

BT's use of Cancel Other

Direction concerning BT's use of Cancel Other and
Determination to resolve a dispute between BT and various
communications providers concerning BT's use of Cancel
Other

Consultation

Publication date: 21 January 2005

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Summary

1. "Cancel Other" is a functionality that enables BT to cancel wholesale orders that have been placed by alternative communications providers for Carrier Pre-Selection ("CPS") and Wholesale Analogue Line Rental ("WLR").
2. A number of communications providers (together "the referring parties") asked Ofcom to resolve a dispute about BT's use of Cancel Other, after negotiations between BT and the rest of the industry failed to lead to agreement of a new process for managing customer complaints and cancellations when alternative providers attempt to transfer a customer away from BT.
3. Ofcom published its proposals for resolving the dispute, a draft Direction and draft Determination, on 22 November 2004 (referred to throughout this document as "the consultation document").
4. After considering stakeholders' responses to the consultation document, Ofcom has published a final Direction which specifies when BT is permitted to use Cancel Other and what information it must provide to its competitors about its use of Cancel Other. Ofcom has published a separate Determination resolving the dispute.
5. BT will be permitted to use Cancel Other in cases of slamming, which is where a communications provider attempts to transfer some or all of a customer's calls and/or his telephone line without that customer's express knowledge and consent. In the Direction, Ofcom has provided further detail on the definition of slamming and clarified the types of behaviour covered by the definition. This clarification is expected to lead to a reduction in the number of cases in which BT uses Cancel Other.
6. As well as being able to use Cancel Other in cases of slamming, BT will be permitted to use Cancel Other in order to prevent a customer from being transferred as a result of another communications provider's failure to action that customer's request to cancel his transfer.
7. BT will also be permitted to use Cancel Other where a BT account is closed before a CPS or WLR order has matured ("line cease").
8. BT Wholesale will be permitted to use Cancel Other for a number of other reasons, agreed with the industry, where a customer has not asked BT to cancel a transfer. In particular, BT Wholesale is permitted to use Cancel Other at the request of an alternative provider, for example where a customer is transferring between two non-BT providers.
9. In order to make BT's use of Cancel Other more transparent, BT must record why it has used Cancel Other in each case, and must provide this information to its competitors.
10. To give BT's competitors comfort that BT is using Cancel Other only in accordance with the permitted reasons set out in the Direction, BT is required to provide alternative providers, on reasonable request, with full records of contact between individual customers and BT, relating to transfers associated with the communications provider making the request, where BT has used Cancel Other.
11. Ofcom has proposed that there should be a requirement on communications providers to establish, and comply with, codes of practice for sales or marketing of fixed-line

telecoms services¹. Ofcom has proposed that this requirement should be time-bounded, lapsing after two years. Ofcom intends to review BT's use of Cancel Other before the obligation on service providers to establish and comply with codes of practice falls away.

12. Ofcom's Direction and Determination aim to strike a balance between allowing BT to retain its ability to use Cancel Other when it plays a useful role as a consumer protection mechanism, and the need to place restrictions on BT's use of Cancel Other, in order to promote competition by facilitating consumer transfers to alternative providers.

¹ Protecting citizen-consumers from mis-selling of fixed-line telecoms services: Consultation on a notification to modify General Condition 14 on codes of practice and dispute resolution, 22 November 2004.

Direction under section 49 of the Communications Act 2003 ("the Act") and Condition AA1(a) imposed on British Telecommunications plc ("BT") as a result of the market power determinations made by the Director General of Telecommunications that BT has significant market power

WHEREAS:

- A. as a result of a market analysis carried out by the Director General of Telecommunications ("the Director"), he proposed on 17 March 2003 and on 26 August 2003, in accordance with section 80 of the Act that BT has significant market power in the markets for, inter alia, wholesale residential analogue exchange line services, and wholesale call origination on fixed public narrowband networks;
- B. the Director having considered every representation duly made, and thereafter on 28 November 2003 pursuant to sections 48(1) and 79 of the Act by way of publication of a notification ("the Notification"), identified the relevant markets, made a market power determination to the effect referred to in recital (A) above and set certain significant market power conditions on BT to take effect on 28 November 2003, such as Condition AA1(a);
- C. by virtue of section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 the Director was able to exercise powers under the Act for an interim period;
- D. this Direction concerns matters to which Condition AA1(a) relates;
- E. for the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (iii) proportionate to what it is intended to achieve;
 - and (iv) in relation to what it is intended to achieve, transparent;
- F. for the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with the six Community requirements set out in section 4 of the Act and their duties in section 3 of the Act;
- G. on 22 November 2004, Ofcom published a notification of the proposed Direction in accordance with section 49 of the Act;
- H. by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the notification, with or without modification, only if:
 - a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - b) 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;
- I. Ofcom have considered every representation about the proposed Direction duly made to them and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose; and

Therefore, pursuant to section 49 of the Act and Condition AA1(a) in Schedule 1 to the Notification, Ofcom gives the following Direction:

1. BT shall only be permitted to use Cancel Other in the following circumstances:
 - a) where a request for CPS and/or WLR has been made without the Customer's express knowledge and consent ("Slamming"), that is, in the following circumstances:
 - i. where the Customer has never been contacted by the Gaining Provider;
 - ii. where a Customer has been contacted by Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider;
 - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - iv. where the Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider;
 - b) at a Customer's request, where the Gaining Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
 - c) where the telephone line is ceased during the Transfer Period ("Line Cease");
 - d) for other specified reasons not related to a Customer's request to BT to cancel a transfer, and agreed by the CPS and WLR Service Providers Forum (the "SPF");
2. Before using Cancel Other in cases of Slamming and/or Failure to Cancel, BT shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place;
3. After using Cancel Other, BT shall confirm the cancellation of the CPS and/or WLR order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased;
4. Where a Customer is the subject of Cancel Other, BT shall keep a record of all contact made with that Customer during the Transfer Period where such contact relates to BT's use of Cancel Other and BT shall retain such records for a period of at least six months;
5. Subject to paragraph 4 above, BT shall provide, within 15 working days of a reasonable request by a Gaining Provider, save in exceptional circumstances, the following information (in relation to that Gaining Provider):
 - a randomly selected representative sample, covering a period of one month, of the records of contact between BT and a Customer, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such

- records shall include recordings of Customer-initiated calls to BT where available;
and
- all records of any contact between BT and an individual Customer specified by the Gaining Provider, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available;
6. BT shall record its reason for using Cancel Other in each case, according to categories (a) (i) to (iv) and categories (b) to (d) set out at paragraph 1 above, and shall:
- within a reasonable period, pass this information to the CPSO or WLR Service Provider; and
 - on a fortnightly basis, and within five working days of the end of the relevant two-week period, pass this information to the Gaining Provider, where the Gaining Provider is not also the CPSO or WLR Service Provider;
7. BT shall implement, within three months, the necessary changes to its systems to comply with paragraph 6 of this Direction;
8. The direction published on 27 November 2003 and concerning Cancel Other is withdrawn;
9. For the purpose of interpreting this Direction, the following definitions shall apply:
- a) "Act" means the Communications Act 2003;
 - b) "BT" means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
 - c) "Cancel Other" means a functionality, which pursuant to this Direction, allows BT to cancel an order for CPS or for WLR during the Transfer Period;
 - d) "CPS" means Carrier Pre-Selection as defined in Schedule 1 to the Notification;
 - e) "CPSO" means a provider of a public electronic communications network that interconnects with BT's network to allow BT customers to subscribe to CPS services provided by means of that operator's network;
 - f) "Customer" means the retail end user;
 - g) "Gaining Provider" means the communications provider that has a direct retail relationship with the Customer, and to whom some or all of the Customer's calls and/or the Customer's line rental will transfer at the end of the Transfer Period, except where the transfer is cancelled;
 - h) "Notification" means the notification made on 28 November 2003 pursuant to sections 48(1) and 79 of the Act which identified that BT had significant market power in the markets for, inter alia, wholesale residential exchange line services and wholesale call origination on fixed public narrowband networks;

- i) "Ofcom" means the Office of Communications as established under section 1 of the Communications Act 2003;
 - j) "SPF" means the forum for industry discussion and implementation of processes for CPS and WLR;
 - k) "Transfer Period" means the period of ten working days starting from the date on which an order for CPS and/or WLR is accepted by BT;
 - l) "WLR" means Wholesale Analogue Line Rental as defined in Schedule 1 to the Notification;
 - m) "WLR Service Provider" means a communications provider that purchases WLR from BT in order to provide exchange line services to end users;
10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Direction and otherwise any word or expression shall have the same meaning as it has in the Notification, or, if the context so permits, in Schedule 1 thereto, as appropriate;
11. For the purpose of interpreting this Direction:
- a) headings and titles shall be disregarded; and
 - b) the Interpretation Act 1978 (c.30) shall apply as if this Direction were an Act of Parliament;
12. Except where otherwise stated, this Direction shall take effect one month after the day it is published.

Sean Williams

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

20 January 2005

Determination under Sections 188 and 190 of the Communications Act 2003 ("the Act") for resolving a dispute between British Telecommunications Plc ("BT") and various communications providers concerning BT's use of Cancel Other

WHEREAS:

- A. Section 188(2) of the Act provides that where there is a dispute between different communications providers relating to the provision of network access, and Ofcom has decided pursuant to section 186(2) of the Act that it is appropriate for it to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes for resolving the dispute must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based. Section 190 of the Act sets out the scope of Ofcom's powers for resolving a dispute which may include, in accordance with section 190(2) of the Act, a direction imposing an obligation on the parties to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
- B. On 24 August 2004, the communications providers listed at Schedule 1 to this determination ("the Referring Parties") wrote to Ofcom asking them to resolve a dispute between the Referring Parties and BT relating to the process for managing customer complaints and cancellations during the CPS and WLR transfer process;
- C. On 22 September 2004, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for them to handle the dispute and informed the parties of this decision;
- D. In order to resolve this dispute, Ofcom have considered, among other things, the information provided by the parties and their relevant duties set out in sections 3 and 4 of the Act;
- E. Ofcom issued a draft Determination and the explanatory statement on 22 November 2004 and responses were invited by close of business on 23 December 2004;
- F. An explanation of the background to the dispute and Ofcom's reasons for making this Determination are set out in the explanatory statement accompanying this Determination;

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

- 1. BT shall act towards the Referring Parties in accordance with the Direction, made by Ofcom under Section 49 of the Act and Condition AA1(a) in Schedule 1 to the Notification made on 28 November 2003 pursuant to sections 48(1) and 79 of the Act which identified that BT had significant market power in the markets for, inter alia, wholesale residential exchange line services and wholesale call origination on fixed public narrowband networks, and published on 21 January 2005.
- 2. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination.
- 3. For the purpose of interpreting this Determination the Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.
- 4. This Determination shall take effect one month after the day it is published.

5. This Determination is binding on BT and the Referring Parties in accordance with section 190(8) of the Act.

Sean Williams

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

20 January 2005

SCHEDULE 1

THE REFERRING PARTIES

Company name	Registered Company Number
Broadssystem Ventures Ltd	2927001
Caudwell Communications Ltd	4063120
Centrica plc	03033654
MCI Worldcom Ltd	02776038
Opal Telecom Ltd	3849133
Telco Global Communications Ltd	04222886
THUS plc	SC192666
Your Communications Ltd	3842309

Explanatory memorandum

Section 1

Background and history of the dispute

CPS and WLR

- 1.1 CPS is a service that enables customers to choose for some or all of their fixed-line telephone calls to be carried by an alternative communications provider, without having to dial an access code or use any additional equipment. The customer continues to pay his existing communications provider (generally BT) for line rental and for any calls he has not chosen to have routed via the alternative communications provider. This means that the customer receives two bills.
- 1.2 CPS was introduced in the UK from the end of 2000. The option for customers to choose for all of their calls to be carried by an alternative communications provider using CPS was introduced from the end of 2001. Since its introduction, takeup of CPS has grown to 4,571,131 lines as at 31 December 2004.
- 1.3 WLR is a service that enables customers to choose for their telephone calls and line rental to be transferred to an alternative communications provider. The customer no longer has a relationship with his existing communications provider, and pays the alternative communications provider for line rental and call charges (and only receives one bill). WLR was introduced in the UK in April 2004. The number of analogue lines taken over by alternative communications providers using WLR² was 559,597 as at 26 November 2004.
- 1.4 In order to offer services based on CPS to retail customers, alternative network providers (referred to in the Direction as "CPSOs") interconnect with BT's network at the wholesale level. In order to offer services based on WLR, alternative communications providers (referred to in the Direction as "WLR service providers") in effect lease the customer's exchange line from BT.
- 1.5 In the residential sector, the customer's relationship is frequently with an alternative communications provider that does not contract with BT, but has made arrangements with one or more CPSOs and/or WLR service providers to offer retail services to its customers. Such communications providers are known in this context as CPS and WLR resellers, and are referred to in the Direction and in this document as "Gaining Providers", in line with the terminology used by the industry.
- 1.6 Some alternative network providers have both a wholesale relationship with BT and a retail relationship with the customer (so that an alternative network provider is in effect its own CPS reseller). These providers may have different brands for their wholesale and retail businesses, so that the name of their customer-facing business is not the same as the name of the network provider which interconnects with BT.
- 1.7 When a customer places an order with a CPS or WLR reseller, the CPS or WLR reseller then submits an order to BT for the underlying CPS or WLR wholesale service. This order may be placed directly by the CPS or WLR reseller, or via a CPSO or WLR service provider with which it has a relationship.

² The proposals set out in this document do not apply to wholesale digital line rental. See paragraph 2.127 below.

- 1.8 The transfer process takes ten working days, starting from the date that the BT systems accept the order for CPS and/or WLR. This period is known as the “transfer period”. If the customer changes his mind, he has the right to cancel the order and can do so by contacting the gaining provider at any point during the transfer period.
- 1.9 During the transfer period, both the losing provider (the customer’s current supplier, in this context usually BT) and the gaining provider send out letters to the customer confirming the order. The BT letter is an additional consumer protection mechanism, as it alerts customers that an order has been placed in cases of slamming (when an attempt is made to transfer a customer’s calls and/or line rental without his express knowledge and consent), where they might not otherwise be aware that an order had been placed.

The market reviews

- 1.10 On 23 November 2003 the Director General of Telecommunications (“the Director”³) published his review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets (the “wholesale fixed narrowband market review”⁴).
- 1.11 The wholesale fixed narrowband market review concluded that BT has significant market power (“SMP”) in a number of wholesale markets in the UK excluding the Hull area and imposed a number of SMP conditions on BT, including:
- a requirement to provide network access on reasonable request (SMP Condition AA1(a);
 - a requirement to provide CPS (SMP Condition AA8); and
 - a requirement to provide wholesale analogue line rental (SMP Condition AA10).
- 1.12 The wholesale fixed narrowband market review made a Direction setting out the circumstances in which BT is permitted to use Cancel Other⁵. This mirrored the provisions of the original Cancel Other Direction described at paragraph 1.16 below.
- 1.13 On the same date, the Director published his review of the fixed narrowband retail services markets (the “retail fixed narrowband market review”⁶).
- 1.14 The retail fixed narrowband market review concluded that BT has SMP in a number of retail markets for line rental and various different call types in the UK excluding the Hull area.

Cancel Other

- 1.15 Cancel Other is the industry term for a functionality that enables BT to cancel orders for CPS or WLR during the transfer period.
- 1.16 On 8 July 2003, following an own initiative investigation prompted by industry concern surrounding BT’s use of Cancel Other, the Director published a Direction

³ The Director’s powers were assumed by Ofcom as of 29 December 2003.

⁴ Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets: identification and analysis of markets, determination of market power and the setting of SMP conditions. Final Explanatory Statement and Notification.

⁵ Annex C to the wholesale fixed narrowband market review.

⁶ Fixed narrowband retail services markets: identification and analysis of markets, determination of market power and the setting of SMP conditions. Final Explanatory Statement and Notification.

(the “original Cancel Other Direction”⁷) specifying in what circumstances BT is permitted to use Cancel Other to cancel orders for CPS.

- 1.17 The original Cancel Other Direction permitted BT to use Cancel Other to cancel orders for CPS only in certain circumstances. The original Cancel Other Direction also imposed a number of further conditions on BT's use of Cancel Other to cancel orders for CPS. These are discussed at section 2 of the consultation document.
- 1.18 The original Cancel Other Direction applies to CPS only. Ofcom understands that BT and the rest of the industry have designed the equivalent processes for WLR to be consistent with the existing processes for CPS.

History of the current dispute

- 1.19 Following the publication of the original Cancel Other Direction, BT and the industry discussed, at BT's initiative, the possible introduction of a new process for managing customer complaints and cancellations during the transfer period which, it was envisaged, would eventually replace the current process, including BT's ability to use Cancel Other. These discussions led to the development of a proposed alternative process, known as the “CEO initiative process”.
- 1.20 The industry, including BT, considered that the current process could be improved. BT's competitors considered that the current process, and specifically Cancel Other, enables BT to cancel their CPS and WLR orders inappropriately. They also argued that the current process does not enable them to address allegations of slamming, because customers who believe they have been slammed can simply ask BT to cancel the order, and do not have to contact the gaining provider directly.
- 1.21 On 29 January 2004, BT stated at a meeting of the CPS Commercial Group that, in the context of ongoing high numbers of allegations from their customers about mis-selling of fixed-line telecoms services, it did not consider it appropriate to continue negotiations on the development and implementation of the CEO initiative process. BT reiterated this position at the CPS Commercial Group meeting of 6 July 2004⁸.
- 1.22 On 26 August 2004, the referring parties asked Ofcom to resolve a dispute about the process for managing customer complaints during the CPS and WLR transfer process. The referring parties' proposed solution was the current version of the CEO initiative process, referred to in this document as the “revised interim solution”.
- 1.23 Ofcom considered, in line with sections 185 and 186 of the Communications Act 2003 (“the Act”), that the parties were in dispute and that it was appropriate for Ofcom to resolve the dispute. On 22 September 2004 Ofcom informed the parties of this decision and published details of the dispute in its online *Competition Bulletin*.

The scope of the dispute

- 1.24 Ofcom considered that the scope of this dispute was to determine whether the existing processes governing BT's use of Cancel Other remained appropriate; and, if not, to determine under what circumstances BT may use Cancel Other and in particular:

⁷ Carrier pre-selection 'save' and 'cancel other' activity.

⁸ The CPS Commercial Group was responsible for discussing operational and commercial issue relating to CPS. Members included BT and alternative network providers, and meetings of the Group were attended by Ofcom. In July 2004, the CPS Commercial Group was subsumed into Ofcom's CPS and WLR Service Providers Forum (SPF).

- the circumstances in which BT may use 'Cancel Other' when the relevant consumer has not contacted the gaining provider; and
- the information on the use of Cancel Other that BT is obliged to provide to other providers.

1.25 The scope of the dispute did not include broader issues surrounding the mis-selling of fixed-line telecoms services, but was limited to process issues related to the provision of network access.

Information gathering by Ofcom

1.26 In addition to the referring parties' submission, Ofcom sought information from CPSOs, WLR service providers and CPS and WLR resellers about their sales processes and procedures for obtaining customers' consent, their perceptions of BT's use of Cancel Other, and the effect that they consider BT's ability to cancel their orders and its current use of Cancel Other has on their businesses.

1.27 Ofcom requested from BT a sample of audit trails for cases in which it had generated a UFT (Unfair Trading Incident) report and used Cancel Other during August 2004⁹. Cases were selected using a random stratified sampling approach. The total population of cases was sorted by provider. Random samples were then taken from each sub-group, ensuring that smaller service providers were represented and that the sample was not skewed towards larger service providers.

1.28 BT supplied a recording of the customer-initiated call relating to CPS or WLR which resulted in the use of Cancel Other by BT, plus the accompanying UFT report prepared by BT, in 444 cases¹⁰.

1.29 Ofcom listened to each call and noted whether BT's use of Cancel Other in each case appeared to be the result of slamming or internal customer miscommunication¹¹.

1.30 In listening to the call recordings provided by BT, Ofcom was able to understand the processes followed by BT when it generates and records UFTs and when it uses Cancel Other. The exercise enabled Ofcom to understand the various different reasons why customers ask BT to cancel transfers, and to identify a number of different types of alleged behaviour by gaining providers which, Ofcom considers, all constitute slamming (i.e. an attempt to transfer a customer's telephone calls and/or line rental without his express knowledge and consent).

1.31 BT explained to Ofcom the circumstances in which BT Retail and BT Wholesale use Cancel Other, and in what circumstances a cancellation is generated automatically and reported as Cancel Other, as opposed to the cases in which a Cancel Other is manually actioned by a BT operator.

⁹ The relationship between Cancel Other and UFTs is discussed at paragraphs 3.14-3.18 of the consultation document.

¹⁰ BT provided a final batch of 38 recordings after publication of the consultation document. Ofcom's analysis of these recordings proved consistent with its analysis of the recordings BT provided before publication of the consultation document, and did not alter Ofcom's view that the proposals set out in the consultation document were appropriate.

¹¹ "Internal customer miscommunication" was specified in the original Cancel Other Direction as a permissible reason for BT to use Cancel Other. See section 4 of the consultation document and paragraph 2.64-2.67 below.

- 1.32 Having considered the information provided by the parties, on 22 November 2004 Ofcom published a consultation on a draft Direction and draft Determination for resolving the dispute, referred to in this document as the “consultation document”.
- 1.33 On the same date, Ofcom published a statement and consultation document entitled *Protecting citizen-consumers from mis-selling of fixed-line telecoms services* (referred to in this document as the “codes of practice consultation”) which proposed a requirement upon communications providers to establish codes of practice for sales and marketing of fixed-line telecoms services which are consistent with guidelines published by Ofcom, and to comply with the provisions of those codes.
- 1.34 Stakeholders’ responses to the consultation document, and Ofcom’s comments on those responses, are discussed in section 2. Ofcom’s decision is summarised in section 3.

Section 2

Responses to the consultation and Ofcom's comments

Responses received

2.1 Responses to the consultation were received from:

- Broadsystem Ventures Ltd ("BVL")
- BT
- Caudwell Communications Ltd ("Caudwell")
- Centrica plc ("Centrica")
- Fixed Service Providers Association ("FSPA")
- ntl
- THUS plc
- Telewest (partly confidential response)
- UK Competitive Telecoms Association ("UKCTA")

2.2 Caudwell and ntl indicated that they fully support UKCTA's response. FSPA indicated that it supports the views expressed by Centrica and BVL.

2.3 Non-confidential responses are published on Ofcom's website.

Ofcom's proposals

The revised interim solution

2.4 Several respondents expressed disappointment that Ofcom had not proposed to adopt the revised interim solution, which the referring parties put forward as their proposed solution. Centrica thought that Ofcom's proposed solution would fail to prevent further disagreements around the CPS/WLR transfer process.

2.5 UKCTA expressed surprise that Ofcom had not structured its analysis as a comparison of the pros and cons of different options. UKCTA stated that the revised interim solution was designed to address two problems. First, that the current process may have led to inappropriate cancellation of transfers by BT. Second, that the current process (as it does not require a customer to speak to the relevant gaining provider in order for a transfer to be cancelled) prevents alternative providers from addressing customers' problems with the sales process.

2.6 A number of respondents noted that a customer would not be required by the revised interim solution to make three calls to cancel a transfer (as discussed at paragraph 5.15 of the consultation document), and UKCTA stated that the "three calls scenario" appeared to be a factor in Ofcom's decision not to recommend adoption of the revised interim solution. THUS and Centrica noted that most service providers would try and ensure this did not happen. UKCTA thought this indicated a lack of trust in service providers on Ofcom's part.

Ofcom's comments

- 2.7 This dispute arose in the context of existing requirements that apply to BT as a result of its SMP status (as discussed at paragraphs 1.10-1.14 above and at paragraphs 4.3-4.10 of the consultation document). The starting point of Ofcom's investigation was, therefore, to assess whether the current process for Cancel Other remains appropriate given the obligations imposed on BT as a result of its position of SMP in relevant markets.
- 2.8 Ofcom considers that the Determination and the Direction address the first of the problems identified by UKCTA (as set out in paragraph 2.5 above), as they enable BT's competitors to assess whether BT is using Cancel Other appropriately, by defining the permissible use of Cancel Other by BT more clearly, and by requiring BT to record its reason for using Cancel Other in each case. If BT's competitors consider that BT is not using Cancel Other appropriately, they may ask Ofcom to investigate whether BT is in breach of the Direction. Parties to the dispute can also enforce the Determination through the courts. In addition, BT's competitors can request a full audit trail for an individual customer specified by the gaining provider, according to the terms of the Direction, to enable them to assess whether BT has used Cancel Other appropriately in a particular case. Ofcom's proposed solution also addresses the second of the problems identified by UKCTA, since in analysing the information provided by BT, alternative providers may also identify problems with their sales processes and internal compliance that have led customers to contact BT and request cancellation.
- 2.9 Ofcom considers that the revised interim solution would not have prevented further disputes surrounding BT's use of Cancel Other. As UKCTA noted in its response, the revised interim solution would, as a "safety net", have enabled BT to cancel transfers at a customer's request where the customer could not identify the gaining provider or refused to contact the gaining provider. The customer would not, therefore, have been required to contact the gaining provider in every case, and disputes could still arise around those instances where BT used Cancel Other as a "safety net".
- 2.10 Ofcom believes that further work by the industry would have been required to implement the revised interim solution. Ofcom wished to avoid further delay in implementing an entirely new and untested process for managing consumer complaints and cancellations during the CPS and WLR transfer process, and considers that its solution will minimise such delay.
- 2.11 Ofcom acknowledges that the revised interim solution would not necessarily require a customer to make three calls to cancel a transfer. This example, which described a scenario that would be possible under the revised interim solution, was intended to illustrate the importance of the customer experience, and of ensuring a transfer process which enables customers to easily cancel an order where they wish to do so. Ofcom agrees with UKCTA that failure to cancel is a serious matter and notes that the forthcoming guidelines for sales and marketing codes of practice include provisions for ensuring that customers can easily cancel transfers where they wish to do so.

The scope of the dispute

- 2.12 Centrica expressed the view that Ofcom had failed to address the scope of the dispute fully, arguing that Ofcom had linked two "mutually exclusive" issues, namely the disputing parties' concerns that BT may be able to use Cancel Other to cancel

transfers inappropriately, and their view that Cancel Other is not the best way of addressing customer concerns during the transfer period.

Ofcom's comments

- 2.13 As set out in paragraph 2.7 above, Ofcom's starting point in this investigation was to assess whether the current obligations on BT in relation to Cancel Other remain appropriate. The published scope of the investigation was therefore "to determine whether the existing processes governing BT's use of Cancel Other remain appropriate; and if not to determine under what circumstances BT may use 'Cancel Other'". Ofcom notes that stakeholders were given the opportunity to submit comments on this published scope and that BT was the only stakeholder to do so.

Mis-selling: scope of the dispute

- 2.14 UKCTA noted that Ofcom states that mis-selling is not within the scope of this dispute, but that Ofcom's proposal to retain Cancel Other is made with reference to evidence of mis-selling. A number of respondents considered that, in proposing a solution to the dispute, Ofcom has not adequately considered the extent of mis-selling. UKCTA considered that Ofcom needed to understand the incidence of mis-selling in order to propose an appropriate solution.
- 2.15 UKCTA and Centrica considered that Ofcom should be cautious in its analysis of the number of consumers contacting Ofcom about mis-selling, noting that BT, for a time, provided Ofcom's contact details when it wrote to customers to confirm the cancellation of a transfer, and that this may have influenced the number of customers contacting Ofcom.

Ofcom's comments

- 2.16 The scope published in Ofcom's *Competition Bulletin* states that "broader issues surrounding mis-selling are not within the scope of this dispute". Ofcom has not, in this investigation, considered fixed-line telecoms providers' sales and marketing practices, which are the subject of the separate codes of practice consultation.
- 2.17 Ofcom has, however, considered whether slamming takes place, because if it did not, BT's ability to use Cancel Other for this reason would be redundant. The available evidence, notably Ofcom's analysis of call recordings, suggests that, in a number of cases, BT uses Cancel Other to cancel a transfer where the customer believes he has been slammed.
- 2.18 Ofcom's decision that BT should continue to be permitted to use Cancel Other in cases of slamming is not dependent on the "extent" of slamming and/or mis-selling, as suggested by the respondents. Ofcom is satisfied that slamming occurs, and that BT should therefore be permitted to use Cancel Other in cases of slamming.
- 2.19 Ofcom notes that a number of respondents referred to the fact that the recent upsurge in consumer complaints coincided with a change to the wording of the letter that BT sends to consumers when it cancels a transfer, which advised consumers to contact Ofcom in the event that they wished to make a formal complaint about the transfer. Ofcom accepts that this may have partially contributed to the recent increase in complaints to Ofcom. However, Ofcom does not accept that the apparent increase in mis-selling and slamming can only be attributed to the reference in BT's letter. Ofcom's analysis of call recordings for the purposes of this investigation confirms this view. The fact that consumers still felt sufficiently aggrieved to contact

Ofcom in order to formally complain, after they had received BT's letter telling them that the transfer had been cancelled, is also a valid consideration. BT's letter did not imply that customers were required to contact Ofcom.

Mis-selling: BT's unfair trading incident (UFT) reports

- 2.20 A number of respondents note that Ofcom's decision appears to have been based in part on an analysis of BT's UFTs. BVL considers that Ofcom should abolish BT's monthly requests to alternative providers for an analysis of UFTs.

Ofcom's comments

- 2.21 Ofcom did not, in its consideration of this dispute, consider the numbers of UFTs recorded by BT as evidence of slamming, although it noted in the consultation document that BT does not create a UFT report each time it uses Cancel Other¹². Ofcom's analysis in this dispute focused on BT's use of Cancel Other. This is why Ofcom based its analysis of individual incidents on recordings of customer-initiated calls to BT and not on BT's UFT reports. Ofcom notes that BT is under no regulatory obligation to record UFTs, or to request analysis from alternative providers.

Mis-selling: use of Cancel Other data

- 2.22 Centrica voiced concern that Cancel Other numbers will be "perceived as a true measure of slamming within the industry".

Ofcom's comments

- 2.23 BT is permitted to use Cancel Other for a number of reasons, only one of which is slamming. The frequency with which BT uses Cancel Other is not, therefore, a true measure of slamming, and should not be presented as such.
- 2.24 Before using Cancel Other, BT is required to take reasonable steps to ensure that slamming has occurred. This means that it must act in good faith based on what it is told by the customer. Ofcom recognises that what a customer tells BT may not always be consistent with what he has told an alternative provider. For this reason, Ofcom considers that Cancel Other numbers are not a reliable gauge of the frequency of slamming, and should not be presented as such.

Mis-selling: obligations on the industry

- 2.25 UKCTA considers that Ofcom should question whether Cancel Other remains necessary, in light of other safeguards against mis-selling. BVL considers that BT should be required to provide Ofcom with confidential statistics indicating which alternative providers appear to be responsible for alleged slamming.

Ofcom's comments

- 2.26 Ofcom's policy on mis-selling is set out in the codes of practice consultation. Communications providers who engage in sales and marketing of fixed-line telecoms services will be required to establish, and comply with, codes of practice on sales and marketing, which are consistent with forthcoming guidelines to be published by Ofcom. It is envisaged that this requirement, which will provide Ofcom with the power to take enforcement action against those providers who breach the provisions of their codes, will result in reduced levels of mis-selling and slamming and, consequently, in

¹² Paragraph 3.16 of the consultation document.

less frequent use of Cancel Other by BT. The guidelines, however, only cover activities surrounding the sale itself, and do not address the issue of how orders are cancelled. Ofcom considers that Cancel Other remains necessary to remedy individual instances of slamming.

- 2.27 BT already supplies Ofcom with confidential data on allegations of mis-selling against individual providers by customers who have contacted BT with an issue related to the transfer process, where BT has cancelled the transfer (and in some cases generated a UFT). Ofcom considers this information alongside complaints made to Ofcom about mis-selling, in order to identify alternative providers that seem to be having problems with their sales activities, and to initiate discussions with those providers. Ofcom expects that BT will continue to supply this data to Ofcom, and does not therefore consider that a specific requirement on BT to supply this data is necessary. Ofcom anticipates that greater clarity about the circumstances in which BT is permitted to use Cancel Other (as provided for in the Direction) will enable BT to provide more robust and meaningful data.

Equivalence

- 2.28 UKCTA considers that the current process, and Ofcom's proposed solution, fail to achieve equivalence between BT and its competitors in the transfer process, as BT's competitors have no equivalent means of cancelling transfers between themselves and other alternative providers (known as "SP-to-SP transfers").
- 2.29 Centrica comments that it is inappropriate for BT, which has SMP, to exercise a functionality which enables it to cancel its competitors' orders.

Ofcom's comments

- 2.30 Alternative providers can cancel SP-to-SP transfers by submitting a request to BT Wholesale¹³. Ofcom understands that alternative providers are not, as UKCTA appears to believe, required to "justify" requests to BT Wholesale for cancellation of transfers. BT Wholesale actions such requests without further questioning. However, it does require alternative providers to submit a written cancellation request. Ofcom considers that, given BT's obligation to record why it uses Cancel Other in each case, it is good practice for BT Wholesale to require cancellation requests from gaining providers to be made in writing. Given this, Ofcom has not been persuaded that its proposal to allow BT to retain Cancel Other, albeit subject to tighter rules surrounding its use, fails to achieve equivalence.
- 2.31 Ofcom's solution, in the context of BT's SMP in relevant markets, imposes strict limits on the circumstances in which BT is permitted to refuse a request from one of its competitors for network access. As discussed at paragraphs 4.64 of the consultation document, Ofcom's solution retains appropriate consumer safeguards while at the same time supporting the development of competition by promoting transparency in the process.

Further review of Cancel Other

- 2.32 In its comments on Ofcom's proposal to review Cancel Other at a future date, BT considers that there will always be isolated instances of slamming and that it should

¹³ While the Direction applies to BT (and not specifically to either BT Retail or BT Wholesale), this explanatory memorandum uses the terms "BT Retail" and "BT Wholesale" to describe which divisions of BT are involved in the process in practice. Cancellation of SP-to-SP transfers is exercised by BT Wholesale.

retain Cancel Other to deal with these. BT notes that it will still need a means of cancelling transfers for reasons not related to alleged mis-selling, for example in the case of line cease. Centrica, on the other hand, urges Ofcom to review Cancel Other in one year and not in two years as suggested in the consultation document.

Ofcom's comments

- 2.33 Ofcom notes BT's comments and will consider, when it reviews Cancel Other again, whether it remains necessary in order to protect against slamming. Ofcom envisages that Cancel Other, or an equivalent mechanism, would be retained for cancellations that are not related to slamming or failure to cancel. Ofcom has already stated that it will review Cancel Other according to a timetable which is consistent with the adoption of Codes of Practice for sales and marketing. Ofcom does not propose to review Cancel Other again before then.

Other options

- 2.34 Centrica welcomes Ofcom's decision not to proceed along the route of a direct notification or third party verification solution for management of CPS and WLR transfers. BT, however, urges Ofcom not to rule out either option for the future.

Ofcom's comments

- 2.35 Ofcom acknowledges Centrica's and BT's comments and will bear these in mind for any further consideration of the CPS and WLR transfer process.

Ofcom's analysis

Ofcom's analysis of BT's call recordings

- 2.36 THUS and Centrica noted that Ofcom only considered customer-initiated calls to BT, and not the customer's contact with the relevant gaining provider. Centrica considered that this approach discriminated in BT's favour. UKCTA notes that BT's use of Cancel Other is based on "allegations of mis-selling" by customers, which may be attributable to customer misunderstanding rather than slamming. A number of respondents noted that what a customer tells BT may not always correspond to what he has told the gaining provider.
- 2.37 UKCTA notes that Ofcom has undertaken research into BT's UFT reports which considers alternative providers' sales records as well as those of BT, and that Ofcom should have waited for the outcome of this research before proposing a solution to this dispute as it "shows the true nature and scale of mis-selling".

Ofcom's comments

- 2.38 As noted at paragraph 2.7 above, the starting point of Ofcom's investigation was to consider whether current relevant obligations on BT remain appropriate. In order to assess the potential for BT to misuse Cancel Other, it was not necessary for Ofcom to consider gaining providers' records of sales.
- 2.39 Ofcom recognises that some alleged slams may in fact be the result of customer misunderstanding. BT must therefore take reasonable steps to ensure that slamming has, in fact, occurred before it uses Cancel Other.

- 2.40 Ofcom notes that the revised interim solution would enable BT to use Cancel Other where customers refuse to contact the gaining provider and would also, therefore, be subject to the problem of customer inconsistency. However, even if the customer were compelled to contact the gaining provider in order to cancel a transfer, this does not necessarily mean that he would be more likely to change his mind and go ahead with the transfer.
- 2.41 Ofcom notes that BT is required to provide call recordings to gaining providers to enable them to assess whether BT is using Cancel Other appropriately, and that gaining providers' analysis of such recordings may also enable them to identify those situations in which a customer has misunderstood the sales process to the extent that he believes he has been slammed, or those sales practices which appear to increase the likelihood that a customer claims to have been slammed.
- 2.42 The research project to which UKCTA refers addresses the accuracy of BT's UFTs, and not BT's use of Cancel Other. Ofcom does not therefore agree that it should have waited for the completion of this research in order to consider the circumstances in which it is appropriate for BT to use Cancel Other. As set out in paragraph 2.13 above, the scope of this dispute does not include mis-selling more broadly.

Permissible use of Cancel Other

Slamming

- 2.43 A number of respondents, including those who would have preferred the adoption of the revised interim solution, welcomed greater clarity around the definition of slamming.
- 2.44 BT, however, did not agree with Ofcom's proposal to incorporate in the Direction a list of circumstances falling within the broader category of slamming. BT considered that the definition of slamming should be "simple to understand and apply" and that BT should be able to use Cancel Other for "any transfer to which the customer has not consented".
- 2.45 Centrica considered that Ofcom's definition of slamming is still not precise enough to avoid further disputes.
- 2.46 BT considered that Ofcom's definition at paragraph 1(a)(iv) of the draft Direction (discussed at paragraph 4.24 of the consultation document) falls short of the legal concept of "passing off", which entails no requirement of intention. BT suggested that the term "deliberate" be removed from the Direction so that it equates with the legal definition. BT further suggested that Ofcom clarifies that all forms of trademark infringement constitute a slam. THUS, while it agreed that "passing off", as defined by Ofcom in the consultation document, constitutes slamming, recommended that there should be a distinction between cases where a customer is deliberately misled, and where a customer misunderstands the relationship between the gaining provider and BT.

Ofcom's comments

- 2.47 Ofcom considers that the definition of slamming, given at paragraph 1 of the Direction, is simple to understand, and that it enables BT to cancel any transfer which is attempted without the customer's express knowledge and consent.

- 2.48 In specifying a number of practices that fall within the broader definition of slamming, Ofcom has provided greater clarity to the industry, including BT, about the circumstances in which it is permissible for BT to use Cancel Other.
- 2.49 Ofcom acknowledges that “passing off”, as legally defined, is a form of intellectual property infringement. However, Ofcom did not intend the description at paragraph 1(a)(iv) of the draft Direction to align with the legal definition of passing off. Paragraph 1(a)(iv) addresses a specific form of passing off, which is where a company attempts to transfer a customer to another telecoms provider without his full knowledge and consent by intentionally misleading that customer about the identity of the company he is dealing with (i.e. where a sales agent from Company A falsely claims to represent Company B in order to secure a sale). Ofcom therefore considers that it is appropriate to list this form of passing off as a type of slamming, and does not agree that the word “deliberately” should be removed, as this would broaden the definition to include behaviours that (while they may constitute passing off) may not constitute slamming.

Failure to cancel

- 2.50 A number of respondents expressed reservations about Ofcom’s proposal that BT should be permitted to use Cancel Other in cases of failure by an alternative provider to cancel.
- 2.51 BVL noted that the fact that a customer has called BT to check whether an alternative provider has cancelled an order is not, in itself, a reason for BT to use Cancel Other. BVL and Centrica considered that safeguards should be introduced to ensure that BT uses this ability only where appropriate. A number of respondents considered that Ofcom should provide guidance on what “reasonable steps” it considers BT should take to verify that a service provider has failed to cancel. Centrica recommended that the inclusion of this category should be reviewed after six months.
- 2.52 BT noted that it will not know, when a customer calls it to check that a cancellation has been submitted (or to allege that an alternative provider has failed to submit a cancellation), whether the alternative provider in question intends to submit a cancellation order by day 9 of the 10 working day transfer period. BT suggests that it “should record the fact that the customer has asked the communications provider to cancel [and] if the order is still open by day 9 and the customer has not [contacted BT again], BT should use Cancel Other”. Centrica suggested that “no Cancel Other raised by BT should mature until at least day 9”, which would appear to be consistent with BT’s proposal.
- 2.53 BT notes that in cases of failure to cancel, it would be required to submit a Cancel Other by day 8 in order to stop a WLR transfer, as opposed to day 9 for a CPS transfer.
- 2.54 BT suggested that the qualification “repeatedly” should be removed from the Direction, as it makes no difference how many times a customer has contacted the gaining provider to request a cancellation, as it should do so at the customer’s first request.
- 2.55 BVL suggested that a customer-initiated call to BT as a result of failure by a gaining provider to cancel should not act as a save/winback opportunity for BT.

- 2.56 UKCTA asks Ofcom to confirm what proportion of the calls it listened to related to alleged failure to cancel, suggesting that if these instances were attributable to particular gaining providers, it would be more appropriate to raise the issue with those gaining providers.

Ofcom's comments

- 2.57 Ofcom agrees with BVL that the fact a customer contacts BT "to check" is not a reason in itself for BT to use Cancel Other. Ofcom's decision that BT should be able to use Cancel Other in cases of failure to cancel provides an opportunity to control against the possibility that a customer may believe a gaining provider has failed to cancel his order, where this may not in fact be the case. Before using Cancel Other in cases of failure to cancel, BT must take reasonable steps to ensure that failure to cancel has, in fact, occurred. Ofcom considers that BT should not therefore use Cancel Other following an alleged failure by a gaining provider to cancel an order unless it is assured that, unless it does so, the transfer will be completed.
- 2.58 Ofcom agrees with BT's proposal that it should only use Cancel Other where an order is still open on day 9 (or, for WLR orders, on day 8), and considers that this corresponds to the proposals put forward by Centrica.
- 2.59 Ofcom considers that delaying the use of Cancel Other until day 9 (or, for WLR orders, until day 8) constitutes reasonable steps to ensure that failure to cancel has occurred. Ofcom does not therefore consider it is necessary to provide further guidance about the steps that BT must take to ensure that a gaining provider has failed to cancel.
- 2.60 Ofcom agrees with BT that, if a customer has asked the gaining provider to cancel a transfer, it makes no difference how many times he has done so, and has removed the qualification "repeatedly" from the Direction.
- 2.61 Ofcom's investigation was not intended to assess the behaviour of gaining providers. Ofcom agrees with UKCTA that it would be appropriate for Ofcom to address concerns about systemic failure to cancel with the gaining provider concerned.
- 2.62 Ofcom does not believe it would be appropriate to limit BT's ability to carry out save/winback activity as the result of a genuinely customer-initiated call. If a customer has chosen to contact BT with the intention of remaining with, or returning to BT, then BT should be able to carry out marketing activity¹⁴.
- 2.63 Ofcom does not intend to review this category following its introduction, but will consider any submission by BT's competitors that BT is failing to use this ability appropriately.

Internal miscommunication

- 2.64 A number of respondents welcomed Ofcom's decision to remove "internal customer miscommunication" as a valid reason for BT to use Cancel Other. Centrica noted that some allegations of slamming arise from internal customer miscommunication.
- 2.65 BT was concerned that removing this category would restrict its ability to take instructions from the BT Account Holder and to fulfil its contractual obligations to the BT Account Holder.

¹⁴ See also paragraph 313 of the Competition Appeal Tribunal's judgement in *British Telecommunications plc v Office of Communications* (CPS save activity).

Ofcom's comments

- 2.66 Ofcom notes that the internal customer miscommunication category was introduced to deal with precisely the kind of situation described by Centrica. Since BT is required to take reasonable steps that slamming has, in fact, occurred (and that the allegation has not arisen from the fact that the order was placed by another authorised decision maker), an additional "internal customer miscommunication" category is not required.
- 2.67 If BT is assured that an order has been placed without a customer's express knowledge and consent, it may use Cancel Other, because this is slamming. If the order has been placed with the customer's express knowledge and consent, and the customer has changed his mind, then the customer should approach the gaining provider to cancel the new agreement, given that he has entered into an agreement with the gaining provider.

BT Wholesale's use of Cancel Other

- 2.68 Centrica and UKCTA considered that further guidance is required about the circumstances in which BT Wholesale is permitted to use Cancel Other, and the procedure for agreeing such use with the industry.
- 2.69 BT considers that the Direction should refer to the gaining provider and losing provider and not simply to BT, noting that gaining providers can also cancel SP-to-SP transfers via BT Wholesale.

Ofcom's comments

- 2.70 The CPS Gateway (the system used by BT and CPSOs for managing CPS orders) already incorporates a number of "reason codes", four-digit codes that enable alternative providers to identify when, and why, BT Wholesale has cancelled a transfer. Ofcom understands that BT and the rest of the industry have agreed to implement a number of additional reason codes (beginning 91XX and 92XX) specifying further types of BT Wholesale use, and considers that these reason codes are "specified reasons" as referred to at paragraph 1(d) of the Direction, which have been agreed by the CPS and WLR Service Providers Forum. Ofcom considers that implementation of these additional reason codes on the CPS Gateway (and roll-out of identical codes on the equivalent system used to manage orders for WLR), enables BT to meet the obligations set out at paragraph 6 of the Direction.
- 2.71 Ofcom is aware that the industry has considered the adoption of specific additional reason codes for BT Wholesale at a later date, and would expect any further changes to be discussed and agreed through established industry processes (i.e. the CPS and WLR Service Providers Forum, as specified in the Direction) before implementation.
- 2.72 Ofcom has made changes to obligations that apply to BT as a result of its SMP status, which do not apply to other communications providers. In addition, the Determination, which relates to a dispute between BT and various other communications providers, concerns BT's behaviour rather than the actions of all parties. However, Ofcom is aware that the proportion of transfers that do not involve BT is likely to increase over time, and will bear this in mind when it reviews Cancel Other again.

Other uses of Cancel Other

- 2.73 BT considers that vulnerable consumers need adequate protection against types of mis-selling other than slamming and that BT should therefore have discretion to use Cancel Other where the customer “appears to be upset or confused”.

Ofcom's comments

- 2.74 Ofcom agrees with BT that communications providers must act responsibly when dealing with customers who may be vulnerable. Ofcom's current guidelines for sales and marketing codes of practice, shortly to be made mandatory for providers of fixed-line telecoms services, state that providers must not, in selling and marketing their services, abuse the trust of vulnerable consumers, and that companies must have policies regarding such customers. Ofcom does not therefore believe that it is appropriate to allow BT to use Cancel Other in those instances where customers appear upset or confused.

Provision of information by BT to alternative providers

General comments

- 2.75 UKCTA considers that the proposed requirements on BT are not sufficient to enable them to monitor BT's use of Cancel Other, or to enable them to address alleged mis-selling “sufficiently close in time to the sales event”. UKCTA proposes a system whereby a customer is transferred to the gaining provider in the event that BT is found to have used Cancel Other incorrectly.

Ofcom's comments

- 2.76 Ofcom considers that the requirement on BT to record its reason for using Cancel Other and to provide that information to gaining providers enables BT's competitors to monitor BT's use of Cancel Other. The requirement on BT to provide more detailed information on request enables BT's competitors to reassure themselves that BT has used Cancel Other in line with its obligations, and may also enable them to identify problems with their processes or lapses in internal compliance.
- 2.77 While Ofcom requires BT to provide reasons and, on reasonable request, records of contact (including call recordings), as close as possible to the sales event, it notes that this may not be within the transfer period. The requirements set out in the Direction are not intended to enable alternative providers to reverse an individual decision by BT to use Cancel Other, but to ensure that BT complies with its obligation to use Cancel Other in line with the Direction, and to enable alternative providers to raise any concerns about BT's use of Cancel Other.
- 2.78 In the event that BT is found to have used Cancel Other incorrectly, Ofcom does not consider that it would be appropriate for a customer to be transferred automatically to the gaining provider. Any dispute arising from BT's use of Cancel Other will focus on whether BT should have cancelled the transfer, and not on whether the customer wanted the transfer to be cancelled. In the event that BT is found to have used Cancel Other inappropriately, it is possible (and, in fact, likely where Cancel Other has been used following a customer-initiated call to BT) that the customer does not want to transfer. A customer should not be transferred without his express knowledge and consent.

Which party receives the information?

- 2.79 UKCTA considers that BT should provide information about its use of Cancel Other to “the seller of the WLR/CPS-based services”, i.e. to CPS and WLR resellers as well as CPSOs and WLR service providers. UKCTA notes that this will require development and implementation of a system that enables BT to identify the gaining provider, where this is not the CPSO or WLR service provider¹⁵.
- 2.80 BT considers that it should only provide information to the party contracting with BT¹⁶, and that the contracting party should be responsible for passing information on to downstream CPS and WLR resellers where they require it. BT notes that if it is required to pass information to gaining providers, it will be unable to meet this requirement without the introduction of an identification system.
- 2.81 BT considers that the implementation of an industry-wide service provider and reseller identification system will not be possible before December 2005.
- 2.82 UKCTA considers that any change to the system specification should be discussed with the CPS/WLR IT Group before implementation.
- 2.83 BT proposes that, in the event that Ofcom requires it to implement a CPS and WLR reseller identification system, it should be able to tell customers, on request, which gaining provider placed the transfer request. BT considers that this may prompt recall among consumers who have forgotten that they agreed to a transfer (or have forgotten who they agreed it with), reducing the incidence of alleged slams and BT's need to use Cancel Other.

Ofcom's comments

- 2.84 Ofcom agrees with UKCTA that, where possible, information about BT's use of Cancel Other should be provided to “the seller of the WLR/CPS-based services” (although the procedure for provision of this information may not be identical – see paragraph 2.122 below).
- 2.85 Ofcom does not consider that the party contracting with BT is responsible for the actions of its customers. The introduction of mandatory codes of practice for sales and marketing will enable Ofcom to consider the actions of all providers of fixed-line telecoms services, regardless of whether they are the party contracting with BT. This increases gaining providers' need for information on BT's use of Cancel Other where it relates to slamming.
- 2.86 Ofcom recognises that requiring BT to provide information to the gaining provider, where this is not the CPSO or WLR service provider, will require development and implementation of an identification system. BT (with the co-operation of the rest of the industry) will be required to implement such a system in order for BT to fulfil the obligations set out at paragraph 6 of the Direction.
- 2.87 Ofcom understands that the industry has already undertaken a large part of the work necessary (including the allocation of reseller identification codes by Ofcom). While the other provisions of the Direction will take effect in one month, BT (with the co-operation of the rest of the industry) will be required to finalise implementation of

¹⁵ BT is currently able to identify the relevant CPSO or WLR service provider, but not any downstream CPS or WLR reseller.

¹⁶ The relevant network operator or, in the case of WLR, the WLR service provider, as opposed to any downstream reseller.

such an identification system within three months of this Direction, as Ofcom considers that this period will enable further discussion by appropriate industry groups. However, Ofcom understands that implementation of such a system may require further changes to BT's systems, and will therefore consider any request for additional time to finalise implementation. If Ofcom considers that it may be appropriate to extend the implementation period, it will consult for a month on amending the Direction.

- 2.88 Ofcom considers that any necessary changes will, inevitably, be discussed with the CPS/WLR IT Group before introduction and that it is not necessary to impose any specific obligation on BT to ensure that this happens.
- 2.89 Ofcom agrees that, following the implementation of a CPS service provider and WLR reseller identification system, BT should be able to tell the customer, at that customer's request, the name of the gaining provider (which may be a CPS service provider or a WLR reseller). Ofcom would expect BT to follow current procedures that it uses when giving a customer the name of the network operator that placed a CPS order, i.e. that this information should only be provided at the customer's request, that it should be provided by an appropriate manager, and that the process must be consistent with the requirement on BT to use Cancel Other only in accordance with the permitted circumstances as set out in the Direction. Ofcom notes, however, that such a process is not necessary to ensure that BT can comply with the Direction, and that Ofcom did not mention this possibility in the consultation document, and would therefore expect BT to discuss such a process with the rest of the industry.

Reason codes

- 2.90 Centrica and UKCTA note that the reason codes used by BT must be consistent with the definition of slamming set out in the Direction. Centrica considers that Ofcom should cap or bar the use of the "unknown reason" category currently used by BT to record some uses of Cancel Other.
- 2.91 UKCTA considers that BT should be required to discuss reason codes with the industry within one month of the Direction, and to provide further disaggregation of existing categories if demand exists.
- 2.92 BT notes that in relation to WLR orders, the system changes to incorporate Cancel Other reason codes are not scheduled to be implemented until August 2005.

Ofcom's comments

- 2.93 The Direction requires BT to record its reason for using Cancel Other in each case, according to categories (a) (i) to (iv) and (b) to (d) set out at paragraph 1 of the Direction. Ofcom does not envisage that BT Retail (as distinct from BT Wholesale) will use Cancel Other for reasons other than slamming, failure to cancel or line cease.
- 2.94 Since any immediate changes to reason codes will derive from the Direction, Ofcom does not consider that it is necessary to require BT to discuss reason codes with the industry prior to their implementation (i.e. within the next month). In the event that the industry identifies a need for additional reason codes in the future, Ofcom would expect it to discuss this through the appropriate industry channels (i.e. the CPS and WLR Service Providers Forum), and for such additional reason codes to be consistent with the Direction.

- 2.95 Ofcom acknowledges that the system changes to incorporate Cancel Other reason codes for WLR orders are not scheduled to be implemented until August 2005. However, Ofcom understands that BT will be able to make equivalent provision in the interim solution which it is currently using to manage WLR orders.

Full audit trail, including call recordings: BT's comments

- 2.96 BT argues that Ofcom's proposal to require BT to provide records of customer-initiated contact to gaining providers is unnecessary and disproportionate because:
- the provision of call recordings, in addition to reason codes, adds nothing to transparency of the process, and any investigation of sales activity is best carried out by examining the audit trail of the sale, not the cancellation;
 - Ofcom's proposal raises consent and confidentiality concerns because:
 - customers may decide not to pursue matters at all if there is a requirement for records to be sent to the gaining provider; and
 - BT may be required to scrutinise each record to ensure it does not contain confidential customer information.
- 2.97 As an alternative to Ofcom's proposal, BT puts forward a proposal which consists of providing summary information to gaining providers in the event that a customer complains that BT has cancelled a transfer without that customer's consent or where a gaining provider has "reasonable grounds to be concerned about a demonstrated pattern of activity surrounding BT's use of Cancel Other".

Ofcom's comments

- 2.98 BT's use of Cancel Other is subject to regulation as a result of BT's SMP in the relevant wholesale markets. BT's use of Cancel Other amounts, in effect, to a refusal to supply access. In these circumstances, there is a need for an extremely high level of transparency to demonstrate that BT is in compliance with the terms of the Direction.
- 2.99 Against the background described above, an obligation to allow a gaining provider to examine the full information used by BT as the basis for its decision to use Cancel Other is appropriate and proportionate. BT's alternative proposal adds very little to the amount of information currently available to competing providers (i.e. BT's UFTs), who, as noted in their responses to the consultation document, have concerns about BT's use of Cancel Other, and need greater transparency and the ability to monitor BT's behaviour.
- 2.100 Ofcom believes BT's concerns about consent and confidentiality are unfounded. Since BT is required by the Direction to provide data to other providers, there is no need for BT to obtain the customer's consent¹⁷. In any event, Ofcom does not agree with BT's assertion that a customer may "decide not to pursue matters at all" if a call recording would be passed to the competing provider. The Direction is concerned with the control of BT's use of Cancel Other and not whether or not BT is able to register a complaint about the gaining provider.
- 2.101 Ofcom notes that the recipients of call recordings are subject to the provisions of the Data Protection Act 1998 (the "DPA"). The DPA requires the recipient of information to use this information only for the purpose it was provided.

¹⁷ Section 35 and Schedule 2, Data Protection Act 1998.

- 2.102 Ofcom notes that additional protection is provided by General Condition 1.2, which provides that, where a communications provider receives information in confidence from another communications provider for the purposes of negotiating network access, the recipient must use that information only in connection with network access.
- 2.103 The Direction requires BT to provide a full audit trail of its use of Cancel Other, including any call recordings relating to BT's use of Cancel Other, in certain circumstances. The intention of this requirement, and the purpose for which this information will be provided, is to enable alternative providers to assess whether BT has used Cancel Other in accordance with the Direction. The information may also enable alternative providers to identify problems with their processes or lapses in internal compliance. In line with the DPA and General Condition 1.2, alternative providers must not use this information for other purposes, for example as the basis of further marketing or winback activity.

Implementation of Ofcom's proposals: BT's comments

- 2.104 BT argues that Ofcom's proposals will require substantial and extensive changes to BT's systems, and does not believe BT should bear all the cost of developing such systems. The changes required include:
- changes to customer record systems, including call recording equipment, to allow the indexation and retrieval of individual records;
 - hiring or re-allocating personnel to review each relevant record, including call recording, for confidential information and personal data; and
 - creating systems and processes to deliver the call records to the relevant gaining provider.
- 2.105 BT states that it could not introduce a system to support the provision of records of customer initiated contact before May 2005.

Ofcom's comments

- 2.106 As a result of the original Cancel Other Direction, BT has, since July 2003, been subject to a requirement to retain a full audit trail of contact between BT and its customers and to provide this audit trail to alternative providers on reasonable request. Although there was no specific obligation on BT to provide call recordings, Ofcom considers that it can be assumed that this would form part of the full audit trail. The desirability of incorporating a feature into BT's systems that allowed BT to search in an efficient manner for relevant call recordings according to specified criteria should have been anticipated. Ofcom considers, therefore, that the onus is on BT to update its systems as a matter of urgency or bear the cost of manual retrieval until BT can update its systems.
- 2.107 BT will be required by the Direction to pass call recordings to alternative providers. As discussed at paragraphs 2.101-2.103 above, the recipients of call recordings are subject to the provisions of the DPA and General Condition 1.2 and BT would not therefore be required to review each relevant record.
- 2.108 Ofcom does not consider that an elaborate system for the delivery of records to gaining providers is necessary. The provision of the information on CD (delivered by

a secure method, e.g. recorded delivery) or by e-mail is likely to be acceptable to all parties.

- 2.109 Ofcom does not believe that the costs of system set-up or record retrieval should be substantial if carried out in an efficient manner. Ofcom also notes that BT already imposes a cancellation fee on other communications providers. In the event that BT seeks to impose additional charges on other communications providers, Ofcom may be called upon to resolve a dispute about the appropriateness and/or level of any charge, and would consider such a request in line with its published guidelines¹⁸.

Limits on the number of requests that can be made

- 2.110 A number of respondents considered that the number of requests they will make will depend on whether they believe BT is using Cancel Other correctly. Centrica noted that alternative providers would only request call recordings if they were prepared to make the considerable resource commitment to reviewing them.
- 2.111 BT argued that in the event that Ofcom proceeds with its proposal to oblige BT to provide call recordings to gaining providers, the obligation should be subject to a threshold of “reasonableness”. BT’s present requirement applies to “reasonable requests” only.
- 2.112 UKCTA suggests that call recordings should be provided automatically, at least initially, where they relate to failure to cancel.

Ofcom’s comments

- 2.113 Ofcom agrees that the number of requests an alternative provider will wish to make will depend on its own experience, and that it is not therefore appropriate to specify an upper limit to the number of records they can request. In order to ensure that resources are used efficiently, however, Ofcom agrees with BT that a threshold of “reasonableness” is appropriate.
- 2.114 BT should not consider that it is reasonable to refuse a request for call recordings on the basis that it has inadequate systems or resources to meet a routine request for call recordings.
- 2.115 The first obligation on BT requires BT to provide a randomly selected representative sample covering a period of one month. This obligation is naturally reasonably limited to a maximum of one request for call recordings in any one month period (because if the sample is representative, another sample is not required).
- 2.116 The second obligation requires BT to provide records of any contact with a specified customer. The intention behind this obligation is to allow a competing provider to investigate specific cases. It is not intended to allow a provider to request more information than would be obtainable under the first obligation, or to enable providers to obtain call recordings that they do not actually intend to review. Ofcom might consider a request to be unreasonable if, for example, a gaining provider requested recordings that it did not intend (or have the resources) to analyse.
- 2.117 As other respondents note, gaining providers would need to commit substantial resource to investigate call recordings. Ofcom does not agree with UKCTA that all recordings related to Cancel Other associated with failure to cancel should be

¹⁸ Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives.

provided automatically. Other respondents have not indicated that they require such recordings and Ofcom considers that such a requirement would be disproportionate.

Timescales for provision

- 2.118 Centrica considers that BT should provide gaining providers with reason codes in real time.
- 2.119 In addition, Centrica considers that BT should provide a “full audit report” every two weeks, to consist of summaries of total reason codes over the period, plus other data, including records of all contact between BT and a customer (including call recordings), for a randomly selected representative sample (Centrica suggests 25 per cent) of Cancel Other incidents.
- 2.120 Centrica considers that 15 working days for provision of information by BT is excessive, and that BT should be required to provide call recordings ideally within one working day. UKCTA considers that call recordings should be provided within 24 hours, as this will enable gaining providers “to act on reason codes or contact from customers if they have immediate queries about the validity of a Cancel Other”, and at most within five working days.
- 2.121 Two other respondents noted that they considered 15 working days to be an appropriate turnaround time for provision of information to alternative providers.

Ofcom's comments

- 2.122 BT currently provides reason codes to CPSOs and WLR service providers on a per-occasion basis and Ofcom expects this to continue in line with paragraph 6 of the Direction. While Ofcom considers that the information should be provided to the gaining provider, where this is not the CPSO or WLR service provider (as noted at paragraph 2.84 above), Ofcom does not consider that it is necessary to require BT to provide reason code data to the gaining provider in real time. As noted above at paragraph 2.77 above, the intention of requiring BT to provide information is not to enable alternative providers to reverse Cancel Others within the transfer period. The provision of regular reports summarising reason codes enables gaining providers to identify any patterns in BT's use of Cancel Other which would give them cause for concern.
- 2.123 BT is therefore required to provide gaining providers with data on its use of Cancel Other every two weeks, as proposed by Centrica, within five days of the end of the relevant two-week period. Ofcom expects that the data supplied to gaining providers in order to meet this requirement would include the telephone number (CLI), reason code and date (and, where possible, time¹⁹) of each use.
- 2.124 Ofcom does not, however, consider that it is appropriate for more detailed records of customer contact, including call recordings, to be included in these fortnightly reports. Ofcom does not consider that the provision of full audit details for 25% of transfers, as proposed by Centrica, is a proportionate requirement where it is far from clear that all alternative providers want, or have the resources to investigate, this volume of information.
- 2.125 Ofcom does not consider that it is reasonable to require BT to provide call recordings with 24 hours of such a request being made. As noted at paragraph 2.77 above, the intention is not to enable alternative providers to reverse Cancel Others within the

¹⁹ Ofcom understands that systems for WLR do not yet capture the time of each cancellation.

transfer period, and Ofcom does not therefore consider that it is necessary to require BT to provide call recordings within 24 hours in order to fulfil the purposes of this Direction, which is to ensure that it uses Cancel Other appropriately. While Ofcom recognises that it is important for alternative providers to investigate this information as close to the event as possible, it considers that 15 working days is appropriate.

Digital WLR

2.126 FSPA suggests that the Direction should also be applied to digital WLR from its introduction.

Ofcom's comments

2.127 The referring parties did not raise any concerns about Cancel Other in relation to digital WLR. Ofcom stated in the consultation document that its proposals did not apply to digital WLR, and has not expanded the scope of the dispute to include digital WLR. However, Ofcom considers that it would be desirable to align processes for digital WLR with existing process for analogue WLR and CPS, and would consider any future submission about the transfer process for digital WLR in line with its published guidelines²⁰.

Further changes to the draft Direction

2.128 Ofcom has amended the Direction where appropriate to reflect its final decision, as discussed above. Ofcom has made a number of further changes which do not result from any change in Ofcom's view, but are intended to make the Direction clearer. These are discussed in the following paragraphs.

2.129 BT commented that the terminology used in the draft Direction to refer to the communications providers involved in the transfer is confusing and suggested that Ofcom reconsider the wording. Ofcom agrees with BT, and has amended the Direction (and this explanatory memorandum) to distinguish between CPS and WLR resellers (which are referred to as gaining providers, in line with standard industry terminology) and CPSOs/WLR service providers, as appropriate.

2.130 BT suggested that paragraph 3 of the draft Direction should revert to the wording of the original Cancel Other Direction, which specified that BT should confirm cancellations in writing "unless this is not possible or appropriate, including where the customer is deceased". Ofcom acknowledges that it may not always be appropriate to write to customers, for example where the order has been placed on behalf of someone who has died, and has adopted BT's suggested amendment.

2.131 BT suggested that Ofcom amend the wording of the draft Direction to specify that BT will supply records of contact between a customer and BT where that contact relates to the use of Cancel Other (a customer may contact BT during the transfer period for reasons not relating to a pending CPS or WLR order). Ofcom has amended the Direction to refer only to contact relating to the use of Cancel Other.

2.132 BT suggested that Ofcom amend its definition of "Transfer Period" (defined in the draft Direction as the period "starting from the date on which an order for CPS and/or WLR is accepted by BT, and ending when the transfer is completed"), noting that the transfer will not be completed where BT uses Cancel Other. Ofcom agrees and has amended the Direction accordingly.

²⁰ Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives.

- 2.133 Ofcom has amended the Direction where appropriate to reflect the fact that a customer does not necessarily choose for all of his calls to be routed via an alternative provider and may, for example, use an alternative provider for international calls only.
- 2.134 Ofcom has amended the Direction to specify that where a communications provider requests, from BT, a representative sample of customer contact, that sample should be randomly selected.

Section 3

Conclusion

- 3.1 In reaching a proportionate resolution of this dispute, Ofcom has had regard to the need to strike a balance between allowing BT to retain the use of Cancel Other when it plays a useful role as a consumer protection mechanism, and the need to place restrictions on BT's use of Cancel Other in order to promote competition by facilitating consumer transfers to alternative providers.
- 3.2 Following its consideration of stakeholders' responses, Ofcom's decision is as set out below.

Permissible use of Cancel Other

Slamming

- 3.3 Ofcom's analysis of customer-initiated calls to BT²¹ suggested that in a majority of cases in which Cancel Other is used by BT following contact with the customer about a CPS or WLR order, the customer claims to have been slammed. In addition, a rise in the number of customers contacting Ofcom about slamming suggests that a number of consumers are affected by slamming.
- 3.4 As discussed in the consultation document, Ofcom's view is that it is not appropriate to require a customer to contact the gaining provider to cancel a transfer where he has been slammed. The customer may not, in fact, know the identity of the gaining provider.
- 3.5 Ofcom's conclusion is therefore that BT will be permitted to use Cancel Other in cases of slamming.
- 3.6 Ofcom considers that guidance as to what constitutes slamming will help to ensure that BT uses Cancel Other appropriately. The definition of slamming (which is where a request for CPS and/or WLR has been made without the customer's express knowledge and consent) encompasses a variety of possible behaviours, as set out in the Direction, namely:
- where the customer has never been contacted by the gaining provider;
 - where a customer has been contacted by gaining provider, but has not given the gaining provider authorisation to transfer some or all of his telephone calls and/or line rental to the gaining provider;
 - where the customer has agreed to purchase a product or service from the gaining provider, but the gaining provider has submitted a request for a different product or service which the customer did not agree to purchase; or
 - where the customer has agreed to transfer some or all of his telephone calls and/or line rental to the gaining provider having understood, as a result of a deliberate attempt by the gaining provider to mislead, that he is making an agreement with a different communications provider.
- 3.7 Before it uses Cancel Other in cases of slamming, BT must take reasonable steps to ensure that slamming has, in fact, taken place.

²¹ Discussed in more detail at paragraphs 3.27-3.28 and 4.11-4.12 of the consultation document.

Failure to Cancel

- 3.8 While gaining providers are required to cancel a transfer if the customer asks it to do so during the transfer period, Ofcom considers that consumers also need a “safety net” mechanism that enables them to cancel a transfer when a gaining provider has failed to do so.
- 3.9 BT will therefore be permitted to use Cancel Other where a gaining provider has failed to cancel a transfer when the customer has requested this.
- 3.10 However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a gaining provider has in fact failed to cancel, and not simply because a customer has contacted BT for peace of mind and asked BT to ensure that the transfer has been cancelled.
- 3.11 Before it uses Cancel Other in cases of failure to cancel, BT must, therefore, take reasonable steps to ensure that failure to cancel has, in fact, taken place. Ofcom considers that BT should only use Cancel Other if the customer would otherwise be transferred to the gaining provider against his wishes.
- 3.12 In practice, where BT submits a Cancel Other in response to a customer’s allegation that the gaining provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the gaining provider by day 9 of the transfer period (or day 8 for WLR orders).
- 3.13 If the gaining provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

Line cease and other administrative ceases

- 3.14 BT is permitted to use Cancel Other where the line has been ceased since the CPS/WLR order was placed. Unlike slamming and failure to cancel, BT’s use of Cancel Other in cases of line cease does not follow a conversation with a customer about a CPS or WLR order, but happens automatically when a line cease order is placed (for example, if the customer closes his BT account because he is moving house) on a line on which a CPS or WLR order is pending.
- 3.15 As set out in the consultation document, Ofcom considers that BT’s ability to use Cancel Other where the line has cease is a necessary administrative mechanism.
- 3.16 BT Wholesale is permitted to use Cancel Other for a number of other reasons (already agreed, or to be agreed, by the industry, i.e. the CPS and WLR Service Providers Forum, as discussed at paragraphs 2.70-2.72 above). As in the case of line cease, such reasons are not related to a customer’s request to BT to cancel a transfer and are a necessary administrative mechanism.
- 3.17 Ofcom considers that it is desirable that BT’s competitors also have a mechanism for cancelling transfers between themselves and their competitors, for example where they consider that one of their customers has been slammed. BT Wholesale may also use Cancel Other at the request of an alternative provider, to cancel an “SP-to-SP” transfer. The reason codes discussed at paragraph 2.70 above include this option.

Provision of information

- 3.18 3.18 Ofcom considers that BT should provide its competitors with information about its use of Cancel Other, in order to provide greater transparency around BT's use of Cancel Other, restoring trust between BT and the industry by enabling alternative communications providers to assess whether BT is using Cancel Other appropriately and, if they believe that it is not, to escalate the issue.
- 3.19 BT must therefore provide alternative providers with two different types of information about its use of Cancel Other.
- 3.20 In order to fulfil this requirement, BT and the rest of the industry must complete the implementation of an identification system which enables BT to identify not only the CPSO or WLR service provider, but also the gaining provider, where the gaining provider is a downstream CPS or WLR reseller.

Reason codes

- 3.21 Each time BT uses Cancel Other, it must record the reason, selecting the appropriate "reason code" from a list corresponding to the permitted uses of Cancel Other set out in the Direction, including agreed reason codes corresponding to BT Wholesale's use of Cancel Other.
- 3.22 The reason code is provided in real time to the CPSO or WLR service provider.
- 3.23 This communications provider may not be responsible for the attempted transfer. BT must therefore also provide reason codes to the gaining provider, where the gaining provider is a downstream CPS or WLR reseller. BT must collate reports from the order management systems used by BT and CPSOs/WLR service providers and provide the gaining provider with a report, every two weeks (delivered within five working days of the end of the relevant two-week period), setting out why orders relating to that gaining provider were cancelled.

Full audit trails

- 3.24 Provision of reason code data will enable gaining providers to understand why their orders have been cancelled, according to the categories specified in the Direction.
- 3.25 In addition, however, gaining providers may require access to more detailed information to enable them to assure themselves that BT is using Cancel Other only in accordance with the Direction. Ofcom acknowledges that this may also enable them to identify breaches of internal compliance.
- 3.26 BT must keep a record of all contact made customers during the transfer period where such contact relates to BT's use of Cancel Other, and must retain these records for at least six months. BT must provide to gaining providers, on reasonable request:
- a randomly selected representative sample, covering a period of one month, of the records of contact between BT and a customer, where such contact relates to BT's use of Cancel Other, in instances of slamming and/or failure to cancel. Such records shall include recordings of customer-initiated calls to BT where available; and

- all records of any contact between BT and an individual customer specified by the gaining provider, where such contact relates to BT's use of Cancel Other, in instances of slamming and/or failure to cancel. Such records shall include recordings of customer-initiated calls to BT where available;

Implementation of the Direction

- 3.27 The Direction will take effect in one month, with the exception of paragraph 7, which states that BT must make the necessary changes to its systems to comply with paragraph 6 within three months.
- 3.28 The direction published on 28 November 2003 and concerning BT's use of Cancel Other will be withdrawn.

Promoting competition and protecting consumers

- 3.29 In resolving this dispute, and in its Direction, Ofcom has had regard to its duty under section 3 of the Act to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom considers that the Direction and Determination will retain appropriate consumer safeguards, while at the same time supporting the development of competition in the markets for fixed-line telecoms services by promoting transparency and enabling service providers to more easily address allegations of slamming by their sales agents.
- 3.30 In resolving this dispute, and in adoption of the Direction, Ofcom has had regard to its Community duties set out at section 4 of the Act. Ofcom considers that the Direction and Determination promote competition in the markets for fixed-line telecoms services, as required by the first Community requirement to protect competition. Ofcom considers that its proposals, by retaining appropriate consumer safeguards against slamming, promote the interests of all persons who are citizens of the European Union, in line with the third Community requirement.
- 3.31 Ofcom considers that, while there is evidence that slamming in the telecommunications industry remains an issue, BT's use of Cancel Other is justified on the basis that it serves a useful function in allowing consumers to prevent a transfer to another provider that has been made without a customer's express knowledge and consent.
- 3.32 In its codes of practice consultation, Ofcom has proposed that the requirement on communications providers to establish, and comply with, codes of practice for sales of marketing of fixed-line telecoms services should be time-bounded, lapsing after two years. As stated in the codes of practice consultation, Ofcom considers that it is over this period that the majority of problems are likely to occur. Ofcom therefore intends to review BT's use of Cancel Other again before the obligation on communications providers to establish, and comply with, codes of practice falls away.
- 3.33 Ofcom considers that, in accordance with section 49(2) of the Act, the provisions set out in the Direction:
- are objectively justifiable, as they are necessary to ensure that consumers are protected from slamming of CPS and WLR services;
 - do not discriminate unduly, as they flow from BT's position SMP in the underlying markets and ensure that BT's use of Cancel Other is consistent with the resultant SMP conditions that apply to BT;

- are proportionate, as they strike a necessary balance between the role of Cancel Other as a consumer safeguard and ensuring that consumers are able to transfer easily between providers; and
- are transparent, as its reasons Determination and Direction are clearly explained in this explanatory memorandum.