

Review of fixed geographic call termination markets

Identification and analysis of markets, determination of market power and setting of SMP conditions

Final Explanatory Statement and Notification

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EXPLANATORY STATEMENT

Summary

A new regulatory regime

S.1 A new regulatory framework for electronic communications networks and services entered into force in the UK on 25 July 2003. The basis for the new framework is five new EC Communications Directives that are designed to create harmonised regulation across Europe. Four of these Directives have been implemented in the UK since 25 July 2003 via the Communications Act 2003 ('the Act'). The fifth will be implemented later this year.

S.2 The Act provides for functions, powers and duties to be carried out by Ofcom which include functions, powers and duties flowing from the four EC Communications Directives. Certain existing functions are also transferred to Ofcom. However, Ofcom is not expected to assume full functions under the Act until 29 December 2003. For this reason, transitional arrangements are in place so as to allow for the Director General of Telecommunications ('the Director') to carry out functions under the Act until that time.

S.3 The new Directives require National Regulatory Authorities ('NRAs') to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

Previous consultation

S.4 In its review of competition in the provision of fixed geographic call termination services, Oftel has published two consultation documents both of which were entitled *Review of fixed geographic call termination markets*. These were published on 17 March 2003 and 26 August 2003. The period of consultation for the second document (referred to throughout this document as 'the second consultation') closed on 26 September 2003.

The present document

S.5 The Director has considered responses to the second consultation and these included one from the Commission. As a result, the present document establishes the Director's final decisions and, at Annex B, includes the Notification under section 48(1) of the Act recording his decision.

S.6 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 Act, the Director's draft

decisions were sent to the Commission. This document has also been sent to the Commission.

Summary of the decision

S.7 This document needs to be read in conjunction with the first and second consultations for a full understanding of the Director's reasons for his final decisions, and for further explanation as to the intended effect of these decisions. In summary, the Director has identified the markets for fixed geographic call termination on BT's network, Kingston's network and on the networks of each of the fixed public electronic communications networks (PECNs) set out at Annex A to Schedule 3 to the Notification at Annex B. Each fixed geographic call termination market is a separate identifiable economic market. The Director has also found that each PECN provider (also referred to as PECNs throughout this document) identified in Schedules 1, 2 and 3 to the Notification has significant market power (SMP) in the provision of its own network fixed geographic call termination services. As a result of the Director's conclusions, he has set out the conditions under which services must be made available in Schedules 1, 2 and 3 to the Notification. The conditions vary between different sets of PECNs as a result of differing competitive conditions in related retail markets.

S.8 The main difference between the Director's draft decision and his final decision is a reduction in the number of PECNs found to have SMP in the markets for fixed geographic call termination. The reduction in the number of PECNs found to have SMP reflects evidence provided to the Director to the effect that certain PECNs are not providing fixed geographic call termination services. As these PECNs are not providing services considered in this review they cannot therefore have SMP. Of tel does not believe that this reduction in the number of PECNs found to have SMP is a material change to Of tel's proposals, as these communications providers do not provide the service that is being considered in this review. There is therefore no need to regulate them or consider regulation in this context. They would however be subject regulatory obligations if they were ever found to have SMP in any other market(s).

Identification of markets

S.9 The services considered in this review are fixed geographic call termination services. However, the Director does not consider that call termination on non-geographic services or mobile services are in the same market as fixed geographic call termination. The Director has identified the following economic markets in accordance with competition law principles, for the purpose of ensuring that regulatory obligations are proportionate and objectively justifiable:

fixed geographic call termination on each individual network.

S.10 The detail of the definition of these markets, and the approach taken by the Director in identifying these markets, was outlined in Chapter 2 and Annex A to the second consultation. That document also explained the differences between the market definitions identified by the Director and those set out in the Commission Recommendation on Relevant Product and Service Markets in accordance with the Framework Directive (2003/311/EC) (referred to throughout this document as the 'Commission Recommendation').

Assessment of market power

S.11 The Director has found that all providers of fixed networks that terminate fixed geographic traffic have SMP in the provision of call termination on their network. In reaching this conclusion, the Director has taken the utmost account of the *Commission's Guidelines on market analysis and the assessment of SMP* (the 'SMP Guidelines').

S.12 This view is consistent with the Director's view as set out in the second consultation document. However, as explained in paragraph S.8, the list of PECNs believed to have SMP has been amended as a result of correspondence with some of the parties.

Regulatory remedies

S.13 As each provider of fixed geographic call termination services has SMP and, as such, could behave to an appreciable extent independently of competitors, customers and ultimately consumers, the Director has decided to impose the following conditions:

- (a) to require all providers of fixed PECNs to provide call termination ('network access') to all public communications providers if they are reasonably requested to do so and to set fair and reasonable terms for their call termination services. (Disputes could be referred to the Director and he would determine what would constitute fair and reasonable terms);
- (b) BT's charges for call termination services should be subject to a price control and its charges should be set on the basis of its forward looking long-run incremental costs; and
- (c) for calls terminating on Kingston's network inside the Hull Area, it should be required to set its charges for those services on the basis of its forward looking long-run incremental costs.

S.14 In addition, for BT and, separately, for calls terminating on Kingston's network inside the Hull Area, the Director proposes that they should publish cost-accounting information, separate accounts, a reference offer, and give advance notification of changes to their charges. The differences between the regulatory

approaches adopted for BT, and for calls terminating on Kingston's network inside the Hull Area, and the other fixed PECNs stem from the fact that BT, and Kingston inside the Hull Area, possess SMP in related retail markets.

S.15 Oftel discusses the remedies further in Chapters 3 and 4 of this document. Reference should also be made to Chapters 4 and 5 of the second consultation.

Discontinuation of the present regime

S.16 In Chapter 7 Oftel has set out the licence conditions and the Directions under which services in the relevant markets were regulated under the Telecommunications Act 1984 regime that was effective until 25 July 2003. These licence conditions and Directions were continued for an interim until the completion of this market review. As the Director has now concluded this review, he is also discontinuing all continued licence conditions and Directions as they are now redundant. The Discontinuation notices themselves are set out at Annexes D to I.

Chapter 1

Background and consultation process

Scope of this review and regulation to be replaced

1.1 This review has considered the markets for fixed geographic call termination services. BT (in the UK except inside the Hull Area¹) and Kingston (inside the Hull Area) were designated as operators with SMP under Directive 97/33/EC (the “Interconnection Directive”) and, until the completion of this review were, therefore, subject to regulatory controls under that regime. As a consequence, BT and Kingston were obliged:

- to offer fixed geographic call termination services;
- to publish a reference interconnection offer;
- to set cost-oriented charges;
- to give ninety days’ notice before changing call termination charges;
- not to unfairly discriminate in the provision of services between operators and their own retail businesses; and
- to publish separate accounts

1.2 In addition, BT has been subject to a charge control since October 2001 under which it has been required to reduce its call termination charges on average by RPI-10% in each charge control year. This control was set on the basis that it was to last for four years.

1.3 For calls terminating on Kingston’s network inside the Hull Area, charges are set on the basis of Kingston’s current cost accounting fully allocated costs (CCA FAC), as directed by the Director².

1.4 Other PECNs (including for calls terminating on Kingston’s network outside the Hull Area) agreed to set their charges for fixed geographic call termination services on the basis of BT’s charges under a reciprocal charging agreement established in 2001.

1.5 As the Director has now established the regulatory obligations to apply under the new regime, he proposes to discontinue the regulatory obligations that have applied under the old regime that ended on 24 July 2003 and were continued until the completion of this review (see Chapter 7).

¹ “Hull Area”: the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under Section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.

² Direction under the provision of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a dispute between British Telecommunications plc and Kingston Communications (Hull) plc (Kingston), 22 October 2001

A new regulatory regime

1.6 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 new EC Communications Directives.

Implementation of the new regime

1.7 The Act provides for functions, powers and duties to be carried out by Ofcom. These include functions, powers and duties flowing from the four EC Communications Directives. Certain existing functions are also transferred to Ofcom. However, Ofcom is not expected to assume full functions under the Act until 29 December 2003. For this reason, transitional arrangements are in place as described in the following paragraph.

1.8 The Communications Act 2003 (Commencement Order No. 1) Order 2003 has been made under sections 408 and 411 of the Act. This order commences certain provisions of the Act for the purpose of enabling the networks and services functions under those provisions to be carried out by the Director until such time as those functions are transferred to Ofcom later in the year. Accordingly, references in those provisions of the Act are, for the present time, to be read as references to the Director.

Market reviews

1.9 The new Directives require National Regulatory Authorities ('NRAs') to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. This document concludes one of the market review processes that the Director commenced in anticipation of the new regime. The Director published two earlier consultation documents both of which were entitled *Review of fixed geographic call termination markets* (the 'first consultation' and the 'second consultation'), which was published on 17 March 2003 and 26 August 2003 respectively. The Director then published the second consultation document of the same title on 26 August 2003.

1.10 The Director has considered responses to the second of those documents (having earlier considered response to the first) and is now setting out his final decision in the present document. The Notification giving effect to the Director's decision is set out at Annex B.

1.11 More detailed requirements and guidance concerning the conduct of market reviews are provided in the Directives, the Act, and in additional documents

issued by the Commission and Oftel. As required by the new regime, in conducting this review, Oftel has taken the utmost account of the Commission publications on relevant product and service markets and its Guidelines on market analysis and the assessment of SMP.

Obligation to inform the Commission and other NRAs

1.12 As required by Article 7 of the Framework Directive and sections 50 and 81 of the Act, Oftel's draft proposals set out in the second consultation were sent to the Commission and to other NRAs. The Commission and other NRAs were entitled to make comments on the proposals. If the Commission believed that any of the market definitions, or proposals to designate or not designate any PECN with SMP, would create a barrier to the single market or if the Commission had serious doubts as to the proposals compatibility with Community law, it was entitled to issue a notice under Article 7(4) of the Framework Directive. In these circumstances, the Director would have been required by section 82 of the Act to delay adoption of the draft proposals for a further period of 2 months while the Commission considered its position. However, the Commission did not issue such a notice. The Director is therefore entitled to proceed with a final decision under section 79 of the Act.

Services considered in this review

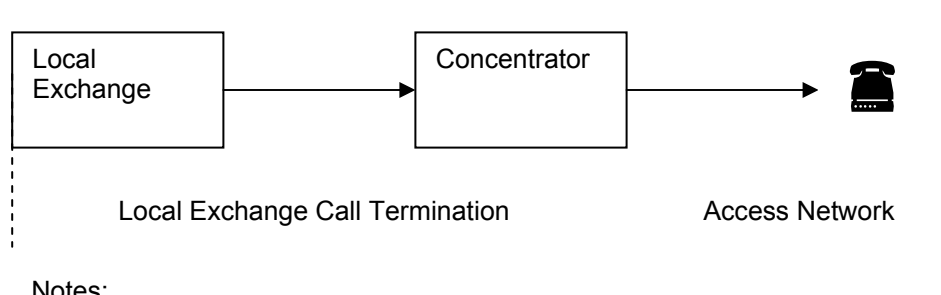
1.13 Retail customers expect (and demand) to be able to speak with or send data to any other retail customer irrespective of the network to which the called party is connected. PECNs therefore need to interconnect with each other to allow calls to be seamlessly delivered between them. However, there are costs associated with the delivery of calls between and over networks and the recipient PECN expects the requesting (or originating) PECN to pay those delivery costs relevant to termination. This review considered the final service needed to deliver a call to a called party on a fixed (i.e. not mobile) network. This service is fixed call termination. In this particular review, Oftel considered fixed *geographic* call termination only.

1.14 There are four main inland wholesale conveyance services which are services sold and purchased by PECNs to allow calls to cross networks. These services are:

- fixed geographic call origination (which is the conveyance of a call from the customer to the local exchange);
 - local-tandem conveyance (which conveys a call to or from the local exchange to the tandem or trunk exchange and involves use of the tandem exchange);
 - inter-tandem conveyance (which conveys a call between two tandem or trunk exchanges and involves use of one of the tandem exchanges); and
 - fixed geographic call termination (which involves conveyance between the local exchange and the called customer).
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1.15 An end-to-end BT call from London to Birmingham, for instance, would need to use call origination, local-tandem conveyance, inter-tandem conveyance, local-tandem conveyance (again) and call termination. This consultation is concerned with the wholesale conveyance service fixed geographic call termination only. This service is shown in diagram 1. The consultation document entitled the *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets* considers other inland wholesale conveyance services.

Diagram 1 - Fixed geographic call termination



Notes:

- (1) The concentrator may be co-located with the local exchange; and
- (2) The costs of the local access network are recovered through the retail line rental charge. The local exchange and concentrator terminating costs are recovered through the wholesale call termination charge.

Outline of this document

1.16 The rest of the document is structured as follows:

- Chapter 2 sets out the Director's final decisions on market definition and SMP;
- Chapter 3 sets out the regulatory obligations for BT;
- Chapter 4 sets out the regulatory obligations for all other PECNs;
- Chapter 5 summarises Of tel's proposals for cost accounting and accounting separation in this market;
- Chapter 6 explains the relationship between this market review and BT's credit vetting supplemental agreement;
- Chapter 7 sets out the discontinued licence conditions and directions;
- Annex A lists respondents to the second consultation;
- Annex B contains the Notification setting out the Director's final measures;
- Annex C sets out a direction in relation to BT's credit vetting supplemental agreement;
- Annex D contains the Notice discontinuing certain of BT's licence conditions;

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- Annex E contains the Notice discontinuing certain of Kingston's licence conditions;
 - Annex F contains a Notice discontinuing the interconnection direction relating to reciprocal charging (C&W and Telewest);
 - Annex G contains a Notice discontinuing the interconnection direction relating to reciprocal charging (Inclarity and others);
 - Annex H contains a Notice discontinuing the interconnection direction relating to BT's credit vetting supplemental agreement; and
 - Annex I contains a Notice discontinuing the interconnection direction relating to customer sited interconnect (BT and Orange).
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Chapter 2

Final decisions: market definition and SMP

2.1 The Director's decisions covering the definition of the relevant markets and the existence of SMP within those markets are set out in this chapter. These decisions take full account of respondents' representations to the second consultation document.

Market definition

2.2 The Director has defined the economic market as fixed geographic call termination on each individual network.

2.3 This view is consistent with that set out in the first and second consultations and also reflects respondents' views. The detailed reasoning for coming to this conclusion was set out in Chapter 2 and Annex A to the second consultation document.

Responses to the second consultation and Oftel's views

2.4 Respondents broadly agreed with Oftel's market definition. Generally, throughout this consultation, respondents have been more concerned with the market power findings and the remedies applied rather than the market definition employed by Oftel. In this case, the market definition is broadly consistent with the Commission's recommendation. There is a slight difference in that Oftel has focussed on fixed geographic call termination services only whereas the Commission's recommendation (fixed call termination on each individual network) could be adjudged to include non-geographic call termination services as well. The difference is justifiable in that non-geographic call termination markets are subject to different payment arrangements that are not purely 'calling party pays' and, moreover, they are competitive in the UK. Oftel's market definition is therefore slightly narrower than that recommended by the Commission.

Market power

2.5 Oftel believes that **all PECNs** who terminate fixed geographic calls have SMP in the provision of call termination services when providing such services to all other PECNs. The Director has therefore designated that each relevant PECN has SMP.

2.6 This view is consistent with that set out in the first and second consultations. Oftel has also considered respondents' views. The detailed reasoning for coming to this conclusion was set out in Chapter 3 to the second consultation.

Responses to the second consultation and Oftel's views

2.7 As with the market definition, respondents to the second consultation did not dwell on the SMP designations. But this does not detract from those set out previously in which respondents expressed concerns – verbally as well as in writing – about the proposed finding of SMP in each and every case. Oftel understands that the level of countervailing buyer power in each and every case is key to the ability to increase prices above the competitive level. However, as explained in the first and second consultations, Oftel does not believe that the level of countervailing buyer power in many, if any, of the interrelationships between PECNs is likely to be of the precise magnitude to ensure that prices would be set at the competitive level. In addition, Oftel does not believe that a thorough assessment of every single interrelationship would be proportionate and neither is it likely to be beneficial to retail customers, as, if anything, prices would be likely to increase. PECNs' compliance costs would almost certainly increase as a result of such detailed scrutiny of each interrelationship. Oftel would also find it difficult to manage such a process

2.8 Oftel is strongly of the view that its assessment of SMP between PECNs is appropriate and that the potential and, moreover, the incentive to increase call termination charges needs to be met with appropriate remedies designed to encourage efficiency and fair and sustainable competition. However, in recognition of the fact that the precise extent of countervailing buyer power in each case may vary, Oftel has tried to ensure that the obligations that it is imposing do not create an unnecessary regulatory burden. Indeed, the proposed requirements should not increase the regulatory burden any more than current arrangements. They are, however, more explicit in that there is now a requirement to provide call termination services and this should assist transparency.

Commission response

2.9 In its response, the Commission stated that it is necessary to set out a detailed assessment of the competitive effects (at the retail level) of the obligations to be imposed on BT in order to conclude that all other PECNs have SMP. The immediate effect of the requirement on BT to buy call termination from other networks is that BT no longer has countervailing buyer when buying call termination services and therefore other networks have SMP in the provision of call termination to BT. As these networks have SMP, they have an incentive to increase their prices. Oftel agrees that it is necessary for there to be actual or potential concerns about the possible impact of competitiveness at the retail level to justify regulation at the wholesale level. But, in this case, it is difficult to predict with any certainty what would be the longer-term effects of the withdrawal of regulation in these markets. However, Oftel has considered the possible effects on the retail market.

2.10 At the retail level, in the short-term, it could be expected that the majority of retail customers (who are connected to BT's network) would pay more for calls to other networks, as the operators of these networks would have a dual incentive to increase their termination charges. As the calling party pays, terminating providers naturally have an incentive to raise the charge for termination to maximise their call termination revenues and profitability. In providing termination services to competitors in the retail market, a terminating provider has a further incentive to increase its call termination charge. This is because the terminating provider not only increases its revenues but it also increases its competitors' end-to-end retail costs. This peculiarity to this market review is known as the call termination externality.

2.11 Oftel therefore believes that, in the absence of regulation, other PECNs would have a strong incentive to set call termination prices above the competitive level and this would give them a commercial advantage over BT and would be a distortion of competition. Belgacom's response to the first consultation supports this view. It commented that in the absence of regulation in call termination markets prices are likely to rise (see paragraph 5.22 of the second consultation). In the short-term, customers of networks other than BT's might benefit from lower prices. However, in the longer-term, as charges for call termination would not be competitively neutral, BT would become less competitive because of its increased costs, which would not reflect any inefficiency on its part and so would be a distortion of competition. Moreover, other PECNs' charges for call termination would almost certainly be set above the competitive level resulting in consumers paying prices for calls to those networks that were too high. This would stem from the regulatory obligation on BT to buy call termination services, which would remove its potential countervailing buyer power.

Other responses

2.12 In correspondence and discussions with a number of the communications providers provisionally designated as having SMP, Oftel was advised that the providers in question did not terminate fixed geographic calls in the manner set out in the first and second consultations (see diagram 1 in this final statement). In the second consultation, Oftel explained that call termination was in this case a service that connected incoming calls from the final terminating exchange to the retail customer. This is the monopoly service in question and cannot be purchased from anyone other than the terminating PECN. A retail customer wishing to call someone connected to that PECN has no choice other than to contact that network.

2.13 The communications providers querying the designation explained that they offered indirect access or re-routing services behind fixed geographic numbers and were not therefore terminating calls on those numbers. In short, they

explained that the call's final destination was not on their network and that they were not therefore terminating calls.

2.14 In terms of the market definition and the explanation supporting SMP in this case, this is correct. The fact that these communications providers use fixed geographic numbers for indirect access services and might actually be paid for call termination does not mean that they are in fact providing fixed geographic call termination services. Oftel has, therefore, revised the list of PECNs deemed to have SMP.

2.15 In its response, BT explained that, as its universal service obligations require it to send calls to all PECNs, and only the terminating PECN can terminate such calls, all communication providers 'terminating' calls must have SMP. It also explained that it pays these providers for call termination. This complicates the situation. At the wholesale level, BT is not sending these calls to other PECNs for onward transit either nationally or internationally and thus it pays them for call termination. However, these communication providers are not themselves terminating calls to retail customers and therefore cannot have SMP in the market considered in this review. It would seem that BT may not know how these geographic number ranges are being used and nor does it need to know. Oftel has given this issue considerable thought.

2.16 In conclusion, Oftel considers that it is right to revise the list of PECNs with SMP, as those communications providers previously on the list do not control access to a retail customer. All they control is access to a geographic number. At the retail level, customers can decide whether or not they wish to use these providers for indirect access services. If any communication provider increased its charge for 'termination' this would be passed onto the customer choosing to use their services and, as a result, the retail customer would be likely to choose another provider of retail indirect access services. The customer does not have a choice over which number to dial to reach the person they are contacting but they do have a choice via which, if any, indirect access provider they wish to route their calls.

2.17 At the wholesale level, Oftel considers that the call termination externality would be present if BT was required to buy call termination from these communication providers and had no way of recovering its increased costs. An increase in the provider's termination charge would increase BT's costs and the terminating provider's revenues. At the retail level, the 'terminating' provider would therefore obtain a competitive advantage over BT. However, in this case, Oftel believes that BT could choose to reflect the higher termination charges in its retail prices for calls to the relevant number ranges. BT's retail business would therefore be able to pay its wholesale business more for a call terminating on the particular provider's number range(s). That said, Oftel recognises that this could present practical difficulties.

2.18 If BT chose to reflect its higher outgoing costs in its retail prices, the indirect access service provider's retail service would be less competitive. The retail customer would be paying more for calling the access number behind which the indirect access service provider's retail service was being offered and might therefore choose to switch to an alternative provider of calls. This suggests that an increase in the termination charge would not prove to be profitable.

2.19 Alternatively, under section 185(1) of the Act, BT or any other party in dispute could choose to refer the matter to Oftel for resolution.

2.20 Of those that queried the SMP designation, most already set their charges for call termination on the basis of BT's call termination charges and, as such, Oftel expects the impact of removing the proposed SMP designation to be negligible. For those designated as SMP providers, Oftel believes that the incremental regulatory costs are likely to be low. The major difference between the new regime and the old regime is that regulation in this market is now explicit and transparent.

Chapter 3

Regulatory remedies: BT

The framework for imposing regulatory remedies

3.1 As explained in Chapter 2, the Director has found that all PECNs who terminate fixed geographic calls have SMP in the provision of such services on their networks. In this chapter, Oftel has set out the SMP conditions that apply to BT. In Chapter 4, Oftel has set out the SMP conditions that apply to all other relevant PECNs.

3.2 Section 87(1) of the Act provides that where the Director has made a determination that a person has SMP in the market reviewed, he shall set such SMP conditions as he considers appropriate and as are authorised under the Act. This implements Article 8 of the Access Directive.

3.3 Paragraphs 21 and 114 of the Commission's SMP Guidelines state that this means that Oftel must impose one or more SMP conditions on a dominant provider. Furthermore, the SMP Guidelines state that the imposition of no SMP conditions on a dominant provider would be inconsistent with the new regime. Thus, the Director is under an obligation to impose at least one appropriate SMP condition on any undertaking where they have been found to have SMP.

3.4. Sections 45-50 and 87-92 of the Act set out the regulatory obligations that the Director can impose if he finds that any undertaking has SMP. Sections 87 to 92 implement Articles 9 to 13 of the Access Directive and Articles 17 to 19 of the Universal Service Directive. The potential regulatory obligations relevant to this review are:

- the provision of network access;
- no undue discrimination;
- transparency;
- cost recovery, including price controls; and
- cost accounting and accounting separation.

3.5 Recital 27 of the Framework Directive provides that ex ante regulation should only be imposed where competition is not effective and where competition law remedies are not sufficient to address the problem. In this case, Oftel has found that competition is not effective. In addition, as a result of the call termination externality (see paragraph 2.10), Oftel does not believe that it would be appropriate to rely on competition law.

3.6 Section 4 of the Act sets out the Community duties on the Director flowing from Article 8 of the Framework Directive. The Director in considering whether to propose any conditions has considered all of these requirements. In particular,

he has considered the requirement to promote competition in relation to the provision of electronic communications networks and electronic communications services. The Director has also considered the requirement to secure efficient and sustainable competition. The Director has therefore considered which SMP conditions are needed to prevent distortion in downstream markets.

3.7 In particular, as well as being appropriate (section 87(1)), each SMP condition must also satisfy the tests set out in section 47 of the Act, namely that each condition must be:

- a. objectively justifiable in relation to the networks, services or facilities to which it relates;
- b. not such as to discriminate unduly against particular persons or a particular description of persons;
- c. proportionate to what the condition is intended to achieve; and
- d. in relation to what it is intended to achieve, transparent.

3.8 It is the Director's view that the proposals contained in this chapter satisfy the relevant requirements specified in the Act and relevant European Directives. This view is explained in detail in the following paragraphs.

Aims of the conditions

3.9 In Chapter 4 of the second consultation document Of tel set out the proposed conditions to apply to BT and the reasons why they were required. This chapter therefore needs to be read in conjunction with that chapter which expands on the reasons why each of the SMP conditions is needed.

Responses to the second consultation and Of tel's views

3.10 BT was the only respondent that commented and its comments were relatively minor. BT focussed on the differences between the proposed treatment of it and Kingston. In the second consultation, Of tel proposed that Kingston should be subject to less regulation when providing call termination services outside the Hull Area. Of tel explained that, as Kingston does not have SMP in retail markets outside the Hull Area, it would be unlikely that any discriminatory behaviour would have a material impact on retail competition. BT therefore argued that it should also be subject to less regulation for call termination provided inside the Hull Area, as it does not have SMP in retail markets inside the Hull Area.

3.11 The argument has some merit. As explained in the second consultation, there is no need to require Kingston not to discriminate in the provision of call termination services outside the Hull Area as any discrimination would be unlikely to have a material impact on competition in retail markets. The logic might therefore lead to the conclusion that, as BT does not have SMP in related retail

markets inside the Hull Area, any discrimination would be unlikely to have a material impact on competition in retail markets inside the Hull Area. But OfTel does not believe that this needs further consideration at this point in time. BT does not terminate calls inside the Hull Area and the argument is therefore purely theoretical. If BT started to terminate calls inside the Hull Area, OfTel would need to consider whether any discriminatory behaviour on its part would distort competition in retail markets inside the Hull Area.

3.12 In its response, BT also commented that the definition of “Third Party” in Conditions BA1.1, BB1.1 and BC1.1 means that, as providers of Public Electronic Communications Services do not possess any physical infrastructure, they could not buy call termination services. As BT noted, the definition was chosen to ensure consistency with other wholesale reviews. However, the Director is aware that it is currently necessary to own physical infrastructure to purchase call termination services.

- ***Requirement to provide network access (Condition BA1)***

3.13 Condition BA1 requires BT to provide network access (that is, fixed geographic call termination services) and to do so on fair and reasonable terms. It also requires BT to provide such network access as the Director may from time to time direct, and allows the Director to make a direction under the condition. It is set pursuant to sections 83(3) and (5) and 45(10) of the Act. This condition meets the tests set out in sections 87(4) and 47 of the Act.

3.14 In the absence of an obligation to provide call termination, BT would have an incentive to refuse to do so, as other PECNs would not be able to offer a sustainable alternative retail service if they were unable to offer outgoing calls to the majority of fixed access customers.

3.15 Section 47 requires conditions to be justifiable, non-discriminatory, proportionate and transparent. Condition BA1 is objectively justifiable, in that it relates to the need to ensure that competition develops to the benefit of consumers. It does not discriminate unduly, in that it is imposed on BT and, as explained in Chapter 4, all other fixed PECNs who terminate fixed geographic calls. It is proportionate, since it does not require BT to provide access if the request is unreasonable, and it only requires access to be provided to public communications networks providers. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

3.16 The tests set out in section 87(4) of the Act have been met in that it is feasible for BT to provide network access and the absence of call termination on its network would undermine competition. The condition should also help to secure effective competition in the long term.

- ***Obligation not to unduly discriminate in the provision of such access (Condition BA2)***

3.17 Condition BA2 prohibits BT from unduly discriminating in provision of network access. It also sets out that ‘undue’ discrimination may be deemed to have occurred where BT favours its own business to a material extent so as to disadvantage competitors. It is set pursuant to section 87(6)(a) of the Act. This condition meets the tests set out in section 47 of the Act.

3.18 In the absence of an obligation not to unduly discriminate, BT would have a strong incentive to do so, as its retail business could be offered favourable terms and this would give its retail business a competitive advantage over equivalent activities.

3.19 Condition BA2 is objectively justifiable, in that it provides safeguards to ensure that competitors, and hence consumers, are not disadvantaged by BT discriminating in favour of its own retail business or between its own different activities. It does not discriminate unduly against BT, in that it reflects BT’s proposed SMP in relevant retail calls markets as well as its SMP in fixed geographic call termination markets, and therefore its potential for using SMP to distort competition in other markets. It also reflects the fact that BT is a vertically integrated PECN. It is proportionate in that discrimination is only prohibited if it is ‘undue’. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Obligation to set charges on the basis of forward looking long-run incremental costs (Condition BA3)***

3.20 Condition BA3 requires BT to set charges on the basis of its forward-looking long-run incremental costs. It also clarifies that any charges for services subject to a price control must also be cost-oriented in terms of this condition, and allows for the Director to make a direction under the condition. It is set pursuant to sections 87(9)(b) and (d), 87(10) and 45(10) of the Act. This condition meets the tests set out in sections 47 and 88 of the Act.

3.21 In the absence of this obligation, there is a risk that, given BT’s persistent SMP in the market, BT might fix or maintain its prices for call termination at an excessively high level, which in turn would be passed on to calling end users at the retail level. The proposed requirement to set cost-oriented charges is also necessary in order to enable competing providers to buy call termination services at pricing levels that might be expected in competitive markets. It therefore appears to the Director that this condition is appropriate in accordance with section 88 of the Act. The Director has taken the extent of BT’s investment into account as the condition provides for a mark-up relating to an appropriate return on capital employed.

3.22 Condition BA3 is objectively justifiable, as it will enable competitors to purchase services at charges that will enable them to develop competitive retail services to the benefit of consumers. As well as this, the condition is a proportionate response to competition in the market analysed, as it will allow BT (on a forecast basis) to make a rate of return commensurate with that which it might expect in competitive markets if efficient. It does not unduly discriminate against BT, in that it reflects the circumstances of BT (in particular, its level of vertical integration), and its potential for using market power in termination to distort competition in other markets. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Obligation under which charges would be subject to a charge control (Condition BA4)***

3.23 Condition BA4 requires BT to reduce its charges for call termination services in each charge control year (1 October to 30 September) by on average RPI-10%. It also allows for corresponding adjustments to be made in the following year in the event that BT's charges, on average, overshoot or undershoot the control. The condition also requires BT to supply the Director with information that will allow him to ensure that the control has been met in each year. It is set pursuant to sections 87(9)(a) and (d), and 87(10) of the Act. This condition meets the tests set out in sections 47 and 88 of the Act.

3.24 As discussed above, the Director takes the view that BT's SMP in the market is persistent and, in the absence of this condition, likely to result in prices for call termination over BT's network being excessively high, given the 'bottleneck' nature of termination markets. The Director believes that the RPI-10% charge control will encourage BT to increase its efficiency and prevent it from setting excessive charges. In addition, the condition should promote efficient and sustainable competition, as BT will be permitted to earn a reasonable return on its investment. The Director is therefore of the view that this condition satisfies the requirements of section 88 of the Act.

3.25 Condition BA4 is objectively justifiable in that the benefits of RPI-X regulation are widely acknowledged as an effective mechanism to reduce charges in a situation where competition does not act to do so. The value of 'X' is also objectively justifiable in that the assumptions made in assessing 'X' are still expected to result in BT having the opportunity to earn its cost of capital at the end of the control period if it proves to be efficient, as intended. The proposal to keep the current value of 'X' is proportionate, as the assumptions on which the current value of 'X' was set remain valid and reasonable (see paragraphs 4.85 to 4.90 of the second consultation for more detail). It is non-discriminatory as it reflects BT's position in national retail calls markets, and the likelihood of persistent SMP in the call termination market. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Obligation to publish a reference offer (Condition BA5)***

3.26 Condition BA5 requires BT to publish a reference offer setting out the terms, conditions and other provisioning procedures upon which it is willing to provide fixed geographic call termination services, and requires BT not to depart from these terms and conditions. It also requires BT to publish an additional reference offer detailing the terms and conditions upon which BT provides network access to its own business, should those terms and conditions differ from the standard reference offer. The condition sets out requirements for publication of the reference offer and its provision to the Director, and allows the Director to make directions under the condition (including requirements to modify a reference offer). It is set pursuant to sections 87(6)(b), (c), (d) and (e) and 45(10) of the Act. This condition meets the tests set out in section 47 of the Act.

3.27 In the absence of an obligation to publish a reference offer under which the terms, conditions and provisioning procedures were not readily available, the process for obtaining network access would more likely than not be cumbersome and lead to delays in provisioning.

3.28 Condition BA5 is objectively justifiable in that it requires that the terms and conditions should be published in order to encourage competition and provide stability in markets. It is proportionate, in that only information that is necessary to ensure that there is no material adverse effect on competition would have to be published. It does not discriminate in that it reflects the scale of BT's access network and thus its role as a provider of fixed geographic call termination services to other providers. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Obligation to notify proposed changes to charges in advance of them taking place (Condition BA6)***

3.29 Condition BA6 requires BT to notify the Director and every PECN with which it has a contract to provide fixed geographic call termination services of any proposed changes to its call termination charges ninety days before those changes can take place. It also requires certain information to be included with that notification, and requires BT to notify the Director of any proposed changes to charges for network access provided to itself which differs from that provided to others. It is set pursuant to sections 87(6)(b) and (c) and 45(10) of the Act. This condition meets the tests set out in section 47 of the Act.

3.30 In the absence of an obligation to provide advance notification of charge changes, providers of retail services would have insufficient time to restructure their retail prices as a result of a change in costs at the wholesale level. This could result in retail prices being either too high if the wholesale costs decreased or too low if the wholesale costs increased. This would therefore lead to the over-recovery or under-recovery of cost and potentially cause competitive concerns.

3.31 Condition BA6 is objectively justifiable, non-discriminatory, proportionate, and transparent. It is objectively justifiable, in that the benefits of prior publication and notification of charges outweigh any possible disadvantages (see paragraphs 4.113 to 4.115 to the second consultation). It is proportionate, in that only information that other network providers would need to know would have to be notified. It does not discriminate unduly against BT, in that it reflects BT's scale as a provider of fixed geographic call termination services to other providers. In addition, the condition and the intentions behind it, as explained in the second consultation, ensure that it is transparent.

Other issues

Price Control Monitoring

3.32 In the first and second consultations, Oftel explained that it proposed to monitor annual revenues for call termination services to see whether on average charge changes had decreased by the controlling percentage. These proposals did not meet with any dissent.

3.33 Condition BA4 hence requires BT to show that on average annual revenues for call termination decrease in each year by RPI-10%.

Product management, policy and planning

3.34 In a confidential response, the respondent expressed concern that upward movements in the charges for product management, policy and planning could have anti-competitive effects. The respondent explained that, as BT does not pay PPP for calls that remain on its network, it has an incentive to increase this surcharge and thus its competitors' costs. Oftel is aware of these incentives and has committed to investigate the costs associated with PPP. Until such time as that review is completed, the continuation notices maintaining the current control on PPP will remain in effect.

Chapter 4

Regulatory remedies: other PECNs

The framework for imposing regulatory remedies

4.1 As explained in Chapter 2, the Director has found that all PECNs who terminate fixed geographic calls have SMP in the provision of such services on their networks. In this chapter, Of tel has set out the SMP conditions that apply to all PECNs other than BT. Of tel has set out the SMP conditions that apply to BT in Chapter 3.

4.2 The first part of this chapter sets out the SMP conditions that apply to all PECNs designated as operators with SMP other than BT and Kingston. The second part sets out the SMP conditions that apply to Kingston for call termination services provided inside and outside the Hull Area.

4.3 Section 87(1) of the Act provides that where the Director has made a determination that a person has SMP in the market reviewed, he shall set such SMP conditions as he considers appropriate and as are authorised under the Act. This implements Article 8 of the Access Directive.

4.4 Paragraphs 21 and 114 of the Commission's SMP Guidelines state that this means that Of tel must impose one or more SMP conditions on a dominant provider. Furthermore, the SMP Guidelines state that the imposition of no SMP conditions on a dominant provider would be inconsistent with the new regime. Thus, the Director is under an obligation to impose at least one appropriate SMP condition on any undertaking they have been found to have SMP.

4.6 Sections 45-50 and 87-92 of the Act set out the regulatory obligations that the Director can impose if he finds that any undertaking has SMP. Sections 87 to 92 implement Articles 9 to 13 of the Access Directive and Articles 17 to 19 of the Universal Service Directive. The potential regulatory obligations relevant to this review are:

- the provision of network access;
- no undue discrimination;
- transparency;
- cost recovery, including price controls; and
- cost accounting and accounting separation.

4.7 Recital 27 of the Framework Directive provides that ex ante regulation should only be imposed where competition is not effective and where competition law remedies are not sufficient to address the problem. In this case, Of tel has found that competition is not effective.

4.8 Section 4 of the Act sets out the Community duties on the Director flowing from Article 8 of the Framework Directive. The Director in considering whether to propose any conditions has considered all of these requirements. In particular, he has considered the requirement to promote competition in relation to the provision of electronic communications networks and electronic communications services. The Director has also considered the requirement to secure efficient and sustainable competition. The Director has therefore considered which SMP conditions are needed to prevent distortion in downstream markets.

4.9 In particular, as well as being appropriate (section 87(1)), each SMP condition must also satisfy the tests set out in section 47 of the Act, namely that each condition must be:

- (a) objectively justifiable in relation to the networks, services or facilities to which it relates;
- (b) not such as to discriminate unduly against particular persons or a particular description of persons;
- (c) proportionate to what the condition is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

4.10 It is the Director's view that the proposals contained in this chapter satisfy the relevant requirements specified in the Act and relevant European Directives.

Fixed PECNs other than Kingston: aims of the conditions

4.11 In Chapter 5 of the second consultation document Oftel set out the proposed conditions to apply to fixed PECNs other than BT and the reasons why they were required. This chapter therefore needs to be read in conjunction with that chapter which expands on the reasons why each of the SMP conditions is needed.

Responses to the second consultation and Oftel's views

4.12 UKCTA (a joint response by a number of fixed PECNs) asked Oftel to make it clear that the requirement to meet reasonable requests should not require PECNs to enter into uneconomic relationships. Oftel considers that its views were made clear in the second consultation. But, nonetheless, it is willing to re-emphasise that Condition BC1 only requires PECNs to meet reasonable requests. Any request that is likely to involve the terminating PECN incurring more costs than it would be likely to save or be able to recoup as a result of meeting that request is unlikely to be reasonable. Nonetheless, as also explained, the Director cannot fetter his discretion and would need to look into the merits of any representations brought to his attention should a request for network access be refused.

4.13 In a confidential response, the respondent considered that Oftel's stance on reciprocity was unclear. It explained that Oftel stated in the second consultation that charges should in principle be based on BT's. However, the respondent stated that the document did not make it clear whether Oftel intended to review the current reciprocity agreement. For the sake of clarity, Oftel will set out its view here. This view is consistent with that set out in the second consultation.

4.14 For interrelationships with BT, Oftel believes that charges for call termination should be based on BT's charges. This would prevent the terminating PECN from setting excessive call termination charges and it also sends out the correct signals in terms of efficiency. However, Oftel does not intend to review the reciprocal charging call termination agreement. This was a commercially negotiated settlement.

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

4.16 For interrelationships between PECNs other than BT (and Kingston), Oftel believes that BT's charges for call termination could be used as a reasonable proxy. However, these PECNs could agree to set charges that were below BT's or otherwise introduce innovative call termination tariffs (e.g. on the basis of capacity). Oftel would only need to determine whether tariffs were or were not reasonable in the event of a dispute.

Final decision: fixed PECNs other than Kingston

Requirement to provide network access (Condition BC1)

4.17 Condition BC1 requires fixed PECNs (other than BT and Kingston) to provide network access (that is, fixed geographic call termination services) and do so on fair and reasonable terms. It also requires relevant fixed PECNs to provide such network access as the Director may from time to time direct, and allows the Director to make a direction under the condition. It is set pursuant to sections 83(3) and (5) and 45(10) of the Act. This condition meets the tests set out in sections 87(4) and 47 of the Act.

4.18 In the absence of an obligation to provide network access on fair and reasonable terms, PECNs would have an incentive to offer call termination on unreasonable terms and this might lead to higher retail prices.

4.19 Condition BC1 is objectively justifiable, as in the absence of regulation PECNs might choose to set excessive prices for call termination given the 'monopoly' nature of the service. It is non-discriminatory in that all PECNs who terminate fixed geographic traffic are required to meet reasonable requests and do so on fair and reasonable terms. It is proportionate, because it represents the minimum regulatory obligation consistent with the existence of SMP in these markets. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

4.20 In terms of section 87(4), amongst other things, the Director believes his proposals would help to secure effective competition in the long term and that it is technically and economically viable to provide such network access.

Kingston: aims of the conditions

4.21 In Chapter 5 of the second consultation document Oftel set out the proposed conditions to apply to Kingston and the reasons why they were required. This chapter therefore needs to be read in conjunction with that chapter which expands on the reasons why each of the SMP conditions is needed.

Responses to the second consultation and Oftel's views

4.22 BT and Kingston were the only respondents that commented on the proposed regulatory remedies for Kingston. BT repeated its view that Kingston should be subject to price controls. However, as explained in the second consultation document, Oftel does not believe that a price control would presently be a proportionate response to SMP in this case. But, nonetheless, Oftel notes BT's view.

4.23 In general, Kingston accepted that the proposed remedies were appropriate as Oftel had differentiated between Kingston's activities inside and outside of the Hull Area. However, Kingston made a number of general points about the manner in which Oftel was proceeding.

4.24 First, Kingston was concerned that the definition of the Hull Area continues to refer to its Telecommunications Act 1984 licence. Kingston believes that the definition should refer to a geographic area rather than an area defined in a lapsed licence. Oftel notes Kingston's comments. However, it has not been possible, as yet, to produce a more succinct and accurate definition for the area in which it Kingston operates than that under the former licence. It therefore proposes to use the definition on which it consulted with reference to the licence granted under the Telecommunications Act 1984.

4.25 Second, Kingston also expressed concern that the second consultation referred to components that do not necessarily equate to those within Kingston's network and the document also stated that Oftel would discuss further the

appropriate basis of charges in the context of its financial reporting obligations. On the former, Kingston stated that it would be content to discuss refinements to the list in the context of the financial reporting obligations and, as discussed in Chapter 5, the list does not now accompany the conditions. On the latter, Oftel does not believe that it is necessary to delay implementation of the new requirements until the financial reporting consultation is complete, as proposed by Kingston. However, Oftel understands that Kingston requires certainty. Oftel believes that Condition BB3.2 provides the Director with sufficient flexibility to accept that charges set on the basis of CCA FAC meet the current requirements of the condition. Charges set on the basis of CCA FAC are a good proxy for charges based upon LRIC plus mark-ups if appropriate accounting methodologies are used reflecting economic principles of asset valuation and cost causation.

4.26 Third, Kingston explained that currently it sets interim (starting) charges each year based on cost estimates and then revises these charges at each year's end based on actual costs and seeks recompense or reimburses PECNs as appropriate. Charges therefore, on average, reflect its costs. However, Kingston enquired whether it would be able to retrospectively set charges based on cost under the new regime given the proposed requirement to give advance notification of charge changes. As delays in reimbursing PECNs or setting charges based on cost are not a desired outcome, Oftel believes that it seems sensible for this practice to continue until such time as (or if) a forward-looking (charge) control is set. In addition, as the intention behind advance notification of charge changes is to allow competitors to change retail prices in line with reductions in wholesale costs, it seems less apparent that advance notification of a retrospective charge change would serve any purpose. Oftel is of the view that it may be appropriate for Kingston to seek consent under Condition BB5.1 disapplying the obligation for that particular purpose.

Final decision: Kingston

- ***Requirement to provide network access (Condition BB1)***

4.27 Condition BB1 requires Kingston to provide network access (that is, fixed geographic call termination services) and to do so on fair and reasonable terms. It also requires Kingston to provide such network access as the Director may from time to time direct, and allows the Director to make a direction under the condition. This obligation applies to Kingston's call termination services throughout the UK. It is set pursuant to sections 83(3) and (5) and 45(10) of the Act. This condition meets the tests set out in sections 87(4) and 47 of the Act.

4.28 In the absence of an obligation to provide network access on fair and reasonable terms, Kingston would have an incentive to offer call termination on unreasonable terms and this might lead to higher retail prices. For providers competing in the Hull Area, Kingston might refuse to offer call termination

altogether. Competition would not therefore be sustainable, as the majority of customers in the Hull Area would be connected to Kingston's network.

4.29 Condition BB1 is objectively justifiable, in that it relates to the need to ensure that competition develops to the benefit of consumers. It does not discriminate unduly, in that it is imposed on Kingston and all other fixed PECNs who terminate fixed geographic calls. It is proportionate, since it does not require Kingston to provide access if the request is unreasonable, and it only requires access to be provided to public communications providers. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

4.30 The tests set out in section 87(4) of the Act have been met in that it is feasible for Kingston to provide network access and the absence of call termination on its network would undermine competition. The condition should also help to secure effective competition in the long term.

- ***Requirement not to unduly discriminate (Condition BB2)***

4.31 Condition BB2 prohibits Kingston from unduly discriminating in provision of network access. It also sets out that 'undue' discrimination may be deemed to have occurred where Kingston favours its own business to a material extent so as to disadvantage competitors. This condition applies to Kingston's call termination activities inside the Hull Area only. It is set pursuant to section 87(6)(a) of the Act. This condition meets the tests set out in section 47 of the Act.

4.32 In the absence of an obligation not to unduly discriminate, Kingston would have a strong incentive to do so, as its retail business could be offered favourable terms and this would give its retail business a competitive advantage over equivalent activities.

4.33 Condition BB2 is objectively justifiable, in that it provides safeguards to ensure that competitors, and hence consumers, are not disadvantaged by Kingston discriminating in favour of its own retail business or between its own different activities inside the Hull Area. It does not discriminate unduly against Kingston, in that it reflects Kingston's SMP in relevant retail calls markets as well as its SMP in fixed geographic call termination markets, and therefore its potential for using SMP to distort competition in other markets. It is proportionate in that discrimination is only prohibited if it is 'undue', and because the scope of the proposed condition is limited to the Hull Area. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Basis of charges (Condition BB3)***

4.34 Condition BB3 requires Kingston to set charges on the basis of its forward-looking long-run incremental costs. This condition applies to the Hull Area only. It

is set pursuant to sections 87(9)(b) and (d), 87(10) and 45(10) of the Act. This condition meets the tests set out in sections 47 and 88 of the Act.

4.35 In the absence of this obligation, there is a risk that, given Kingston's persistent SMP in the market, Kingston might fix or maintain its prices for call termination at an excessively high level, which in turn would be passed on to calling end users at the retail level. The proposed requirement to set cost-oriented charges is also necessary in order to enable competing providers to buy call termination services at pricing levels that might be expected in competitive markets. It therefore appears to the Director that this condition is appropriate in accordance with section 88 of the Act. The Director has taken the extent of Kingston's investment into account as the condition provides for a mark-up relating to an appropriate return on capital employed.

4.36 Condition BB3 is objectively justifiable and a proportionate response to the extent of competition in the markets analysed. The condition should enable competitors of Kingston inside the Hull Area to purchase services at charges that would provide them with an opportunity to develop competitive retail services to the benefit of consumers. Also, the condition allows Kingston to make a rate of return commensurate with that which it might expect in competitive markets. It is proportionate in that the Director has made it clear that charges based on CCA FAC are likely to provide a good proxy for charges based on LRIC plus mark-ups. It does not discriminate unduly against Kingston, in that it reflects the circumstances of Kingston inside the Hull Area, and its potential for using market power in termination to distort competition in other markets. In addition, the condition and the intentions behind it, as explained in the second consultation, ensure that it is transparent.

- ***Requirement to publish a reference offer (Condition BB4)***

4.37 Condition BB4 requires Kingston to publish a reference offer setting out the terms, conditions and other provisioning procedures upon which it is willing to provide fixed geographic call termination services, and requires Kingston not to depart from these terms and conditions. It also requires Kingston to publish an additional reference offer detailing the terms and conditions upon which Kingston provides network access to its own business, should those terms and conditions differ from the standard reference offer. The condition sets out requirements for publication of the reference offer and its provision to the Director, and allows the Director to make directions under the condition (including requirements to modify a reference offer). This condition applies to Kingston's call termination activities inside the Hull Area only. It is set pursuant to sections 87(6)(b), (c), (d) and (e) and 45(10) of the Act. This condition meets the tests set out in section 47 of the Act.

4.38 In the absence of an obligation to publish a reference offer under which the terms, conditions and provisioning procedures were not readily available, the

process for obtaining network access would more likely than not be cumbersome and lead to delays in provisioning.

4.39 Condition BB4 is objectively justifiable in that it requires that the terms and conditions should be published in order to encourage competition and provide stability in markets. It is proportionate, in that only information that is necessary to ensure that there is no material adverse effect on competition would have to be published. It does not discriminate in that it reflects the scale of Kingston's access network inside the Hull Area and thus its role as a provider of fixed geographic call termination services to other providers. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent.

- ***Requirement to notify prices (Condition BB5)***

4.40 Condition BB5 requires Kingston to notify the Director and every PECN with which it has a contract to provide fixed geographic call termination services of any proposed changes to its call termination charges ninety days before those changes can take place. It also requires certain information to be included with that notification, and requires Kingston to notify the Director of any proposed changes to charges for network access provided to itself which differs from that provided to others. This condition applies to the Hull Area only. It is set pursuant to sections 87(6)(b) and (c) and 45(10) of the Act. This condition meets the tests set out in section 47 of the Act.

4.41 In the absence of an obligation to provide advance notification of charge changes, providers of retail services would have insufficient time to restructure their retail prices as a result of a change in costs at the wholesale level. This could result in retail prices being either too high if the wholesale costs decreased or too low if the wholesale costs increased. This would therefore lead to the over-recovery or under-recovery of cost and potentially cause competitive concerns.

4.42 Condition BB5 is objectively justifiable, non-discriminatory, proportionate, and transparent. It is objectively justifiable, in that the benefits of prior publication and notification of charges outweigh any possible disadvantages (see paragraphs 5.113 to 5.115 to the second consultation). It is proportionate, in that only information that other network providers would need to know would have to be notified. It does not discriminate unduly against Kingston, in that it reflects Kingston's scale as a provider of fixed geographic call termination services inside the Hull Area to other providers. In addition, the condition and the intentions behind it, as explained in the second consultation, are transparent. The proportionality of the condition should also be considered in light of the discussions in paragraph 4.26 in which the Director has indicated that he would consider consenting to disapply this condition under certain circumstances.

Chapter 5

Cost accounting and accounting separation

5.1 This chapter covers regulatory financial reporting obligations that can be imposed on BT and Kingston to ensure that a number of the obligations set out in Chapters 3 and 4 are met. In particular, obligations of cost orientation, price controls and non-discrimination can require the imposition of financial reporting regimes to monitor SMP providers' compliance with these obligations. In particular, this chapter covers the imposition of obligations for cost accounting systems and accounting separation.

5.2 The Director considers that it is appropriate to impose cost accounting and accounting separation obligations on BT and Kingston in respect of their markets covered in this review. Paragraphs 5.6 to 5.12 and 5.17 to 5.20 outline why these financial reporting obligations are required.

5.3 The processes of regulatory financial reporting are complex and cover many issues such as accounting standards and methodologies, audit, transparency, disaggregation, reconciliation and publication of information. These practical issues are distinct from the questions such as the level of regulation in a market and the types of remedies to be employed, which have been addressed in the market reviews. However, these practical processes should be consistent across all markets susceptible to regulation to ensure that there is certainty both for the regulator, those subject to regulation and other players in the market.

5.4 Therefore, on 22 May 2003, the Director published the consultation document entitled *Financial reporting obligations in SMP markets*. That document can be found at http://www.oftel.gov.uk/publications/eu_directives/2003/cost/index.htm. The consultation period to that consultation closed on 31 July 2003 and responses to it can be accessed at <http://www.oftel.gov.uk/publications/responses/2003/cost0503/index.htm>.

5.5 The scope of that document was to address the issues of how the requirements for cost accounting and accounting separation will be implemented. It contained the draft cost accounting and accounting separation conditions. It also proposed the level of granularity required for such obligations to be imposed in a proportionate and appropriate manner. The Director intends to publish the explanatory statement and formal notifications on regulatory financial reporting at the end of the total market review process so that the requirements of the accounting separation condition and the cost accounting condition can reflect the findings of the individual reviews.

Cost accounting systems

5.6 Under sections 87(9) to 87(11) and 88 of the Act, appropriate cost accounting obligations may be imposed on providers with SMP in respect of the provision of network access, the use of the relevant network and the availability of relevant facilities. Cost accounting rules may be made in relation to charge controls, the recovery of costs and cost orientation.

5.7 As required by condition BA3 and BB3, the charges for fixed geographic call termination should be cost-oriented on the basis of LRIC and allow for an appropriate mark-up for the recovery of common costs. This requirement should ensure that BT's and Kingston's charges are constrained to enable competitors purchasing such services to compete with those SMP providers in downstream markets. In particular, the first and second consultations described why LRIC and the allowance of an appropriate mark-up for the recovery of common costs is a justifiable and proportionate response to the extent of competition in the markets analysed.

5.8 In addition, the Director is imposing charge controls on BT. As explained in Chapter 3, such charge controls are necessary to ensure that competition develops to the benefit of consumers and to encourage network efficiency. In particular, the first and second consultations described why a charge control is a justifiable and appropriate response to the extent of competition in the provision of fixed geographic call termination, and why the level of the charge control is proportionate. It should be noted that the Director is not currently proposing a charge control on the wholesale services offered by Kingston.

5.9 As BT and Kingston are required to set charges based on LRIC with an appropriate mark-up for the recovery of common costs, they should each maintain a cost accounting system that demonstrates that the obligations of cost orientation are being met. This will enable the Director to monitor compliance with this obligation. A cost accounting system is also necessary to provide the information necessary for the Director to set, monitor and review BT's charge control obligations.

5.10 The cost accounting obligations for BT will apply to the provision of fixed geographic call termination for which BT must demonstrate that its charges are set on the basis of its LRIC and an appropriate mark-up to allow for the recovery of common costs.

5.11 The cost accounting obligations for Kingston will apply to the provision of fixed geographic call termination inside the Hull Area for which Kingston must demonstrate that its charges are set on the basis of LRIC plus an appropriate mark-up for the recovery of common costs. However, in saying this, Ofcom recognises that charges based on CCA FAC can provide a good proxy for those

based on LRIC plus mark-ups if appropriate accounting methodologies are used reflecting economic principles of asset valuation and cost causation.

5.12 In summary in the consultation document entitled *Financial reporting obligations in SMP markets*, the Director proposed that BT and Kingston should be required to produce cost accounting information for these purposes and Annex C to that document set out the details of his proposals.

Communications Act Tests

5.13 Section 4 of the Act sets out the Community requirements for regulation. The Director has considered all of the criteria in section 4 of the Act. In particular, the imposition of a cost accounting obligation would specifically be justifiable and proportionate to promote competition in relation to the provision of electronic communications networks and services; and to ensure the provision of network access and service interoperability for the purpose of securing efficient and sustainable competition and the maximum benefit for the persons who are customers of communications providers. This is because the imposition of a cost accounting obligation will ensure that obligations designed to curb potentially damaging market power can be effectively monitored and enforced.

5.14 In addition, the Director has considered the tests laid out in section 88 of the Act. The Director believes that there is a relevant risk of adverse effects arising from price distortion. In particular, the market analysis has shown that BT and Kingston would have incentives to maintain some or all of their charges for call termination at an excessively high level, or impose a price squeeze so as to have adverse consequences for end-users. In the light of this analysis, and taking into account the level of investment of BT and Kingston, the Director is of the view that a cost accounting obligation is appropriate for the purposes of promoting efficiency, promoting sustainable competition, and conferring the greatest possible benefits on the end-users of public electronic communications services.

5.15 Section 47 of the Act requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. The Director believes that given the importance of cost orientation (for BT and Kingston) and charge controls (for BT) in these markets (as described in Chapters 3 and 4) the imposition of a cost accounting obligation is objectively justifiable. That is, in order to ensure that the obligations of cost orientation and charge control are met and the benefits are realised, it is essential that the Director is able to monitor the obligations via a cost accounting obligation. Furthermore, the cost accounting obligation does not discriminate between providers of the same class.

5.16 The proportionality and transparency of the financial reporting obligations are dealt with in more detail in the consultation document entitled *Financial reporting in SMP markets*. In that document, the Director proposed the amount of information required and the processes needed to ensure that the information is

fit for purpose, relevant and reliable. The Director will ensure that in imposing cost accounting obligations, they are both proportionate and transparent.

Accounting separation

5.17 Under sections 87(7) and 87(8) of the Act, appropriate accounting separation obligations may be imposed on a provider with SMP in respect of the provision of network access, the use of the relevant network and the availability of relevant facilities. That is to say, the SMP provider may be required to maintain a separation for accounting purposes between such different matters relating to network access or the availability of relevant facilities.

5.18 In Chapters 3 and 4, the Director explains that BT and Kingston are not allowed to unduly discriminate in the provision of fixed geographic call termination services (see Conditions BA2 and BB2). This is because where an SMP provider is vertically integrated it has an incentive to provide wholesale services on terms and conditions that discriminate in favour of its own retail activities in such a way that may have a material effect on competition.

5.19 Therefore, given the importance of this issue in ensuring an effectively competitive marketplace in the UK, the Director believes that it is necessary that BT and Kingston should be obliged to have accounting separation obligations. These obligations will enable the Director to monitor whether they are unduly discriminating against or between other providers or not, by making visible the wholesale charges and internal transfer charges of their services and products. Therefore, the accounting separation obligations for BT and Kingston will apply to fixed geographic call termination services.

5.20 In summary in the consultation document entitled *Financial reporting obligations in SMP markets*, the Director proposed that BT and Kingston should be required to separately account for these purposes and Annex H to that document set out the details of his proposals.

Communications Act tests

5.21 Section 4 of the Act sets out the Community requirements for regulation. The Director has therefore considered all of the criteria set out in that section. In particular, the imposition of an accounting separation obligation would specifically be justifiable and proportionate to promote competition in relation to the provision of electronic communications networks and services; to ensure the provision of network access and service interoperability for the purpose of securing efficient and sustainable competition and the maximum benefit for the persons who are customers of communications providers. This is because the imposition of an accounting separation obligation will ensure that obligations designed to curb potentially damaging market power can be effectively monitored and enforced.

5.22 Section 47 of the Act requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. The Director believes that given the importance of non-discrimination in these markets (as described in Chapters 3 and 4) the imposition of an accounting separation obligation is objectively justifiable. In order to ensure that the obligation not to unduly discriminate is met and the benefits are realised, it is essential that Ofel is able to monitor the obligations via an accounting separation obligation. Furthermore, the accounting separation obligation does not discriminate between operators of the same class.

5.23 The proportionality and transparency of the financial reporting obligations is dealt with in more detail in the consultation document entitled *Financial reporting in SMP markets*. In that document, the Director has proposed the amount of information required and the processes needed to ensure that the information is fit for purpose, relevant and reliable. The Director will ensure that any accounting separation obligation imposed is both proportionate and transparent.

5.24 As non-discrimination must be capable of being implemented, where appropriate, on a service or product basis it is not sufficient for monitoring to be carried out only at the market level, as this would not enable Ofel to identify whether products and services are being provided on a non-discriminatory basis.

Treatment of network components

5.25 Conditions BA5 and BB4 require BT and Kingston respectively to publish, as part of their reference offer, charges and transfer charges for the use of network components. In the second consultation the Director specified each and every network component. However, as a result of responses to that document and the document entitled *Financial reporting obligations in SMP markets*, the Director is giving further consideration to the list of network components specified and, as a result, believes that it would be prudent for the condition to allow him to specify the relevant necessary components for these purposes from time to time.

5.26 The final notification and explanatory statement on regulatory financial reporting obligations will contain a draft direction to implement a new network component list based on the ongoing review. The draft direction will be subject to consultation and hence interested parties will have an opportunity to comment on the Director's proposals with respect to network components.

5.27 This means that, for present purposes, BT and Kingston are not as yet required to publish charges and transfer charges for network components as part of their reference offers, as no network components have yet been specified by the Director. However, once the anticipated direction setting out the list of network components is finalised, the obligation to publish this information will enter into effect.

Chapter 6

BT's Credit Vetting Supplemental Agreement

6.1 On 20 February 2003, the Director issued a direction (the "Old Credit Vetting Direction") in accordance with the provisions of regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 for the resolution of a dispute between BT and the Operators listed in Schedule 2 of the Old Credit Vetting Direction regarding BT's Credit Vetting Supplemental Agreement. The Agreement is relevant in terms of the provision by BT of, amongst other services, its fixed geographic call termination services.

6.2 The requirements set out in the Old Credit Vetting Direction have not as yet been implemented into BT's Network Charge Control Standard Interconnect Agreement ("NCC SIA"). In order to ensure that the obligations imposed in the Old Credit Vetting Direction continue to be enforceable against BT, the Director believes that it is necessary to issue a new direction under the requirement to provide network access on reasonable request (the "New Credit Vetting Direction").

6.3 The Director considers that it is reasonable, in principle, for BT to have a credit vetting policy. BT has stated that its proposals are designed to give it a degree of protection without unduly restricting market entry for new operators or restricting growth for existing operators. The Director considers that such an objective is reasonable. However, having taken into account the views of BT and a number of other operators, following the consultation on the Old Credit Vetting Direction, the Director considers that certain changes should be made to this policy in order to ensure that BT's Credit Vetting Supplemental Agreement is reasonable and consistent with its stated aim.

6.4 The New Credit Vetting Direction can be found at Annex C. A draft of the New Credit Vetting Direction was consulted upon as part of the second consultation, in accordance with section 49 of the Act. The effect of the New Credit Vetting Direction was set out in paragraph 7.4 to the second consultation and the basis for implementing it and the reasons for doing so are set out below.

6.5 In the second consultation Oftel consulted on the draft New Credit Vetting Direction. No one commented on Oftel's proposals.

Communications Act tests

6.6 The Director considers the New Credit Vetting Direction meets the tests set out in the Act. The Director has considered all the Community requirements set out in section 4 and, in particular, the requirements to promote competition, secure efficient and sustainable competition and secure the maximum benefit for

end users. The Director considers that it is reasonable in principle for BT to have a Credit Vetting policy in place, as taking steps to prevent bad debt from occurring in the first place, is more efficient than taking steps only after the bad debt has been incurred. Maximum benefit for end-users will be secured where a solvent operator does not have to bear costs incurred as a result of the financial instability of an insolvent operator. The requirements on BT will ensure that its credit vetting policy is reasonable. The promotion of competition and the securing of efficient and sustainable competition will be ensured if the credit vetting policy is reasonable and does not restrict the ability of operators to compete.

6.7 The Director considers that the Old Credit Vetting Direction remains relevant, and that it is necessary to make the New Credit Vetting Direction in order to ensure that the measures set out in the Old Credit Vetting Direction remain in place. The Director is of the opinion that it is appropriate in principle for BT to have a credit vetting policy. However, this policy should be amended in accordance with the requirements on BT in order to ensure that BT's Credit Vetting Supplemental Agreement is reasonable and consistent with its stated aim.

6.8 In making a direction that affects the operation of a condition imposed under section 49 of the Act, the Director must first be satisfied that to do so is objectively justifiable, does not discriminate unduly, and is proportionate and transparent.

Objectively justifiable

6.9 The Director considers that the requirements on BT are objectively justifiable as they relate to the fair application of the Credit Vetting Supplemental Agreement, and will ensure that the Credit Vetting Supplemental Agreement is reasonable and sufficiently transparent. For example, BT is required to ensure that an operator can understand how any credit limit has been set. In addition, BT is also required to ensure that an operator is given written notice when a late payment, sufficient to infringe a provision of BT's Supplemental Agreement, has been made. Implementation of such requirements will ensure that competition between BT and communications providers is not distorted.

Not unduly discriminatory

6.10 The Director has also considered whether the New Credit Vetting Direction does not unduly discriminate between operators with SMP in this market. It is a commercial matter for these operators to decide whether they should implement a credit vetting policy, and the Director has not had to consider any other disputes relating to any such policies. However, where a credit vetting policy is introduced, it should be reasonable, proportionate and transparent. The introduction of a credit vetting policy should not distort competition and any allegation that this is the case can be considered by the Director.

Proportionate

6.11 The Director also considers that the requirements on BT will ensure that the Credit Vetting Supplemental Agreement is a proportionate solution to the issue that BT has identified. BT has stated that its credit vetting policy is designed to give it a degree of protection without unduly restricting market entry for new operators or restricting growth for existing operators. However, the Director considers that the requirements on BT ensure that its policy is consistent with this stated aim. For example, removal of the paragraphs of the Supplemental Agreement which refer to BT's ability to automatically reduce payment periods for invoices will ensure that the Credit Vetting Supplemental Agreement does not have an undue adverse impact on the cashflows of smaller operators. In addition, the implementation of appropriate dispute resolution procedures to disputes arising from disputed credit vetting reports will ensure that the level of security is not disproportionate to the credit risk that an operator may pose. Therefore, the New Credit Vetting Direction is the most proportionate method of ensuring that BT's policy is consistent with its stated aim.

Transparent

6.12 Furthermore, the New Credit Vetting Direction sets out clearly the requirements to be imposed on BT and therefore it meets the requirements of transparency.

The Access Guidelines

6.13 The Access Guidelines state that obligations relating to the supply of wholesale products must be based on the nature of the problem identified, proportionate and justified in light of the objectives in Article 8 of the Framework Directive. The New Credit Vetting Direction has been formulated in accordance with the nature of the problem identified, which is that the Current Credit Vetting Supplemental Agreement is not consistent with its stated aim. Section 4 of the Act gives effect to Article 8 of the Framework Directive. As section 4 of the Act has been considered above, further analysis of the objectives of Article 8 is not required. Furthermore, it has also already been stated why the New Direction is proportionate.

Chapter 7

Discontinuing existing regulation

7.1 The new Directives allow Member States to carry forward some existing regulation until each relevant market review has been completed and any new conditions applied as appropriate according to the competitiveness of each market. The power for the Director to do this is contained in paragraphs 9 and 22 of Schedule 18 to the Act. As NRAs were not able to notify draft proposals to the European Commission before 25 July 2003, the Director issued continuation notices to relevant communications providers to maintain some of the regulatory regime that existed before that date. Specified interconnection directions and licence conditions were made to continue in force by continuation notices given to BT, Kingston and other relevant communications providers on 21 and 23 July 2003 (the 'Continuation Notices'). These Continuation Notices came into effect on 25 July 2003. Further details are contained in the Director's statement "Continuing Licence Conditions after 25th July" of 10th September 2003, available at http://www.oftel.gov.uk/publications/eu_directives/cont_notices/cont0903.pdf

7.2 Paragraphs 9(11) and 22(9) of Schedule 18 to the Act imposes a duty on the Director, as soon as reasonably practicable after giving a continuation notice, to take the necessary steps to enable him to decide whether or not to set an SMP condition for the purpose of replacing the continued obligation. He must also decide whether or not to impose a new SMP condition for that purpose. As the Director has now concluded that the SMP conditions set out in Chapters 3 and 4 should apply in the markets covered in this review, present regulatory rules are surplus to requirements. OfTel therefore intends to discontinue the regulatory rules (licence conditions and directions) applicable to BT, Kingston and all other relevant communications providers in respect of fixed geographic call termination services. Discontinuation notices for BT, Kingston and other relevant communications providers, where applicable, are included at Annexes D to I to this document. The effect of the discontinuation notices will be to discontinue the continued conditions and directions, in so far as they apply to the markets identified in this document.

7.3 On 2 October 2003 the Director issued a consultation document entitled *Discontinuing licence conditions after 25th July 2003* (the "October consultation document"), which consulted on a model discontinuation notice, the process for discontinuation and the appropriateness of discontinuing a particular obligation in respect of a particular market review. In that consultation document, the Director set out at Annex 3 the continued conditions and at Annex 4 the continued directions which he believed applied in the markets covered by this document. These were:

For BT, Conditions 43, 45, 46, 47, 48, 49, 53, 65 and 69

For Kingston, Conditions 43, 45, 46, 47, 48, 49, and 53

7.4 Additionally, the Director proposed to discontinue the following Directions:

- Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc ("BT") and: (i) Cable & Wireless Communications (Mercury) Limited ("C&W"); and (ii) Telewest Communications plc & other Operators in the Telewest group of companies as set out in Annex A to the Direction ("Telewest"); concerning termination rates payable by BT to Operators based reciprocally upon BT's own termination charges under the Network Charge Control Regime.
- Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc ("BT") and: (i) Inclarity plc ("Inclarity"); and (ii) the Operators set out in Annex B of the Direction concerning termination rates payable by BT to Operators based reciprocally upon BT's own termination charges under the Network Charge Control Regime.
- Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a dispute between British Telecommunications plc ("BT") and the Operators listed in Schedule 2 regarding the credit vetting supplemental agreement
- Direction relating to a dispute between BT and Orange concerning the sharing of costs for customer sited interconnect under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997

7.5 The Director received no responses to that consultation that objected to his proposals.

7.6 The Director will therefore discontinue the licence conditions and directions in so far as they apply to the markets considered in this review.

Annex A

List of respondents

1. BT
2. CNS
3. European Commission
4. Kingston
5. PTS
6. UK Competitive Telecommunications Association

Of tel also received one confidential response

Annex B

NOTIFICATION PURSUANT TO SECTION 48(1) AND SECTION 79 OF THE COMMUNICATIONS ACT 2003

The identification of a market, the making of a market power determination in relation to that market and the setting of SMP services conditions under section 45 of the Communications Act 2003

WHEREAS

- (A) The Director General of Telecommunications (“the Director”) issued a notification pursuant to section 48(2) and section 80 of the Communications Act 2003 (“the Act”) setting out his proposals for the identification of markets, the making of market power determinations and the setting of SMP services conditions on 26 August 2003 (“the First Notification”);
 - (B) A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act, and to the European Commission and to the regulatory authorities of every other member State in accordance with sections 50(3) and 81 of the Act;
 - (C) By virtue of the Communications Act 2003 (Commencement Order No. 1) Order 2003 (“the Commencement Order”) made under sections 411 and 408 of the Act:
 - (i) certain provisions of the Act were commenced on 25 July 2003 for the purpose only of enabling the networks and services functions under those provisions to be carried out by the Director; and
 - (ii) those provisions of the Act are to have effect as if references to OFCOM were references to the Director;
 - (D) In the First Notification and the accompanying explanatory statement, the Director invited representations about any of the proposals set out therein by 26 September 2003;
 - (E) By virtue of section 80(6) of the Act, the Director may give effect to any proposals to identify a market for the purposes of making a market power determination or any proposals for making a market power determination set out in the First Notification, with or without modification, where:
 - (i) he has considered every representation about the proposals made to him within the period specified in the First Notification; and
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- (ii) he has had regard to every international obligation of the United Kingdom (if any) which has been notified to him for this purpose by the Secretary of State; but
 - (iii) the Director's power to give effect to such proposals is subject to sections 82 and 83 of the Act;
- (F) By virtue of section 48(5) of the Act, the Director may give effect to any proposals to set SMP services conditions set out in the First Notification, with or without modification, where:
 - (i) he has considered every representation about the proposals made to him within the period specified in the First Notification; and
 - (ii) he has had regard to every international obligation of the United Kingdom (if any) which has been notified to him for this purpose by the Secretary of State;
- (G) The Director received responses to the First Notification and has considered every such representation made to him in respect of the proposals set out in the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified the Director of any international obligation of the United Kingdom for this purpose;
- (H) The European Commission has not made a notification for the purposes of Article 7(4) of the Framework Directive as referred to in section 82 of the Act and the proposals do not relate to a transnational market as referred to in section 83 of the Act;

THEREFORE

1. The Director in accordance with section 79 of the Act identifies the following market/s for the purposes of making a market power determination:
 - (a) Fixed geographic call termination provided by British Telecommunications plc, whose registered company number is 1800000, including any subsidiary or holding company of it, 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 ('BT');
 - (b) Fixed geographic call termination provided by Kingston Communications (Hull) plc, whose registered company number is 2150618, including any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989 ('Kingston'); and
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- (c) Fixed geographic call termination provided by a person set out at Annex A of Schedule 3 to this Notification (the extent of each such person's public telephone network to constitute a separate market for the purposes of this Notification).
 - 2. The Director in accordance with section 79 of the Act makes the following market power determination/s that the following persons have significant market power in relation to the markets referred to in paragraph 1 above:
 - (a) in relation to the market in sub-paragraph (a), BT;
 - (b) in relation to the market in sub-paragraph (b), Kingston; and
 - (c) in relation to each of the markets in sub-paragraph (c), the corresponding person set out at Annex 1 of Schedule 3 to this Notification which provides the public telephone network in question.
 - 3. In accordance with sections 48(1) and 79 of the Act, the Director hereby sets pursuant to section 45 the SMP services conditions on the persons referred to in paragraphs 2(a), (b) and (c) above as set out in Schedules 1, 2, and 3 respectively, to this Notification to take effect, unless otherwise is stated in those Schedules, on the date of publication of this Notification.
 - 4. The effect of the decisions, and the Director's reasons referred to in paragraphs 1 to 3, are contained in the explanatory statement accompanying this Notification.
 - 5. In making the decisions referred to in paragraphs 1 and 2, the Director has taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of a Community instrument, and relate to market identification and analysis, as required by section 79 of the Act.
 - 6. In making the decisions referred to in paragraphs 1 to 3, the Director has considered and acted in accordance with the six Community requirements set out in section 4 of the Act.
 - 7. The Director considers that the SMP services conditions referred to in paragraph 3 comply with the requirements of sections 45 to 50 and sections 87 to 88 of the Act.
 - 8. The Director has sent a copy of this Notification to the Secretary of State in accordance with section 50(1)(a) and 81(1) of the Act and to the European Commission in accordance with sections 50(2) and 81(2) of the Act.
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9. In this Notification:

- (a) "United Kingdom" has the meaning given to it in the Interpretation Act 1978; and
- (b) except as otherwise defined, words or expressions used shall have the same meaning as in the Act.

DAVID ALBERT EDMONDS
DIRECTOR GENERAL OF TELECOMMUNICATIONS

28 NOVEMBER 2003

SCHEDULE 1

The conditions to be imposed on BT under section 45(1) and 45(8) of the Communications Act 2003 as a result of the analysis of the fixed geographic call termination market in which BT has been found to have significant market power

Part 1: Definitions and Interpretation of these conditions

1. These conditions shall apply to the market for fixed geographic call termination provided by the Dominant Provider ("the Market").
2. For the purpose of interpreting the conditions imposed on the Dominant Provider following a review of the market referred to in paragraph 1 the following definitions shall apply:

"Act" means the Communications Act 2003;

"Access Charge Change Notice" has the meaning given to it in Condition BA6.2;

"Approved Apparatus" means, in relation to any network, apparatus which meets the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000;

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

"Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

"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;

“Fixed Call Termination Wholesale Service” means an Electronic Communications Service provided by the Dominant Provider from (and over) the local exchange to (but not including the conveyance of Signals over) an Exchange Line;

“Network Component” means, to the extent they are used in the Market, the network components specified in any direction given by the Director from time to time for the purpose of these conditions;

“Network Termination Point” means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber. Where a Network Termination Point is provided at a fixed position on Served Premises it shall be within an item of Network Termination and Testing Apparatus;

“Network Termination and Testing Apparatus” means an item of apparatus comprised in an Electronic Communications Network installed in a fixed position on Served Premises which enables:

- (a) Approved Apparatus to be readily connected to, and disconnected from, the network;
- (b) the conveyance of Signals between such Approved Apparatus and the network; and
- (c) the due functioning of the network to be tested,

but the only other functions of which, if any, are:

- (i) to supply energy between such Approved Apparatus and the network;
 - (ii) to protect the safety or security of the operation of the network; or
 - (iii) to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);
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“Reference Offer” means the terms and conditions on which the Dominant Provider is willing to enter into an Access Contract;

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

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

“RPI” means the amount of the change in the Retail Prices Index in the period of twelve months ending on 30th June immediately before the beginning of a Relevant Year, expressed as a percentage (rounded to two decimal places) of that Retail Prices Index as at the beginning of that first mentioned period;

“Served Premises” means a single set of premises in single occupation where Apparatus has been installed for the purpose of the provision of Electronic Communications Services by means of an Electronic Communications Network at those premises;

“Third Party” means person providing a Public Electronic Communications Network or a Public Electronic Communications Service;

“Transfer Charge” means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within the Market and the use of Network Components in that Market;

“Usage Factor” means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity;

“Wholesale Service” means any services related to Network Access used by or offered to any Communications Provider (including the Dominant Provider)

3. 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.
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4. The Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament.
 5. Headings and titles shall be disregarded.
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Part 2: The conditions**Condition BA1 – Requirement to provide Network Access on reasonable request**

BA1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as the Director may from time to time direct.

BA1.2 The provision of Network Access in accordance with paragraph BA1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct.

BA1.3 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition.

Condition BA2 – Requirement not to unduly discriminate

BA2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access.

BA2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

Condition BA3 – Basis of charges

BA3.1 Unless the Director directs otherwise from time to time, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of the Director, that each and every charge offered, payable or proposed for Network Access covered by Condition BA1 is reasonably derived from the costs of provision based on a forward looking long-run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

BA3.2 For the avoidance of any doubt, where the charge offered, payable or proposed for Network Access covered by Condition BA1 is for a service which is subject to a charge control under Condition BA4, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of the Director, that such a charge satisfies the requirements of Condition BA3.1.

BA3.3 The Dominant Provider shall comply with any direction the Director may from time to time direct under this Condition.

Condition BA4 – Charge control

BA4.1 Without prejudice to the generality of Condition BA3, and subject to paragraphs BA4.4 and BA4.5, the Dominant Provider shall take all reasonable steps to secure that, during any Relevant Year, the Percentage Change (determined in accordance with paragraph BA4.2) in the aggregate of charges for Fixed Call Termination Wholesale Services is not more than the Controlling Percentage (determined in accordance with paragraph BA4.3).

BA4.2 The Percentage Change shall be calculated by employing the following formula:

$$C = \left[\frac{\sum_{i=1}^n \frac{R_{ti} V_{(t-1)i}}{V_{ti}} - \sum_{i=1}^n R_{(t-1)i}}{\sum_{i=1}^n R_{(t-1)i}} \right]$$

where:

C is the Percentage Change in charges for Fixed Call Termination Wholesale Service(s);

n = the number of Fixed Call Termination Wholesale Service(s);

$R_{(t-1)i}$ is the revenue from Fixed Call Termination Wholesale Service(s) in the year immediately preceding the Relevant Year where j is a specific Fixed Call Termination Wholesale Service;

R_{ti} is the revenue from Fixed Call Termination Wholesale Service(s) in the Relevant Year where j is a specific Fixed Call Termination Wholesale Service;

$V_{(t-1)i}$ is the actual volume of Fixed Call Termination Wholesale Service(s) in the year immediately preceding the Relevant Year where j is a specific Fixed Call Termination Wholesale Service;

V_{ti} is the volume of transactions of Fixed Call Termination Wholesale Service(s) in the Relevant Year where j is a specific Fixed Call Termination Wholesale Service.

For the avoidance of doubt, where there is more than one charge for a Fixed Call Termination Wholesale Service in any 24 hour period, such a difference in charge does not imply a distinct service.

BA4.3 Subject to paragraphs BA4.4 and BA4.5, the Controlling Percentage in relation to any Relevant Year means RPI reduced by 10 percentage points.

BA4.4 Where the Percentage Change in any Relevant Year is less than the Controlling Percentage, then for the purposes of paragraph BA4.1 the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph BA4.3, but increased by the amount of such deficiency.

BA4.5 Where the Percentage Change in any Relevant Year is more than the Controlling Percentage, then for the purposes of paragraph BA4.2 the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph BA4.3, but decreased by the amount of such excess.

BA4.6 BT shall, no later than three months after the end of each Relevant Year, supply to the Director, in writing, the data necessary to perform the calculation of the Percentage Change.

Condition BA5 – Requirement to publish a reference offer

BA5.1 Except in so far as the Director may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

BA5.2 Subject to paragraph BA5.8, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

- (a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of the Network Access);
 - (b) the locations of the points of Network Access;
 - (c) the technical standards for Network Access (including any usage restrictions and other security issues);
 - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
 - (e) any ordering and provisioning procedures;
 - (f) relevant charges, terms of payment and billing procedures;
 - (g) details of interoperability tests;
 - (h) details of traffic and network management;
 - (i) details of maintenance and quality as follows:
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
 - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
 - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
 - (iv) a definition and limitation of liability and indemnity; and
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- (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
 - (j) details of measures to ensure compliance with requirements for network integrity;
 - (k) details of any relevant intellectual property rights;
 - (l) a dispute resolution procedure to be used between the parties;
 - (m) details of duration and renegotiation of agreements;
 - (n) provisions regarding confidentiality of non-public parts of the agreements;
 - (o) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
 - (p) the standard terms and conditions for the provision of Network Access;
 - (q) the amount applied to:
 - (i) each Network Component used in providing Network Access with the relevant Usage Factors;
 - (ii) the Transfer Charge for each Network Component or combination of Network Components described above,reconciled in each case to the charge payable by a Third Party other than the Dominant Provider.

BA5.3 To the extent that the Dominant Provider provides to itself Network Access that:

- (a) is the same, similar or equivalent to that provided to any other person;
or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs BA5.2(a)-(q).

BA5.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date this Condition enters into force.

BA5.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date this Condition enters into force.

BA5.6 Publication referred to above shall be effected by:

(a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and

(b) sending a copy of the Reference Offer to the Director.

BA5.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

BA5.8 The Dominant Provider shall make such modifications to the Reference Offer as the Director may direct from time to time.

BA5.9 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

BA5.10 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition.

Condition BA6 – Requirement to notify charges

BA6.1 Except in so far as the Director may otherwise consent in writing, the Dominant Provider shall publish charges and act in the manner set out below.

BA6.2 The Dominant Provider shall send to the Director and to every Third Party with which it has entered into an Access Contract covered by Condition BA1 a written notice of any amendment to the charges on which it provides Network Access or in relation to any charges for new Network Access (an “Access Charge Change Notice”) not less than 90 days before any such amendment comes into effect.

BA6.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider’s current Reference Offer of the terms and conditions associated with the provision of that Network Access;
- (c) the date on which or the period for which any amendments to charges will take effect (the “effective date”);
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge;
- (e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies; and
- (f) the relevant network tariff gradient.

BA6.4 The Dominant Provider shall not apply any new charge identified in an Access Charge Change Notice before the effective date.

BA6.5 To the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
 - (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,
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in a manner that differs from that detailed in an Access Charge Change Notice in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it sends to the Director an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs BA6.3(a)-(f).

SCHEDULE 2

The conditions to be imposed on Kingston under section 45(1) and 45(8) of the Communications Act 2003 as a result of the analysis of the fixed geographic call termination market in which Kingston has been found to have significant market power

Part 1: Definitions and Interpretation of these conditions

1. These conditions shall apply to the market for fixed geographic call termination provided by the Dominant Provider ("the Market").
2. For the purpose of interpreting the conditions imposed on the Dominant Provider following a review of the market referred to in paragraph 1 the following definitions shall apply:

"Act" means the Communications Act 2003;

"Access Charge Change Notice" has the meaning given to it in Condition BB5.2;

"Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

"Dominant Provider" means Kingston Communications plc, whose registered company number is 2150618, and Kingston Communications 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;

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

"Network Component" means, to the extent they are used in the Market, the network components specified in any direction given by the Director from time to time for the purpose of these conditions;

"Reference Offer" means the terms and conditions on which the Dominant Provider is willing to enter into an Access Contract;

“Third Party” means person providing a Public Electronic Communications Network or a Public Electronic Communications Service;

“Transfer Charge” means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within the Market and the use of Network Components in that Market;

“Usage Factor” means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity;

“Wholesale Service” means services related to Network Access used by or offered to any Communications Provider (including the Dominant Provider).

3. 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.
 4. The Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament.
 5. Headings and titles shall be disregarded.
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Part 2: The conditions**Condition BB1 – Requirement to provide Network Access on reasonable request**

BB1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as the Director may from time to time direct.

BB1.2 The provision of Network Access in accordance with paragraph BB1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct.

BB1.3 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition.

Condition BB2 – Requirement not to unduly discriminate in the Hull Area

BB2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access provided in the Hull Area.

BB2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

Condition BB3 – Basis of charges in the Hull Area

BB3.1 Unless the Director directs otherwise from time to time, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of the Director, that each and every charge offered, payable or proposed for Network Access in the Hull Area covered by Condition BB1 is reasonably derived from the costs of provision based on a forward looking long-run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

BB3.2 The Dominant Provider shall comply with any direction the Director may from time to time direct under this Condition.

Condition BB4 – Requirement to publish a reference offer for the Hull Area

BB4.1 Except in so far as the Director may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer in relation to the provision of Network Access in the Hull Area and act in the manner set out below.

BB4.2 Subject to paragraph BB4.8, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access in the Hull Area includes at least the following:

- (a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of the Network Access);
 - (b) the locations of the points of Network Access;
 - (c) the technical standards for Network Access (including any usage restrictions and other security issues);
 - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
 - (e) any ordering and provisioning procedures;
 - (f) relevant charges, terms of payment and billing procedures;
 - (g) details of interoperability tests;
 - (h) details of traffic and network management;
 - (i) details of maintenance and quality as follows:
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
 - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
 - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
 - (iv) a definition and limitation of liability and indemnity; and
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- (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
 - (j) details of measures to ensure compliance with requirements for network integrity;
 - (k) details of any relevant intellectual property rights;
 - (l) a dispute resolution procedure to be used between the parties;
 - (m) details of duration and renegotiation of agreements;
 - (n) provisions regarding confidentiality of non-public parts of the agreements;
 - (o) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
 - (p) the standard terms and conditions for the provision of Network Access;
 - (q) the amount applied to:
 - (i) each Network Component used in providing Network Access with the relevant Usage Factors;
 - (ii) the Transfer Charge for each Network Component or combination of Network Components described above,

reconciled in each case to the charge payable by a Third Party other than the Dominant Provider.

BB4.3 To the extent that the Dominant Provider provides to itself Network Access that:

- (a) is the same, similar or equivalent to that provided to any other person; or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs BB4.2(a)-(q).

BB4.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing in the Hull Area as at the date this Condition enters into force.

BB4.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided in the Hull Area after the date this Condition enters into force.

BB4.6 Publication referred to above shall be effected by:

- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the Reference Offer to the Director.

BB4.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

BB4.8 The Dominant Provider shall make such modifications to the Reference Offer as the Director may direct from time to time.

BB4.9 The Dominant Provider shall provide Network Access in the Hull Area at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

BB4.10 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition.

Condition BB5 – Requirement to notify charges in respect of Network Access provided in the Hull Area

BB5.1 Except in so far as the Director may otherwise consent in writing, the Dominant Provider shall publish charges in respect of Network Access provided in the Hull Area and act in the manner set out below.

BB5.2 The Dominant Provider shall send to the Director and to every Third Party with which it has entered into an Access Contract in respect of Network Access provided in the Hull Area covered by Condition BB1 a written notice of any amendment to the charges on which it provides such Network Access or in relation to any charges for such new Network Access (an “Access Charge Change Notice”) not less than 90 days before any such amendment comes into effect.

BB5.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider’s current Reference Offer of the terms and conditions associated with the provision of that Network Access;
- (c) the date on which or the period for which any amendments to charges will take effect (the “effective date”);
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge;
- (e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies; and
- (f) the relevant network tariff gradient.

BB5.4 The Dominant Provider shall not apply any new charge identified in an Access Charge Change Notice before the effective date.

BB5.5 To the extent that the Dominant Provider provides to itself Network Access in the Hull Area that:

- (a) is the same, similar or equivalent to that provided to any other person; or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in an Access Charge Change Notice in relation to Network Access provided in the Hull Area to any other person, the Dominant Provider shall ensure that it sends to the Director an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs BB5.3(a)-(f).

SCHEDULE 3

The condition to be imposed on all persons listed at Annex A under section 45(1) and 45(8) of the Communications Act 2003 as a result of the analysis of the fixed geographic call termination markets in which all persons listed at Annex A have been found to have significant market power

Part 1: Definitions and Interpretation of this condition

1. This condition shall apply to the market for fixed geographic call termination provided by the Dominant Provider ("the Market").
 2. For the purpose of interpreting the condition imposed on the Dominant Provider following a review of the market referred to in paragraph 1 the following definitions shall apply:
 - "Act" means the Communications Act 2003;
 - "Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - "Dominant Provider" means any person listed at Annex A to this Schedule;
 - "Third Party" means person providing a Public Electronic Communications Network or a Public Electronic Communications Service.
 3. 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.
 4. The Interpretation Act 1978 shall apply as if the condition was an Act of Parliament.
 5. Headings and titles shall be disregarded.
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Part 2: The condition**Condition BC1 – Requirement to provide Network Access on reasonable request**

BC1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as the Director may from time to time direct.

BC1.2 The provision of Network Access in accordance with paragraph BC1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct.

BC1.3 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition.

**Annex A to Schedule 3 (List of Dominant Providers for the purpose of
Schedule 3)**

1. 4D Telecom Ltd whose registered company number is 2676756, and any subsidiary or holding company of it, 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;
 2. Aggregated Telecom Ltd whose registered company number is 3882936, and any subsidiary or holding company of it, 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;
 3. Band-X Managed Services plc whose registered company number is 3899869, and any subsidiary or holding company of it, 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;
 4. Cable and Wireless plc whose registered company number is 1541957, and any subsidiary or holding company of it, 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;
 5. Call UK Ltd whose registered company number is 3375033, and any subsidiary or holding company of it, 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;
 6. Centrica Telecommunications Ltd whose registered company number is 4226697, and any subsidiary or holding company of it, 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;
 7. Cheers International Telecom Ltd whose registered company number is 3866455, and any subsidiary or holding company of it, 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;
 8. COLT Telecommunications Ltd whose registered company number is 2452736, and any subsidiary or holding company of it, 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;
 9. Core Telecommunications Ltd whose registered company number is 3274623, and any subsidiary or holding company of it, 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;
 10. Easynet Group plc whose registered company number is 3137522, and any subsidiary or holding company of it, or any subsidiary of that holding company, all
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as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

11. Edinburgh Network Technologies Ltd whose registered company number is SC160949, and any subsidiary or holding company of it, 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;
 12. Eescape Ltd whose registered company number is 3798888, and any subsidiary or holding company of it, 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;
 13. Eircom UK Ltd whose registered company number is 3478971, and any subsidiary or holding company of it, 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;
 14. Energis Communications Limited whose registered company number is 2630471, and any subsidiary or holding company of it, 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;
 15. Gamma Telecommunications Limited whose registered company number is 4287779, and any subsidiary or holding company of it, 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;
 16. Global Crossing UK Telecommunications Limited whose registered company number is 2495998, and any subsidiary or holding company of it, 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;
 17. Global One Communications Holding Ltd whose registered company number is 2082327, and any subsidiary or holding company of it, 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;
 18. Inclarity plc whose registered company number is 2673204, and any subsidiary or holding company of it, 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;
 19. Intelnet Communications Ltd whose registered company number is 3268671, and any subsidiary or holding company of it, 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;
 20. Interweb Design Ltd whose registered company number is 3101247, and any subsidiary or holding company of it, or any subsidiary of that holding company, all
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- as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
21. Ixnet UK Ltd whose registered company number is 2874554, and any subsidiary or holding company of it, 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;
 22. Jupiter Modes Ltd whose registered company number is 3801478, and any subsidiary or holding company of it, 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;
 23. Leaf Telecom Ltd whose registered company number is 3926712, and any subsidiary or holding company of it, 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;
 24. MCI WorldCom Ltd whose registered company number is 2776038, and any subsidiary or holding company of it, 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;
 25. Nevada tele.com whose registered company number is NI036608, and any subsidiary or holding company of it, 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;
 26. ntl Group Ltd whose registered company number is 2591237, and any subsidiary or holding company of it, 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;
 27. OMNE Communications Ltd whose registered company number is 3775645, and any subsidiary or holding company of it, 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;
 28. Opera Telecom Ltd whose registered company number is 3383285, and any subsidiary or holding company of it, 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;
 29. Pipemedia Communications Limited whose registered company number is 3427755, and any subsidiary or holding company of it, 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;
 30. PNC Telecom plc whose registered company number is 2709891, and any subsidiary or holding company of it, or any subsidiary of that holding company, all
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as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

31. Premier Communications International whose registered company number is 3774299, and any subsidiary or holding company of it, 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;
 32. Premier Voicemail Limited whose registered company number is 3172426, and any subsidiary or holding company of it, 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;
 33. Primus Telecommunications Ltd whose registered company number is 2937312, and any subsidiary or holding company of it, 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;
 34. Rateflame Ltd whose registered company number is 3033408, and any subsidiary or holding company of it, 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;
 35. Reach Europe Limited whose registered company number is 2822455, and any subsidiary or holding company of it, 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;
 36. Redstone Communications Ltd whose registered company number is 3021292, and any subsidiary or holding company of it, 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;
 37. Sala Trading Limited whose registered company number is 3617973, and any subsidiary or holding company of it, 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;
 38. SingTel (Europe) Ltd whose registered company number is 3426947, and any subsidiary or holding company of it, 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;
 39. Spitfire Network Services Ltd whose registered company number is 2657590, and any subsidiary or holding company of it, 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;
 40. Startec Global Communications UK Ltd whose registered company number is 3555992, and any subsidiary or holding company of it, or any subsidiary of that
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- holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
41. Syntec UK Ltd whose registered company number is 3529985, and any subsidiary or holding company of it, 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;
 42. Tele 2 Communications Services Limited whose registered company number is 3565220, and any subsidiary or holding company of it, 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;
 43. Telecentric Solutions Ltd whose registered company number is 3779638, and any subsidiary or holding company of it, 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;
 44. Telecom One Ltd whose registered company number is 3396559, and any subsidiary or holding company of it, 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;
 45. Telewest Communications plc whose registered number is 02983307, and any subsidiary or holding company of it, 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;
 46. The Airtime Group Ltd whose registered company number is 3841911, and any subsidiary or holding company of it, 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;
 47. Thus plc whose registered company number is SC192666, and any subsidiary or holding company of it, 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;
 48. Tiscali UK Limited whose registered company number is 3408171, and any subsidiary or holding company of it, 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;
 49. Totem Communications Ltd whose registered company number is 2933669, and any subsidiary or holding company of it, 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;
 50. United Networks Ltd whose registered company number is 2356964, and any subsidiary or holding company of it, or any subsidiary of that holding company, all
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- as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
51. Wightcable Limited whose registered company number is 4392360, and any subsidiary or holding company of it, 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; and
 52. Your Communications Ltd whose registered company number is 3842309, and any subsidiary or holding company of it, 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.
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Annex C

Direction in respect of Credit Vetting under Condition BA1 imposed on British Telecommunications plc as a result of the analysis of the market for fixed geographic call termination in which British Telecommunications plc 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 26 August 2003 in accordance with section 80 of the Act that BT has significant market power in the market for fixed geographic call termination provided over BT's network;
 - (B) the Director is able to exercise powers under the Act pursuant to section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No.1) Order 2003, until Ofcom assumes those powers at a later date;
 - (C) the Director having considered every representation duly made and on 28 November 2003 pursuant to sections 48(1) and 79 of the Act by way of publication of a Notification identified the relevant services markets, made market power determinations to the effect referred to in recital (A) above and set certain SMP conditions on BT such as Condition BA1;
 - (D) this Direction concerns matters to which Condition BA1 relates;
 - (E) for the reasons set out in the explanatory statement accompanying this Direction the Director 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 the explanatory statement accompanying this Direction, the Director is satisfied that he has acted in accordance with the relevant duties set out in section 4 of the Act;
 - (G) On 26 August 2003, the Director published a notification of the proposed Direction in accordance with section 49 of the Act;
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- (H) The Director has considered every representation about the proposed Direction duly made to him; and

NOW, therefore, pursuant to Condition BA1, the Director makes the following Direction:

1. BT can implement its credit vetting proposals as set out in its Supplemental Agreement and its Policy Document, copies of which can be obtained from BT, provided it incorporates the changes as specified in the Annex to this direction.
 2. For the purpose of interpreting this Direction, the following definitions shall apply:
 - (a) "Act" means the Communications Act 2003;.
 - (b) "BT" means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
 - (c) "Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - (d) "Notification" means the Notification referred to in recital (C) of this Direction above, as published on 28 November 2003;
 - (e) "Policy Document" means BT's Credit Vetting Policy Interconnect Document of 13 May 2002; and
 - (f) "Supplemental Agreement" means BT's Credit Vetting Review Supplemental Agreement (to NCC Standard Interconnect Agreement) of 13 May 2002.
 3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Notification or, if the context so permits, in Schedule 1 thereto, as appropriate.
 4. For the purpose of interpreting this Direction:
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
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5. This Direction shall take effect on the day it is published.
6. The Annex to this Direction shall form part of this Direction.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Annex to the Direction under Condition BA1**CHANGES TO BE INCORPORATED INTO THE SUPPLEMENTAL AGREEMENT AND/OR POLICY DOCUMENT**

1. BT shall remove the paragraphs of the Supplemental Agreement which refer to BT's ability to automatically reduce payment periods for invoices. These paragraphs should include, but not necessarily be limited to:
 - paragraph 14B.4.1(a);
 - paragraph 14B.4.2;
 - paragraph 14B.4.3; and
 - paragraph 14B.4.4.
 2. BT shall include the following measures within the Supplemental Agreement and/or the Policy Document as necessary:
 - BT shall ensure that an operator can understand how any credit limit has been set. If BT has relied on internal information for the purposes of setting an operator's credit limit, the Director considers that such information shall be made available to that operator;
 - BT shall ensure that appropriate dispute resolution procedures apply to disputes arising from disputed credit vetting reports;
 - BT shall ensure that an operator is given written notice when a late payment, sufficient to infringe a provision of BT's Supplemental Agreement, has been made. Such notice will be issued after BT has received both the first and the second late payment in question;
 - BT shall ensure that paragraph 14B.6.3 of its Supplemental Agreement shall apply only when the Credit Vetting Report indicates that there is something adverse; and
 - BT shall not credit vet an operator solely as a result of novation if, prior to that contractual change, and in the absence of a structural change that may lead to that operator being considered a financial risk, the operator's payment record was not sufficient to infringe BT's credit vetting provisions.
 3. BT shall ensure reciprocal application of these measures, as appropriate.
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Annex D

Notice discontinuing certain licence conditions (BT)

NOTICE TO BT UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that certain continued provisions set out in the continuation notice given to British Telecommunications plc on 23 July 2003 will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications ('the Director'), in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to British Telecommunications plc ('BT') that certain continued provisions contained in Schedule 1 to the continuation notice given to BT on 23 July 2003, which had effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent set out in Schedule 1 to this notice ('the Discontinued Provisions').

2. In giving this notice, the Director has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the continued provisions and whether or not to exercise his power to set a condition under that Chapter for that purpose.

3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent that they were given or made for the purposes of the Discontinued Provisions.

4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until the Director has given a further notice to BT in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.

5. The Director issued a consultation as to his proposals to discontinue the Discontinued Provisions on 2 October 2003 and requested comments by

9.00a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

6. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Schedule 1 to the Discontinuation Notice to BT

The following continued provisions which were contained in Schedule 1 to the Continuation Notice will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent set out below.

Conditions 43, 45, 46, 47, 48, 49, 53, 65 and 69 (except in so far as specified in the Note below) in so far as those conditions relate to the markets which have been reviewed as set out in the Final Explanatory Statement and Notification to the Review of Fixed Geographic Call Termination Markets published on 28 November 2003 ('the Market Review'). Such conditions will be replaced by SMP services conditions imposed on BT by way of the Notification set out in Annex B of the Market Review.

Note: The provisions in paragraphs 69.5 to 69.21 of Condition 69 shall not cease to have effect by the giving of this notice in so far as they relate to Standard Services described in paragraph 69.6(c), that is to say Category C services.

Annex E

Notice discontinuing certain licence conditions (Kingston)

NOTICE TO KINGSTON UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that certain continued provisions set out in the continuation notice given to Kingston Communications (Hull) plc on 23 July 2003 will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications ('the Director'), in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to Kingston Communications (Hull) plc ('Kingston') that certain continued provisions contained in Schedule 1 to the continuation notice given to Kingston on 23 July 2003, which had effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent set out in Schedule 1 to this notice ('the Discontinued Provisions').
 2. In giving this notice, the Director has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the continued provisions and whether or not to exercise his power to set a condition under that Chapter for that purpose.
 3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent that they were given or made for the purposes of the Discontinued Provisions.
 4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until the Director has given a further notice to Kingston in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.
 5. The Director issued a consultation as to his proposals to discontinue the Discontinued Provisions on 2 October 2003 and requested comments by
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9.00a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

6. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Schedule 1 to the Discontinuation Notice to Kingston

The following continued provisions which were contained in Schedule 1 to the Continuation Notice will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003, to the extent set out below.

Conditions 43, 45, 46, 47, 48, 49, and 53 in so far as those conditions relate to the markets which have been reviewed as set out in the Final Explanatory Statement and Notification to the Review of Fixed Geographic Call Termination Markets published on 28 November 2003 ('the Market Review'). Such conditions will be replaced by SMP services conditions imposed on Kingston by way of the Notification set out in Annex B of the Market Review.

Annex F

Notice discontinuing the interconnection direction relating to reciprocal charging (C&W and Telewest)

NOTICE TO BRITISH TELECOMMUNICATIONS PLC AND THE OPERATORS LISTED IN THE SCHEDULE TO THIS NOTICE UNDER PARAGRAPH 22 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that the *“Direction under the provision of regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc (“BT”) and: (i) Cable & Wireless Communications (Mercury) Limited [Cable & Wireless UK] (“C&W”); and (ii) Telewest Communications plc & other Operators in the Telewest group of companies as set out in Annex A to this Direction (“Telewest”); - concerning termination rates payable by BT to Operators based reciprocally upon BT’s own termination charges under the Network Charge Control Regime”* made on 1 March 2002 and continued by the continuation notice given to BT and all operators listed in the Schedule to this notice on 21 July 2003 will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications (‘the Director’), in accordance with Paragraph 22(8) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc and the operators listed in the Schedule to this Notice that the *“Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc (“BT”) and: (i) Cable & Wireless Communications (Mercury) Limited (“C&W”); and (ii) Telewest Communications plc & other Operators in the Telewest group of companies as set out in Annex A to the Direction (“Telewest”); concerning termination rates payable by BT to Operators based reciprocally upon BT’s own termination charges under the Network Charge Control Regime”* made on 1 March 2002 and which was continued by the continuation notice given to BT, C&W and Telewest on 21 July 2003, which had effect from 25 July 2003 (‘the Continued Interconnection Direction’), will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003.

2. In giving this notice, the Director has, in accordance with Paragraph 22(10) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Continued Interconnection Direction and whether or not to exercise his power to set a condition under that Chapter for that purpose.

3. The Director issued a consultation as to his proposals to revoke the Continued Interconnection Direction on 2 October 2003 and requested comments by 9.00 a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

4. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Schedule to the Notice discontinuing the Interconnection Direction relating to Reciprocal Charging (C&W and Telewest)

1. Cable & Wireless Communications (Mercury) Limited (Cable & Wireless UK)
 2. Telewest Communications plc
 3. Birmingham Cable Ltd
 4. Cable London
 5. General Cable TCC
 6. General Cable YCC
 7. Eurobell (South West) Limited
 8. Eurobell (Sussex) Limited
 9. Eurobell West Kent Limited
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Annex G

Notice discontinuing the interconnection direction relating to reciprocal charging (Inclarity and others)

NOTICE TO BRITISH TELECOMMUNICATIONS PLC AND THE OPERATORS LISTED IN THE SCHEDULE TO THIS NOTICE UNDER PARAGRAPH 22 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that the *“Direction under the provision of regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc (“BT”) and: (i) Inclarity plc (“Inclarity”); and (ii) and the Operators set out in Annex B to this Direction; concerning termination rates payable by BT to Operators based reciprocally upon BT’s own termination charges under the Network Charge Control Regime”* made on 1 March 2002 and continued by the continuation notice given to BT and the operators listed in the Schedule to this notice on 21 July 2003 will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications (‘the Director’), in accordance with Paragraph 22(8) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc and the operators listed in the Schedule to this Notice that the *“Direction under the provision of regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of disputes between British Telecommunications plc (“BT”) and: (i) Inclarity plc (“Inclarity”); and (ii) and the Operators set out in Annex B to this Direction; concerning termination rates payable by BT to Operators based reciprocally upon BT’s own termination charges under the Network Charge Control Regime”* made on 1 March 2002 and which was continued by the continuation notice given to BT and the operators listed in the Schedule to this notice on 21 July 2003, which had effect from 25 July 2003 (‘the Continued Interconnection Direction’), will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003.

2. In giving this notice, the Director has, in accordance with Paragraph 22(10) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Continued Interconnection Direction and whether or not to exercise his power to set a condition under that Chapter for that purpose.

3. The Director issued a consultation as to his proposals to revoke the Continued Interconnection Direction on 2 October 2003 and requested comments by 9.00

a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

4. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Schedule to the Notice discontinuing the Interconnection Direction relating to reciprocal charging (Inclarity and others)

1. Inclarity plc
 2. IDT Global Ltd
 3. Mannesmann Ipulsys UK Ltd
 4. RSL Com UK Ltd
 5. Star Telecommunications Inc
 6. Starcomm Ltd
 7. Torc Europe Ltd
 8. Viatel Global Communications Ltd
 9. Worldxchange Communications Ltd
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Annex H

Notice discontinuing the interconnection direction relating to credit vetting

NOTICE TO BRITISH TELCOMMUNICATIONS PLC AND THE OPERATORS LISTED IN THE SCHEDULE UNDER PARAGRAPH 22 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that the “Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a dispute between British Telecommunications plc (“BT”) and the operators listed in Schedule 2 regarding the Credit Vetting Supplemental Agreement” made on 19 February 2003 and continued by the continuation notice given to BT and the operators listed in the Schedule on 21 July 2003 will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications (‘the Director’), in accordance with Paragraph 22(8) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to BT and the operators listed in the Schedule (‘the Operators’) that the “Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a dispute between British Telecommunications plc (“BT”) and the operators listed in Schedule 2 regarding the Credit Vetting Supplemental Agreement” made on 19 February 2003 and which was continued by the continuation notice given to BT and the Operators on 21 July 2003, which had effect from 25 July 2003 (“the Continued Interconnection Direction”), will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003.

2. In giving this notice, the Director has, in accordance with Paragraph 22(10) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Continued Interconnection Direction and whether or not to exercise his power to set a condition under that Chapter for that purpose.

3. The Director issued a consultation as to his proposals to revoke the Continued Interconnection Direction on 2 October 2003 and requested comments by 9.00 a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

4. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

**NEIL BUCKLEY
POLICY PROJECT DIRECTOR**

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003

Schedule

	OPERATOR	AGREEMENT DATE
1.	186K Ltd	June 27, 2001
2.	4D Telecom Limited	July 20, 1998
3.	Aggregated Telecom Ltd	October 10, 2000
4.	Allied Communications (UK) Ltd	August 18, 2000
5.	Alpha Telecom (UK) Ltd	August 11, 1999
6.	America First Ltd	October 19, 1998
7.	Band-X Managed Services plc	September 12, 2001
8.	Bis Ltd	October 6, 2001
9.	Broadsystem Ventures Ltd	May 24, 1999
10.	O2 (UK) Ltd	May 24, 1996
11.	Cable & Wireless Communications Ltd (Mercury) (Cable & Wireless UK)	September 23, 1997
12.	Call Sciences Ltd	June 13, 1997
13.	Call-Link Communications Ltd	May 10, 2000
14.	Cellcom Ltd	December 4, 1997
15.	Cheers International Telecom Ltd	October 3, 2001
16.	Colloquium Ltd	February 7, 2002
17.	COLT Telecommunications	July 24, 1996
18.	Communications 2000 Group plc	August 14, 2000
19.	Communications Networking Services (UK)	January 5, 2000
20.	Core Telecommunications Ltd	February 11, 1998
21.	Darose Ltd	December 21, 1999
22.	Earthadvice Ltd (Inquam Telecom (Holdings) Ltd)	May 11, 1998
23.	Easynet Group PLC	December 18, 1997
24.	Ecosse Telecommunications Ltd	November 11, 1998
25.	Eircom NI Limited	July 12, 1999
26.	Energis Carrier Services UK Ltd	December 4, 1997
27.	Energis Communications Ltd	June 20, 1997
28.	E-Tel Ventures plc	January 21, 2002
29.	Global Crossing (UK) Telecommunications Ltd	August 31, 1995
30.	Global Crossing Communications International Ltd	June 27, 1997
31.	Global Electroteks Ltd	April 30, 2001
32.	Hutchison 3G UK Ltd	August 13, 2001
33.	IDT Global Limited	April 21, 1999

34.	Inclarity plc	November 27, 1997
35.	Intelnet Communications Limited	February 16, 1999
36.	International Telecom plc	July 31, 2000
37.	Iomart Limited	March 29, 1999
38.	Ipsaris Ltd	May 8, 2001
39.	IV Response Ltd	April 2, 2002
40.	iXnet UK Ltd	December 20, 1996
41.	Keycom plc	September 9, 2000
42.	Kingston Communications (Hull) PLC	December 17, 1998
43.	Level 3 Communications Limited	March 24, 2000
44.	London Digital Ltd	November 11, 1998
45.	Manet Telecom Ltd	April 26, 2001
46.	MCI WorldCom Ltd	February 20, 1997
47.	Nevada Tele.Com Limited (Energis Communications (Ireland) Ltd	January 24, 2000
48.	OMNE Communications Ltd	June 26, 2001
49.	T-Mobile (UK) Ltd	June 17, 1996
50.	Opal Telecommunications PLC	December 17, 1996
51.	Opera Telecom Ltd	February 16, 2000
52.	Orange Personal Communications Services Ltd	December 13, 1996
53.	PageOne Communications Ltd	January 26, 2000
54.	Patientline UK Limited	April 18, 2000
55.	PNC TELECOM plc	August 3, 2000
56.	Primus Telecommunications Ltd	January 7, 1997
57.	Prodigy Internet Ltd	September 12, 2001
58.	Rateflame Limited	June 25, 1999
59.	Reach Europe Ltd	March 27, 1997
60.	Redstone Communications Ltd	May 22, 1996
61.	Routo Ltd	April 2, 2002
62.	Singtel (Europe) Limited	December 11, 1998
63.	Skymaker Limited	December 9, 1998
64.	Starcomm Limited	November 2, 1999
65.	Startec Global Communications UK Limited	September 15, 1999
66.	Stratos Global Ltd	January 5, 2001
67.	Swiftnet Ltd	August 8, 2000
68.	Syntec UK Limited	February 5, 1999
69.	T3 Telecommunications Limited	June 25, 1999

70.	Talk Telecom Limited	October 14, 1999
71.	Telco Network Services Ltd	March 13, 1997
72.	Telecentric Solutions Ltd	February 29, 1996
73.	Telecom Art Limited	April 20, 1999
74.	Telecom GB Ltd	September 19, 2000
75.	Telegroup UK Ltd	December 4, 1997
76.	TGC UK Ltd	July 18, 2000
77.	The Airtime Group	May 17, 2000
78.	The Phone Company Ltd	June 30, 1997
79.	Thus plc	August 16, 1996
80.	Tiscali UK Ltd	January 13, 1997
81.	Tweedwind	October 30, 2000
82.	Torch Communications Ltd	February 26, 1997
83.	Totem Communications Ltd	October 5, 1998
84.	UKBELL plc	December 10, 2001
85.	UK-SPN	September 27, 1996
86.	Unitel Communications Limited	February 1, 1999
87.	Vartec Telecom (U.K.) Limited	October 21, 1998
88.	Ventelo UK Ltd	April 28, 1995
89.	Via-Fon Limited	April 23, 1999
90.	Vodafone Ltd	May 10, 1996
91.	Wavecrest (UK) Ltd	July 10, 1997
92.	World-Link, Inc	May 4, 2000
93.	Your Communications Ltd	February 28, 1997
94.	Zipcom Telecommunications Limited	October 10, 2000
95.	Barnsley Cable Communications Ltd	September 11, 1996
96.	Birmingham Cable Ltd	October 24, 1996
97.	Cable Camden Ltd	September 30, 1996
98.	Cable Enfield Ltd	September 30, 1996
99.	Cable Hackney & Islington Ltd	September 30, 1996
100.	Cable Haringey Ltd	September 30, 1996
101.	Doncaster Cable Communications Ltd	September 11, 1996
102.	Eurobell (South West) Ltd	June 28, 1996
103.	Eurobell (Sussex) Ltd	June 28, 1996
104.	Eurobell West Kent	July 21, 1997
105.	Halifax Cable Communications Ltd	September 11, 1996
106.	Imminus Ltd	October 2, 1996

107. Middlesex Cable Ltd	September 11, 1996
108. Sheffield Cable Communications Ltd	September 11, 1996
109. Telewest Communications (Central Lancashire) Ltd	September 26, 1996
110. Telewest Communications (Cotswolds) Ltd	September 26, 1996
111. Telewest Communications (Cumbernauld) Ltd	September 26, 1996
112. Telewest Communications (Dumbarton) Ltd	September 26, 1996
113. Telewest Communications (Dundee and Perth) Ltd	September 26, 1996
114. Telewest Communications (Dundee and Perth) Ltd	September 26, 1996
115. Telewest Communications (Falkirk) Ltd	September 26, 1996
116. Telewest Communications (Glenrothes) Ltd	September 26, 1996
117. Telewest Communications (Liverpool) Ltd	September 26, 1996
118. Telewest Communications (Liverpool) Ltd	September 26, 1996
119. Telewest Communications (London South) Ltd	September 26, 1996
120. Telewest Communications (London South) Ltd	September 26, 1996
121. Telewest Communications (London South) Ltd	September 26, 1996
122. Telewest Communications (Midlands) Ltd	September 26, 1996
123. Telewest Communications (Motherwell) Ltd	September 26, 1996
124. Telewest Communications (North East) Ltd	September 26, 1996
125. Telewest Communications (Scotland) Ltd	September 26, 1996
126. Telewest Communications (South East) Ltd	September 26, 1996
127. Telewest Communications (South Thames Estuary) Ltd	September 26, 1996
128. Telewest Communications (South West) Ltd	September 26, 1996
129. Telewest Communications (St Helens and Knowsley) Ltd	September 26, 1996
130. Telewest Communications (Telford) Ltd	September 26, 1996
131. Telewest Communications (Wigan) Ltd	September 26, 1996
132. Telewest Communications PLC	January 15, 1998
133. Wakefield Cable Communications Ltd	September 11, 1996
134. Windsor Television Ltd	September 11, 1996
135. Windsor Television Ltd	September 11, 1996
136. Yorkshire Cable Communications Ltd	September 11, 1996
137. Andover Cablevision Ltd	May 30, 1996
138. Anglia Cable Ltd	March 26, 1997
139. Cable Television Ltd	August 19, 1996
140. Cable Thames Valley Ltd	August 19, 1996
141. CableTel Cardiff Ltd	December 13, 1996
142. CableTel Central Hertfordshire Ltd	December 13, 1996
143. CableTel Hertfordshire Ltd	December 13, 1996

144. CableTel Herts and Beds Ltd	December 13, 1996
145. CableTel Newport	December 13, 1996
146. CableTel North Bedfordshire Ltd	December 13, 1996
147. CableTel Northern Ireland Ltd	April 15, 1996
148. CableTel Surrey and Hampshire Ltd	December 13, 1996
149. CableTel West Glamorgan Ltd	December 13, 1996
150. Comtel Coventry Ltd	September 29, 1997
151. Diamond Cable (GrimClee) Ltd	July 12, 1996
152. Diamond Cable (Leicester) Ltd	July 12, 1996
153. Diamond Cable (Lincoln) Ltd	July 12, 1996
154. Diamond Cable (Mansfield) Ltd	July 12, 1996
155. East Coast Cable Ltd	March 26, 1997
156. Heartland Cablevision UK Ltd	August 19, 1996
157. Herts Cable Ltd	August 19, 1996
158. Lichfield Cable Communications Ltd	March 25, 1997
159. National Transcommunications Ltd	December 22, 1997
160. NTL Cambridge Ltd	March 26, 1997
161. NTL Darlington Ltd	October 30, 1996
162. NTL Glasgow	December 13, 1996
163. NTL Glasgow	December 13, 1996
164. NTL Glasgow	December 13, 1996
165. NTL Glasgow	December 13, 1996
166. NTL Glasgow	December 13, 1996
167. NTL Group Ltd	November 21, 2000
168. NTL Kirklees	December 13, 1996
169. NTL Midlands Ltd	July 12, 1996
170. NTL Teesside Ltd	October 30, 1996
171. NTL Telecom Services Ltd	September 10, 1997
172. Oxford Cable Ltd	May 8, 1996
173. Stafford Communications Ltd	May 8, 1996
174. Swindon Cable Ltd	May 26, 1998
175. Wessex Cable Ltd	May 30, 1996

Annex I

Notice discontinuing the interconnection direction relating to customer sited interconnect

NOTICE TO BRITISH TELECOMMUNICATIONS PLC AND ORANGE PERSONAL COMMUNICATIONS LIMITED UNDER PARAGRAPH 22 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that the “*Direction relating to a dispute between BT and Orange concerning the sharing of costs for customer sited interconnect*” made under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 and made on 15 October 1999 and continued by the continuation notice given to British Telecommunications plc and Orange Personal Communications Limited on 21 July 2003 will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Director General of Telecommunications (‘the Director’), in accordance with Paragraph 22(8) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc (‘BT’) and Orange Personal Communications Limited (‘Orange’) that the “*Direction relating to a dispute between BT and Orange concerning the sharing of costs for customer sited interconnect*” made under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 and made on 15 October 1999 and which was continued by the continuation notice given to BT and Orange on 21 July 2003, which had effect from 25 July 2003 (‘the Continued Interconnection Direction’), will be revoked with effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003.

2. In giving this notice, the Director has, in accordance with Paragraph 22(11) of Schedule 18 to the Act, taken all steps necessary for enabling him to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Continued Interconnection Direction and whether or not to exercise his power to set a condition under that Chapter for that purpose.

3. The Director issued a consultation as to his proposals to revoke the Continued Interconnection Direction on 2 October 2003 and requested comments by 9.00 a.m. on 16 October 2003. The Director has taken into account the comments he received during that consultation.

4. In this notice, except as otherwise provided or unless 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. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

**A person duly authorised by the Director General of Telecommunications
pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984**

26 NOVEMBER 2003
