

Requirement on BT to publish Key Performance Indicators

Statement and Directions

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Section 1

Summary

Purpose of this Statement and Consultation

1.1 This document contains a Statement and final Directions for a set of Key Performance Indicators ("KPIs") that BT is required to publish¹ in respect of key wholesale products and services. The Directions set out in detail the information which BT is required to publish under the Quality of Service conditions, which were confirmed in the following reviews of competition in communications markets, undertaken by Oftel/Ofcom:

- Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets, published on 28 November 2003 ('Fixed Narrowband Review'); condition AA7 (http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/fixednarrowbandstatement.pdf)
- Review of the wholesale broadband access market, published on 13 May 2004 ('Broadband Review') condition EA5 (http://www.ofcom.org.uk/codes_guidelines/telecoms/netw_intercon_index/wholesalebroadbandreview/?a=87101)

The May consultation

1.2 On 27 May 2004 Ofcom consulted on its proposals and draft Directions for a set of KPIs, which Ofcom proposed BT would be required to publish in respect of key wholesale products and services (http://www.ofcom.org.uk/consultations/past/bt_kpi/bt_kpi/?a=87101). The consultation closed on 6 August 2004. Ofcom has considered the responses to the May consultation carefully and has taken them into account in making its final decision.

Summary of final proposals

1.3 Tables 1 and 2 below summarise the individual indicators BT will be required to publish under the Quality of Service conditions imposed in the above mentioned reviews, including publication requirements. Full details of the requirements are set out in the Directions in Annexes 2 and 3.

¹ For the purpose of this document references to the requirement to publish KPIs includes the requirement to provide specific KPIs to Ofcom where this is required for confidentiality purposes.

Table 1: Summary of KPIs BT is required to publish

KPI	DataStream End User Access	Virtual Paths	WLR	FRIACO	Interconnection circuits (excluding FRIACO) including ATM Interconnect
Frequency	<i>Monthly</i>	<i>Monthly</i>	<i>Monthly</i>	<i>Quarterly</i>	<i>Quarterly</i>
% orders rejected	√	√	√		
% orders provisioned on time	√	√	√	√	√
% new provisions reported as faulty	√		√		
% installed base reported as faulty	√		√		
Average time to restore service	√	√	√	√	√
% of repeat faults	√		√		
Gateway availability			√		
% of DMAs provisioned within 30 days					√

Table 2: Requirements for publication of data

For each KPI (except gateway availability and DMAs)	Aggregate figure showing BT's performance to all communications providers (including BT where relevant) plus total volume associated with each aggregate KPI
For each KPI (except order rejection rates and gateway availability for WLR), and only DMAs for Interconnection circuits	A separate comparator showing the equivalent level of performance to BT only. (The associated volume data to be provided to Ofcom only)
For each KPI except FRIACO	Disaggregated data for the top 10 providers (measured by installed base) shown as a percentage of the total figure. (The associated volume data and data with names to be provided to Ofcom only).
For each KPI except FRIACO	An aggregate figure for the remaining providers not included in the top 10.

Average time to restore service KPI (for WLR only)	Disaggregated by care level and shown as a percentage (with volume information provided to Ofcom only)
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1.5 As confirmed in the market reviews listed in para 1.1 above, the Quality of Service condition will not apply to Kingston Communications as there is insufficient demand for the wholesale services in question for the data to be statistically meaningful.

Next steps

Implementation

1.6 Following the publication of the Directions in Annexes 2 - 3 on 23 September 2004, BT has three months to implement the proposed KPIs reporting regime. The timetable for publication of the data is as follows:

Wholesale Line Rental	BT to first publish/provide data to Ofcom as required within 14 working days of 23 January 2005 in relation to the period from 23 December 2004 to 23 January 2005 and subsequently within 14 working days of the last working day of every month in respect of that month.
Interconnection circuits (including DMAs), DLE FRIACO and ATM Interconnect	BT to first publish/provide data to Ofcom as required within 14 working days of 23 December 2004 in relation to period from 23 December 2004 to 23 March 2005 and subsequently within 14 working days of each successive period of three calendar months in respect of those months.
End User Access and Virtual Path KPIs	BT to first publish/provide data to Ofcom as required within 14 working days of 23 January 2005 in relation to the period from 23 December 2004 to 23 January 2005 and subsequently within 14 working days of the last working day of every month in respect of that month.

Process for Review

1.7 Ofcom's intention is that the transparency requirement will enable BT's competitors to detect potential discrimination and to raise this with BT as appropriate. Ofcom therefore considers it essential that the KPIs should be published in a timely fashion and should be easily accessible, for example by publishing on BT's Website. Ofcom considers that peer review will be the most effective way of determining whether the set of KPIs as directed remain appropriate in the light of changing market conditions. Any proposed changes to the individual indicators should be raised with Ofcom. If Ofcom accepts those proposals they will be subject to a one month consultation period. The KPIs may also be subject to review as a result of further reviews of the relevant markets, SMP findings and the imposition of new or withdrawal of current regulatory remedies.

Section 2

Introduction and regulatory framework

A new regulatory regime

2.1 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is five EU Communications Directives that are designed to create harmonised regulation across Europe, four of which were implemented by the Communications Act 2003 ("the Act").

2.2 The Act provides for functions, powers and duties to be carried out by Ofcom which include, inter alia, functions, powers and duties flowing from the four EU Communications Directives. For an interim period until Ofcom assumed its functions, the Director General of Telecommunications ("Director") was able to carry out various of these functions on behalf of Ofcom. Ofcom has now assumed full functions under the Act as of 29 December 2003. For these reasons this document refers to both acts undertaken by the Director (and Oftel) up until 29 December 2003 and acts now being undertaken by Ofcom.

Market reviews

2.3 The new Directives require National Regulatory Authorities ("NRAs"), such as Ofcom, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

2.4 In its concluding Statements on the review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets published by the Director on 28 November 2003 ("Fixed Narrowband Review") (http://ofcom.org.uk/about_ofcom/publications.fixednarrowbandstatement.pdf), and the wholesale broadband access market published by Ofcom on 13 May 2004 ("Broadband Review") (http://www.ofcom.org.uk/codes_guidelines/telecoms/netw_intercon_index/wholesalebroadbandreview/), Oftel/Ofcom concluded that BT has significant market power ("SMP") in a number of markets (see Annex 1). As a result, the Director/Ofcom proposed that BT should be subject to a requirement to publish data relating to the Quality of Service it delivers in providing certain wholesale services.

2.5 A detailed KPI obligation for PPCs was established in the PPC Phase II Direction to resolve a dispute concerning the provision of partial private circuits and confirmed in the review of the retail leased lines, symmetric broadband origination and wholesale trunk segments market published by Ofcom on 24 June 2004 ("Leased Lines Review") (http://www.ofcom.org.uk/consultations/past/llmr/statement/state_note.pdf).

2.6 In the Review of the wholesale local access market, published by Ofcom on 26 August 2004 (http://www.ofcom.org.uk/consultations/past/rwlam/rwlam_state/) Ofcom has imposed a Quality of Service condition on BT in the wholesale local access market in which BT has been found to have SMP and in respect of wholesale local access and co-location (Condition FA7). Ofcom does not propose to set any specific

KPIs relating to LLU services at this time, as it considers it appropriate for the Telecoms Adjudicator to deal with issues arising. The Quality of Service condition allows Ofcom to specify a list of KPIs should it be appropriate to do so in the future.

Relationship of the Directions to the Market Review process

2.7 On 27 May 2004 Ofcom consulted on its proposals and draft Directions for a set of Key Performance Indicators (“KPIs”) that BT will be required to publish in respect of key wholesale products and services (the “May consultation”) (http://www.ofcom.org.uk/consultations/past/bt_kpi/bt_kpi/?a=87101). The consultation closed on 6 August 2004.

2.8 As required by Article 7 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (“the Framework Directive”) (as implemented by sections 50 and 81 of the Communications Act 2003), the draft Directions were forwarded to the European Commission, the Secretary of State and other NRAs, as in Ofcom’s opinion the requirement may affect trade between Member States. The Commission registered Ofcom’s Notification on 27 May 2004. The Commission concluded that the Notification concerned the provision of further details of remedies imposed in relation to the markets in which SMP had been found, as signalled in the Fixed Narrowband Review and Broadband Review and assessed by the Commission. The Commission had no comments on the proposals.

2.9 Having carefully considered the representations made in response to the May consultation, Ofcom is giving effect to its proposals (with some small modifications) by publishing this Final Statement and Directions. The modifications to the proposals made in the May consultation are identified and explained in Section 3.

2.10 The Directions contained in Annexes 2 and 3 provide the detail of the data that Ofcom considers should be published under the Quality of Service conditions arising from the above mentioned reviews.

2.11 In accordance with section 49(2) of the Act, in giving these Directions, Ofcom is satisfied that to do so is:-

- Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate;
- Not such as to discriminate unduly against particular persons or against a particular description of persons;
- Proportionate to what they are intended to achieve; and
- In relation to what they are intended to achieve, transparent.

2.12 The Directions are objectively justifiable because the KPIs are intended to ensure that there is no undue discrimination in the quality of service provided by BT. The KPIs reflect key business processes which in Ofcom’s view are important in the promotion of competition. The Directions are proportionate because publication of KPIs is only required where BT is found to have SMP in the relevant markets and where the demand for the wholesale product or service in question is sufficient for the data provided to be statistically meaningful. BT is not required to publish each KPI for each product and the proposed level of granularity has taken into account information provided by BT regarding the costs of implementation. Ofcom considers that the measures are transparent as the requirements have been subject to

extensive stakeholder consultation and are clearly set out in the Directions and further explained in Section 3.

2.13 Although an equivalent Quality of Service condition is not proposed for Kingston Communications, the Directions do not unduly discriminate as it is only appropriate to impose such a condition where there is sufficient demand for a wholesale service such that the data provided will be statistically meaningful. This is currently not the case in respect of Kingston.

Ofcom's duties and functions

2.14 Ofcom has considered its duties under Section 3(3) of the Act, which sets out a general requirement that Ofcom's regulatory activities must be proportionate and targeted only at cases in which action is needed. For the reasons set out in paragraph 2.12, Ofcom considers that this duty is satisfied. Ofcom has also considered all the Community requirements set out in section 4 which flow from Article 8 of the Framework Directive. In particular, the proposed KPIs are intended to promote competition and secure efficient and sustainable competition, by ensuring that BT provides a quality of service to providers competing with it in downstream markets that is not unduly discriminatory.

2.15 Section 6 of the Act imposes a general duty on Ofcom to keep its functions under review with a view to securing that regulation does not involve maintaining burdens which have become unnecessary. In terms of the SMP Condition under which the KPI directions are made (i.e. the Quality of Service condition in the Fixed Narrowband and Broadband reviews), Ofcom will keep the relevant markets and designations under review in accordance with a duty contained in section 86 of the Act.

2.16 In accordance with Section 7 of the Act, in proposing the options for specific KPIs, Ofcom has sought to ensure that the proposals constitute an appropriate level of regulation. Such an analysis was undertaken in the Regulatory Options Appraisal published in the July 2003 consultation (http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/kpis0703.htm#chapterfour) and has been taken into consideration in the decisions set out in this document.

Section 3

Summary of consultation responses and Ofcom's responses

Introduction

3.1 In the May consultation, respondents were asked to comment on Ofcom's detailed proposals for a set of KPIs (including the proposal not to include a KPI on call accounting accuracy), proposed publication requirements, and implementation costs. This Section summarises those responses, together with Ofcom's responses and conclusions.

3.2 Consistent with its duty under section 6(1) of the Act not to impose unnecessary regulatory burdens or maintain burdens that have become unnecessary, Ofcom's proposals have taken into account:

- Recent product developments, for example, WLR, particularly where quality is a major issue.
- The appropriate scope for the requirement.
- Optimal frequency of publication.
- Appropriate level in the detail of the data to be published, balancing transparency with commercial confidentiality.

3.3 In order to ensure that the KPIs specified in the Directions in Annexes 2 and 3 constitute an appropriate level of regulation, Oftel/Ofcom have undertaken an extensive consultation process, which included a regulatory options appraisal (http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/kpis0703.htm). That appraisal and the responses to the May consultation have been taken into consideration in formulating the final KPIs. Where no changes have been made to the KPIs proposed in the May consultation, the reasoning for those KPIs is as explained in that document, in particular Sections 6 and 7. Where changes have been made or where Ofcom has decided not to make changes in response to representations made, the reasons are set out below.

Consultation question 1: Proposals for specific indicators

3.4 Respondents were asked whether they agreed with the proposed indicators as outlined in table 3 of the May consultation. If not they were asked to provide justification and outline alternative proposals, which would meet the requirements under Section 49(2) of the Act (as outlined in section 2.11 above).

DataStream

KPI	<i>End User Access (EU orders/fault measures) Monthly publication</i>	<i>Virtual Path Access (VP orders/fault measures) Quarterly publication</i>
% orders rejected	% of total orders submitted that are rejected	% of total orders submitted that are rejected

% orders provisioned on time	% of orders completed by Contractual Delivery Date ("CDD")	% of orders completed by CDD
% new provisions reported as faulty	% orders provisioned where fault reported within 28 calendar days	
% installed base reported as faulty	EU faults per line per quarter x 4 expressed as a percentage of the installed base	
Average time to restore service	Average time to clear fault in clock hours, excluding parked time	Average time to clear fault in clock hours, excluding parked time.
% of repeat faults	% of faults reported where further fault reported within 28 days of restored service	

3.5 Only Cable and Wireless commented on the proposed KPIs for DataStream. Cable and Wireless supports the proposed separation of the KPIs between End User access and Virtual Path elements but would like Ofcom to reconsider its proposal that the KPIs for VPs should be published quarterly, whilst EUA data is published monthly. Cable and Wireless argues that it is not always the case that DataStream VPs serve multiple end users and therefore it would be helpful to report on the same timescales.

Ofcom's response

3.6 In the May consultation, Ofcom proposed that as EUAs have high volumes with a fast turnaround the data should be published monthly. Ofcom originally proposed that VPs should be published quarterly on the assumption that the associated volumes would not be sufficient for the data to be statistically meaningful. Having considered the Cable and Wireless response and as BT has indicated that it currently measures the proposed KPIs for VPs on a monthly basis, Ofcom concludes that it would be consistent and proportionate to require BT to publish these KPIs monthly as this is the basis on which it currently measures VPs.

Ofcom's conclusion

BT should publish KPIs for VPs covering order rejections, orders provisioned on time and average time to restore service on a monthly basis, in line with the reporting requirements for EUAs.

WLR

KPI	Description of requirement
Frequency of publication: Monthly	
% orders rejected	% of total orders submitted that are rejected, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)
% orders provisioned on time	% of orders provisioned by CDD, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30) for new and transferred lines
% new provisions reported as faulty	% of orders reported as faulty within 30 calendar days of completion, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)
% installed base reported as faulty	Number of faults that occur during the 30 calendar days reporting period in relation to completed orders, expressed as average of installed base of WLR, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)
Average time to restore service	Average time to clear fault in clock hours, excluding parked time, split by care levels I II and III and by business and residential end users, and by the type of exchange line (analogue, ISDN2, ISDN30)
% of repeat faults	% of faults reported as having a further fault registered within 30 days of service restoration, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)
Gateway availability	% of actual availability vs. total availability of gateway during reporting period, (i) excluding and (ii) including scheduled outages

3.7 BT expressed concerns that the KPIs proposed for WLR were excessively granular, might be costly to implement and might not be statistically meaningful. In particular, BT does not consider it necessary to disaggregate the “average time to restore service” measure by care level (on the basis that most of the faults reported relate to level I care), nor to disaggregate the “top 10” by individual provider (on the basis that this may result in nil returns.) BT also considered that in some instances, requiring disaggregation of the “top 10” could involve BT having to publish data which was potentially commercially sensitive.

3.8 UKCTA and Uniworld wanted assurance that the KPIs proposed in the draft Directions will not supersede or be less granular than those currently required to demonstrate that BT’s enhanced WLR product is “fit for purpose” (“FFP”). Uniworld

agreed overall with the proposed list, with some additional comments eg that BT should provide Ofcom with data showing the number of orders rejected incorrectly.

3.9 BT proposed that the following KPIs should be aligned with the FFP indicators in order to minimise the development work required to comply with the Direction and to ensure consistency of reporting between the FFP and the ongoing KPIs:

- Percentage of orders rejected - ie this should become the percentage of processed orders that became rejected during the reporting period.
- Percentage of installed base reported as faulty ie to become the number of completed orders registered as having a fault during a three month rolling period ending at the end of the reporting period, measured as a percentage of the installed base over the same rolling three month period.
- Average time to restore service: to be expressed in working hours, rather than clock hours, not excluding parked time. (Other respondents also requested that the measure should not exclude parked time).

Gateway availability

3.10 BT considers that as its gateway is universally available during published hours a KPI is not relevant.

Ofcom response

3.11 Ofcom accepts that in some respects the level of granularity proposed for the ongoing KPIs is greater than that currently required for the FFP KPIs. Specifically, BT does not currently disaggregate the data by service care level, nor by individual “top 10” providers. In addition, BT will be required to publish the KPIs in relation to the ISDN2 and ISDN30 products to be launched in January 2005, which will increase the total number of metrics required, compared with the FFP KPIs. Conversely there are several examples where these KPIs are less stringent. For example, BT will not be required under this set of KPIs to report the breakdown of rejected orders by rejection code as Ofcom considers that the KPI provides a powerful means of highlighting where there may potential problems.

3.12 Ofcom does not accept BT’s arguments that the request to disaggregate the data by care level is not justified. BT provides service in three different ways. The intention is to provide transparency of how BT provides service care to itself in comparison to the way it provides this to others. Ofcom would expect BT to collect and monitor this data on a regular basis and would not therefore envisage that any specific system development is required to report this KPI.

3.13 Ofcom agrees that it would be appropriate and proportionate to align the ongoing KPIs with the FFP KPIs where practicable, especially as the FFP KPIs and mandated KPIs will run consecutively. It therefore accepts BT’s proposals as outlined in para 3.9 above, as Ofcom considers that the proposals do not impact on the potential effectiveness of the KPIs.

3.14 Ofcom accepts that at present the volumes associated with WLR orders may be relatively small but Ofcom expects this situation to change and therefore sample sizes should increase. Ofcom concludes that it is reasonable to request a disaggregation of the top 10 providers. As each of the proposed KPIs are to be expressed as percentages or averages and no individual names are to be published,

Ofcom does not consider that confidentiality concerns are raised. Equally Ofcom does not require BT to publish the underlying volume information (but this will be provided to Ofcom) and therefore Ofcom does not agree that BT would be required to publish commercially confidential information.

Gateway availability

3.15 Respondents have made clear to Ofcom during the consultation process that availability of the gateway is a key concern. The ordering gateway represents an additional process overhead, which BT's retail arm is not subject to. Without high availability, BT's competitors are unable to obtain a similar level of service. Without visibility of gateway availability, it is not possible to detect whether or not there may be potential discrimination.

Ofcom's conclusions

Ofcom confirms that the publication of the KPI "FFP" measures should not be affected by those KPIs mandated by the Directions outlined in Annex 2.

The mandatory KPIs should be aligned to the FFP KPI definitions as specified in para 3.9 above. In line with the FFP KPIs, average time to restore service should be measured in working hours, not clock hours as proposed in the May consultation, and should not exclude parked time.

BT is required to publish a breakdown by service care level and a disaggregation of the "top 10" for the "average time to restore service" measure. The underlying volume information should be provided to Ofcom.

Ofcom concludes that BT should publish a KPI showing gateway availability for WLR.

Interconnection circuits (excluding FRIACO) but including ATM interconnection

KPI	Description of requirement
Publication frequency: Quarterly	
Percentage of orders provisioned on time	% of all orders provisioned to CDD (including new routes and augmented routes)
Average time to restore service	Average time to clear fault in clock hours, excluding parked time
DMAs	Percentage of total DMAs provisioned within 30 working days for new number ranges (Interconnection circuits only)

FRIACO

KPI Publication frequency: Quarterly	Description of requirement
Percentage of orders provisioned on time	% of all orders provisioned to CDD (ie new routes and augmented routes)
Average time to restore service	Average time to clear fault in clock hours, excluding parked time

3.16 UKCTA would like BT to publish the full set of KPIs for FRIACO/Interconnect circuits, even if volumes are insufficient for the data to be statistically meaningful. It proposed annual publication of the KPIs, prepared on a rolling quarterly basis.

3.17 BT proposed it should continue to publish figures for Interconnect links, including FRIACO, along with separate figures for FRIACO as a subset of Interconnect links as this is in line with current reporting systems.

3.18 BT requested clarification regarding the proposed “average time to restore service” measure and proposed that the KPIs should measure the number of faults where the Dominant Provider subsequently achieves restored service, in order to ensure that BT only reports those faults over which it has visibility.

3.19 UKCTA has welcomed Ofcom’s proposal to include a KPI for DMAs. BT also agreed with the proposal, subject to:

- Clarification as to whether the measure should include both new and existing number ranges;
- An amendment being made to the Directions whereby the reporting period is measured in working days (rather than calendar days as stated);
- Agreement that the KPIs should only include DMAs where the standard 30 working day lead time had been requested;
- Agreement that the “top 10” for DMAs should be measured according to the number of DMAs ordered during the reporting period as DMAs cannot be measured by installed base.

Ofcom response

3.20 Ofcom does not consider it would be proportionate to require BT to publish each KPI for each aspect of operational performance for FRIACO and Interconnect links. Ofcom is satisfied that the KPIs proposed cover key processes, namely order provision and service restoration. Ofcom also considers that the timeliness of the data is crucial and therefore its preference is to have fewer KPIs published more frequently.

3.21 Ofcom’s intention is that where practicable, and in order to balance transparency with proportionality, the KPIs BT is required to publish are in line with BT’s legacy systems. However, as explained in the May consultation, FRIACO is both an Interconnect circuit (and therefore measurement of the performance of the circuits needed to support FRIACO is required) and a product in its own right (hence the proposal for a separate KPI). Ofcom does not therefore accept BT’s proposed change as outlined in para. 3.17 above.

3.22 Ofcom's proposal to include existing number ranges in the KPI was intended to capture situations whereby modifications were made to routings of existing number ranges. Respondents have not raised any concerns about delays when modifying existing number ranges and agree that a DMA measure for new number ranges only would be appropriate. Ofcom further considers that it would not be sensible to include in the KPI those DMAs completed outside of the 30 day reporting period where BT's customer has already agreed a date outside of the target for operational reasons. Therefore Ofcom agrees with BT's proposals in this respect. Ofcom also accepts BT's proposed amendment to the Directions whereby the KPI will be measured in working days, not calendar days as this is in line with current reporting systems.

Ofcom's conclusions

BT is required to publish KPIs in respect of order provisioning and service restoration for FRIACO and ATM Interconnection. In relation to Interconnect circuits BT is additionally required to publish a KPI showing the percentage of total DMAs (for Interconnect circuits only) provisioned within 30 working days, where the standard 30 working day lead time had been requested for new number ranges only. The "top 10" DMAs should be measured by the number of DMAs ordered within the reporting period.

General comments

Average time to restore service

3.23 Several respondents expressed concern that the exclusion of "parked time" may distort the "average time to restore service performance" KPI, as it may be possible for BT to adjust its final figures by "parking" faults. BT responded that, for the WLR FFP measure, its systems are unable to recognise parked time and therefore cannot account for it. BT proposed to continue to report both the FFP and ongoing KPI measure expressed in working hours and not excluding parked time.

Ofcom's response

3.24 Ofcom's proposal to exclude parked time was based on BT's explanation of restoring service, as "anytime during repair of a fault whereby the ability to progress the repair is outside of the control of the dominant provider" ie the intention was not to distort the KPI by including delays over which BT did not have control. Given that respondents have argued that excluding parked time may distort the KPI and given that parked time is not recognised on BT's systems, Ofcom concludes that the KPI will include parked time.

Ofcom's conclusions

The average time to restore service measure, which BT is required to publish for EUAs, VPs, ATM Interconnect, WLR, Interconnect circuits and FRIACO, should not exclude parked time.

Carrier Pre-Selection ("CPS") and Statement of Requirements ("SOR")

3.25 BT's competitors did not support Ofcom's proposal not to mandate KPIs for CPS and SORs. UKCTA proposed three CPS KPIs it considers should, as a minimum, be

mandated (see UKCTA's response

http://www.ofcom.org.uk/consultations/past/bt_kpi/responses/ukcta.pdf).

3.26 Respondents expressed a lack of confidence in BT's willingness to continue to publish KPIs for CPS in the longer term and whether data integrity could be assured.

Ofcom's response

3.27 Ofcom acknowledges industry concerns but considers there are clear benefits to be derived from maintaining the existing arrangement. BT began to publish the CPS KPIs on a voluntary basis following extensive dialogue with CPS providers regarding which KPIs they would find most useful. Moreover, respondents to previous consultations have been positive about the process, described as beneficial to help discern trends and identify problems. Ofcom has no reason to believe that BT may cease to publish KPIs in future, but were any problems to arise, Ofcom would not hesitate to consider mandatory KPIs if necessary.

3.28 With regard to SoRs, BT's published guidelines (www.btinterconnect.com/wwwmanls.htm) are effectively mandated through 'Requests for new network access' SMP conditions imposed following the Fixed Narrowband (Condition AA1 (b)) and Broadband Reviews (Condition EA7)². The guidelines cover a whole range of process issues, including KPIs. BT must consult with industry before making any changes. Data is published quarterly and Ofcom monitors the results and addresses any issues arising directly with BT.

Ofcom's conclusions

Ofcom does not consider it necessary to mandate BT to publish KPIs for CPS but would be willing to consider mandating this requirement in future should it prove necessary.

Ofcom considers that satisfactory procedures are already in place for SoR reporting.

² See Condition AA1(b) in Schedule 1 to the Notification to the Fixed Narrowband Review and Condition EA7 in Schedule 1 to the Notification to the Broadband Review.

Consultation Question 2: Proposals for publication

3.29 In the May consultation document, respondents were asked whether they agreed with Ofcom's proposals for publication as follows:

- An aggregate figure for each KPI, showing BT's performance to all communications providers (including BT, where relevant), plus the total volume associated with each of these aggregate KPIs.
- Where available (as specified by Ofcom in the draft Directions), a separate comparator for each KPI, showing BT's performance in relation to its retail arm. The associated volume data should not be published, but should be provided to Ofcom separately.
- Disaggregated data for each KPI showing BT's performance in relation to each of the "top 10" providers, measured by installed base, or to all providers (whichever is less). This data should be anonymised, and the associated volume information should not be published. The names of the providers, and associated volume data, should be provided to Ofcom separately
- An aggregate figure showing BT's performance in relation to all other providers not included in the "top 10"

3.30 In its response, BT expressed concerns regarding commercial confidentiality in relation to the proposed requirement to publish disaggregated data for the "top 10". It believes it would be possible to identify individual providers from the data, especially where there are a small number of players involved (eg FRIACO) or a large player (eg DataStream order provisioning). BT believes that the aggregated top 10 total in itself would allow providers to detect where there may be potential discrimination. BT does not accept that it should be required to publish the volume information associated with each KPI, but is willing to provide this information to Ofcom.

3.31 BT has further proposed that the "top 10" providers should be derived to include a fixed set of providers for a period of twelve months for all products to provide some stability and to enable meaningful trend analysis for all interested parties.

3.32 Respondents sought further clarification on how the data would be published and how the KPIs themselves would be reviewed.

Ofcom's response

3.33 As explained in the May consultation, Ofcom intends to balance transparency with commercial confidentiality. Ofcom therefore accepts that BT may have valid concerns regarding the proposed disaggregation of the top 10 providers, but only if required to publish names or disaggregated volume information. In the May consultation document, Ofcom has requested only that BT should provide this information to Ofcom. As explained in the May consultation, Ofcom considers that a disaggregation of the data greatly improves transparency. Ofcom does not require BT to publish the underlying volume information (but this will be provided to Ofcom) and therefore Ofcom considers that BT is not required to publish commercially confidential information.

3.34 Ofcom considers that BT's proposal to fix the top 10 for a period of twelve months is a sensible approach as it provides consistency and may potentially be more meaningful for analysing the data.

3.35 Ofcom considers that publication of the volume information for the aggregate KPIs will provide clarity and place the KPI in context. More fundamentally, publication makes it possible to assess the statistical significance of any variations in the KPI data. The aggregate volume information allows each operator to assess the statistical significance of any variation between the aggregate KPI and the performance it receives from BT, on the assumption that each operator knows the volume information in relation to services supplied to itself.

3.36 In order to ensure maximum transparency Ofcom considers it essential that the KPIs should be published in a timely fashion in a way that is easily accessible, for example on BT's Website.

3.37 Ofcom's preference is that peer review should determine whether the set of KPIs as directed remain appropriate in the light of changing market conditions. Any proposed changes to the individual indicators should be raised with Ofcom. If Ofcom accepts those proposals in principle, they will be subject to a one month consultation period. The KPIs may also be subject to review as a result of further reviews of the relevant markets, SMP findings and the imposition of new or withdrawal of current regulatory remedies.

Ofcom's conclusions

In the interests of balancing commercial confidentiality with transparency, BT should publish the top 10 breakdown in percentage terms and provide the associated volume data and names of providers to Ofcom.

BT should publish the total volumes associated with each of the aggregate KPIs.

The "top 10" should be fixed for a period of twelve months.

Publication of comparators

Percentage of orders provisioned on time

3.38 In the draft Directions relating to wholesale line rental, Ofcom proposed that BT should publish a KPI showing the percentage of orders completed by the contractual delivery date, in relation to both newly provisioned lines and transferred lines. BT considers that only newly provisioned lines should be included, on the grounds that BT does not transfer lines to itself. However UKCTA considers that transfers to BT are relevant because when BT gains a customer from a WLR provider it transfers that customer back to itself (ie it is a transfer and not a new provision). As there may be potential for discrimination UKCTA considers that transfers should therefore be included.

Order rejections

3.39 Caudwell Communications considered BT should be required to publish a comparator for order rejections for WLR in order to capture instances where customers wish to transfer back to BT Retail. BT issues a 'pending cease' to the current provider and subsequently removes WLR from that line. BT does not interact

with the gateway in these cases but the process is subject to validation which may feasibly result in order rejections.

Performance targets

3.40 Centrica would like Ofcom to set stringent targets for KPIs where there is no equivalent implicit wholesale product or service available for the provision of downstream services.

Ofcom's response

Percentage of orders provisioned on time

3.41 When a WLR customer decides to go back to BT the line is not transferred via the gateway but is logged and executed solely through BT's operating system. Therefore the gateway logs only those transfers between BT and other communications providers, and transfers between communications providers, but not transfers between communications providers and BT. Ofcom therefore considers it perfectly reasonable that BT should demonstrate that it does not complete transfers back to BT quicker than it completes transfers from BT to other providers.

Order rejections

3.42 In the May consultation Ofcom explained that in some circumstances it will not be possible for BT to publish a comparator for the KPI eg if there is no explicit wholesale transaction between BT and its retail arm, nor an implicit transaction ie whereby BT implicitly purchases WLR from itself in order to provide downstream services. Specifically this would not be possible for order rejections nor gateway availability.

Performance targets

3.43 The requirement on BT to publish KPIs is intended to ensure that BT complies with the requirement not to discriminate unduly. The overall objective of KPI reporting is not to set an absolute standard for BT's performance, of the type that would normally be contracted in a SLA. The intention is that they will give an indication of BT's overall performance. Ofcom does not consider it would be appropriate to set performance targets for KPIs.

Ofcom's conclusions

Ofcom concludes that it is appropriate for BT to publish a KPI for the "percentage of orders provisioned on time" for WLR, which includes provision by BT to itself (or provision of an implicit comparator); covering both newly provisioned and transferred lines.

Ofcom concludes that it would not be feasible for BT to publish a comparator for order rejections for WLR.

Ofcom concludes that it would not be appropriate to set performance targets for KPIs

Consultation question 3: Proposals for frequency of publication

3.44 In general, respondents agreed with Ofcom's proposals regarding the frequency of publication of individual KPIs. The proposed frequencies reflect the nature of the products involved in terms of market dynamics and lead times. However, BT requested that the timescale for reporting the KPIs should be increased from 14 to 20 days. BT argues that experience to date with the wholesale access fit for purpose measurements indicates that is difficult to meet a 14 working day timescale given the amount of collation, validation and reconciliation that is required.

Ofcom's response

3.45 Whilst recognising BT's concerns regarding the processes involved in publication of the data, Ofcom considers that timeliness of publication is an essential part of the transparency requirement. It therefore considers that the timetable for publication should remain as proposed in the draft Directions.

Ofcom's conclusions

Ofcom concludes that the KPIs for DataStream (EUAs/VPs) and for WLR should be published monthly.

Ofcom concludes that the KPIs for FRIACO and Interconnection circuits (excluding FRIACO but including ATM Interconnect) should be published quarterly.

The timescale for publication of the KPIs should be 14 days after the end of the relevant reporting period.

Consultation question 4: Proposal not to include a KPI on call accounting accuracy

3.46 Respondents were asked whether they were satisfied with Ofcom's proposal that it would not be appropriate to include a KPI for call accounting accuracy.

3.47 In BT's view a KPI is unnecessary for the reasons stated in its response to the July 2003 consultation: it believes call accounting accuracy is best addressed through SLA arrangements rather than a regulatory obligation. BT considers it is in its best interests to bill all operators in a timely and accurate manner, avoiding time and resource-consuming disputes. In its response to the May consultation BT stated that in its view there is no scope for discrimination in this context, and, moreover, it does not believe that a useable definition is achievable.

3.48 UKCTA believes that the industry would greatly benefit from additional controls on BT in this area, as inaccuracies may cause considerable disruption and additional costs, which may ultimately be potentially discriminatory. UKCTA proposed three possible KPIs:

1. The number of credits issued in lieu of incorrect billing claims per billing period

2. The percentage of discrepancy between the “correct” and the invoiced bill
3. The time taken BT to rectify discrepancies (as compared with the time taken to resolve discrepancies with BT’s retail arm)

of which it considers (1) would be the most useful.

3.49 Centrica also proposed a measure, namely:

4. The disputed value of BT Wholesale invoices to each communications provider as a percentage of overall invoice value.

Ofcom’s response and conclusions

3.50 Ofcom welcomes respondents' proposals for KPIs for call accounting accuracy. Ofcom wishes to gather further evidence and seek further views before deciding whether further consultation is required. Should Ofcom subsequently consider it would be appropriate to amend the Directions to incorporate the additional KPI, it will issue a separate Notification setting out its proposed modifications, stating why it considers these to be objectively justifiable, not unduly discriminatory, proportionate and transparent. If Ofcom decides not to proceed it will issue a Statement giving reasons.

Consultation question 5: Implementation costs

3.51 In the July consultation Ofcom considered that the proposed KPIs should not require BT to incur disproportionate implementation costs. Respondents were asked to provide evidence of the costs involved so that Ofcom could assess the impact of its proposals.

3.52 In order to ensure that the KPI requirement is proportionate, Ofcom proposed that BT should publish only a small number of KPIs that are representative of key business processes and provide transparency of the quality of service BT provides to itself and to other providers. Where practicable, Ofcom has proposed KPIs that are in line with BT’s legacy systems.

3.53 All respondents agreed that BT should not be required to incur disproportionate costs. Some respondents were concerned that BT may include costs already incurred in the development of the FFP KPIs for WLR in any figures provided to Ofcom.

3.54 Although BT did not initially provide cost information as part of its response to the consultation, an assessment has subsequently been provided confidentially.

Ofcom’s response

3.55 Having analysed the data provided, Ofcom is satisfied that the proposed requirements are not onerous, particularly when balanced against the benefits of transparency. Ofcom is also satisfied that the estimated costs for development of the WLR metrics do not include the costs incurred in the implementation of the FFP KPIs.

Ofcom's conclusions

Ofcom is satisfied that the requirement on BT to publish a set of KPIs as outlined in the Directions in Annexes 2 and 3 is proportionate.

Additional comments received

3.56 Ofcom stated in the May consultation (para 3.5) that "the proposed KPI obligations are not intended to set an absolute standard for BT's performance, of the type that would normally be set out in a Service Level Agreement. The intention is only to ensure that the relative performance of BT in relation to different providers is not unduly discriminatory." In its response, Centrica sought clarification as to whether evidence of discrimination per se would be required to trigger further investigation, or whether Ofcom would base their assessment on whether the discrimination was 'undue'.

Ofcom's response

3.57 A requirement not to unduly discriminate is intended, principally, to prevent dominant providers from discriminating in favour of their own downstream activities and to ensure that competing providers are placed in a position whereby they are able to compete. The overall objective of the quality of service condition, to which the KPIs relate, is to provide transparency of BT's overall performance relative to that which it provides to itself. Transparency should allow industry to identify where it considers that undue discrimination may be occurring. Further guidance on what may be unduly discriminatory was set out in Oftel's Access Guidelines, published on 13 September 2002 (http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.htm). However, it should be noted that Ofcom intends to produce its own guidelines on discrimination later this year. An alternative to KPIs would be to require BT to provide wholesale services to other communications providers using the same operational processes and interfaces as it uses to supply itself ("transactional equivalence"). The high cost of replacing legacy systems means that this may not always be practical or indeed proportionate.

Section 4

Summary of KPI requirements

4.1 Table 3 below summarises the KPIs that BT is required to publish. The detailed requirements are set out in the Directions in Annexes 2 and 3.

Table 3: Summary of KPI requirements

Proposed KPIs for publication	DataStream		WLR	FRIACO	Interconnection circuits (excluding FRIACO but including ATM interconnection)
Proposed frequency	Monthly	Monthly	Monthly	Quarterly	Quarterly
	<i>End User Access (EU orders/fault measures)</i>	<i>VP Access (Virtual Path orders/fault measures)</i>			
% orders rejected	% of total orders submitted that are rejected	% of total orders submitted that are rejected	% of total orders submitted that are rejected, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)		
% orders provisioned on time	% of orders completed by Contractual Delivery Date ("CDD")	% of orders completed by CDD	% of orders provisioned by CDD, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30) for new and transferred lines	% of all orders provisioned to CDD (ie new routes and augmented routes)	% of orders provisioned to CDD

% new provisions reported as faulty	% orders provisioned where fault reported within 28 calendar days		% of orders reported as faulty within 30 calendar days of completion, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)		
% installed base reported as faulty	EU faults per line per quarter x 4 expressed as a percentage of the installed base		Number of faults that occur during the 30 calendar days reporting period in relation to completed orders, expressed as average of installed base of WLR, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)		

Average time to restore service	Average time to clear fault in hours	Average time to clear fault in hours	Average time to clear fault in hours, split by care levels I II and III and by business and residential end users, and by the type of exchange line (analogue, ISDN2, ISDN30)	Average time to clear fault in hours	Average time to clear fault in hours
% of repeat faults	% of faults reported where further fault reported within 28 days of restored service		% of faults reported as having a further fault registered within 30 days of service restoration, split between residential and business end users, and by the type of exchange line (analogue, ISDN2, ISDN30)		
Gateway availability			% of actual availability vs. potential availability of gateway during reporting period, (i) excluding and (ii) including scheduled outages		
DMA					% of total DMAs provisioned within 30 days for new number ranges. (Interconnection circuits only)

4.2 The draft Directions contained in Annexes 2 and 3 provide the detail of the data that Ofcom considers should be published under the Quality of Service conditions arising from the above mentioned reviews. In accordance with section 49(2) of the Act, Ofcom can only give these Directions if it is satisfied that to do so is:-

- Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate;
- Not such as to discriminate unduly against particular persons or against a particular description of persons;
- Proportionate to what they are intended to achieve; and
- In relation to what they are intended to achieve, transparent

4.3 Ofcom considers that the proposed KPIs are **objectively justifiable** because they have been selected to detect where there may potentially be discrimination in the Quality of Service provided. They also reflect key business processes which in Ofcom's view are important in the promotion of competition. For example, the ability of competing providers to address the business and retail wholesale access markets depends critically on the availability of, and Quality of Service provided for Wholesale Line Rental. BT is the only provider able to provide Interconnect circuits, which are particularly important to smaller operators. The ability to compete in the unmetered Internet termination market depends on utilisation of the provider's FRIACO network and the speed at which it can respond to changes in demand, thus transparency of the Quality of Service provided is paramount. BT's competitors are obliged to purchase at least one element of BT's DataStream product in order to gain broadband access to multiple end users using BT's ATM network therefore their ability to compete with BT depends, among other things, on the Quality of Service provided.

4.4 It is Ofcom's view that the individual KPIs selected reflect processes that have a significant impact on the customer experience on the end-user. For example, if there are problems with BT's ordering process, then its competitors will experience a high level of order rejections which can lead to a loss of customers, which is particularly important when BT's competitors are offering a new service eg WLR. Speed of response at which orders are provisioned is also crucial for both new and established products as it will affect the speed at which BT's competitors can respond to changes in demand. The time taken to fix a fault is a fundamental potential discrimination issue and although fault clearance may sometimes be outside of BT's control, excessive fault clearance times may result in BT's competitors experiencing a high level of churn in their customer base.

4.5 Ofcom considers that its requirement for BT to publish a KPI for DMAs (part of the operational management of the Interconnect circuit product) is justifiable as BT's competitors consider visibility of the time taken by BT to complete DMAs for its own services is crucial for determining whether discrimination may exist.

4.6 Ofcom considers that the proposed KPIs do not **discriminate unduly** against BT. Although an equivalent condition is not proposed for Kingston, it does not unduly discriminate as the condition only applies where there is sufficient demand for the wholesale service in question such that the data provided will be statistically meaningful.

4.7 Ofcom considers that the KPIs are **proportionate** to what they are intended to achieve. Publication is only required where wholesale remedies have been imposed following the Fixed Narrowband Review, where BT is found to have SMP in the

relevant markets and where the demand for the wholesale product or service is sufficient that the data provided would be statistically meaningful. BT is not required to publish each KPI for each product, nor is it required to drill down to a high level of granularity eg to provide a breakdown of order rejection codes. For established products, eg Interconnect circuits and FRIACO, BT is required to publish the two pivotal KPIs, namely the percentage of orders provisioned on time and the average time to restore service.

4.8 For DataStream, publication is required only where wholesale remedies have been imposed in relation to the Broadband Review and only apply where BT is found to have SMP in the relevant market and where the demand for the wholesale product or service is sufficient that the data provided would be statistically meaningful. BT is not required to publish each KPI for each element of the DataStream product, nor is it required to drill down to a high level of granularity. For example BT is not required to publish a KPI for VPs in respect of faulty new provisions, installed base reported as faulty or repeat faults. As required for Interconnect circuits under the Fixed Narrowband Review, BT is only required to publish the two pivotal KPIs for ATM Interconnect circuits, namely the percentage of orders provisioned on time and the average time to restore service.

4.9 Ofcom considers that the measures are **transparent** as the requirements are clearly set out in the Directions and have been fully explained in the May consultation and/or in section 3 of this Statement.

4.10 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4 as explained in para 2.14 above. For example, the requirement for consistency is met by selecting one set of KPIs across all products and services, except where there is an objectively justifiable reason for doing otherwise. The KPIs are targeted at key business processes, rather than applying across the board. Transparency is provided by ensuring that all KPI information that is not commercially confidential is published.

4.11 Ofcom has also had regard to its duties under section 4 of the Act, in particular the requirement to promote competition. Ofcom considers that its proposals promote competition amongst providers of electronic communications networks and services as the KPIs are designed to ensure that alternative providers have an equivalent opportunity to compete with BT.

Next steps

4.12 On publication of this Statement the Directions contained in Annexes 2 and 3 will take effect. In accordance with section 50 of the Act copies of the Notifications have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State.

4.13 BT has three months to implement the proposed KPIs reporting regime. The timetable for publication of the data is as follows:

Wholesale Line Rental

BT to first publish/provide data to Ofcom as required within 14 working days of 23 January 2005 in relation to the last month of the period from 23 December 2004 and subsequently within 14 working days of the last working day of every month in respect of that month

Interconnection circuits(including DMAs), DLE FRIACO and ATM Interconnect	BT to first publish/provide data to Ofcom as required within 14 working days of 23 December 2004 in relation to the last three months of the period from 23 December 2004 to 23 March 2005 and subsequently within 14 working days of each successive period of three calendar months in respect of those months
End User Access and Virtual Path KPIs	BT to first publish/provide data to Ofcom as required within 14 working days of 23 January 2005 in relation to the last month of the period from 23 December 2004 to 23 January 2005 and subsequently within 14 working days of the last working day of every month in respect of that month

Annex 1

Overview of market reviews

List of Markets where Quality of Service Condition imposed for which KPIs are imposed in this Explanatory Statement and Directions

Market Review condoc	Markets where condition proposed/imposed	Cond. No.	Market in which KPI is required	Wholesale remedy
Review of the Wholesale Broadband Access Market – Final Explanatory Statement and Notification published 13 May 2004	<ul style="list-style-type: none"> Asymmetric broadband origination in the UK, except Hull Broadband conveyance in the UK 	EA5	<ul style="list-style-type: none"> Asymmetric broadband origination in the UK, except Hull Broadband conveyance in the UK 	End User Access Virtual Paths ATM Inter-connection circuits
Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets (Final Explanatory Statement and Notification published 28 November 2003)	<ul style="list-style-type: none"> Wholesale residential analogue exchange line services Wholesale business analogue exchange line services Wholesale business ISDN2 exchange line services Wholesale ISDN30 exchange line services Call origination on fixed public narrowband networks Local-tandem conveyance and transit on fixed public narrowband networks Inter-tandem conveyance and transit on fixed public narrowband networks Single transit on 	AA7	<ul style="list-style-type: none"> Wholesale residential analogue exchange line services Wholesale business analogue exchange line services Wholesale business ISDN2 exchange line services Wholesale ISDN30 exchange line services Call origination on fixed public narrowband networks Local-tandem conveyance and transit on fixed public narrowband networks Inter-tandem conveyance and transit on fixed public narrowband networks Single transit on fixed public narrowband networks 	WLR Inter-connection circuits and FRIACO

fixed public narrowband networks			
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Annex 2

Directions under the Quality of Service Condition (AA7) in the Fixed Narrowband Review

Direction under section 49 of the Communications Act 2003 and Condition AA7 imposed on the Dominant Provider as a result of the analysis of the markets listed in Recital (A) of this Direction in which the Dominant Provider has been found to have significant market power

Whereas:

- (A) as a result of a market analysis carried out by the Director he proposed on 17 March 2003 and 26 August 2003 in accordance with sections 48(2) and 80 of the Act that the Dominant Provider has significant market power in, amongst others, the following markets in the United Kingdom excluding the Hull Area:
 - (i) wholesale residential analogue exchange line services;
 - (ii) wholesale business analogue exchange line services;
 - (iii) wholesale business ISDN2 exchange line services;
 - (iv) wholesale ISDN30 exchange line services;
- (B) by virtue of the Transitional Provisions the Director was able to exercise the powers under the Act for an interim period. Ofcom has now assumed those powers as of 29 December 2003;
- (C) Ofcom 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 a publication of the Notification identified the relevant services markets, made market power determinations to the effect referred to in Recital (A) above and set certain SMP Services Conditions on the Dominant Provider to take effect on 28 November 2003, such as Condition AA7;
- (D) this Direction concerns matters to which Condition AA7 relates;
- (E) for the reasons set out in Section 3 of the explanatory memorandum accompanying this Direction Ofcom is 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 Section 3 of the explanatory memorandum accompanying this Direction Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (G) on 27 May 2004 Ofcom published a notification of the proposed Direction in accordance with section 49 of the Act;
- (H) Ofcom has considered every representation about the proposed Direction duly made to it; and

NOW, therefore, pursuant to section 49 of the Act and Condition AA7 in Schedule 1 to the Notification, Ofcom gives the following Direction:

1. The Dominant Provider shall publish or provide to Ofcom as required the information specified in Parts 1 and 2 of Annex A to this Direction in relation to the provision of Wholesale Line Rental ("the Wholesale Line Rental KPIs").
2. The Dominant Provider shall first publish or provide to Ofcom as required the Wholesale Line Rental KPIs within 14 Working Days of 23 January 2005 in relation to the preceding month and subsequently within 14 Working Day of the last Working Day of every month in respect of that month.
3. The Dominant Provider shall publish or provide to Ofcom as required the Wholesale Line Rental KPIs by placing a copy of such information on any relevant website operated or controlled by the Dominant Provider.
4. The Annex to this Direction forms part of the Direction.
5. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
6. For the purpose of interpreting this Direction the following definitions shall apply:

"Act" means the Communications Act 2003;

"Committed Order" means an Order which has passed validation and has been registered on the Dominant Provider's operational support system and a Contract Delivery Date has been confirmed;

"Completed Order" means an Order which has been provisioned and for which all other related work has been carried out;

"Contract Delivery Date" means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

"Director" means the Director General of Telecommunications;

"Dominant Provider" 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;

“Exchange Line” means Apparatus comprised in the Dominant Provider’s Electronic Communications Network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing Electronic Communications Services at the premises at which the Network Termination and Testing Apparatus is located;

“Fault” means a degradation or problem or with Wholesale Line Rental which is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system;

“Hull Area” means the area defined as the ‘Licensed Area’ in the license granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

“Installed Base” means the average number of Wholesale Line Rental lines that are in use during the Reporting Period;

“ISDN” means the integrated services digital network which is an Electronic Communications Network evolved from the telephony integrated digital network that provides for digital end-to-end connectivity to support a wide range of Public Electronic Communications Services, including voice and non-voice service to which End Users have access by a limited set of standard multi-purpose customer interfaces;

“KPI” means key performance indicator;

“Level 1 Care” means the level of care provided by the Dominant Provider which provides the standard level of response to a Fault on an Exchange Line, provided as part of the basic line rental;

“Level 2 Care” means the level of care provided by the Dominant Provider which provides an enhanced level of response to a Fault on an Exchange Line, guaranteeing a response within a specified time;

“Level 3 Care” means the level of care provided by the Dominant Provider which provides an enhanced level of response to a Fault on an Exchange Line, guaranteeing a response within a specified time and providing cover 24 hours per day, seven days a week including public and bank holidays;

“Newly Provisioned Lines” means an Order where any Wholesale Line Rental product/Exchange Line Service is not being provided by the Dominant Provider to the Third Party at the time of order;

“Notification” means the Notification referred to in Recital (C) of this Direction above, as published on 28 November 2003;

“Order” means a request for Wholesale Line Rental submitted to the Dominant Provider by a Third Party;

“Pending Order” means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;

“Rejected Order” means an Order which cannot be placed by the Dominant Provider on its operational support system;

“Reporting Period” means the month in respect of which the Dominant Provider is required to publish or provide to Ofcom as required the Wholesale Line Rental KPIs;

“Restored Service” means the point at which the Wholesale Line Rental in relation to which a Fault was registered becomes available again for use by the Third Party;

“Scheduled Outages” means the defined periods of time whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities whereby the Dominant Provider must have given as much notice as reasonably practicable and in any event not less than seven calendar days;

“Third Party” means either:

a) a person providing a Public Electronic Communications Network;
or

b) a person providing a Public Electronic Communications Service;

“Top Ten” means the top ten largest Third Parties, excluding the Dominant Provider, requesting Wholesale Line Rental from the Dominant Provider during the Reporting Period measured by Installed Base; whereas the top ten should be determined by the Dominant Provider during the first Reporting Period and re-determined by the Dominant Provider every 12 months thereafter;

“Transitional Provisions” means sections 408 and 411 of the Act, Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 and Article 3(2) of the Office of Communications 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003;

“Transferred Lines” means an Order where Wholesale Line Rental is being provided to the Third Party by another Third Party (including those provided by the Dominant Provider) at the time of order;

“Wholesale Analogue Line Rental” means an Electronic Communications Service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line;

“Wholesale Business ISDN2 Line Rental” means an Electronic Communications Service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an ISDN2 Exchange Line (business quality of service);

“Wholesale ISDN30 Line Rental” means an Electronic Communications Service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an ISDN30 Exchange Line;

“Wholesale Line Rental” means each of the following provided by the Dominant Provider:

- a) Wholesale Analogue Line Rental provided to Third Parties’ residential End Users;
- b) Wholesale Analogue Line Rental provided to Third Parties’ business End Users;
- c) Wholesale Business ISDN2 Line Rental;
- d) Wholesale ISDN30 Line Rental;

and, for the avoidance of doubt, any requirement to publish or provide to Ofcom as required the Wholesale Line Rental KPIs shall be a requirement to publish or provide that information separately in relation to each of the above;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

- 7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 1 of Schedule 1 to the Notification.
- 8. For the purpose of interpreting this Direction:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
- 9. This direction shall take effect on the day it is published.



Gareth Davies
Director, Competition Policy

23 September 2004

Annex A

Wholesale Line Rental KPIs

Part 1: Indicators

1. The Dominant Provider shall publish the information required in KPIs **(i) to (viii)** below in relation to the provision of Wholesale Line Rental to:
 - a) all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Wholesale Line Rental to itself);
 - b) the Top Ten Third Parties (as separate figures, save that individual Third Party names should not be published); and
 - c) all Third Parties excluding the Top Ten Third Parties (as an aggregate figure).
2. The Dominant Provider shall publish the information required in KPIs **(ii) to (vi)** below in relation to the provision of Wholesale Line Rental to itself.
3. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (vi)** in relation to the provision of Wholesale Line Rental to the Top Ten Third Parties (as separate figures, including individual Third Party names).
4. Where the Dominant Provider does not provide Wholesale Line Rental to itself, it shall instead publish or provide as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to End Users.

Percentage of orders rejected

- (i) the percentage of Committed Orders that became Rejected Orders during the Reporting Period;

Percentage of orders provisioned on time

- (ii) the percentage of Completed Orders that were completed by the Contract Delivery Date during the Reporting Period in relation to each of:
 - (a) Newly Provisioned Lines; and
 - (b) Transferred Lines;

Percentage of new provisions reported as faulty

- (iii) the percentage of Completed Orders that were reported as having a Fault during the Reporting Period whereby that Fault was reported within 30 calendar days of the date that it became a Completed Order;

Percentage of installed base reported as faulty

- (iv) the number of Completed Orders that were registered as having a Fault during a three month rolling period, ending at the end of the Reporting Period, measured as a percentage of the mean of the Installed Base;

Average time to restore service

- (v) the average time (in working hours) during the Reporting Period for the Dominant provider to achieve Restored Service after a Fault has been registered in relation to each of:
 - a) Level 1 Care;
 - b) Level 2 Care; and
 - c) Level 3 Care;

Percentage of repeat faults

- (vi) the percentage of Faults that were reported as having a further Fault during the Reporting Period whereby the further Fault was registered within 30 calendar days of the Dominant Provider achieving Restored Service of the previous Fault;

Gateway availability

- (vii) the percentage of actual availability of the Dominant Provider's ordering gateway during the Reporting Period compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages;
- (viii) the percentage of actual availability of the Dominant Provider's ordering gateway during the Reporting Period compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

Annex A

Wholesale Line Rental KPIs

Part 2: Volumes

1. The Dominant Provider shall publish the information required in KPIs **(i) to (iv)** below in relation to the provision of Wholesale Line Rental to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Wholesale Line Rental to itself);
2. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iv)** below in relation to the provision of End User Access to:
 - a) Top Ten Third Parties (as separate figures, including individual Third Party names); and
 - b) itself.
3. Where the Dominant Provider does not provide End User Access to itself, it shall instead publish or provide as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to End Users.

Volume of orders submitted

- (i) the total number of Orders that became Pending Orders during the Reporting Period;

Volume of orders completed

- (ii) the total number of Committed Orders that became Completed Orders during the Reporting Period in relation to each of:
 - (a) Newly Provisioned Lines; and
 - (b) Transferred Lines;

Volume of installed base

- (iii) the Installed Base during the Reporting Period;

Volume of faults reported

- (iv) the number of Faults where the Dominant Provider subsequently achieves Restored Service during the Reporting Period in relation to each of:
 - a) Level 1 Care;
 - b) Level 2 Care; and
 - c) Level 3 Care.

Direction under section 49 of the Communications Act 2003 and Condition AA7 imposed on the Dominant Provider as a result of the analysis of the markets listed in Recital (A) of this Direction in which the Dominant Provider has been found to have significant market power

Whereas:

- (A) as a result of a market analysis carried out by the Director he proposed on 17 March 2003 and 26 August 2003 in accordance with sections 48(2) and 80 of the Act that the Dominant Provider has significant market power in, amongst others, the following markets in the United Kingdom excluding the Hull Area:
 - (v) call origination on fixed public narrowband networks;
 - (vi) local-tandem conveyance and transit on fixed public narrowband networks;
 - (vii) inter-tandem conveyance and transit on fixed public narrowband networks; and
 - (viii) single transit on fixed public narrowband networks;
- (B) by virtue of the Transitional Provisions the Director was able to exercise the powers under the Act for an interim period. Ofcom has now assumed those powers as of 29 December 2003;
- (C) Ofcom 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 a publication of the Notification identified the relevant services markets, made market power determinations to the effect referred to in Recital (A) above and set certain SMP Services Conditions on the Dominant Provider to take effect on 28 November 2003, such as Condition AA7;
- (D) this Direction concerns matters to which Condition AA7 relates;
- (E) for the reasons set out in Section 3 of the explanatory memorandum accompanying this Direction Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - (v) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (vi) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (vii) proportionate to what it is intended to achieve; and
 - (viii) in relation to what it is intended to achieve, transparent.
- (F) for the reasons set out in Section 3 of the explanatory memorandum accompanying this Direction Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (G) on 27 May 2004 Ofcom published a notification of the proposed Direction in accordance with section 49 of the Act;

- (H) Ofcom has considered every representation about the proposed Direction duly made to it; and

NOW, therefore, pursuant to section 49 of the Act and Condition AA7 in Schedule 1 to the Notification, Ofcom gives the following Direction:

1. The Dominant Provider shall publish or provide to Ofcom as required the information specified in:
 - a) Parts 1 and 2 of Annex A to this Direction in relation to the provision of Interconnection Circuits (“the Interconnection Circuit KPIs”); and
 - b) Parts 1 and 2 of Annex B to this Direction in relation to the provision of DLE FRIACO (“the DLE FRIACO KPIs”);
2. The Dominant Provider shall first publish or provide to Ofcom as required the Interconnection Circuit KPIs and the DLE FRIACO KPIs within 14 Working Days of 23 March 2005 in relation to the preceding three months and subsequently within 14 Working Day of each successive period of three calendar months in respect of those months.
3. The Dominant Provider shall publish or provide to Ofcom as required the Interconnection Circuit KPIs and the DLE FRIACO KPIs by placing a copy of such information on any relevant website operated or controlled by the Dominant Provider.
4. The Annexes to this Direction form part of the Direction.
5. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
6. For the purpose of interpreting this Direction the following definitions shall apply:

“Act” means the Communications Act 2003;

“Augmented Route” means an Order where any Interconnection Circuit is being provided to the Third Party by another Third Party (including those provided by the Dominant Provider) at the time of order and the effect of that order is to modify the capacity of the route;

“Committed Order” means an Order for which a Contract Delivery date has been confirmed;

“Completed Order” means an Order which has been provisioned and for which all other related work has been carried out;

“Contract Delivery Date” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

“CSI” means customer sited Interconnection links;

“DMA” (Data Management Amendments) means the routing amendment which a Third Party requests the Dominant Provider to make in order to

modify the way in which calls are routed both at the Digital Local Exchange and at the tandem switches;

“Director” means the Director General of Telecommunications;

“DLE FRIACO” means the provision of FRIACO at the digital Local Exchange;

“Dominant Provider” 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;

“Fault” means a degradation or problem with the Interconnection Circuit or DLE FRIACO, as appropriate, which is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system;

“FRIACO” means flat rate internet access call origination;

“Hull Area” means the area defined as the ‘Licensed Area’ in the license granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

“IEC” means Interconnection extension circuits;

“Installed Base” means the average number of Interconnection Circuits or DLE FRIACO circuits (as appropriate) that are in use during the Reporting Period;

“Interconnection Circuits” mean any and all of the following specific services provided by the Dominant Provider:

- a) CSI;
- b) ISI;
- c) IEC;

“ISI” means in-span Interconnection links;

“KPI” means key performance indicator;

“New Route” means an Order where any Interconnection Circuits are not being provided by the Dominant Provider to the Third Party at the time of order;

“Notification” means the Notification referred to in Recital (C) of this Direction above, as published on 28 November 2003;

“Order” means a request for Interconnection Circuits or DLE FRIACO, as appropriate, submitted to the Dominant Provider by a Third Party;

“Reporting Period” means the period of three calendar months in respect of which the Dominant Provider is required to publish or provide to Ofcom as

required the Interconnection Circuit KPIs or the DLE FRIACO KPIs, as required;

“Restored Service” means the point at which either the Interconnection Circuit or DLE FRIACO, as appropriate, in relation to which a Fault was registered becomes available again for use by the Third Party;

“Third Party” means either:

- a) a person providing a Public Electronic Communications Network;
or
- b) a person providing a Public Electronic Communications Service;

“Top Ten” means the top ten largest Third Parties, excluding the Dominant Provider, requesting Interconnection Circuits or DLE FRIACO, as appropriate, from the Dominant Provider during the Reporting Period measured by Installed Base (except in the case of DMAs which shall instead be measured by the number of DMAs ordered during the Reporting Period); whereas the top ten should be determined by the Dominant Provider during the first Reporting Period and re-determined by the Dominant Provider every 12 months thereafter;

“Transitional Provisions” means sections 408 and 411 of the Act, Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 and Article 3(2) of the Office of Communications 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 1 of Schedule 1 to the Notification.
8. For the purpose of interpreting this Direction:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
9. This direction shall take effect on the day it is published.



Gareth Davies
Director, Competition Policy

23 September 2004

Annex A

Interconnection Circuit KPIs

Part 1: Indicators

5. The Dominant Provider shall publish the information required in KPIs **(i) to (iii)** below in relation to the provision of Interconnection Circuits to:
 - d) all Third Parties (as an aggregate figure);
 - b) the Top Ten Third Parties (as separate figures, save that individual Third Party names should not be published); and
 - c) all Third Parties excluding the Top Ten Third Parties (as an aggregate figure).
6. The Dominant Provider shall publish the information required in KPI **(iii)** below in relation to the provision of Data Management Amendments to itself.
7. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iii)** in relation to the provision of Interconnection Circuits to the Top Ten Third Parties (as separate figures, including individual Third Party names).

Percentage of orders provisioned on time

- (ix) the percentage of Completed Orders that were completed by the Contract Delivery Date during the Reporting Period;

Average time to restore service

- (x) the average time (in hours) during the Reporting Period for the Dominant Provider to achieve Restored Service after a Fault has been registered;

Data Management Amendments

- (xi) the percentage of Data Management Amendments for new numbers that become Completed Orders during the Reporting Period whereby they are completed within 30 Working Days of the Order becoming a Committed Order excluding any Data Management Amendments where the standard 30 Working Day lead time has not been requested.

Annex A

Interconnection Circuit KPIs

Part 2: Volumes

4. The Dominant Provider shall publish the information required in KPIs **(i) to (iii)** below in relation to the provision of Interconnection Circuits to all Third Parties (as an aggregate figure);
5. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iii)** below in relation to the provision of Interconnection Circuits to Top Ten Third Parties (as separate figures, including individual Third Party names).
6. The Dominant Provider shall provide to Ofcom the information required in KPIs **(iii)** below in relation to the provision of Data Management Amendments to itself.

Volume of orders provisioned

- (i) the total number of Committed Orders that became Completed Orders during the Reporting Period;

Volume of faults reported

- (ii) the number of Faults where the Dominant Provider subsequently achieves Restored Service during the Reporting Period;

Volume of Data Management Amendments

- (iii) the total number of Data Management Amendments for new number ranges that became Completed Orders during the Reporting Period.

Annex B DLE FRIACO KPIs

Part 1: Indicators

1. The Dominant Provider shall publish the information required in KPIs **(i) and (ii)** below in relation to the provision of DLE FRIACO to:
 - a) all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of DLE FRIACO to itself); and
 - b) itself.

Percentage of orders provisioned on time

- (i) the percentage of Completed Orders that were completed by the Contract Delivery Date during the Reporting Period in relation to each of:
 - a) New Routes; and
 - b) Augmented Routes;

Average time to restore service

- (ii) the average time (in hours) during the Reporting Period for the Dominant Provider to achieve Restored Service after a Fault has been registered.

Annex B DLE FRIACO KPIs

Part 2: Volumes

1. The Dominant Provider shall publish the information required in KPIs **(i) and (ii)** below in relation to the provision of DLE FRIACO to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of DLE FRIACO to itself).
2. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) and (ii)** below in relation to the provision of DLE FRIACO to itself.

Volume of orders provisioned

- (i) the total number of Committed Orders that became Completed Orders during the Reporting Period;

Volume of faults reported

- (ii) the total number of Faults registered during the Reporting Period.

Annex 3

Direction under the Quality of Service Condition (EA5) in the Wholesale Broadband Access Review

Direction under section 49 of the Communications Act 2003 and Condition EA5 imposed on the Dominant Provider as a result of the analysis of both the market for asymmetric broadband origination in the United Kingdom (excluding the Hull Area) and the market for broadband conveyance in the United Kingdom in which the Dominant Provider has been found to have significant market power

Whereas:

- (A) as a result of a market analysis carried out by the Director he proposed on 28 April 2003 and on 16 December 2003 in accordance with sections 48(2) and 80 of the Act that the Dominant Provider has significant market power in both the market for asymmetric broadband origination in the United Kingdom (excluding the Hull Area) and the market for broadband conveyance in the United Kingdom;
- (B) by virtue of the Transitional Provisions the Director was able to exercise the powers under the Act for an interim period. Ofcom has now assumed those powers as of 29 December 2003;
- (C) Ofcom having considered every representation duly made, and thereafter on 13 May 2004 pursuant to sections 48(1) and 79 of the Act by way of publication of the Notification identified the relevant services markets, made market power determinations to the effect referred to in Recital (A) above and set certain SMP Services Conditions on the Dominant Provider to take effect on 13 May 2004, such as Condition EA5;
- (D) this Direction concerns matters to which Condition EA5 relates;
- (E) for the reasons set out in Section 3 of the explanatory memorandum accompanying this Direction Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - (ix) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (x) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (xi) proportionate to what it is intended to achieve; and
 - (xii) in relation to what it is intended to achieve, transparent.

- (F) for the reasons set out in Section 3 of the explanatory memorandum accompanying this Direction Ofcom is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (G) on 27 May 2004 Ofcom published a notification of the proposed Direction in accordance with section 49 of the Act;
- (H) Ofcom has considered every representation about the proposed Direction duly made to it; and

NOW, therefore, pursuant to section 49 of the Act and Condition EA5 in Schedule 1 to the Notification, Ofcom gives the following Direction:

10. The Dominant Provider shall publish or provide to Ofcom as required the information specified in:
 - c) Parts 1 and 2 of Annex A to this Direction in relation to the provision of End User Access ("the End User Access KPIs");
 - d) Parts 1 and 2 of Annex B to this Direction in relation to the provision of Virtual Paths ("the Virtual Path KPIs"); and
 - e) Parts 1 and 2 of Annex C to this Direction in relation to the provision of ATM Interconnection Circuits ("the ATM Interconnection Circuit KPIs").
11. The Dominant Provider shall first publish or provide to Ofcom as required the End User Access KPIs and the Virtual Path KPIs within 14 Working Days of 23 January 2005 in relation to the preceding month, and subsequently within 14 Working Days of the last Working Day of every month in respect of that month.
12. The Dominant Provider shall first publish or provide to Ofcom as required the ATM Interconnection Circuit KPIs within 14 Working Days of 23 March 2005 in relation to the preceding three months, and subsequently within 14 Working Days of each successive period of three calendar months.
13. The Dominant Provider shall publish or provide to Ofcom as required the End User Access KPIs, the Virtual Path KPIs and the ATM Interconnection Circuit KPIs by placing a copy of such information on any relevant website operated or controlled by the Dominant Provider.
14. The Annexes to this Direction form part of the Direction.
15. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
16. For the purpose of interpreting this Direction the following definitions shall apply:
 - "Act" means the Communications Act 2003;
 - "Acknowledged Order" means an Order which the Dominant Provider has acknowledged receipt of to the Third Party;
 - "ATM Interconnection Circuit" means an Interconnection circuit provided by the Dominant Provider to a Third Party for the purpose of conveying

Asynchronous Transfer Mode (ATM) traffic between the Dominant Provider's and a Third Party's network;

"Committed Order" means an Order for which a Contract Delivery Date has been confirmed;

"Completed Order" means an Order which has been provisioned and for which all other related work has been carried out;

"Contract Deliver Date" means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

"Director" means the Director General of Telecommunications;

"Dominant Provider" 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;

"DSL" (Digital Subscriber Line) means a group of technologies known as DSL or xDSL, capable of transforming ordinary phone lines (also known as "local loops") into high speed digital lines;

"DSLAM" (Digital Subscriber Loop Access Multiplexer) means apparatus sited in the same exchange building as is used to terminate DSL enabled local loops, which comprises a bank of DSL Modems and a multiplexer which combines many customer lines into one data path;

"End User Access" means that part of the network which is the DSL connection between the End User and the DSLAM and includes the situation where the Dominant Provider supplies and installs the End User Modem and where the supply and installation of the End User Modem is not carried out by the Dominant Provider;

"Fault" means a degradation or problem with the Completed Order which is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider's operational support system;

"Hull Area" means the area defined as the 'Licensed Area' in the license granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

"Installed Base" means the average number of End User Access, Virtual Paths or ATM Interconnection Circuits, as appropriate, which are in use during the Reporting Period;

"KPI" means key performance indicator;

"Modem" (modulate-demodulate) means a device that converts a digital signal into an analogue Signal for transmission purposes and which also receives analogue Signals and converts them back to digital Signals;

“Notification” means the Notification referred to in Recital (C) of this Direction above, as published on 13 May 2004;

“Order” means a request for End User Access, Virtual Paths or ATM Interconnection Circuits, as appropriate, submitted to the Dominant Provider by a Third Party;

“Rejected Order” means an Order which the Dominant Provider is unable to deliver and which is cancelled at the instigation of the Dominant Provider;

“Reporting Period” means the month in respect of which the Dominant Provider is required to publish or provide to Ofcom as required the End User Access KPIs or the Virtual Path KPIs, as appropriate, and the period of three calendar months in respect of which the Dominant Provider is required to publish or provide to Ofcom as required the ATM Interconnection Circuit KPIs;

“Restored Service” means the point at which the End User Access, Virtual Path or ATM Interconnection Circuit, as appropriate, in relation to which a Fault was registered becomes available again for use by the Third Party;

“Third Party” means either:

- a) a person providing a Public Electronic Communications Network; or
- b) a person providing a Public Electronic Communications Service;

“Top Ten” means the top ten largest Third Parties, excluding the Dominant Provider, requesting End User Access, Virtual Paths or ATM Interconnection Circuits, as appropriate, from the Dominant Provider during the Reporting Period measured by Installed Base; whereas the top ten should be determined by the Dominant Provider during the first Reporting Period and re-determined by the Dominant Provider every 12 months thereafter;

“Transitional Provisions” means sections 408 and 411 of the Act, Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 and Article 3(2) of the Office of Communications 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003;

“Virtual Path” means an established path from the DSLAM through the network to the point of Network Access with a Communications Provider’s network;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

17. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act

18. For the purpose of interpreting this Direction:

- (i) headings and titles shall be disregarded; and
- (ii) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

19. This direction shall take effect on the day it is published.

A handwritten signature in black ink that reads "Gareth Davies". The signature is written in a cursive, flowing style.

Gareth Davies
Director, Competition Policy

23 September 2004

Annex A

End User Access KPIs

Part 1: Indicators

2. The Dominant Provider shall publish the information required in KPIs **(i) to (vi)** below in relation to the provision of End User Access to:
 - e) all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of End User Access to itself);
 - f) the Top Ten Third Parties (as separate figures, save that individual Third Party names should not be published);
 - g) all Third Parties excluding the Top Ten Third Parties (as an aggregate figure); and
 - h) itself.
3. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (vi)** in relation to the provision of End User Access to the Top Ten Third Parties (as separate figures, including individual Third Party names).
4. Where the Dominant Provider does not provide End User Access to itself, it shall instead publish or provide to Ofcom as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Percentage of orders rejected

- (xii) the percentage of Acknowledged Orders that became Rejected Orders during the Reporting Period;

Percentage of orders provisioned on time

- (xiii) the percentage of Committed Orders that became Completed Orders by the Contract Delivery Date during the Reporting Period;

Percentage of new provisions reported as faulty

- (xiv) the percentage of Completed Orders that were reported as having a Fault during the Reporting Period whereby that Fault was reported within 28 calendar days of the date that it became a Completed Order;

Percentage of installed base reported as faulty

- (xv) the number of Completed Orders that were registered as having a Fault during the Reporting Period, measured as a percentage of the mean of the Installed Base;

Average time to restore service

- (xvi) the average time (in hours) during the Reporting Period for the Dominant Provider to achieve Restored Service after a Fault has been registered;

Percentage of repeat faults

- (xvii) the percentage of Faults that were reported as having a further Fault during the Reporting Period whereby the further Fault was registered within 28 calendar days of the Dominant Provider achieving Restored Service of the previous Fault.

Annex A

End User Access KPIs

Part 2: Volumes

3. The Dominant Provider shall publish the information required in KPIs **(i) to (iv)** below in relation to the provision of End User Access to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of End User Access to itself);
4. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iv)** below in relation to the provision of End User Access to:
 - a) Top Ten Third Parties (as separate figures, including individual Third Party names); and
 - b) itself.
5. Where the Dominant Provider does not provide End User Access to itself, it shall instead publish or provide to Ofcom as required) the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Volume of orders submitted

- (i) the total number of Orders submitted to the Dominant Provider that became Acknowledged Orders during the Reporting Period;

Volume of orders provisioned

- (ii) the total number of Committed Orders that became Completed Orders during the Reporting Period;

Volume of installed base

- (iii) the number of Installed Base during the Reporting Period;

Volume of faults reported

- (iv) the number of Faults where the Dominant Provider subsequently achieved Restored Service during the Reporting Period;

Annex B

Virtual Path KPIs

Part 1: Indicators

1. The Dominant Provider shall publish the information required in KPIs **(i) to (iii)** below in relation to the provision of Virtual Paths to:
 - a) all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Virtual Paths to itself);
 - b) the Top Ten Third Parties (as separate figures, save that individual Third Party names should not be published);
 - c) all Third Parties excluding the Top Ten Third Parties (as an aggregate figure); and
 - d) itself.
2. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iii)** in relation to the provision of Virtual Paths to the Top Ten Third Parties (as separate figures, including individual Third Party names).
3. Where the Dominant Provider does not provide Virtual Paths to itself, it shall instead publish or provide to Ofcom as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Percentage of orders rejected

- (i) the percentage of Acknowledged Orders that became Rejected Orders during the Reporting Period;

Percentage of orders provisioned on time

- (ii) the percentage of Committed Orders that became Completed Orders by the Contract Delivery Date during the Reporting Period;

Average time to restore service

- (iii) the average time (in hours) during the Reporting Period for the Dominant Provider to achieve Restored Service after a Fault has been registered.

Annex B

Virtual Path KPIs

Part 2: Volumes

1. The Dominant Provider shall publish the information required in KPIs **(i) to (iii)** below in relation to the provision of Virtual Paths to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Virtual Paths to itself);
2. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) to (iii)** below in relation to the provision of Virtual Paths to:
 - a) Top Ten Third Parties (as separate figures, including individual Third Party names; and
 - b) itself.
3. Where the Dominant Provider does not provide Virtual Paths to itself, it shall instead publish or provide to Ofcom as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Volume of orders submitted

- (i) the total number of Orders submitted to the Dominant Provider that became Acknowledged Orders during the Reporting Period;

Volume of orders provisioned

- (ii) the total number of Committed Orders that became Completed Orders during the Reporting Period;

Volume of faults reported

- (iii) the number of Faults where the Dominant Provider subsequently achieved Restored Service during the Reporting Period.

Annex C

ATM Interconnection Circuit KPIs

Part 1: Indicators

1. The Dominant Provider shall publish the information required in KPIs **(i) and (ii)** below in relation to the provision of ATM Interconnection Circuits to:
 - a) all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of ATM Interconnection Circuits to itself);
 - b) the Top Ten Third Parties (as separate figures, save that individual Third Party names should not be published); and
 - c) all Third Parties excluding the Top Ten Third Parties (as an aggregate figure).
2. The Dominant Provider shall publish the information required in KPI **(i) and (ii)** below in relation to the provision of ATM Interconnection Circuits to itself.
3. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) and (ii)** in relation to the provision of ATM Interconnection Circuits to the Top Ten Third Parties (as separate figures, including individual Third Party names).
4. Where the Dominant Provider does not provide ATM Interconnection Circuits to itself, it shall instead publish or provide to Ofcom as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Percentage of orders provisioned on time

- (i) the percentage of Completed Orders that were completed by the Contract Delivery Date during the Reporting Period;

Average time to restore service

- (ii) the average time (in hours) during the Reporting Period for the Dominant Provider to achieve Restored Service after a Fault has been registered.

Annex C

ATM Interconnection Circuit KPIs

Part 2: Volumes

1. The Dominant Provider shall publish the information required in KPIs **(i) and (ii)** below in relation to the provision of ATM Interconnection Circuits to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of ATM Interconnection Circuits to itself);
2. The Dominant Provider shall provide to Ofcom the information required in KPIs **(i) and (ii)** below in relation to the provision of ATM Interconnection Circuits to:
 - a) Top Ten Third Parties (as separate figures, including individual Third Party names); and
 - b) itself.
3. Where the Dominant Provider does not provide ATM Interconnection Circuits to itself, it shall instead publish or provide to Ofcom as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services.

Volume of orders provisioned

- (iv) the total number of Committed Orders that became Completed Orders during the Reporting Period;

Volume of faults reported

- (v) the number of Faults where the Dominant Provider subsequently achieved Restored Service during the Reporting Period.

Annex 4

List of representations received in response to the consultation issued on 27 May 2004

BT
Cable and Wireless
Caudwell Communications
Centrica
UKCTA
Uniworld

Annex 5

Glossary

This glossary is without prejudice to the definitions used in the draft notification of proposals set out in Annex 1.

Analogue: the direct representation of a waveform, as opposed to digital, which is a binary coded representation

ATM Access Port: Connectivity between the Customer's site and the BT DataStream service can be provided by an ATM Access Port. The ATM Access Port is connected to the Customer by means of the BT ATM In-Span Handover product between the ATM Access Port and a point of hand-over with the Customer (typically in a BT footway box).

ATM Service: data services using Asynchronous Transfer Mode technology such as BT's DataStream family of products

BT: British Telecommunications plc.

CAL (Customer Access Circuit) – physical connection between a switch in BT's ATM network and the Communications Provider.

CP (Communications Provider): a provider of electronic communications services to third parties whether over its own network or otherwise.

CPS (Carrier pre-selection): A mechanism which allows users to select, in advance, alternative communications providers to carry their calls without having to dial additional codes (while keeping their existing phone line).

CSI (Customer Sited Interconnection): The Interconnection circuit established when BT provides a point of interconnection at the site of the interconnecting communications provider. In order to do so, BT has to extend its network out to the point of interconnection, by providing a 2 Mbit/s circuit up to the site of the operator

CSH (Customer Sited Handover): CSH is when BT provides a point of interconnection at the site of the interconnecting communications provider. In order to do so, BT has to extend its network out to the point of interconnection and provide a CSH circuit along with CSH POC equipment; and

DMAs (Data Management Amendments): Changes necessary for BT to set up new services and routes under the operator's request.

DMSU (Digital Main Switching Unit): a tandem exchange primarily used for connecting calls between DLEs.

DSL (digital subscriber line): a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as "twisted

copper pairs”) into high-speed digital lines, capable of supporting advanced services such as fast Internet access and video-on-demand. ADSL (Asymmetric Digital Subscriber Line), HDSL (High data rate Digital Subscriber Line) and VDSL (Very high data rate Digital Subscriber Line) are all variants of xDSL.

DSLAM (Digital subscriber line access multiplexer) An apparatus sited in the same exchange building as is used to terminate DSL enabled copper loops, which comprises a bank of DSL modems and a multiplexer which combines many customer lines into one data path.

DLE FRIACO: digital local exchange FRIACO. The provision of Flat Rate Internet Access Call Origination via a wholesale unmetered Internet access product from BT at the local exchange.

End User Access (EUA) previously known as “End User Data Path” – the ADSL connection between the end user and the DSLAM in the local serving exchange

FRIACO (Flat Rate Internet Access Call Origination): the provision of Flat Rate Internet Access Call Origination via wholesale unmetered Internet access product from BT.

IEC (Interconnection Extension Circuit) An IEC allows an interconnecting communications provider with an existing ISI to extend this point of interconnection to a new building. In order to do this, BT will provide a 2MBit/s circuit between the two buildings.

Indirect access: where a customer establishes a connection with a particular operator’s network by dialling a short code to switch through the network on which his exchange line terminates. Such calls are usually billed by the Indirect Access operator.

Interconnection: the circuiting (whether directly or indirectly by physical or logical means, or by a combination of physical or logical means) of one Public Electronic Communications Network to another for the purpose of enabling the persons using one of them to be able:

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that Network or by another person);

IP (Internet Protocol): the packet data protocol used for routing and carriage of messages across the Internet and similar networks.

Integrated Services Digital Network (ISDN): a network evolved from the digital PSTN which provides digital exchange lines to customers and 64kbps end to end digital connectivity between them. Two or more 64kbps connections can be combined to provide a higher speed connection, eg 128kbps.

ISH (In Span Handover circuits)/ISI (In Span Interconnection) ISH/ISI is when two communications providers build out their networks to a handover point located between their switches. The handover point is normally close to the BT exchange and therefore most of the responsibility of the build is the responsibility of the interconnecting communications provider

Kingston: Kingston Communications (Hull) PLC – communications company which operates in the Hull area.

Leased lines (also known as private circuits) a permanently connected communications circuit between two premises dedicated to the customers' exclusive use.

Local loop unbundling (LLU): a process by which an incumbent's exchange lines (local loops) are physically disconnected from its network and connected to other providers' networks. This enables operators other than the incumbent to use the local loop to provide services directly to customers.

Narrowband: a service or connection allowing only a limited amount of information to be conveyed, such as for telephony. This compares with broadband which allows a considerable amount of information to be conveyed.

NRAs: the body or bodies, legally distinct and functionally independent of the telecommunications organisations, charged by a Member State with the elaboration of, and supervision of compliance with, communications authorisations.

NTS (Number Translation Services): telephone services using non-geographic numbers, where that number is translated to a geographic or mobile number for final delivery to the called party.

PPCs (Partial Private Circuits): a generic term used to describe a category of private circuits that terminate at a point of connection between two operators' networks. It is therefore the provision of transparent transmission capacity between a customer's premises and a point of connection between the two operators' networks. It may also be termed a part leased line. It includes terminating segments.

PSTN: Public Switched Telephone Network

SMP: The Significant Market Power test is set out in European case law, the new Directives and the Commission's SMP Guidelines. It is used by the National Regulatory Authorities (NRA) such as Ofcom to identify those operators who must meet additional obligations under the relevant Directive.

Standard Service: An interconnection service which BT is required to provide.

SurfPort24: An unmetered port-based package offered by BT Global Services that enables remote access between end-users and host computers using IP technology. SurfPort24 enables ISPs and communications providers to provide unmetered Internet access to their users for a fixed monthly fee on a national basis in the UK.

ST FRIACO: Single Tandem FRIACO. The provision of Flat Rate Internet Access Call Origination via a wholesale unmetered Internet access product from BT at the tandem exchange.

Voice: Service originally provided on an analogue exchange line (single 64 kbit/s channel). Most residential consumers obtain their voice telephony service via either analogue exchange lines, or cable telephony.

VP (Virtual Path): ATM virtual path connection between the DSLAM and the hand-over point. This includes; the backhaul circuit between the DSLAM and the 'first' ATM switch, conveyance across BT's ATM network (if required) and a path through the customer access circuit which connects the 'last' ATM switch to the communications providers.

Wholesale ISDN30 Line Rental: an Electronic Communications Service provided by BT to a Third Party for the use and Ordinary Maintenance of an ISDN30 Exchange Line;

Wholesale line rental (WLR): Wholesale Line Rental (WLR) is a facility offered to communications providers that allows them to rent an exchange line from BT on wholesale terms, and resell it to an end-user. The provider can also rent those Supplementary Services normally made available by BT over an exchange line. The term here refers to any and all of the following provided by BT:

- (i) Wholesale Residential Analogue exchange line services;
- (ii) Wholesale Business Analogue exchange line services;
- (iii) Wholesale Business ISDN2 Line Rental; and
- (iv) Wholesale ISDN30 Line Rental;