom considers that this offers the related advantage of cost minimisation; by divorcing OCPs' call termination charges from a measurement of their costs and using instead BT's charges, they would be given strong incentives to minimise costs. In addition, this takes account of cost causation through the link to BT's cost-based charges. Ofcom therefore considers BT's proposal to be consistent with the principles of effective competition, cost causation and cost minimisation.

Practicability

80. Setting OCP termination charges on the basis of BT's charges has the advantage of being a practicable pricing regime. It obviates the need to consider the efficient costs of each OCP, which would involve a multiplicity of cost models, and a substantial use of CPs' and regulatory resources. The practicability of BT's proposal has been amply demonstrated, since it has been the model governing largely successful negotiations with the whole CP community for 10 years.

Make/buy neutrality

81. Telewest's main objection to BT's model of reciprocity is the dynamic nature of the X ratio and its effects on make/buy decisions.

¹⁸ Annex C, paragraphs C.15(2) and C.32 of the 1997 Statement.

82. Telewest has submitted that the formula within the reciprocity agreement has the effect of providing a clear disincentive for them to invest in increased local exchange connectivity with BT. This is because any increased connectivity at the local exchange in sending geographic traffic to BT would increase X and, given the mechanics of the formula, therefore reduce their revenues from geographic terminating traffic sent by BT.
83. The overall impact of this is dependent on both the Y ratio and the relative volumes of traffic Telewest sends to and receives from BT. If all traffic received by Telewest from BT was single switched (i.e. the Y ratio equals zero) then investments in local exchange connectivity with BT would reduce the charge Telewest pays to BT for geographic termination but also reduce by the same amount the charge BT pays Telewest for traffic in the opposite direction. If BT and Telewest exchange identical traffic volumes, then the net effect of any investment in local exchange connectivity would be neutral – revenue from and payments to BT would fall by an equal amount. It could be then argued that Telewest has no clear incentive to invest in local exchange connectivity as the overall effect is that there is no saving in net termination payments with BT. However, this does not take account of the lag in updating X within the formula, which means that for a short time (up to a year) immediately following any investment, Telewest would see a reduced cost in payments to BT, but still receive the same revenue from BT.
84. Ofcom notes that in the 1997 Statement, the Director General had identified these distortive effects¹⁹ on make or buy decisions as a drawback of this preferred approach but considered that they were more than offset by other advantages (eg competitive neutrality). Ofcom recognises that the dynamic operation of the X ratio introduces a greater distortion to build/buy decisions than would be the case where X was made exogenous, such as where X was fixed for a certain period at a certain value or where there were stepped changes in the values of X which were independent of Telewest's decisions in respect of termination on BT's network. Ofcom considers that in this instance, the practical approach to addressing the make or buy distortion would be to ascertain the magnitude and impact of the problem in reality on Telewest.
85. To this end, Ofcom has attempted to assess the scale of any actual disincentive effect on Telewest by looking at Telewest's actual charges and volumes for sending and receiving traffic from BT. In its original submission, Telewest argued that it was a net terminator of traffic – i.e. it receives a higher volume of traffic from BT than it sends to BT. This balance of traffic would have the effect of increasing the scale of the disincentive effect outlined above by making Telewest worse off following any investment, even before the investment cost itself is taken into account. That is, any reductions in Telewest geographic call termination costs resulting from deeper connectivity with BT would be more than offset by reduced revenues on traffic received by Telewest meaning net termination revenues would be lower following any investment. Linked to this, Telewest has indeed argued that it may face incentives to withdraw from BT local exchanges in order to reduce X and increase its net revenues.
86. In support of this contention, Telewest submitted a stylised model of termination net revenues, which purported to show a drastic reduction in net termination revenues as

¹⁹ Annex C, paragraph C.22 of the 1997 Statement.

a result of an increase in the X ratio (resulting from deeper local exchange connectivity).

87. However, modelling undertaken by Ofcom using data subsequently provided by Telewest during this investigation has suggested that Telewest's model overstated this effect on net revenues. The overstatement derives from two factors. The first factor is that Telewest had initially overstated the extent to which it is a net terminator with respect to BT traffic. Telewest's data suggests that its traffic balance with BT is only moderately negative. In addition, in Telewest's initial model, the Y ratio – the proportion of traffic sent by BT to Telewest which is multi-switched – was assumed to change (fall) in response to the assumed change in X. It is not clear, however, that the Y ratio is dependent on X. That is, the mix of interconnection points TW has with BT's network is likely to be independent of the mix of interconnection points which BT uses to hand over traffic to Telewest's network. If Y is assumed to be held constant, modelling suggests that an increase in X (resulting from Telewest investment in DLE roll-out) may lead to a net increase in *net* termination receipts. This indicates that Telewest's initial submission may be overstating the magnitude of the disincentive to invest resulting from the dynamic operation of X.
88. Furthermore, the magnitude of the actual disincentive is likely to be further reduced by the time lag in recalculating X and recalculating the termination charges to apply.
89. Ofcom's preliminary view on the issue of the X ratio's potential for make/buy distortion is that whilst the existence of the distortion cannot be ruled out, its practical importance for Telewest has not been sufficiently demonstrated so as to render the impact of BT's proposals unfair or unreasonable for the purposes of the relevant SMP condition.
90. In Ofcom's view, on balance the proposals within the OCCN do achieve the objectives of reciprocity, cost minimisation, competitive neutrality and practicability, and take account of cost causation through the link to BT's cost-based charges. It is not clear that the distortions to the build/buy decision are of sufficient magnitude to make the overall proposals inconsistent with the obligation that Telewest's charges be fair and reasonable. This is not to preclude the possibility that alternative means of setting charges could also be considered fair and reasonable whilst addressing any potential distortions. To this end, Ofcom also considers the Telewest Proposal in the next section.

Is Telewest's proposal fair and reasonable?

91. Telewest proposes to set its charge for single-switched geographic call termination on its network at the BT Single Tandem (ST) rate. For multi-switched traffic, the proposed charge is the BT Double Tandem (short) rate.

Reciprocity

92. As set out above at paragraphs 69 onward, Ofcom considers that reciprocity is a desirable feature of charging for fixed geographic call termination on OCP networks. One aspect of reciprocity is that charges are ultimately based on BT's costs.
93. In respect of whether Telewest's proposed charge is based on BT's costs, it is true in one sense that it is. Telewest's proposed rate is the BT Single Tandem Call Termination rate, which is based on BT's costs – i.e. based on a cost-oriented charge set by BT. However, Single Tandem Call Termination reflects the costs to BT of switching a call through a tandem switch, conveying that call on to a second switch –

a local exchange - and then terminating that call on the appropriate network termination point. In Ofcom's view it is fair and reasonable for reciprocal charges to be based on a combination of Local Exchange and Single Tandem termination - see paragraph 78 above. The Telewest proposal, however, involves only Single Tandem and no Local Exchange and in this critical sense, therefore, it does not appear to be based on an appropriate BT cost relating to single switched OCP call termination.

94. Therefore, Ofcom is of the view that Telewest's proposal to set its charge at BT's ST rate is not appropriately reciprocal.

Effective competition

95. Charges are competitively neutral where the reward (disadvantage) of greater (lesser) efficiency is appropriated by more (less) efficient networks and their subscribers.
96. Ofcom notes that Telewest's proposal would translate into BT paying higher termination charges for termination on Telewest's network than the charges paid by Telewest for termination on BT's network. Telewest's charge effectively amounts to an interpretation of BT's proposal with a fixed zero weighting on DLE traffic, i.e. $X = 0$. This increases termination receipts for Telewest.
97. This would mean that BT's subscribers would incur the higher cost (to BT) of calling a Telewest subscriber through higher call prices. Taking into account the discussion above on competitive neutrality, and that Telewest's proposal involves a zero weight on local exchange termination, in Ofcom the Telewest Proposal is not competitively neutral.

Cost minimisation and cost causation

98. Telewest submitted that it has proposed using the BT ST rate for its single switch termination despite this amount being below its identified costs of termination.
99. Telewest has not sought to provide evidence to substantiate their assertions as to their own costs. Rather, Telewest provided qualitative and schematic arguments to support the proposition that its costs of termination are significantly above the charge that would apply under BT's proposal.
100. Ofcom considers, however, that Telewest's evidence falls short of a robust demonstration that its costs are higher than BT's. Ofcom is also uncertain as to the reasons for any such cost difference (particularly as to whether or not it is related to a lower level of efficiency). Telewest has not sufficiently established that its termination costs are higher than BT's. Therefore, the adoption of its proposal would risk termination charges that are higher than necessary, as well as being unfairly borne by BT and its customers, even though the higher costs are not caused by BT. These features tend to undermine the consistency of the Telewest Proposal with the principles of cost minimisation and cost causation.
101. In any event, even if Telewest could demonstrate that its costs were above the charge under the BT proposal (and indeed the Telewest Proposal), Ofcom would not necessarily consider charges based on these higher costs to be fair and reasonable. Whether such a proposal would be fair and reasonable may depend on the reasons why Telewest's efficient costs were higher. These reasons could be related, amongst other things, to economies of scale, a different balance of costs between access and

traffic-sensitive costs, a different balance of cost between switching and transmission, or be simply a result of inefficiencies.

Practicability

102. Given the Telewest Proposal involves setting its termination charge as BT's Single Tandem charge, the proposal is self-evidently easy to implement, and in this sense, it can be seen as a simple and practicable charging methodology. However, although the Telewest Proposal does not explicitly set charges based on Telewest's specific costs of termination, Ofcom wishes to reiterate in this context that a regime which involved OCPs setting termination charges on the basis of their own specific termination costs would not be likely to constitute a practicable method of setting OCP termination charges. As set out at paragraph 79 above, the use of individual OCPs' costs of termination for the basis of the charge would potentially involve an assessment of a multiplicity of cost models, and a substantial use of CPs' and regulatory resources and would not therefore be seen as practicable.
103. In light of the principles of cost recovery and the discussion set out above Ofcom considers that the Telewest Proposal as regards the call termination rate charged to BT is not fair and reasonable.

Ofcom's initial conclusions

104. Based on the discussions and the regulatory objectives set out above, Ofcom proposes to conclude that:
- The Telewest Proposal as regards the call termination rate charged to BT would not be fair and reasonable; and
 - The proposals set out within the BT OCCN would derive charges for single switched termination on the Telewest network which would be fair and reasonable.

Section 8

Ofcom's proposed decision

105. This dispute was referred to Ofcom by both BT and Telewest under Section 185 of the Act. In accordance with Section 186(4) of the Act, Ofcom decided that it was appropriate for it to handle this dispute and published its decision in a Competition Bulletin setting out the scope of its investigation on 17 February 2006.

Relevant market and the position of the parties to the dispute

106. The relevant market is the market for fixed geographic call termination on Telewest's network.

107. Telewest has been designated as having SMP in the market for fixed geographic call termination on its own network, as set out in the Market Review.

108. Telewest is required under SMP condition BC1 to provide fixed geographic call termination services on fair and reasonable terms, conditions and charges.

Ofcom's proposed decision

109. Ofcom proposes to determine that:

Should Telewest provide Network Access to BT on the terms set out in the Telewest Proposal, such provision would not be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.

Should Telewest provide Network Access to BT on the terms set out in the OCCN, such provision would be regarded as being on fair and reasonable terms, conditions and charges under SMP Condition BC1.

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 2 June 2006**.
- A1.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, 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 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- A1.3 Please can you send your response to first CW890Dispute@ofcom.org.uk.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Tanya Rofani
Floor 4
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact on 020 7783 4342.

Confidentiality

- A1.7 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).
- A1.8 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
- A1.9 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.

- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement around the middle of June.
- A1.12 Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

- A1.13 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
- 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. 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, whose views are less likely to be obtained in 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 (Scotland)
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
E-mail: vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

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

Before the consultation

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

During the consultation

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

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

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

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

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

After the consultation

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

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet 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 in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your 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

What do you want Ofcom to keep confidential?

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

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

☐

Name

Signed (if hard copy)

