



Modifications to BT's SMP services conditions AA4, BA4 and PA1

Amendments to the charge control conditions

Consultation

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Section 1

Summary

Introduction

- 1.1 On 9 December 2004, Ofcom published a consultation document in which it set out its proposals to modify BT's SMP services conditions AA4, BA4 and PA1. These are the conditions that place limitations on what BT can charge other communications providers for wholesale services in markets in which BT has been found to have significant market power (SMP). The SMP analyses giving the underlying reasons for setting these conditions is set out in the statements entitled *Review of fixed geographic call termination markets* and *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets*, which were published on 28 November 2003. The conditions themselves were established through those documents and that *entitled Review of BT's product management, policy and planning (PPP) charges*, which was published on 28 July 2004.
- 1.2 These conditions relate to the following markets in which BT has been found to have SMP in the UK except for the Hull Area unless otherwise stated:
- call origination on fixed public narrowband networks;
 - local-tandem conveyance and transit on fixed public narrowband networks;
 - inter-tandem conveyance and transit on fixed public narrowband networks;
 - single transit on fixed public narrowband networks;
 - fixed geographic call termination on its network;
 - wholesale residential analogue exchange lines services;
 - wholesale residential ISDN2 exchange line services;
 - wholesale business analogue exchange line services;
 - wholesale business ISDN2 exchange line services; and
 - wholesale ISDN 30 exchange line services.
- 1.3 As well as the services directly in these markets, the conditions also control charges for interconnection circuits and the product management, policy and planning component.

Reasons for the modifications and charge control compliance

- 1.4 As explained in paragraph 1.1, Ofcom set the relevant SMP services conditions AA4, and BA4 on 28 November 2003, modified condition AA4 on 28 July 2004 and, on the same date, set condition PA1. The conditions were set as a consequence of Ofcom's findings that BT had SMP in the relevant markets. As set, the conditions required BT to meet the controls on the basis of the volumes and revenues accrued per service in the charge control year concerned in comparison to the volumes and revenues accrued for the services in the preceding charge control year. For instance, if the volumes remained constant, BT would need to show that revenues in the charge control year concerned decreased in accordance with the controlling percentage. This approach would require BT to reduce charges year-on-year in comparison to those charges in the preceding charge control year. Logically, this makes sense.

Unfortunately, BT would not be in a position to know the exact volumes and therefore the revenues accrued in any charge control year until the year in question ended. The control therefore required BT to forecast volumes and revenues and set charges on the basis of those forecasts. In the event that any such forecast was inaccurate, Ofcom and BT would have needed to take steps to ensure that BT adjusted its charges by a sufficient amount to satisfy Ofcom that the requirements of the condition were met after the end of the year in question.

- 1.5 Ofcom does not believe that it would be of benefit to any parties if Ofcom and BT had to recalculate whether or not BT had met the preceding year's controls after the end of that control year. This would not aid transparency and nor would it provide any certainty. This is not a satisfactory position to maintain. For these reasons, Ofcom believes that it is appropriate to modify these conditions now. The modifications allow BT to show compliance with the charge control at the point in time that it changes its charges. The changes would be based on known volumes and therefore revenues.

Responses to consultation

- 1.6 BT was the only respondent to the consultation document and, as the proposed modifications to the SMP services conditions were instigated by BT, it did not object to Ofcom's proposals. It did, nonetheless, comment on the mechanics of the proposed control formulae to satisfy itself that the conditions would work in the manner intended. This necessitated further discussions between BT and Ofcom. As a result of these discussions, Ofcom has made some further minor modifications to the SMP services conditions. These minor modifications have satisfied BT and Ofcom that the conditions work. Ofcom does not believe that any of these changes are material. It has, nonetheless, discussed these further in Section 2.

Conclusions

- 1.7 Ofcom has decided to proceed with the proposed modifications to the SMP services conditions. This means that Ofcom will not need to consider adjustments to the charges for these services after 30 September 2005 (for wholesale interconnection services) or 31 August 2006 (for wholesale line rental services), as BT should have been able to show compliance with the current relevant charge controls before those dates. This will aid transparency and provide certainty. For wholesale interconnection services (such as call origination and call termination), Ofcom intends to consider proposals for the future regulation of services that fall within the boundaries of the relevant markets beyond the current charge control periods. Ofcom intends to publish a consultation document considering those markets in March 2005.

Section 2

Explanatory memorandum

- 2.1 On 9 December 2004, Ofcom published a consultation document in which it set out its proposals to modify BT's SMP services conditions AA4, BA4 and PA1. These are the conditions that place limitations on what BT can charge other communications providers for wholesale services in markets in which BT has been found to have significant market power (SMP). The SMP analyses giving the underlying reasons for setting these conditions is set out in the statements *entitled Review of fixed geographic call termination markets* and *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets*, which were published on 28 November 2003. The conditions themselves were established through those documents and that entitled *Review of BT's product management, policy and planning (PPP) charges*, which was published on 28 July 2004.
- 2.2 These conditions relate to the following markets in which BT has been found to have SMP in the UK except for the Hull Area unless otherwise stated:
- call origination on fixed public narrowband networks;
 - local-tandem conveyance and transit on fixed public narrowband networks;
 - inter-tandem conveyance and transit on fixed public narrowband networks;
 - single transit on fixed public narrowband networks;
 - fixed geographic call termination on its network;
 - wholesale residential analogue exchange lines services;
 - wholesale residential ISDN2 exchange line services;
 - wholesale business analogue exchange line services;
 - wholesale business ISDN2 exchange line services; and
 - wholesale ISDN 30 exchange line services.
- 2.3 As well as the services directly in these markets, the conditions also control charges for interconnection circuits and the product management, policy and planning component.

Charge control mechanics and annual net revenues

- 2.4 In the statements referred to in paragraph 2.1, Ofcom set out the SMP services conditions that were imposed on BT as a direct consequence of Ofcom finding that BT had SMP in the relevant markets. The charge control conditions were designed to ensure that BT would not be able to exploit its SMP by setting exploitative charges. These SMP services conditions replaced conditions of a similar nature to those to which BT was subject under the licensing regime established under the Telecommunications Act 1984. For example, both the preceding licence conditions and succeeding SMP services conditions subjected BT to controls using the familiar RPI-X% formula. For wholesale interconnection services, the relevant licence condition was condition 69 and for wholesale line rental services the relevant condition was 69B.

- 2.5 However, in setting the SMP services conditions, Ofcom chose not to monitor price control compliance in exactly the same way as it did under the preceding regime. There were two main differences between the two regimes. First, Ofcom chose to monitor annual net revenues accrued within the charge control year against those accrued in the preceding charge control year. This meant that charges set on this basis (and therefore costs) would be based on the most recent volume data.
- 2.6 The second main difference between the two regimes was that Ofcom removed the weighted average date requirement. This requirement was designed to ensure that BT did not delay charge changes (in the event that the value of 'X' was negative) or introduce them too early (in the event that the value of 'X' was positive). In the absence of this additional constraint, BT would have a strong incentive to reduce its charges on the last possible day in each charge control year, as this would mean that it could maintain higher charges for a longer period. The effect of any given charge change was calculated by multiplying it by a factor representing the fraction of the year for which it actually applied. This was known as the weighted average date of the change. But the new regime did not lose the essential property of the weighted average date calculation. The weighting of charge changes was such that BT would benefit less from a charge change made later in the year than one made earlier in the year, i.e. its incentives to delay charge changes were diluted.

Reasons for the modifications and charge control compliance

- 2.7 For the main wholesale interconnection services, BT has generally chosen to change its charges on 1 April in each charge control year. This date is the fulcrum point of each year and is, as explained in paragraph 2.6, the date by which the effect of average charge changes has been measured. However, in this particular year, as a direct consequence of the new monitoring arrangements set out in the relevant SMP services conditions and explained in paragraph 2.5, BT has found that it is unable to guarantee compliance within the charge control year. The reasons for this are quite simple. The SMP services conditions established in the documents set out in paragraph 2.1 required BT to meet the controls on the basis of a comparison of volumes and revenues accrued in the charge control year concerned against the preceding year's volumes and revenues. The control, therefore, as established in the relevant SMP services conditions, required BT to forecast volumes and the associated revenues that it expected to accrue in the year concerned. Forecasts are, however, inevitably, prone to error. It would have been quite likely that the SMP services conditions would have required BT to make adjustments to its charges in the following year.
- 2.8 Ofcom does not believe that it would be of benefit to any parties if BT had to calculate whether or not it had met the preceding year's control after the event. This would not be transparent and nor would it provide any certainty. This is not a satisfactory position to maintain. For these reasons, Ofcom published the consultation document entitled *Proposed modifications to BT's SMP services conditions AA4, BA4 and PA1* and set out the proposed changes to the SMP services conditions therein. The modifications set out in the schedules to the Notifications at annexes 1, 2 and 3 of this document allow BT to show compliance with the various charge controls at the point in time in which it changes its charges.
- 2.9 The modifications to the charge control conditions are also consistent with those set out in the statement entitled *Partial Private Circuits Charge Controls*, which was published on 30 September 2004. Ofcom concluded in that that, on balance, prior year revenue weighting (i.e. weighting based on revenues that were known rather than forecast) was preferable to current year revenue weighting (i.e. forecast rather

than known). The latter would be reliant on forecast weights and, as a consequence, it would be probable that such a system would result in the need for adjustments. This would be akin to the annual and interim determination regime, which was replaced on 1 October 1997. Under that regime, Oftel set interim charges on the basis forecast cost movements. These charges were subsequently adjusted and applied once actual costs were known. This was a principal concern with that regime.

Responses to consultation

- 2.10 BT was the only respondent to the consultation document and, as the proposed modifications to the SMP services conditions were instigated by BT, it did not object to Ofcom's proposals. It did, nonetheless, comment on the mechanics of the proposed control formulae to satisfy itself that the conditions would work in the manner intended. This necessitated further discussions between BT and Ofcom. As a result of these discussions, Ofcom has made some minor modifications to the SMP services conditions. These minor modifications have satisfied BT and Ofcom that the conditions work. Ofcom does not believe that any of these changes are material.
- 2.11 BT's main concerns were essentially twofold. First, it was concerned that the conditions AA4.2, AA4.3 and AA4.4 (and the equivalent conditions in BA4 and PA1) introduced charge control provisions that were more onerous than those in place prior to the proposed modifications. Second, it was concerned that the formula set out in condition AA4.2 (and the equivalent conditions in BA4 and PA1) which was intended to show that the effect of average price changes needed to take place on 1 April did not work.

Ofcom's response

- 2.12 In terms of the first of BT's main concerns, Ofcom found that BT had misunderstood the intention behind the three conditions concerned. For clarification, condition AA4.2 (and its equivalents in conditions BA4 and PA1) explains that BT has to show that the effect of any charge changes has to be such that the overall accrued revenue equates to that which it would have accrued if all changes had been made on 1 April. It then provides an example as to how this would be calculated if BT made a single charge change only. Condition AA4.3 sets out the controls for the services that are within charge control 'baskets' (that is, there is more than one service subject to the control). These 'baskets' allow flexibility in average price movements for services within them (e.g. one can go up and one can come down, as long as BT meets the control and does not breach other provisions such as those set out in the Basis of charges conditions). This condition would allow BT to show that it was in compliance with its charge control obligations at the point in time that it changed its charges. However, for changes to charges spread throughout the year, condition AA4.2 is also relevant. Finally, condition AA4.4 applies to services which are individually indexed. Again, this condition would allow BT to show that it was in compliance with its charge control obligations at the point in time that it changed its charges. Condition AA4.2 would also be relevant for changes to charges spread throughout the year.
- 2.13 In terms of BT's concerns relating to the calculation used to show the effect of average charge changes, Ofcom agrees that the condition set out in the document did not work as intended. It has therefore made a slight modification to the relevant paragraphs. The denominator in the definition of D is now 183 and not 365. However, it should be noted that the formula included within this condition applies only where a single charge change has been made and is given by way of an example. The relevant factor is that BT has to show that, on average, the revenues that it accrues for the relevant services (if individually indexed) or 'baskets' of services are such that

it accrues no more than it would have accrued if all those changes had been made on 1 April (i.e. it has to reduce charges by more than the value of 'X' if it changes its charges after that date or less than it if they are changed before that date).

Conclusions

- 2.14 For the reasons explained, Ofcom has decided to modify BT's SMP services conditions. This means that Ofcom will not need to consider adjustments to the charges for these services after 30 September 2005 (for wholesale interconnection services) or 31 August 2006 (for wholesale line rental services), as BT should have been able to show compliance with the relevant charge controls before those dates. This will aid transparency and provide certainty. For wholesale interconnection services, the end of this year's control also coincides with the conclusion of the present charge control period (2001-2005). Ofcom will, therefore, consider the extent of competition and the need for future charge controls in wholesale interconnection markets in its review of the *Network Charge Controls*. A consultation document is expected to be published in March 2005.

The modifications

- 2.15 The main changes to conditions AA4, BA4 and PA1, as set out in the schedules to the Notifications at annexes 1, 2 and 3 respectively, reintroduce the definition of "Relevant Financial Year" and provisions of a similar nature to the weighted average date. The reintroduction of the defined term "Relevant Financial Year" means that compliance for the charge control year 1 October 2004 to 30 September 2005 will use revenues accrued in the financial year 1 April 2003 to 31 March 2004 to weight individual services within baskets. For wholesale line rental services, the relevant controls last until 31 August 2006 and therefore compliance in relation to those services for that year will use revenue weights from the following financial year (i.e. the year ending on 31 March 2005). As a result, BT can show compliance with the charge controls at the point in time in which it changes its charges. As explained, the reintroduction of a weighted average date means that BT has to ensure that the effect of the charge changes is the same as if they had all been made at the mid-point of the year.
- 2.16 The other changes to the conditions are, in the main, cosmetic and relate to historical references which are no longer relevant. For instance, Ofcom has now deleted all references to licence condition 69, the Director General of Telecommunications, and those relating to the average charge for product management, policy and planning for the period 1 August 2004 to 30 September 2004. In terms of insertions, Ofcom has included a provision allowing it to require BT to adjust its charges within the final charge control years to ensure compliance (essentially, this is a backstop provision). The definitions relevant to the conditions are also now included within them.
- 2.17 The main proposed modifications, which were referred to in paragraph 2.14, would align monitoring and compliance of the controls set out in SMP services conditions AA4, BA4 and PA1 with those set out in SMP services conditions G4 and GG4, as amended on 30 September 2004, under which Ofcom controls BT's charges for traditional symmetric broadband origination up to and including 8Mbit/s in the UK excluding the Hull Area and traditional symmetric interface broadband origination over 8Mbit/s up to and including 155Mbit/s excluding the Hull Area respectively. Partial private circuit terminating segments are also controlled under both SMP services conditions G4 and GG4.

- 2.18 In particular, the formulae set out SMP services conditions G4 and GG4 are now replicated in SMP services conditions AA4, BA4 and PA1 and shall be used to monitor compliance with those conditions. The formulae concerned are set out in SMP services conditions AA4.2, AA4.3 and AA4.4, BA4.2 and BA4.3, and PA1.2 and PA1.3.
- 2.19 The modifications to SMP services conditions AA4, BA4 and PA1 are set out in schedules to each of the Notifications at Annexes 1, 2 and 3 respectively.

The relevant tests

- 2.20 In modifying the relevant SMP services conditions, Ofcom has considered its duties under sections 3 and 4 of the Communications Act 2003 (the "Act"). In particular, Ofcom believes that the modifications are in the interests of consumers in relevant markets (section 3(1)(b)), as BT can show compliance and at the point in time that it changes its charges and would not have to subsequently adjust its charges. Many communications providers rely on services purchased from BT to offer retail services and the charges for these services are crucial in determining retail prices. Charging certainty is therefore very important. Ofcom therefore believes that the effect of its modifications would be likely to further the interests of citizens and consumers by promoting competition. For the same reasons, Ofcom believes that its modifications meet the Community requirements set in section 4 of the Act such as the requirement to promote competition (section 4(3)).
- 2.21 In terms of section 47(2) of the Act, the modifications are objectively justifiable, as they serve to ensure that BT can guarantee compliance with the charge controls at the point in time that it chooses to change its charges. The modifications do not unduly discriminate against any persons, as all communications providers would benefit from the certainty and transparency that these changes provide. The modifications are also proportionate. They give BT certainty that it can meet the control without having to subsequently adjust its charges. They are also transparent, as they provide certainty that the controls could be met within the charge control year.
- 2.22 Section 86 of the Act empowers Ofcom to modify SMP services conditions without having to carry out further market analysis and to review the market power determination already made in relation to the services market in question. However, in exercising those enabling powers, Ofcom must be satisfied that there has not been a material change in the markets identified since the SMP services condition was set or last modified. As explained in this document, the modifications are being made by Ofcom so that BT can comply with the existing charge control. Those modifications are backward looking in the sense of satisfying the section 86 test in that Ofcom has considered whether there have been any material changes in the markets material to the modifications in question since 30 July 2004, when BT's SMP conditions AA4, BA4 and PA1 were last modified. On the information presently before it, Ofcom does not consider that there have been any such changes. It is to be emphasised, however, that Ofcom is, at present, expecting to commence a separate consultation in March 2005 to review whether the *Network Charge Controls* should continue after the control periods relevant to the modifications made in this Statement have ended.

Annex 1

Notification

NOTIFICATION UNDER SECTIONS 48(1) AND 86 OF THE COMMUNICATIONS ACT 2003

Modification of SMP services condition AA4 in Schedule 1 to the November 2003 Notification (as amended in Schedule 1 to the July 2004 Notification) imposed on BT as a result of the market power determinations made by the Director that BT has significant market power in the markets set out in paragraph 2 to this notification

WHEREAS:

- A. OFCOM issued a notification pursuant to section 48(2) and 86 of the Act setting out their proposals for the modification of SMP services condition AA4 on 9 December 2004 ('the First Notification');
- B. a copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a), the European Commission and to the regulatory authorities of every other Member State in accordance with section 50(3) of the Act;
- C. in the First Notification and accompanying explanatory statement, OFCOM invited representations about any of the proposals set out therein by 13 January 2005;
- D. by virtue of section 48(5) of the Act, OFCOM may give effect to any proposals to modify SMP services conditions as set out in the First Notification, with or without modification, where:
 - i. they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- E. OFCOM received one response to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE:

- 1. OFCOM hereby make in accordance with sections 48(1) and 86 of the Act the following modifications to an SMP services condition which was set by reference to market power determinations in relation to markets in which OFCOM are satisfied there has been no material change since those determinations were made.
- 2. The measures contained in this notification are further to the market power determinations made in the November 2003 Notification under section 79 of the Act whereby BT was determined to have significant market power in the following markets in the United Kingdom, excluding the Hull Area:

- a. wholesale residential analogue exchange line services;
 - b. wholesale residential ISDN2 exchange line services;
 - c. wholesale business analogue exchange line services;
 - d. wholesale business ISDN2 exchange line services;
 - e. wholesale ISDN30 exchange line services;
 - f. call origination on fixed public narrowband networks;
 - g. local-tandem conveyance and transit on fixed public narrowband networks;
 - h. inter-tandem conveyance and transit on fixed public narrowband networks;
and
 - i. single transit on fixed public narrowband networks.
3. By virtue of the Transitional Provisions, the market power determinations made by the Director referred to in paragraph 2 are to have effect as if made by OFCOM.
4. As a result of, amongst other things, the market power determinations referred to in paragraph 2 above, BT has been subjected to a number of SMP services conditions, including SMP services condition AA4. SMP services condition AA4 was amended as set out in Schedule 1 to the July 2004 Notification in relation to the market referred to in paragraph 2(f) above.
5. OFCOM are modifying SMP services condition AA4 in respect of its application to BT in the markets listed in paragraph 2 above as set out in the Schedules to this notification.
6. The effect of and OFCOM's reasons for making the modifications referred to in paragraph 5 above are set out in the accompanying explanatory statement.
7. OFCOM consider that the modifications referred to in paragraph 5 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to each of the proposals.
8. In making the modifications set out in this notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
9. Copies of this notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission and the regulatory authorities of every other Member State in accordance with section 50(3) of the Act.
10. In this notification (not including the Schedule) –
 - a. “**Act**” means the Communications Act 2003;
 - b. “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by

Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

- c. **"Director"** means the Director General of Telecommunications;
 - d. **"Hull Area"** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;
 - e. **"July 2004 Notification"** means the notification set out at Annex A to the review of the BT's product management, policy and planning (PPP) charge published by OFCOM on 30 July 2004;
 - f. **"November 2003 Notification"** means the notification set out at Annex A to the review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets published by the Director on 28 November 2003;
 - g. **"Transitional Provisions"** means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No. 1) Order 2003 and the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No.2) Order 2003; and
 - h. **"United Kingdom"** has the meaning given to it in the Interpretation Act 1978.
11. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this notification and otherwise any word or expression shall have the same meaning as it has in the Act.
12. For the purpose of interpreting this notification:
- a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament
13. The Schedule to this notification shall form part of this notification.

DAVID K S THOMAS
DIRECTOR OF REGULATORY FINANCE

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

10 February 2005

SCHEDULE 1

Modification to SMP services conditions AA4 imposed on BT as a result of the market power determinations made by the Director in the November 2003 Notification, and subsequently amended by the July 2004 Notification in relation to the market referred to in paragraph 2(f) of this notification, that BT has significant market power in the markets set out in paragraph 2 of this notification

1. SMP services condition AA4, as amended, shall be deleted and replaced in its entirety as follows:

Condition AA4

Charge control

AA4.1 Without prejudice to the generality of Condition AA3, and subject to paragraphs AA4.2, AA4.5 and AA4.6, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with paragraphs AA4.3 or AA4.4 as appropriate) in:

- a. the aggregate of charges for Wholesale Line Rental Services;
- b. the aggregate of charges for Call Origination Services;
- c. the aggregate of charges for Single Transit Services and Local-tandem Conveyance Services;
- d. each discrete charge, including charges disaggregated by time of day, distance or route, for Inter-tandem Conveyance and Transit Services;
- e. the charge for Existing Line Transfer;
- f. each of:
 - i. the charge for the LECO circuit (excluding the FRIACO port at the Local Exchange);
 - ii. the charge for the FRIACO port at the Local Exchange; and
 - iii. the charge for PPP per FRIACO port;
- g. each of:
 - i. the charge for a flat rate internet access local-tandem circuit (including DLE facing port but excluding FRIACO port at the Tandem Exchange); and
 - ii. the charge for a FRIACO port at the Tandem Exchange,

in each case is not more than the Controlling Percentage (determined in accordance with paragraph AA4.7).

AA4.2 For the purpose of complying with paragraph AA4.1, the Dominant Provider shall take all reasonable steps to secure that the revenue it accrues as a result of all individual Charge Changes during any Relevant Year shall be no more than that which it would have accrued had all of those Charge Changes been made at 1 April in the Relevant Year in question. The

Dominant Provider shall be deemed to have satisfied this obligation where, by example in the case of a single Charge Change in the Relevant Year in question, the following formula is satisfied:

$$RC(1-D) \leq TRC$$

where:

RC is the revenue change associated with the single Charge Change made in the Relevant Year in question, calculated by the relevant Percentage Change immediately following the Charge Change multiplied by the revenue accrued during the Relevant Financial Year;

TRC is the target revenue change required in the Relevant Year in question to achieve compliance with paragraph AA4.1, calculated by the Percentage Change required in the Relevant Year in question to achieve compliance with paragraph AA4.1 multiplied by the revenue accrued from the provision of the services or categories of services specified in paragraphs AA4.1(a) to AA4.1(g) during the Relevant Financial Year; and

D is the elapsed proportion of the Relevant Year in question, calculated as the date on which the Charge Change takes effect, expressed as a numeric entity on a scale ranging from 1 October = -182 to 30 September = 182, divided by 183.

AA4.3 The Percentage Change shall be calculated separately for each of:

- i. the category of services specified in paragraph AA4.1(a);
- ii. the category of services specified in paragraph AA4.1(b); and
- iii. the category of services specified in paragraph AA4.1(c);

by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(p_{t,i} - p_{0,i})}{p_{0,i}} \right]}{\sum_{i=1}^n R_i}$$

where:

C_t is the Percentage Change in the aggregate of charges for the services in the category of services in question at a particular time t during the Relevant Year;

n is the number of individual services in the category of services in question;

R_i is the sum of the revenue accrued during the Relevant Financial Year in respect of the individual service i that forms part of the category of services in question where i is a unique number from 1 to n for each of the n individual services in the category of services;

$p_{0,i}$ is the published charge made by the Dominant Provider for the individual service i that forms part of the category of services in question immediately preceding the beginning of the Relevant Year; and

$p_{t,i}$ is the published charge made by the Dominant Provider for the individual service i that forms part of the category of services in question at time t during the Relevant Year.

AA4.4 The Percentage Change shall be calculated separately for each individual service specified within paragraphs AA4.1(d) to AA4.1(g) by employing the following formula:

where:

C_t is the Percentage Change in charges for the service in question at a particular time t during the Relevant Year;

p_0 is the published charge made by the Dominant Provider for the service in question immediately preceding the beginning of the Relevant Year; and

p_t is the published charge made by the Dominant Provider for the service in question at time t during the Relevant Year.

AA4.5 For the purposes of the categories of service specified in paragraphs AA4.1(a) and AA4.1(e), where the Percentage Change in the Relevant Year starting 1 September 2004 is less than the Controlling Percentage (so that the Dominant Provider has made larger than necessary reductions), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph AA4.7, but increased by the absolute value of such excess.

AA4.6 For the purposes of the categories of service specified in paragraphs AA4.1(a) and AA4.1(e), where the Percentage Change in the Relevant Year starting 1 September 2004 is more than the Controlling Percentage (so that the Dominant Provider has made smaller than necessary reductions), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph AA4.7, but decreased by the absolute value of such deficiency.

AA4.7 Subject to paragraphs AA4.5 and AA4.6, the Controlling Percentage in relation to any Relevant Year is the amount of the change in the Retail Prices Index in the period of 12 months ending on 30th June immediately before the beginning of that Year expressed as a percentage (rounded to two decimal places) of that Index as at the beginning of that period reduced:

- a. for Wholesale Line Rental Services, by 2 percentage points;
- b. for Call Origination Services, by 10 percentage points;
- c. for Single Transit Services and Local-tandem Conveyance Services, by 13 percentage points;
- d. for Inter-tandem Conveyance and Transit Services, by 0 percentage points;
- e. for Existing Line Transfer, by 2 percentage points;
- f. for each service specified in paragraph AA4.1(f), by 7.5 percentage points; and

- g. for each service specified in paragraph AA4.1(g), by 8.75 percentage points.

AA4.8 Where the Dominant Provider makes a material change (other than to a Charge) to any Charge Controlled Service for which a Charge is charged or to the date on which its financial year ends or there is a material change in the basis of the Retail Prices Index, paragraphs AA4.1 to AA4.7 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances. For the purposes of this paragraph, a material change to any Charge Controlled Service includes the introduction of a new product and/or service wholly or substantially in substitution for an existing Charge Controlled Service.

AA4.9 The Dominant Provider shall, no later than three months after the end of each Relevant Year, supply to Ofcom, in writing, the data necessary to perform the calculation of the Percentage Change.

AA 4.10 If it appears to Ofcom that the Dominant Provider is likely to fail to secure that the Percentage Change does not exceed the Controlling Percentage for:

- i. the period of 12 months beginning on 1 September 2005 and ending on 31 August 2006 for the purposes of all categories of service specified in paragraphs AA4.1(a) and AA4.1(e); and
- ii. the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005 for the purposes of all categories of service specified in paragraphs AA4.1(b), AA4.1(c); AA4.1(d); AA4.1(f) and AA4.1(g);

the Dominant Provider shall make such adjustment to any of its charges for any of the categories of service specified in paragraphs AA4.1(a) to (g) and by such day in that year as Ofcom may direct for the purpose of avoiding this failure;

AA4.11 Paragraphs AA4.1 to AA4.10 shall not apply to such extent as Ofcom may direct.

AA4.12 In this Condition:

- a. "Charge Change" means a change to any of the charges for any of the services or categories of services specified in paragraphs AA4.1(a) to AA4.1(g);
- b. "Controlling Percentage" is to be determined in accordance with Condition AA4.7;
- c. "Percentage Change" means:
 - i. for the separate categories of services specified in each of sub-paragraphs (a) to (c) of Condition AA4.1, has the meaning given to it in Condition AA4.3; and
 - ii. for the separate services specified in each of sub-paragraphs (d) to (g) of Condition AA4.1, has the meaning given to it in Condition AA4.4.
- d. "Relevant Financial Year" means the period of 12 months ending on 31 March immediately preceding the Relevant Year in question;
- e. "Relevant Year" means for the purposes of the categories of service specified in paragraphs AA4.1(a) and AA4.1(e), any of the two periods of 12 months

beginning on 1 September starting with 1 September 2004 and ending on 31 August 2006; and for the purposes of all categories of service specified in paragraph AA4.1(b), AA4.1(c), AA4.1(d), AA4.1(f) and AA4.1(g), the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005; and

- f. "Retail Prices Index" means the index of retail prices compiled by an agency or a public body on behalf of Her Majesty's Government or a governmental department (which is the Office of National Statistics at the time of publication of this Notification) from time to time in respect of all items.
2. The following definitions set out in paragraph 2 of Part 1 of Schedule 1 to the November 2003 Notification shall be deleted and the definitions remaining in that Schedule to the November 2003 Notification shall be renumbered accordingly:
- (w) "Controlling Percentage" has, for the purposes of the categories of service specified in paragraph AA4.1, the respective meaning given to it in paragraphs (a) to (g) of Condition AA4.6;
 - (eee) "Percentage Change":
 - i. for the three separate categories of service specified in each of sub-paragraphs (a) to (c) of Condition AA4.1, has the meaning given to it in Condition AA4.2; and
 - ii. for the seven separate categories of service specified in each of sub-paragraphs (d) to (g) of Condition AA4.1, has the meaning given to it in Condition AA4.3;
 - (ooo) "Relevant Year" means:
 - i. for the purposes of the category of services specified in paragraphs AA4.1(a) and (e) of Condition AA4, any of the three periods of 12 months beginning on 1st September starting with 1st September 2003 and ending on 31st August 2006;
 - ii. for the purposes of all categories of service specified in paragraph AA4.1 other than those specified in paragraphs AA4.1(a) and (e) of Condition AA4, any of the two periods of 12 months beginning on 1st October starting with 1st October 2003 and ending on 30th September 2005;
 - (ppp) "Retail Price Index" means the index of retail prices compiled by an agency or a public body on behalf of Her Majesty's Government or a governmental department from time to time in respect of all items (which is the Office for National Statistics at the time of publication of this Notification);

Annex 2

Notification

NOTIFICATION UNDER SECTIONS 48(1) AND 86 OF THE COMMUNICATIONS ACT 2003

Modification of SMP services condition BA4 in Schedule 1 to the November 2003 Notification imposed on BT as a result of the market power determination made by the Director that BT has significant market power in the market set out in paragraph 2 to this notification

WHEREAS:

- A. OFCOM issued a notification pursuant to section 48(2) and 86 of the Act setting out their proposals for the modification of SMP services condition BA4 on 9 December 2004 ('the First Notification');
- B. a copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a), the European Commission and to the regulatory authorities of every other Member State in accordance with section 50(3) of the Act;
- C. in the First Notification and accompanying explanatory statement, OFCOM invited representations about any of the proposals set out therein by 13 January 2005;
- D. by virtue of section 48(5) of the Act, OFCOM may give effect to any proposals to modify SMP services conditions as set out in the First Notification, with or without modification, where:
 - i. they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- E. OFCOM received one response to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE:

- 1. OFCOM hereby make in accordance with sections 48(1) and 86 of the Act the following modifications to an SMP services condition which was set by reference to a market power determination in relation to a market in which OFCOM are satisfied there has been no material change since that determination was proposed or made.
- 2. The measures contained in this notification are further to the market power determination made in the November 2003 Notification under section 79 of the Act whereby BT was determined to have significant market power in the market for fixed geographic call termination provided by BT.

3. By virtue of the Transitional Provisions, the market power determination made by the Director referred to in paragraph 2 are to have effect as if made by OFCOM.
4. As a result of, amongst other things, the market power determination referred to in paragraph 2 above, BT has been subjected to a number of SMP services conditions, including SMP services condition BA4.
5. OFCOM are modifying SMP services condition BA4 in respect of its application to BT in the market listed in paragraph 2 above as set out in the Schedules to this notification.
6. The effect of and OFCOM's reasons for making, the modifications referred to in paragraph 5 above are set out in the accompanying explanatory statement.
7. OFCOM consider that the modifications referred to in paragraph 5 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to each of the proposals.
8. In making the modifications set out in this notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
9. Copies of this notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission and the regulatory authorities of every other Member State in accordance with section 50(3) of the Act.
10. In this notification (not including the Schedule) –
 - a. "Act" means the Communications Act 2003;
 - b. "BT" means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
 - c. "Director" means the Director General of Telecommunications;
 - d. "November 2003 Notification" means the notification set out at Annex B to the review of the fixed geographic call termination market published by the Director on 28 November 2003; and
 - e. "Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No. 1) Order 2003 and the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No.2) Order 2003; an
11. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this notification and otherwise any word or expression shall have the same meaning as it has in the Act.
12. For the purpose of interpreting this notification:
 - a. headings and titles shall be disregarded; and

- b. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament

13. The Schedule to this notification shall form part of this notification.

DAVID K S THOMAS
DIRECTOR OF REGULATORY FINANCE

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

10 February 2005

SCHEDULE 1

Modification to SMP services condition BA4 imposed on BT as a result of the market power determination made by the Director in the November 2003 Notification that BT has significant market power in the market set out in paragraph 2 of this notification

1. SMP services condition BA4 shall be deleted and replaced in its entirety as follows:

Condition BA4 – Charge control

BA4.1 Without prejudice to the generality of Condition BA3, and subject to paragraph BA4.2, the Dominant Provider shall take all reasonable steps to secure that, at the end of the Relevant Year, the Percentage Change (determined in accordance with paragraph BA4.3) in the aggregate of charges for Fixed Call Termination Wholesale Services is not more than the Controlling Percentage (determined in accordance with paragraph BA4.4).

BA4.2 For the purpose of complying with paragraph BA4.1, the Dominant Provider shall take all reasonable steps to secure that the revenue it accrues as a result of all individual Charge Changes during any Relevant Year shall be no more than that which it would have accrued had all of those Charge Changes been made at 1 April in the Relevant Year in question. The Dominant Provider shall be deemed to have satisfied this obligation where, by example in the case of a single Charge Change during the Relevant Year in question, the following formula is satisfied:

$$RC(1 - D) \leq TRC$$

where:

RC is the revenue change associated with the single Charge Change made in the Relevant Year in question, calculated by the relevant Percentage Change immediately following the Charge Change multiplied by the revenue accrued during the Relevant Financial Year;

TRC is the target revenue change required in the Relevant Year in question to achieve compliance with paragraph BA4.1, calculated by the Percentage Change required in the Relevant Year in question to achieve compliance with paragraph BA4.1 multiplied by the revenue accrued from the provision of Fixed Call Termination Wholesale Services during the Relevant Financial Year; and

D is the elapsed proportion of the Relevant Year, calculated as the date on which the Charge Change takes effect, expressed as a numeric entity on a scale ranging from 1 October = -182 to 30 September = 182, divided by 183.

BA4.3 The Percentage Change shall be calculated for the purposes of complying with paragraph BA4.1 by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(p_{t,i} - p_{0,i})}{p_{0,i}} \right]}{\sum_{i=1}^n R_i}$$

where:

Ct is the Percentage Change in the aggregate of charges for Fixed Call Termination Wholesale Service(s) at a particular time t during the Relevant Year;

n is the number of individual services that form part of Fixed Call Termination Wholesale Service(s);

R_i is the sum of the revenue accrued during the Relevant Financial Year in respect of the individual service i that forms part of the Fixed Call Termination Wholesale Service(s) where i is a unique number from 1 to n for each of the n individual services in Fixed Call Termination Wholesale Service(s);

p_{0,i} is the published charge made by the Dominant Provider for the individual service i that forms part of the Fixed Call Termination Wholesale Service(s) immediately preceding the beginning of the Relevant Year; and

p_{t,i} is the published charge made by the Dominant Provider for the individual service i that forms part of the Fixed Call Termination Wholesale Service(s) at time t during the Relevant Year.

BA4.4 The Controlling Percentage in relation to the Relevant Year is the amount of the change in the Retail Prices Index in the period of 12 months ending on 30 June immediately before the beginning of that Year expressed as a percentage (rounded to two decimal places) of that Index as at the beginning of that period reduced by 10 percentage points.

BA4.5 The Dominant Provider shall, no later than three months after the end of each Relevant Year, supply Ofcom, in writing, the data necessary to perform the calculation of the Percentage Change.

BA4.6 If it appears to Ofcom that the Dominant Provider is likely to fail to secure that the Percentage Change does not exceed the Controlling Percentage for the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005 the Dominant Provider shall make such adjustment to any of its charges for Fixed Call Termination Wholesale Services and by such day in that year as Ofcom may direct for the purpose of avoiding this failure.

BA4.7 Paragraphs BA4.1 to BA4.6 shall not apply to such extent as Ofcom may direct.

BA4.8 In this Condition:

- a. "Charge Change" means a change to any of the charges for the provision of Fixed Geographic Call Termination Wholesale Services;
- b. "Controlling Percentage" is to be determined in accordance with Condition BA4.4;
- c. "Relevant Financial Year" means the period of 12 months ending on 31 March immediately preceding the Relevant Year;
- d. "Relevant Year" means the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005; and
- e. "Retail Prices Index" means the index of retail prices compiled by an agency or a public body on behalf of Her Majesty's Government or a governmental department (which is the Office of National Statistics at the time of publication of this Notification) from time to time in respect of all items.

2. The following definitions set out in paragraph 2 of Part 1 of Schedule 1 to the November 2003 Notification shall be deleted:

“Controlling Percentage” is to be determined in accordance with Condition BA4.3;

“Percentage Change” has the meaning given to it in Condition BA4.3;

“Relevant Year” means any of the two periods of 12 months beginning on 1st October starting with 1st October 2003 and ending of 30 September 2005; and

“Retail Price Index” means the index of retail prices compiled by an agency or a public body on behalf of Her Majesty's Government or a governmental department (which is the Office for National Statistics at the time of publication of this Notification) from time to time in respect of all items.

Annex 3

Notification

NOTIFICATION UNDER SECTIONS 48(1) AND 86 OF THE COMMUNICATIONS ACT 2003

Modification of SMP services condition PA1 in Schedule 2 to the July 2004 Notification imposed on BT as a result of the market power determinations made by the Director in the November 2003 Notification that BT has significant market power in the markets set out in paragraph 2 to this notification

WHEREAS:

- A. OFCOM issued a notification pursuant to section 48(2) and 86 of the Act setting out their proposals for the modification of SMP services condition PA1 on 9 December 2004 ('the First Notification');
- B. a copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a), the European Commission and to the regulatory authorities of every other Member State in accordance with section 50(3) of the Act;
- C. in the First Notification and accompanying explanatory statement, OFCOM invited representations about any of the proposals set out therein by 13 January 2005;
- D. by virtue of section 48(5) of the Act, OFCOM may give effect to any proposals to modify SMP services conditions as set out in the First Notification, with or without modification, where:
 - i. they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- E. OFCOM received one response to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE:

- 1. OFCOM hereby make in accordance with sections 48(1) and 86 of the Act the following modifications to an SMP services condition which was set by reference to market power determinations in relation to markets in which OFCOM are satisfied there has been no material change since those determinations were proposed or made.
- 2. The measures contained in this notification are further to the market power determinations made the November 2003 Notification under section 79 of the Act whereby BT was determined to have significant market power in the following markets, amongst others, in the United Kingdom, excluding the Hull Area:

- a. call origination on fixed public narrowband networks;
 - b. local-tandem conveyance and transit on fixed public narrowband networks;
 - c. inter-tandem conveyance and transit on fixed public narrowband networks;
 - d. single transit on fixed public narrowband networks; and
 - e. fixed geographic call termination markets.
3. By virtue of the Transitional Provisions, the market power determinations made by the Director referred to in paragraph 2 are to have effect as if made by OFCOM.
4. As a result of, amongst other things, the market power determinations referred to in paragraph 2 above, BT has been subjected to a number of SMP services conditions, including SMP services condition PA1 which was imposed on BT in the July 2004 Notification.
5. OFCOM are modifying SMP services condition PA1 in respect of its application to BT in the markets listed in paragraph 2 above as set out in the Schedules to this notification.
6. The effect of, and OFCOM's reasons for making, the modifications referred to in paragraph 5 above are set out in the accompanying explanatory statement.
7. OFCOM consider that the modifications referred to in paragraph 5 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to each of the proposals.
8. In making the modifications set out in this notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
9. Copies of this notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission and the regulatory authorities of every other Member State in accordance with section 50(3) of the Act.
10. In this notification (not including the Schedule) –
 - a. "Act" means the Communications Act 2003;
 - b. "BT" means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
 - c. "Director" means the Director General of Telecommunications;
 - d. "Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

- e. "July 2004 Notification" means the notification set out at Annex A to the review of the BT's product management, policy and planning (PPP) charge published by OFCOM on 30 July 2004;
 - f. "November 2003 Notification" means the notification set out at Annex A to the review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets published by the Director on 28 November 2003;
 - g. "Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No. 1) Order 2003 and the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No.2) Order 2003; and
 - h. "United Kingdom" has the meaning given to it in the Interpretation Act 1978.
11. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this notification and otherwise any word or expression shall have the same meaning as it has in the Act.
12. For the purpose of interpreting this notification:
- a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament
13. The Schedule to this notification shall form part of this notification.

DAVID K S THOMAS
DIRECTOR OF REGULATORY FINANCE

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

10 February 2005

SCHEDULE 1

Modification to SMP services conditions PA1 imposed on BT as a result of the market power determinations made by the Director in the November 2003 Notification that BT has significant market power in the markets set out in paragraph 2 of this notification

1. SMP services condition PA1 shall be deleted and replaced in its entirety as follows:

Condition PA1

Charge control for PPP and Interconnection Circuits

PA1.1 Without prejudice to the generality of Conditions AA3 and BA3, and subject to paragraphs PA1.2 and PA1.7, the Dominant Provider shall take all reasonable steps to secure that, at the end of the Relevant Year, the Percentage Change (determined in accordance with paragraph PA1.3) in the aggregate of charges for:

- a. PPP per call minute and Interconnection Circuits;
- b. PPP per call minute; and
- c. Interconnection Circuits

in each case is not more than the Controlling Percentage (determined in accordance with Paragraph PA1.4).

PA1.2 For the purpose of complying with paragraph PA1.1, the Dominant Provider shall take all reasonable steps to secure that the revenue it accrues as a result of all individual Charge Changes during the Relevant Year shall be no more than that which it would have accrued had all of those Charge Changes been made at 1 April in the Relevant Year. The Dominant Provider shall be deemed to have satisfied this obligation where, by example in the case of a single Charge Change during the Relevant Year, the following formula is satisfied:

$$RC(1-D) \leq TRC$$

where:

RC is the revenue change associated with the single Charge Change made in the Relevant Year, calculated by the relevant Percentage Change immediately following the Charge Change multiplied by the revenue accrued during the Relevant Financial Year as defined by the term defined in paragraph PA1.3;

TRC is the target revenue change required in the Relevant Year to achieve compliance with paragraph PA1.1, calculated by the Percentage Change required in the Relevant Year to achieve compliance with paragraph PA1.1 multiplied by the revenue accrued from the provision of the categories of services specified in paragraphs PA1.1(a) to PA1.1(c) during the Relevant Financial Year as defined by the term defined in paragraph PA1.3; and

D is the elapsed proportion of the Relevant Year, calculated as the date on which the Charge Change takes effect, expressed as a numeric entity on a scale ranging from 1 October = -182 to 30 September = 182, divided by 183.

PA1.3 The Percentage Change shall be calculated separately for each of:

- i. the category of services specified in paragraph PA1.1(a);
- ii. the category of services specified in paragraph PA1.1(b); and
- iii. the category of services specified in paragraph PA1.1(c);

by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(p_{t,i} - p_{0,i})}{p_{0,i}} \right]}{\sum_{i=1}^n R_i}$$

where:

$$R_i = \frac{1}{2} \left(p_{0,i} + \frac{p_{0,i}}{(1 + (RPI - X))} \right) \cdot V_i$$

C_t is the Percentage Change in the aggregate of charges for the services in the category of services in question at a particular time t during the Relevant Year;

n is the number of individual services in the category of services in question;

$p_{0,i}$ is the published charge made by the Dominant Provider for the individual service i that forms part of the category of services in question immediately preceding the beginning of the Relevant Year;

$p_{t,i}$ is the published charge made by the Dominant Provider for the individual service i that forms part of the category of services in question at time t during the Relevant Year;

V_i is the volume of transactions for the individual service i that forms part of the category of services in question during the Relevant Financial Year; and

$RPI-X$ is the Controlling Percentage as defined in Paragraph PA1.4.

PA1.4 The Controlling Percentage in relation to the Relevant Year is the amount of the change in the Retail Prices Index in the period of 12 months ending on 30 June immediately before the beginning of that Year expressed as a percentage (rounded to two decimal places) of that Index as at the beginning of that period reduced:

- a. for PPP per call minute and Interconnection Circuits, by 8.25 percentage points;
- b. for PPP per call minute, by 0 percentage points; and
- c. for Interconnection Circuits, by 0 percentage points.

PA1.5 Where the Dominant Provider makes a material change (other than to a Charge) to any service which is subject to this Condition or to the date on which its financial year ends or there is a material change in the basis of the Retail Prices Index, paragraphs PA1.1 to PA1.4 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances. For the purposes of this paragraph, a material change to any service which is subject to this Condition includes the introduction of a new product and/or service wholly or substantially in substitution for that existing service.

PA1.6 The Dominant Provider shall, no later than three months after the end of the Relevant Year, supply to Ofcom, in writing, the data necessary to perform the calculation of the Percentage Change.

PA1.7 Where the Percentage Change in the aggregate of charges for services in each of the categories set out in subparagraphs (a) and (c) of paragraph PA1.1 exceeds the Controlling Percentage in the Relevant Year, the Dominant Provider shall be deemed to have satisfied the requirements of paragraph PA1.1 where it can demonstrate that:

- a. any such excess is solely the result of an increase in the aggregate of charges for Interconnection Circuits in the Relevant Year; and
- b. any such excess is not more than 21.6 million pounds. The Dominant Provider shall be deemed to have satisfied this obligation where, in the case of a single change in charges during the Relevant Year, the following formula is satisfied:

$$RC(1 - D) \leq TRC + £21.6m$$

where RC, TRC and D are defined as in paragraph PA1.2.

PA1.8 If it appears to Ofcom that the Dominant Provider is likely to fail to secure that the Percentage Change does not exceed the Controlling Percentage for the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005 the Dominant Provider shall make such adjustment to any of its charges for any of the categories of services specified in paragraphs PA1.1(a) to PA1.1(c) and by such day in that year as Ofcom may direct for the purpose of avoiding this failure.

PA1.9 Paragraphs PA1.1 to PA1.8 shall not apply to such extent as Ofcom may direct.

PA1.10 In this Condition:

- a. "Charge Change" means a change to any of the charges for the provision of any of the services specified in paragraphs PA1.1(a) to PA1.1(c);
- b. "Controlling Percentage" is to be determined in accordance with Condition PA1.4;
- c. "Percentage Change" has the meaning given to it in PA1.3;
- d. "Relevant Financial Year" means the period of 12 months ending on 31 March immediately preceding the Relevant Year;
- e. "Relevant Year" means the period of 12 months beginning on 1 October 2004 and ending on 30 September 2005; and

- f. "Retail Prices Index" means the index of retail prices compiled by an agency or a public body on behalf of Her Majesty's Government or a governmental department (which is the Office of National Statistics at the time of publication of this Notification) from time to time in respect of all items.
- 2. The following definitions set out in paragraph 2 of Part 1 of Schedule 2 to the July 2004 Notification shall be deleted:
 - "Controlling Percentage" has the meaning given to it in paragraph PA1.4;
 - "Percentage Change" has the meaning given to it in paragraph PA1.3;
 - "Relevant Year" means the period beginning on 1 October 2004 and ending on 30 September 2005;