

## Annex 4

# Detailed explanation of remedies including assessment against legal tests

## Aims of regulation

- A4.1 Where Ofcom has made a determination that a person has SMP in an identified services market, it shall set such SMP conditions authorised by section 87 of the 2003 Act as it considers appropriate to apply to that person in respect of the relevant network or relevant facilities and apply those conditions to that person. Annex 2 to this explanatory statement sets out the reasoning, by reference to the SMP Guidelines, as to why Ofcom is obliged to impose at least one appropriate SMP condition.
- A4.2 In Sections 3 to 6, and Annexes 2 and 5, Ofcom explains why it considers that it is necessary for it to control the charges that BT can set in the markets for call origination, call termination, local-tandem conveyance and local-tandem transit, and single transit. In addition, those parts of this document explain why Ofcom considers that it is necessary to control the charges that BT levies for the provision of ISB services, PPP, and FRIACO. As explained, charge controls are designed to promote the development of competition in downstream narrowband markets, as competing providers will be able to purchase services on the basis of BT's increasingly efficient costs in the provision of wholesale services. In the absence of charge control regulation for these services, BT would have an incentive to set charges that were above its costs.
- A4.3 However, Ofcom does not believe that charge controls, in isolation, will be sufficient to prevent SMP being used for anti-competitive purposes. As a consequence, Ofcom considers that it is necessary to set additional remedies requiring, among other things, price publication and cost accounting. This Annex therefore sets out in detail Ofcom's reasons for setting SMP services conditions. It also sets out why Ofcom believes that it has satisfied the tests that are set out in the 2003 Act.
- A4.4 As explained in Section 6, Ofcom, is making a new market power determination in the market for LTC and LTT, and is re-setting existing SMP services conditions on BT in relation to that market, with the exception of the new charge control and amended notification period conditions. For other markets, only new charge control conditions are being set under the notification in Annex 3, therefore the discussion of other markets in this annex is limited to the justification for new NCCs. However, the SMP services conditions referred to in this Annex equally apply in the markets for call origination, call termination, and single transit, despite the fact that those conditions are not being re-set.

## **Requirement to provide network access on reasonable request**

- A4.5 Section 87(3) of the 2003 Act authorises the setting of SMP services conditions requiring the dominant provider to provide network access as Ofcom may from time to time direct. These conditions may, pursuant to section 87(5), include provision for securing fairness and reasonableness in the way in which requests for network access are made and responded to and for securing that the obligations in the conditions are complied with within periods and at times required by or under the conditions. When considering the imposition of such conditions in a particular case, Ofcom must have regard to the six factors set out in section 87(4) of the 2003 Act including, inter alia, the technical and economic viability of installing other competing facilities and the feasibility of the proposed network access.
- A4.6 As the market analysis set out in Section 4 has shown, considerable investment would be needed to offer a service comparable to LTC and LTT at each BT DLE. It may be economically viable to connect at each local exchange in some areas of the UK. However, in other areas, the level of investment that would be needed to achieve the same extensive coverage as BT is high and it is difficult for competing providers to compete on an even basis, and therefore enter the market for LTC and LTT on a national basis. Ofcom therefore considers that BT should be subject to a requirement to provide network access on reasonable request in the market for LTC and LTT, as this requirement helps to enable competitors who only interconnect at tandem exchanges to offer competing retail services in downstream markets without needing to invest in interconnection at hundreds of local exchanges.
- A4.7 Ofcom considers that BT should be required to provide network access in the market for LTC and LTT on reasonable request and as Ofcom may from time to time direct. Any contravention of a direction may therefore result in a contravention of the condition itself and thus subject to enforcement action under sections 94-104 of the 2003 Act.

## **Communications Act tests**

- A4.8 Ofcom considers that SMP services Condition AA1(a) is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to the market for LTC and LTT.
- A4.9 Ofcom has considered all the Community requirements set out in section 4 of the 2003 Act. In particular, the condition promotes competition and secures efficiency and sustainable competition for the maximum benefits for retail consumers by enabling providers to compete in downstream markets. For the same reasons, Ofcom considers that this condition will further the interests set out in section 3 of the 2003 Act.
- A4.10 Section 47 requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. This condition is objectively justifiable, in that it relates to the need to ensure that competition develops to the benefit of consumers. It does not unduly discriminate, as it is imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis. It is proportionate, since it is targeted at addressing the market power that Ofcom considers that BT retains in the market for LTC and LTT and does not require it to provide access if it is

not technically feasible or reasonable. Finally, it is transparent in that it is clear in its intention to ensure that BT provides access to its network in order to facilitate competition.

A4.11 Ofcom has also taken into account all the factors set out in section 87(4). In particular, the economic viability of constructing alternative networks that extend to each of BT's local exchanges that would make the network access provisions unnecessary. As explained, Ofcom does not consider that it is economically viable to connect at all of BT's local exchanges and therefore in some instances competing providers will need to purchase network access services from BT in the market for LTC and LTT .

### **Requirement to provide new Network Access**

A4.12 Ofcom also considers that BT should be required to meet requests for new Network Access in the market for LTC and LTT. Ofcom considers that a condition requiring BT to meet reasonable requests for new Network Access will help to secure fairness and reasonableness in the way in which BT responds to such requests (section 87(5)(a)). Ofcom considers that this is best achieved through the publication of guidelines that set out, among other things, the form and detail that requests for new Network Access should be made and the information that BT requires to consider such requests for new Network Access. Ofcom considers that the provisions of this condition, and the associated guidelines, will help to secure fairness and reasonableness in the way in which BT meets requests for new Network Access in so far as these requests relate to a request for new Network Access in the market for LTC and LTT.

A4.13 Ofcom considers that this approach adds clarity and robustness to the process for seeking new Network Access. In setting the condition, Ofcom has considered the factors set in section 87 in particular Ofcom considers that the condition will help to secure effective competition in the long term (87(4)(d)), as the timely provision of new products will ensure that communications providers were able to make effective use of BT's network and compete in downstream markets.

### **Communications Act tests**

A4.14 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 4), Ofcom considers that SMP services Condition AA1(b) is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to LTC and LTT.

A4.15 Ofcom has considered all the Community requirements set out in section 4 of the 2003 Act. In particular, under section 4(8) Ofcom considers that the provisions will help to secure efficiency and sustainable competition in the market for LTC and LTT, as they will enable other communications providers to make effective use of BT's network in order to offer their downstream products. For the same reasons, Ofcom

considers that this condition will further the interests set out in section 3 of the 2003 Act.

A4.16 Ofcom has also considered the tests for setting conditions set out in section 47 of the 2003 Act. Ofcom considers that this condition is objectively justifiable because BT should be required to publish clear guidelines setting the form and content of requests for new Network Access requests. It does not discriminate unduly against BT, as it is imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis. It is proportionate, as in its absence the process for new Network Access requests might not be clear and for same reasons it is transparent in its intention to ensure that BT has a reasonable process for dealing with requests for new Network Access.

### **Requirement not to unduly discriminate**

A4.17 Section 87(6)(a) of the 2003 Act authorises the setting of an SMP services condition requiring the dominant provider not to unduly discriminate against particular persons, or against a particular description of persons, in relation to matters connected with the provision of Network Access.

A4.18 Providers with SMP in wholesale markets that are vertically integrated would have incentives to provide Network Access on terms and conditions that discriminate in favour of their own retail activities in ways which might have a material effect on competition. In particular, there would be incentives to charge competing providers more for Network Access than the amount charged to their own retail activities. This would increase competitors' costs and would therefore give the dominant provider an unfair competitive advantage. They might also provide services on different terms and conditions, for example with different delivery timescales, which would disadvantage competing providers and in turn consumers.

A4.19 A requirement not to unduly discriminate is intended, principally, to prevent BT from discriminating in favour of its own retail activities and to ensure that competing providers are placed in an equivalent position to BT's retail arm. In this case, BT should not discriminate in the provision of conveyance between its local and tandem exchanges and the use of the tandem exchange processor and in the provision of any equivalent products and components.

A4.20 A prohibition of discrimination might have disadvantages if it prevented discrimination that was economically efficient or justified. However, the condition provides that there should be no undue discrimination. Ofcom considered how it would treat undue discrimination in the document entitled *Imposing access obligations under the new EU Directives* (see [http://www.ofcom.org.uk/static/archive/oftel/publications/ind\\_guidelines/acce0902.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.htm)) (the "Access Guidelines"). Ofcom explained that the objective of undue discrimination obligation is to prevent behaviour that might have a material adverse effect on competition. This does not mean that there should not be any differences in treatment between undertakings. However, any differences should be objectively justifiable, for example, by differences in underlying costs of supplying undertakings. Nonetheless, a vertically integrated SMP operator discriminating in favour of its own retail activities or between its own different activities would be likely to have a material adverse effect on competition. This would equally apply to discrimination in

relation to the underlying components of services. It is to be emphasised, however, that Ofcom is currently consulting<sup>1</sup> on its proposals for investigating potential breaches of this condition and, if adopted following its consultation, these proposals will replace the relevant sections in the Access Guidelines relating to this condition.

A4.21 Also, Ofcom set out its reasons for making minor changes to this requirement not to unduly discriminate that would apply to additional markets, such as call origination.

### **Communications Act tests**

A4.22 Ofcom considers that SMP services Condition AA2 meets the tests set out in the 2003 Act in so far as it applies to local-tandem conveyance.

A4.23 Ofcom has considered all the Community requirements set out in section 4. In particular, this condition promotes competition and secures efficiency and sustainable competition by preventing BT from leveraging its market power into downstream markets.

A4.24 Ofcom considers that this condition is objectively justifiable, in that it provides safeguards to ensure that competitors, and hence consumers, are not disadvantaged by BT discriminating in favour of its own retail activities or between its own different activities. It does not unduly discriminate, as it is imposed on BT in the national market for local-tandem conveyance and it is the only company operating on a national basis in this market. It is proportionate, since it only prevents discriminatory behaviour that has a material effect on competition. Finally, it is transparent in that it is clear in its intention to ensure that BT does not discriminate unduly.

### **Basis of charges**

A4.25 Section 87(9) authorises the setting of SMP services conditions which impose rules in relation to the recovery of costs and cost orientation.

A4.26 In competitive markets, the prices of services would be driven down to competitive levels. However, in markets in which competition is not effective ex-ante regulation to prevent excessive pricing is required. The objective of this regulation should be to move the market from a situation of monopoly to one of effective competition.

A4.27 In the absence of regulation, dominant providers are likely to set excessive prices. This would have the dual intention of maximising profitability and increasing competitors' costs. Higher charges for Network Access would be likely to result in higher retail prices and make it harder for competitors to flourish. In the long-term, this may result in market exit.

A4.28 Ex-ante regulation requiring charges to be based on long run incremental costs ("LRIC"), with appropriate mark-ups for costs which are common across products and for recovery of the cost of capital, is appropriate in many communications markets. Economies of scale combined with high sunk costs pose particular competition problems in the communications industry. Under normal competition principles, a price that was as low as short-run marginal cost might not be anti-

---

<sup>1</sup> see [www.ofcom.org.uk/consult/condocs/undsmpl/](http://www.ofcom.org.uk/consult/condocs/undsmpl/)

competitive. However, in communications markets, short run marginal costs can be very low or even zero. An incumbent's price based on short run marginal costs could deter entry as it would not reflect the price that potential entrants would need to charge to cover fixed sunk costs. LRIC is therefore preferred as the cost floor in communications markets as this includes fixed costs.

A4.29 For these reasons, Ofcom considers that BT should be subject to a requirement to charge on the basis of LRIC plus an appropriate mark-up for common costs including an appropriate return on capital employed. An appropriate mark-up could be interpreted as that within a reasonable range determined by parameters such as the incremental cost floor and ceiling. The condition allows Ofcom to determine that a price need not be set on such a basis.

### **Communications Act tests**

A4.30 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 2), Ofcom considers that SMP services Condition AA3 is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to LTC and LTT.

A4.31 Ofcom has considered all the Community requirements set out in section 4. In particular, Ofcom considers that the condition will promote competition and will secure efficiency and sustainable competition as it will ensure that the charges for LTC are based on BT's incurred costs. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.32 Ofcom considers that this condition is an objectively justifiable and proportionate response to the extent of competition in the provision of LTC and LTT, as it will enable competitors to purchase services at charges that are based on BT's incurred costs and they will therefore be able to develop competitive services to the benefit of consumers. At the same time, BT will be able to earn a fair rate of return. It does not unduly discriminate, as it is imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis in this market. Finally, it is transparent in that it is clear in its intention to ensure that BT charges on a LRIC plus mark-up basis.

A4.33 Ofcom considers that the tests in section 88 of the 2003 Act have been met. For the reason set out above, in markets in which SMP is persistent, it is unlikely that prices would be set at competitive levels. The condition is appropriate in order to promote efficiency and sustainable competition and provide the greatest possible benefits to end users by enabling competing providers to buy LTC at a level consistent with a competitive market.

A4.34 As also required by section 88 of the 2003 Act, the extent of BT's investment has been taken into account as the condition provides for a mark-up to cover common costs and allows BT to earn an appropriate return on capital employed.

### **Charge controls**

A4.35 Section 87(9)(a) of the 2003 Act allows Ofcom to set SMP services conditions that would be designed to control the level of the charges for Network Access.



- A4.36 In markets in which SMP persists, a charge control with transparent, easy to monitor compliance conditions can ensure that firms do not price excessively and would help competition to develop to the benefit of consumers.
- A4.37 The need for ex-ante regulation in the form of a charge control is further demonstrated by the issue of common cost recovery. Within communications markets, there are frequently significant economies of scope. This means that it is more efficient for the same firm to supply a number of different services rather than for each service to be provided by a different firm. It also means that there are likely to be significant common costs that cannot be attributed to the provision of any one service.
- A4.38 The existence of significant common costs complicates the assessment of excessive pricing under ex-post powers, as it may be difficult to establish that prices in any one market are excessive without taking into account the extent of common cost recovery from other markets. A requirement for prices simply to be below stand-alone costs (the sum of incremental and common costs) could allow the firm to make excess profits, as it would in effect allow multiple recovery of common costs. The corollary of these excess profits is the reduction in consumer welfare caused by prices being above and hence quantities below the competitive level.
- A4.39 Charge controls should, therefore, apportion common costs associated with the provision of certain services across those services and this would avoid the problem of multiple cost recovery.
- A4.40 Charge controls can also introduce benefits. In particular, the RPI-X form of charge control creates incentives on the charge controlled operator to increase its efficiency, thereby imitating the effect of a competitive market. If Ofcom were to rely on its ex-post powers to prevent excessive pricing, this efficiency benefit would be foregone and there could be an incentive to disguise high profits by inflating costs.

### Type of charge control

- A4.41 The two main forms charge control regulation are those based on RPI-X controls and those that set a specified rate of return. The former prevents the firm from increasing prices on average by more than inflation minus X percent per annum. Rate of return regulation, however, would allow the firm to earn no more than a pre-specified rate of return in each year. In terms of the latter, the allowable return is set prior to the financial year in question and then charges are adjusted down to that allowed return once actual costs are known.
- A4.42 RPI-X regulation has a number of advantages over a rate of return control. Crucially, it provides very clear incentives to the firm to minimise costs. If the firm can reduce its costs below the level expected when the cap was set, then the firm retains the increased profits for the period until the cap is next reviewed. In addition, it avoids overly intrusive and bureaucratic regulation. RPI-X controls are set for a pre-specified period and would only be revisited in exceptional circumstances such as if there was a distortion of competition. Re-opening controls in the middle of a charge control period can diminish incentives to increase efficiency.

- A4.43 Rate of return controls, however, provides poor incentives to productive efficiency, because the firm does not benefit from cost reductions. Indeed, rate of return controls may encourage the firm to expand its asset base beyond the efficient level in order to increase its total allowed return.
- A4.44 As RPI-X regulation can result in prices being either above or below costs, the undertaking is exposed to greater risk than under rate of return regulation. This point was considered in the National Audit Office (NAO) report on *Pipes and Wires*, HC723, April 2002. The NAO noted that the corollary of this is "two very significant benefits: first that the uncertainty is borne by the companies and their shareholders...rather than by customers; and second...price cap regulation is associated with strong incentives on companies to reduce costs by increasing efficiency." The NAO concluded that "RPI-X has been successful to date" in achieving "substantial improvements...in efficiency" at the same time as "customers have seen lower prices and higher quality of service".
- A4.45 On balance, Ofcom considers that the promotion of efficiency is more likely to benefit customers and result in lower prices than re-setting prices annually and basing these on costs that are not necessarily efficiently incurred. This is substantiated by the illustrative results of a cost-benefit analysis conducted for five of the current charge control baskets for the March 2005 NCC consultation document. Although the results can only be illustrative because they are based on certain parameter assumptions, they are an indication of the very significant benefits that regulation can bring to consumers. These benefits do not vary by a significant degree even when sensitivities within a broad range are carried out on the assumptions. The quantified cost benefit analysis can be found in Annex 10 of that consultation document.
- A4.46 In markets where competition has started to develop, and charges become increasingly driven by competitive forces, charge controls are less appropriate because of the potential for a charge control to adversely distort behaviour in the market to the detriment of consumers. Instead, a safeguard cap (e.g. an RPI-0% price control) is usually applied. In other words, such a cap is designed to ensure that BT cannot increase its charges by more than inflation. This is less likely to create perverse incentives in the market and will provide continued protection for consumers while competition continues to develop. It is intended that safeguard caps will be kept until competition has developed to a sufficient extent that consumers no longer need protection in this form. Ofcom would then be able to rely on competition and its general competition law powers to ensure that competition continues to develop and consumers are protected.

### **Proposed charge controls**

- A4.47 In many of the markets considered in this review, a charge control is already in operation. The controls set under the now repealed regime established in the Telecommunications Act 1984 were known as the Network Charge Controls and were last set to run for a four year period. The level of 'X' applied varied according to the type of service.



A4.48 As explained in Section 6, Ofcom believes that it is appropriate to set charge controls for a four year period, and in that Section it has also set out the structure of the charge control baskets.

### Value of 'X'

A4.49 In setting the values of 'X', Ofcom needs to consider the benefits of regulatory stability; the incentive properties of RPI-X regulation; the need to ensure that any forecast assumptions are reasonably derived from available data; and consumers' best interests. The 'X' factor also needs to ensure that BT is required to make real efficiency gains while ensuring sustainability. Ofcom has considered all of these factors in making its decisions on the values of 'X'.

A4.50 Market share and growth are two key variables used in modelling the appropriate value of 'X'. Overestimating or underestimating market growth or market share could lead to charge controls being either too lenient (if they are underestimated) or too severe (if they are overestimated). Ofcom has considered these and all the other key assumptions in considering the appropriate value of 'X' for each basket. Since the consultation document, Ofcom has refined its analysis further to produce specific values of 'X' for each basket. Annex 6 gives fuller details on the derivation of values of 'X'.

A4.51 More generally, Ofcom is setting the value of 'X' for each basket at a level that will allow BT to earn its cost of capital by the end of the period. It should also ensure that BT has increased its efficiency by the end of the charge control period. This means that 'X' is set to incentivise and ensure that BT can remove inefficiencies and further improve its efficiency beyond this.

### Charge control conditions

A4.52 The SMP services conditions require that charges for services do not increase by more than RPI minus a value of 'X' that varies according to each relevant basket. The services and the values of 'X' for each basket are set out in the SMP services conditions. The reasoning behind the structure of each basket is set out in Section 6. The conditions are:

- AA4(a) for call origination;
- AA4(b) for single transit;
- AA4(c) for local-tandem conveyance;
- AA4(d) for local exchange flat rate internet access components;
- AA4(e) for tandem exchange flat rate internet access components;
- BA4(a) for fixed geographic call termination; and
- PA1(a) for interconnection circuits and product management, policy and planning.

### Price Control Monitoring

A4.53 The charge control conditions require BT to show that the average effect of any charge changes is such that the overall revenue accrued equates to that which it would have accrued if all changes had been made at the midpoint of the charge control year. The conditions provide BT with a certain amount of flexibility in how it

chooses to meet the control. The requirement is for average price movements for services within the 'basket' to meet the control. For example, charges can go up or down as long as on average BT meets the Controlling Percentage (i.e. the RPI-X% control).

### Communications Act tests

A4.54 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 4), Ofcom considers that the SMP services conditions are appropriate, as in particular, they are based on the competition problem identified in Section 4. Furthermore, Ofcom considers that the conditions meet the tests set out in the 2003 Act.

A4.55 Ofcom has considered all the Community requirements set out in section 4. In particular, the new conditions are likely to promote competition and secure efficiency and sustainable competition as they will ensure that charges for wholesale services are set at a level that will enable competitors to compete. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.56 The conditions are objectively justifiable in that the benefits of RPI-X price controls are widely acknowledged as an effective mechanism to reduce prices in a situation where competition does not act to do so. The charge control conditions are not unduly discriminatory as BT maintains SMP in each of these markets in the UK except for the Hull area. Ofcom believes that the values of 'X' set out in the SMP services conditions are proportionate, as they are derived from Ofcom's detailed charge control modelling of relevant variables affecting BT's future revenues and costs. Finally, the conditions are transparent in that they are clear in their intention to control BT's charges while encouraging BT to increase its efficiency.

A4.57 Ofcom considers that the tests in section 88 of the 2003 Act have been met. For the reason set out above, in markets in which SMP is persistent, it is unlikely that prices would be set at competitive levels. There exists, therefore, a relevant risk of adverse effects arising from price distortion. The condition is also appropriate in order to promote efficiency and sustainable competition and provide the greatest possible benefits to end users as it acts to reduce charges for wholesale inputs to retail prices, in the absence of competition reducing those prices.

A4.58 As also required by section 88, the extent of BT's investment has been taken into account as the conditions provide for a mark-up to cover common costs and allow BT to earn an appropriate return on capital employed. Ofcom has recently consulted on the appropriate regulated cost of capital for BT, and the values of X included in these NCC conditions include an allowance for the cost of capital for NCC services that has now been determined as a result of the cost of capital consultation.

### Transparency

A4.59 Section 87(6)(b) of the 2003 Act allows Ofcom to set SMP services conditions which require a dominant provider to publish all such information that Ofcom considers necessary for the purpose of securing transparency. Section 87(6)(c) of the 2003 Act authorises the setting of SMP services conditions requiring the dominant provider to publish, in such manner as Ofcom may direct, the terms and

conditions on which the dominant provider would be willing to enter into an access contract. Section 87(6)(d) also permits Ofcom to set SMP services conditions requiring the dominant provider to include specified terms and conditions in its reference offer. Finally, section 87(e) permits the setting of SMP services conditions requiring the dominant provider to make such modifications to the reference offer as Ofcom may direct from time to time.

A4.60 This section considers the following transparency requirements:

- requirement to publish a reference offer;
- requirement to notify charges;
- requirement to notify technical information; and
- transparency as to quality of service.

### **Requirement to publish a Reference Offer**

A4.61 A requirement to publish a reference offer (“RO”) has two main purposes. These are to assist transparency for the monitoring of potential anti-competitive behaviour and to give visibility to the terms and conditions on which other providers would be able to purchase Network Access. This helps to ensure stability in markets. In its absence, incentives to invest might be undermined and market entry therefore less likely.

A4.62 Ofcom considers that a published RO would potentially quicken negotiations for Network Access, avoid possible disputes and give confidence to those purchasing Network Access that they are being provided on non-discriminatory terms.

A4.63 The (continued) SMP services condition requires BT to publish a RO, specifies the information to be included in that RO and sets out how the RO should be published. The condition prohibits BT from departing from the charges terms and conditions in the RO and requires it to comply with any directions that Ofcom may make from time to time under the condition.

A4.64 It is proposed that the published RO set out such matters as:

- a clear description of the services on offer;
- terms and conditions including charges and ordering, provisioning, billing and dispute resolution procedures;
- information relating to technical interfaces and points of interconnection;
- conditions relating to maintenance and quality; and
- the amount applied to network components .

A4.65 In addition, the condition requires BT to state in its published RO the amount that it charges its own retail activities and the underlying components from which those charges are derived. This would enable Ofcom and competitors to ensure that charges were derived from the same underlying costs components. BT would need to show the amount applied to 'sticks' and reconcile these to the amounts paid by other communications providers. BT currently does this in its List of Standard Services in which it includes the costs applied to all components whether bought by BT or others and which combined make the relevant wholesale services.

## Communications Act tests

A4.66 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 4), Ofcom considers that SMP services Condition AA5 is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to the market for LTC and LTT.

A4.67 Ofcom has considered all the Community requirements set out in section 4. In particular, the (continued) condition promotes competition and secures efficiency and sustainable competition for the maximum benefits of consumers by ensuring that providers have the necessary information to allow them to make informed decisions about competing in the relevant markets. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.68 The condition is objectively justifiable in that it requires that terms and condition are published in order to encourage competition and provide stability in markets. It is proportionate, as only information that is necessary to ensure that there is no material adverse effect on competition is required to be provided. It does not unduly discriminate, as it is imposed on BT in the national market for local-tandem conveyance and it is the only company operating on a national basis in this market. Finally, it is transparent in that it is clear in its intention to ensure that BT publishes details of their terms and conditions.

## Requirement to notify charges

A4.69 Notification of changes to charges for Network Access services can further assist competition by giving advanced warning of charge changes to competing providers purchasing wholesale access services. This is important to ensure that competing providers have sufficient time to plan for such changes, as they may want to restructure retail prices in response to charge changes at the wholesale level. Notification of changes therefore helps to ensure stability in markets. In its absence, incentives to invest might be undermined and market entry made less likely.

A4.70 Prior notification of changes to charges has certain disadvantages, particularly in markets where there is some competition. It can lead to a 'chilling' effect where other communications providers follow BT's prices rather than act dynamically to set competitive prices.

A4.71 On balance, however, Ofcom does not consider that this consideration undermines the importance of this obligation. In markets where SMP remains persistent, there is a high level of reliance by competitors on the provision of access services to enable them to compete. It is possible, however, to reflect the development of competition in adjusting the notification period for particular markets.

A4.72 In Network Access markets in which competition has started to develop, competing providers might not be quite so reliant on BT's Network Access services. In these markets Ofcom, therefore, considers that 28 days notification provides sufficient time to competitors to consider adjusting retail prices or choosing to

purchase services from other providers. Ofcom considers that competition has started to develop in the market for local-tandem conveyance.

A4.73 Ofcom considers that the notice should include the following information:

- a description of the access service;
- the location of terms and conditions within the RO;
- the effective date or period from which changes will have effect;
- the current and proposed charge and the relevant usage factors applied to each network component;
- other charges for services that would be directly affected by the proposed change; and
- the network tariff gradient.

### Communications Act tests

A4.74 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 2), Ofcom considers that the SMP services Condition AA6(a) is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to LTC and LTT.

A4.75 Ofcom has considered all the Community requirements set out in section 4. In particular, the condition promotes competition and secures efficiency and sustainable competition for the maximum benefits of consumers by ensuring that providers have the necessary information to allow them to make informed decisions about competing in the relevant markets. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.76 The condition is objectively justifiable, in that the benefits of publication and notification of changes to charges outweigh any possible disadvantages. It is proportionate, as the period of notice is significantly reduced in markets where competition is developing. It does not unduly discriminate, as it is imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis in that market. Finally, it is transparent in that it is clear in its intention to ensure that BT provide notification of changes to charges.

### Requirement to notify technical information

A4.77 Under the requirement to publish a RO, BT is required to include technical information in its RO.

A4.78 However, advance notification of changes to technical terms and conditions is important to ensure that competing providers are able to make effective use of Network Access services provided by BT. Changes to technical information must be published in advance so that competing providers have sufficient time to prepare for them. For example, a competing provider may have to introduce new equipment or modify existing equipment to support a new or changed technical interface. Similarly, a competing provider may need to make changes to their network in order to support changes in the points of network access or configuration.

### *Scope of the requirement*

A4.79 Technical information includes new or amended technical characteristics, including information on network configuration, locations of the points of Network Access and technical standards (including any usage restrictions and other security issues). Relevant information about network configuration is likely to include information about the function and connectivity of points of access, for example, the connectivity of exchanges to end users and other exchanges.

A4.80 The scope of the condition is defined by reference to the market for LTC and LTT. This includes the information provided currently in the standard interconnection agreement and the network information publication principles ("NIPP") and may also include other information where it is necessary to make use of products provided in the relevant market.

A4.81 Ofcom notes that changes to BT's EBC matrix would normally reflect actual updates to BT's network configuration and that these changes may affect the optimal network configuration for interconnecting providers. Therefore, Ofcom considers that it is appropriate to consider BT's ECB matrix as falling within the scope of this condition, as it provides information on network configuration that is necessary to make effective use of the Network Access that BT provides.

### *Notification period and consultation for major changes*

A4.82 The condition requires the notification of new technical information a minimum of 90 days in advance of providing new Network Access services or amending existing technical terms and conditions. Ofcom considers that 90 days is the minimum time that competing providers would need to modify their network to support a new or changed technical interface or support a new point of access or network configuration.

A4.83 However, in order for BT to meet its obligations under the requirement to provide Network Access on reasonable request, longer periods of notification may be appropriate in certain circumstances. BT is required to 'provide the Network Access requested' and to do so 'on fair and reasonable terms'. In the event of major changes to BT's terms and conditions, the minimum notification period might not be sufficient to enable competing providers to make use of the Network Access provided. In such cases, depending on the circumstances, BT may be in breach of its obligation to provide the Network Access reasonably.

A4.84 BT's standard interconnection agreement already provides for longer notification periods for major "System Alterations" and changes, such as the closure or modification of a switch, and BT should continue to use longer notification periods for these major changes.

A4.85 For other major changes, such as the move to Next Generation Networks ("NGNs"), Ofcom considers that consultation with industry through the network interoperability consultative committee ("NICC") would continue to be the best way for BT to meet its obligations in relation to the provision of Network Access on fair



and reasonable terms. Therefore, Ofcom considers that the onus is on BT to ensure that it provides longer notification and where appropriate, consults, on major changes so that it complies with the requirement to provide Network Access on reasonable request as well as this condition.

A4.86 If providers considered that a technical change notified by BT was not consistent with its requirement to provide Network Access on fair and reasonable terms, then they have the option of referring a dispute to Ofcom for resolution or making a complaint regarding a breach of an SMP condition.

### Communications Act tests

A4.87 As to the application of the tests to be applied under the 2003 Act (see further detail at Annex 4), Ofcom considers that the SMP services condition AA6(b) is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act.

A4.88 Ofcom has considered all the Community requirements in section 4. In particular, the (continued) condition promotes competition and encourages service interoperability for the purpose of securing efficiency and sustainable competition and the maximum benefits for consumers by ensuring that providers have sufficient notification of technical changes to BT's network to enable them compete. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.89 The condition is objectively justifiable in that it enables competing providers to make full and effective use of Network Access. It does not unduly discriminate, as it is imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis. It is proportionate in that 90 days is the minimum necessary to allow competing providers to modify their networks. Finally, it is transparent in that it is clear in its intention that BT notifies technical information.

### Transparency as to quality of service

A4.90 Where a vertically integrated dominant provider has SMP in a specific wholesale market, it has the potential to leverage this into downstream retail markets by providing a different quality of service to different wholesale customers.

A4.91 It may be possible to address this concern by requiring BT to provide Network Access to competing providers using the same operational processes and interfaces that it uses to supply itself. However, the high cost of replacing legacy systems means that this will not always be practical. Instead, Ofcom considers that the dominant provider should deliver the same operational performance to competing providers as it delivers to itself. Specifically, this means that Key Performance Indicators ("KPIs") such as ordering times and fault response times must be the same for other operators as for itself.

A4.92 The quality of service condition should ensure that the necessary information will be collected at the time point in time the services in question was provided, ensuring that the dominant provider's competitors have timely and transparent information about the quality of service being provided.

A4.93 Ofcom has therefore decided that BT should be subject to a requirement to publish data on a specified set of KPIs, the format and frequency of which would be determined by Ofcom. BT does not currently have to publish KPIs for LTC and LTT specifically, but does have to for ST FRIACO, the requirement for which is partly dependent on BT's SMP in local-tandem conveyance. However, the obligations set out in SMP services Condition AA7 may be applied to LTC and LTT.

### Communications Act tests

A4.94 Ofcom considers that SMP services Condition AA7 meets the tests set out in the 2003 Act.

A4.95 Ofcom has considered all the Community requirements in section 4. In particular, the condition promotes competition and secures efficiency and sustainable competition by ensuring that BT provides an equivalent quality of service to competing providers as it provides to itself.

A4.96 The condition is objectively justifiable because without an ex-ante obligation to publish it is not possible to monitor that there is no undue discrimination in the quality of service provided. The condition does not unduly discriminate, as it is imposed on BT in the national market for local-tandem conveyance and it is the only company operating on a national basis in that market. The condition is proportionate because BT has not, as yet, been required to publish specific KPIs for local-tandem conveyance, but may be required to do so in the future. Finally, it is transparent in that it is clear in its intention to monitor quality of service and that Ofcom may decide what information is required in the event that it believed that such information was required.

### Financial reporting and cost accounting

A4.97 In the statement entitled *The regulatory financial reporting obligations on BT and Kingston*, which was published on 22 July 2004, Ofcom explained that, as a result of its conclusions that BT had SMP in the market for, among other services, LTC and LTT, BT should be subject to various cost accounting and financial reporting obligations. In the market for LTC and LTT, Ofcom believed that BT should be required to separately account for local-tandem conveyance and should be required to set out its cost accounting arrangements in its regulatory financial statements.

A4.98 Full details of the requirements placed on BT are set out in the statement and accompanying SMP services conditions set out in the aforementioned document<sup>2</sup>.

A4.99 As a result of its analysis set out in Section 4 in which it has found that BT continues to have SMP in the market for LTC and LTT, Ofcom considers that BT should be subject to requirements to financially report and cost account for local-tandem conveyance services.

---

<sup>2</sup> [www.ofcom.org.uk/consult/condocs/fin\\_reporting/fin\\_report\\_statement/finance\\_report.pdf](http://www.ofcom.org.uk/consult/condocs/fin_reporting/fin_report_statement/finance_report.pdf)

## Communications Act tests

A4.100 Ofcom believes that the imposition of wholesale cost accounting arrangements meet the tests outlined in sections 3, 4 and 88 of the 2003 Act and the tests in Section 47(2)(a) and (b) and that requirements to account separately meet the tests outlined in sections 4, 87(7) and 87(8) of the 2003 Act and the tests in section 47(2)(a) and (b).

A4.101 In particular, the tests set out in section 4 are met by the imposition of regulatory financial reporting obligations because the obligations of cost orientation, cost recovery, price controls and non-discrimination are important in ensuring that dominant providers do not abuse their power in markets. The regulatory financial reporting obligations are of paramount importance in monitoring and enforcing cost orientation, cost recovery and non-discrimination obligations. Therefore, the regulatory financial reporting obligations assist in the promotion of competition by restraining the market power of dominant providers. Additionally, reliable cost-orientation, price controls and non-discrimination assist in encouraging network access for the purpose of securing efficiency and sustainable competition and the maximum benefit for customers of communications providers.

A4.102 Ofcom considers that measures set out in this document meet the tests included in sections 47 of the 2003 Act of being objectively justifiable, proportionate, transparent and not unduly discriminatory.

A4.103 Ofcom considers that these measures are objectively justifiable because the maintenance of accounting systems; preparation, audit, delivery and publication of regulatory financial statement; transparent accounting documentation; and reasonable amendment powers are necessary for Ofcom to effectively monitor and enforce compliance of BT's obligations for non-discrimination, cost-orientation, cost recovery and price controls.

A4.104 Ofcom considers that the measures are proportionate, since they are targeted at addressing the market power that Ofcom considers that BT has in the market for local-tandem conveyance. They do not unduly discriminate, as they are imposed on BT in the national market for LTC and LTT and it is the only company operating on a national basis in this market. Finally, Ofcom considers that they are transparent in that they are clear in their intention to ensure that BT provides sufficient data to ensure that it complies with its obligations in the market for LTC and LTT to, among other things, set cost-oriented charges.

## Requirement to provide FRIACO

A4.105 Flat rate internet Access call origination at the tandem exchange (ST FRIACO) is an unmetered narrowband product that enables communications providers who are connected to tandem exchanges only to purchase circuits linking the local and tandem exchanges on a fixed (unmetered) basis. This product therefore allows competing providers to offer retail unmetered narrowband internet products to end-users when purchased in combination with call origination products. In the absence of a requirement to provide ST FRIACO, BT might choose not to offer an unmetered product between its local and tandem exchanges as this product helps competitors enter the market for narrowband unmetered internet products. Ofcom therefore considers that BT should be required to offer ST FRIACO.

A4.106 Section 87(1) of the 2003 Act provides that, where Ofcom has made a determination that a person has significant market power in particular market, Ofcom shall set such SMP services conditions as it considers appropriate. In Section 4, Ofcom concludes that BT has SMP in the market for LTC and LTT. BT also continues to have SMP in call origination. It is these markets which are relevant for the purposes of setting any provisions in relation to ST FRIACO.

### Communications Act tests

A4.107 Ofcom considers that SMP services Condition AA12 meets the tests set out in the 2003 Act in so far as it applies to ST FRIACO.

A4.108 Ofcom has considered all the Community requirements in section 4. In particular, the requirement to provide ST FRIACO should promote competition in the provision of electronic communications networks and services.

A4.109 The condition is objectively justifiable because in the absence of a requirement to provide ST FRIACO BT might not do so and this might harm competition in the provision of unmetered narrowband internet products. The condition does not unduly discriminate, as it is imposed on BT in the national market for local-tandem conveyance and it is the only company operating on a national basis in that market. The condition is proportionate because BT only has to supply ST FRIACO to third parties if in receipt of a reasonable request. It is also transparent in that the condition is clear that BT is required to provide ST FRIACO and it sets out the basis on which BT should charge for ST FRIACO and the components on which the charge should be calculated.

### The FRIACO Adjustment Ratio

A4.110 Annex 7 analyses the case for making a change to the FRIACO adjustment ratios (FRIACO AR). These ratios are part of the calculation of FRIACO charges, and contribute to the derivation of the charges for FRIACO. Ofcom has previously consulted on the appropriate methodology and use of data for calculating the adjustment ratio and believes that the methodology and the type of data used in its November 2004 Statement is still a reasonable approach.

A4.111 Ofcom is of the view that it has now a more complete data set on which to base the value of the AR and the value of the AR it has decided here reflects the best estimate of the AR over a particular year. Ofcom explains at Annex 7 why it has decided that the adjustment ratio should be changed for the DLE FRIACO AR, from a value of 1.78 to 1.70, as that value constitutes the best estimate on the basis of the data available. This amendment is reflected in the notification in Annex 3.

### Communications Act tests

A4.112 Ofcom considers that SMP services Condition AA12 is appropriate as, in particular, it is based on the competition problem identified in Section 4. Furthermore, Ofcom considers that it meets the tests set out in the 2003 Act in so far as it applies to the DLE FRIACO Adjustment Ratio.

A4.113 Ofcom has considered all the Community requirements in section 4. In particular, the value of the DLE FRIACO adjustment ratio should promote competition in the

provision of electronic communications networks and services. For the same reasons, Ofcom considers that the condition will further the interests set out in section 3 of the 2003 Act.

A4.114 The condition is objectively justifiable because without amending the FRIACO adjustment ratio as Ofcom is doing, the charges for FRIACO would not accurately reflect the true cost of providing DLE FRIACO services, which might harm competition in the provision of unmetered narrowband internet products. The condition does not unduly discriminate, as it is imposed on BT in the market for call origination in the UK (excluding the Hull area) in which BT is the only company with SMP, and as BT is the only communications provider that provides FRIACO. The condition is proportionate because it updates the DLE FRIACO adjustment ratio to ensure that BT is able to charge for DLE FRIACO in relation to the true cost of providing the service. It is also transparent, in that the condition is clear in its intention that the DLE FRIACO ratio should be updated to reflect the true cost of providing the DLE FRIACO service.

### **Certain Modifications to SMP services conditions**

A4.115 As already mentioned above, Ofcom has taken this opportunity to modify certain SMP services conditions. Those relatively minor modifications concern the following obligations imposed on BT:

- requirement not to unduly discriminate;
- requirement to notify charges; and
- requirement to notify technical information.

A4.116 Given that the reasons for modifying the latter two are essentially the same, these 'notification requirements' will be considered together in the following.

### **Notification requirements**

A4.117 Under SMP services conditions AA6(a) and AA6(b), BT is required to notify charges and technical information in a manner, form and within timescales specified in these conditions. Those conditions apply, at present, to each of the following markets and to interconnection circuits:

- call origination;
- local-tandem conveyance and transit;
- inter-tandem conveyance and transit; and
- single transit

on fixed public narrowband networks for the United Kingdom (excluding the Hull area). For the sake of completeness, it is to be noted that those conditions also apply for certain wholesale fixed narrowband exchange line services markets. However, Ofcom is not making any modifications in respect of the latter as they fall outside the scope of Ofcom's considerations and decisions set out in this document.

A4.118 In addition, under SMP services condition BA6, BT is required to notify charges in the market for fixed geographic call termination provided by it. In that market, however, no SMP services condition has been imposed on BT to require it to notify technical information.

A4.119 As to the four above-mentioned markets, but not in relation to inter-tandem conveyance and transit as Ofcom is revoking SMP services conditions in this market) as well as for interconnection circuits, Ofcom is modifying SMP services conditions AA6(a), AA6(b) and BA6 to make it clear that the obligations on BT to give prior notification of amendments to its charges for Network Access (including the charges for new Network Access) and technical information do not apply where such amendments have been directed or determined by Ofcom or where such charges are required by a notification or an enforcement notification given by Ofcom under sections 94 or 95 of the 2003 Act.

A4.120 The reason for these modifications is to avoid a situation where important changes are unnecessarily delayed, to the possible detriment of competition and the interests of consumers. Ofcom recognises the importance of giving stakeholders sufficient time to react to changes to the provision of Network Access by BT. However, Ofcom notes that any changes directed or determined by Ofcom (or, as the case may be, or where such charges are required by a notification or an enforcement notification given by Ofcom under sections 94 or 95 of the 2003 Act) would normally be subject to prior consultation, thereby giving interested parties advance notification of Ofcom's proposals. Moreover, if necessary, Ofcom would consider requiring a lead-in time before any changes directed or determined by Ofcom are introduced by BT.

### Communications Act tests

A4.121 Ofcom considers that these modifications are appropriate as, in particular, they are based on the competition problems identified. Furthermore, Ofcom considers that they meet the relevant tests set out in the 2003 Act.

A4.122 Ofcom has considered and acted in accordance with its duties under section 3 and all the Community requirements set out in section 4 of the 2003 Act. In particular, the changes are aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers, by preventing the unnecessary delay of changes to the provision of Network Access.

A4.123 Section 47 requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. Ofcom considers that its modifications are objectively justifiable, in that they are aimed at avoiding any unnecessary delay in changes to the provision of Network Access, where such changes are directed or determined by Ofcom. The modifications are not inherently discriminatory, as Ofcom would consider any non-discriminatory effects by any direction or determination would have on BT at the time such directions or determinations are made. The modifications are proportionate, as they represent an appropriate balance between avoiding any unnecessary delay in changes to the provision of Network Access, while still allowing for safeguards to be imposed by Ofcom where it is appropriate to have a lead-in time before any changes are introduced by BT. Finally, the modifications are transparent in that they are clear in their intention to remove the notification requirements for



changes directed or determined by Ofcom or where such charges are required by a notification or an enforcement notification given by Ofcom under sections 94 or 95 of the 2003 Act.

### **Requirement not to unduly discriminate**

A4.124 Ofcom has set out above in this Annex its reasons for the continued setting of the SMP services condition AA2 concerning the requirement not to unduly discriminate in respect of the market for LTC and LTT on fixed public narrowband networks for the United Kingdom (excluding the Hull area). However, that condition applies, at present, also to each of the following markets and to interconnection circuits:

- call origination;
- inter-tandem conveyance and transit; and
- single transit

on fixed public narrowband networks for the United Kingdom (excluding the Hull area). Again, Ofcom is not dealing in this document with matters concerning wholesale fixed narrowband exchange line services markets.

A4.125 In addition, under SMP services condition BA2, BT is also required not to unduly discriminate in the market for fixed geographic call termination provided by it.

A4.126 As to the four above-mentioned markets (but not in relation to inter-tandem conveyance and transit as Ofcom is revoking SMP services conditions in this market) as well as for interconnection circuits, Ofcom is modifying SMP services conditions AA2 and BA2 by deleting the 'deeming provision' in those conditions.

A4.127 That 'deeming provision' provides that "[i]n this Condition [...], the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider." This provision was intended only to be a specific example of how the undue discrimination obligation in the above-mentioned SMP services conditions would apply in practice.

A4.128 On 30 June 2005, Ofcom published for consultation its draft Undue Discrimination guidelines<sup>3</sup> on its proposed approach to investigate potential contraventions of SMP obligations not to unduly discriminate. In the light of the proposed new approach in the said guidelines, Ofcom has decided that it is appropriate to remove the specific example of undue discrimination given in SMP Conditions AA2 and BA2. The substance of the undue discrimination obligation, however, remains unaltered.

---

<sup>3</sup> see [www.ofcom.org.uk/consult/condocs/undsmpp/](http://www.ofcom.org.uk/consult/condocs/undsmpp/)

### Communications Act tests

A4.129 Ofcom considers that these modifications are appropriate as, in particular, they are based on the competition problems identified. Furthermore, Ofcom considers that they meet the relevant tests set out in the 2003 Act.

A4.130 Ofcom has considered and acted in accordance with its duties under section 3 and all the Community requirements set out in section 4 of the 2003 Act. The modification does not alter the underlying undue discrimination obligation. That obligation is aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers, by preventing BT from discriminating in favour of its own activities in downstream markets, thereby leveraging its market power.

A4.131 Section 47 requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. Ofcom considers that the modifications are objectively justifiable, in that they are aimed at avoiding any confusion as to the scope of the undue discrimination obligation, while leaving the undue discrimination obligation itself unaltered. The amendment is non-discriminatory as the substantive obligation remains unaffected, since the condition was imposed in November 2003. The modifications are proportionate, as they do not alter the substance of the undue discrimination obligation imposed on BT. Finally, the amendment is transparent, as it is aimed at removing any confusion as to the scope of the undue discrimination pending the publication of Ofcom's guidelines on non-discrimination regulatory requirements.

### Withdrawal of Direction on credit vetting

A4.132 As a direct consequence of the revocation of BT's obligations in the market for inter-tandem conveyance and inter-tandem-transit, Ofcom is withdrawing BT's obligations with respect to an existing direction on credit vetting (see paragraph 6.45). The relevant notification of this decision is at Annex 3, Part II.

### Communications Act tests

A4.133 Ofcom considers that the withdrawal of this Direction as regards the market for inter-tandem conveyance and inter-tandem-transit meets the tests set out in the 2003 Act.

A4.134 In withdrawing BT's obligation in this regard, OFCOM have considered and acted in accordance with their general duties set out in section 3 of the 2003 Act and the six Community requirements set out in section 4 of the 2003 Act.

Ofcom is satisfied that the tests under section 49(2) of the 2003 Act are met because the withdrawal of BT's obligations under this direction is a direct consequence of the revocation of BT's SMP in the relevant market. Ofcom's assessment of SMP in the relevant market, and its revocation of SMP services conditions are explained in Sections 5 and 6 respectively.