

## **Continuing Licence Conditions after 25 July**

A statement by the Director General of  
Telecommunications

**September 2003**

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## Summary

- I. By a short public consultation dated 3rd July the Director General of Telecommunications ('the Director') sought the views of industry and other interested parties on proposals to continue certain Licence Conditions after 24th July when the new EU communications regime was implemented in the UK and telecommunications licensing was abolished. Following that consultation and after considering the responses to it, the Director made Continuation Notices to continue certain Licence Conditions ('the Continued Provisions') under the powers granted to him by the Communications Act 2003 ('the Act'). The texts of these notices are available on the OfTel website at :  
[http://www.oftel.gov.uk/publications/eu\\_directives/cont\\_notices/index.htm](http://www.oftel.gov.uk/publications/eu_directives/cont_notices/index.htm)
  - II. Notification of these Continued Provisions has been communicated to the Licensees in accordance with the procedure set out in Schedule 18 of the Act.
  - III. The purpose of this Statement is to set out in detail what has been done, the reasons for the continuation of the provisions after the abolition of licensing, the legal basis for their continuation and in particular to answer questions from respondents. It also sets out the process for the Continued Provisions to be withdrawn.
  - IV. Under the previous regime most Licence Conditions applied generally to Communications Providers. Those have been replaced by the General Conditions made under the Act. However, there were a number of specific conditions included in some individual licences, some of which were intended to reflect the market power of those Licensees and were only triggered as a result of a finding of market power. Those conditions cannot be replaced by new conditions under the powers contained in the Act until the relevant market reviews have been completed and implemented. Conditions reflecting market power, and Access-Related Conditions (with the exception of Conditional access Conditions) are also subject to consultation procedures under the new EU regulatory regime.
  - V. It had been hoped that a number of these market reviews would have been completed by 25th July, enabling OfTel to introduce many of these new conditions under the provisions in the Act. However, following the European Commission's advice that it could not receive market review proposals before the requirements of the new Directives came into effect on 25th July, none of these conditions could be imposed on the first day of the new regime. The European legislation requires the Commission and National Regulatory Authorities in other Member States to be consulted before the market reviews are completed and before SMP and Access-Related Conditions are imposed.
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- VI. The continuation for an interim period of the old Licence Conditions which corresponded to SMP or Access-Related Conditions has one underlying purpose. That purpose is to maintain the status quo and avoid a regulatory gap until the new conditions can be introduced if appropriate. In a few cases, modifications have had to be made, but this has only been done where necessary to enable these Continued Provisions to be effective and enforceable.
- VII. The Notices, which provide for the provisions to be continued after the abolition of licensing, had to be completed before the licences were revoked. Schedule 18 of the Act provides for the provisions to be continued, but not resurrected. Oftel was faced with a complex exercise that needed to be completed within a very short period of time. That exercise has been completed and this Statement documents the policy and other considerations which gave rise to the issuing of the Notices. Details of the Continued Provisions and the reasons why they are being continued are set in Chapters 3 and 4 of this Statement.
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## Chapter 1

### Introduction and background

#### *A new regulatory regime*

- 1.1 A new regulatory framework for electronic communications networks and services entered into force in the United Kingdom on 25 July 2003. The basis for the new regulatory framework is five new EU Communications Directives as follows:
- the Framework Directive (Directive 2002/21/EC);
  - the Access Directive (Directive 2002/19/EC);
  - the Authorisation Directive (Directive 2002/20/EC);
  - the Universal Service Directive (Directive 2002/22/EC); and
  - the Privacy Directive (Directive 2002/58/EC).
- 1.2 The new regulatory framework is designed to create harmonised regulation across the Member States of the European Union and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.
- 1.3 The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives which read across all the new directives. As its name suggests, it is the directive which establishes the new framework. Article 8 of the Framework Directive sets out three key policy objectives which have been implemented by section 4 of the Act. These have been taken into account in creating this interim regime.
- 1.4 The Authorisation Directive establishes a new regulatory process whereby any person is authorised generally to provide electronic communications services and/or networks without the need to obtain prior approval. The general authorisation replaces the existing licensing regime.
- 1.5 The Universal Service Directive defines a basic set of services which certain designated operators must provide to end-users.
- 1.6 The Access and Interconnection Directive sets out the terms on which providers may access each others' networks and services with a view to providing publicly available electronic communications services. These four Directives have been implemented in the United Kingdom by the Communications Act.
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- 1.7 The fifth Directive on Privacy establishes users' rights with regard to the privacy of their communications. This Directive was adopted slightly later than the other four Directives and has an implementation date of 31 October 2003.

### **The end of the individual licensing regime**

- 1.8 Changes to the regulatory framework flow directly from the requirements of the new Directives. The principal change in the United Kingdom is the ending of the licensing regime under the Telecommunications Act 1984 ('the 1984 Act'). The obligations attached previously to telecommunications licences have been replaced by Conditions of Entitlement ('the General Conditions'), which may be set under section 45 of the Act.
- 1.9 The General Conditions apply to all persons providing electronic communications networks and services or to groups of such persons. Additionally, individual operators may be subject to specific conditions, such as those imposed as a result of a finding of SMP, as defined in Article 14(2) of the Framework Directive, Access-Related Conditions, or as a result of being designated a Universal Service Provider. Oftel has carried out already a number of consultations in relation to such conditions. The new General Conditions are now in force.
- 1.10 The four main EC Communications Directives have been implemented in the United Kingdom through the Act. This Act is available at <http://www.hmso.gov.uk/acts/acts2003/20030021.pdf> The Act makes specific provision to enable OFCOM's functions to be carried out by the Director or the Secretary of State for a transitional period prior to OFCOM becoming operational<sup>1</sup>. This Statement and the Continuation Notices refer to the Director rather than OFCOM. The specific conditions, that is to say those additional Conditions which apply to particular providers under the Directives, will be implemented as SMP Services or Apparatus Conditions (following the completion of the market review process), Access-Related Conditions (both Conditional Access and other Conditions) and Universal Service Conditions.

### **Transition from the old regime to the new regime**

- 1.11 The new Directives seek to ensure that there is a coherent transition from the old regime to the new regime and to ensure that there is no regulatory gap. The Director has carried out already a number of consultations in relation to the new regime such as consultations on the General Conditions, Universal Service Conditions and Conditional Access Conditions. Also he has commenced a number of market reviews proposing the imposition of SMP Service Conditions along with consultations on the imposition of other Access-Related Conditions.

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<sup>1</sup> Section 408 of the Act

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- 1.12 The Director intended originally to complete market reviews so that new SMP services Conditions could be imposed on 25 July 2003. Before imposing SMP services Conditions and Access-Related Conditions (other than Conditional Access Conditions) the Director is required by the new regime to carry out a national consultation. He is required also to notify and consult with the European Commission and the National Regulatory Authorities in other Member States for at least one month<sup>2</sup>. The Commission can request an additional two months for consideration in certain specified circumstances. ((see section 82 of the Act). However, the Commission's Recommendation identifying the relevant product and service markets was not published until 11 February 2003. This can be found at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_114/l\\_11420030508en00450049.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_114/l_11420030508en00450049.pdf) Subsequently in April 2003 the European Commission advised national regulatory authorities that the notifications could not be made under Article 7 of the Framework Directive before 25 July 2003. Accordingly, it has not proved possible for the Director to have new SMP services and Access-Related (other than Conditional Access) conditions in place on 25 July 2003.
- 1.13 In order to avoid a regulatory gap, the Directives permit and require Member States to continue the existing regime until such time as each Member State can complete its assessment of the imposition of the new SMP services and Access-Related (other than Conditional Access) conditions. This has been implemented in the United Kingdom by paragraphs 9 and 22 of Schedule 18 of the Communications Act. Schedule 18 permits the Director to issue Continuation Notices which have the effect of continuing certain Licence Conditions and Interconnection Directions under the existing regime for a transitional period.

### **Structure of this document**

- 1.14 (a) Chapter 2 of this document discusses further why a continuation regime is required and the detail of this interim regime.
- (b) Chapter 3 discusses the details of the Continuation Notices which have been issued in respect of Licence Conditions.
- (c) Chapter 4 discusses the details of the Continuation Notices for Interconnection Directions.
- (d) Chapter 5 discusses the process for the revocation of Continuation Notices and the circumstances in which this will take place.

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<sup>2</sup> Articles 6 and 7 of the Framework Directive as implemented in various provisions in the Act.

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## Chapter 2

### The Continuation regime

- 2.1 Continuation of certain existing provisions after the revocation of licences, avoided a serious regulatory gap pending the completion of the market review process. It is for that reason that Government made provision in the Act to permit the continuation of appropriate provisions. For the reasons set out below the Director considers that the continuation of these provisions is consistent with the requirements of the European Directives.
  - 2.2 Article 7 of the Access Directive and Article 16 of the Universal Service Directive require that certain provisions flowing from the previous regime are maintained until such time as the market reviews under the new regime are completed. As noted above, these reviews could not be completed prior to 25 July 2003. Accordingly, the regulatory obligations listed in Article 7 of the Access Directive and Article 16 of the Universal Service Directive have had to be continued pending the completion of the market reviews at a later date. This has been implemented by paragraph 9(4) of Schedule 18 to the Act.
  - 2.3 In issuing Continuation Notices the Director relied on Article 7(6) of the Framework Directive for the continuation of provisions which might not flow directly from the provisions listed in Article 7 of the Access Directive and Article 16 of the Universal Service Directive. Article 7(6) of the Framework Directive provides that, in exceptional circumstances, where a National Regulatory Authority considers that there is an urgent need to act, it may immediately adopt proportionate and provisional measures. It need not comply with the consultation procedures set out in Article 7(3) and (4) of the Framework Directive). The taking of such measures must be notified to the European Commission and the National Regulatory Authorities of other Member States of the European Union.
  - 2.4 The UK government in the implementation of paragraphs 9(4)(a) and 9(4)(b) of Schedule 18 to the Act has relied upon Article 7(6) of the Framework Directive. Paragraph 22 of Schedule 18 to the Act relates to the continuation of Interconnection Directions. Article 7 of the Access Directive only refers to the continuation of the measures specified there insofar as they were in force on 24 April 2002. An example of regulation imposed during that period is the price controls on the mobile operators. However, the Director considers (as discussed further below) that there are exceptional circumstances which justify the issue of a Notice to continue those price controls until such time as he can complete his assessment of appropriate regulation (if any) under the new regime.
  - 2.5 Furthermore, Article 7 of the Access Directive lists decisions taken under Article 9 of the previous Interconnection Directive, as measures which must be continued until the assessments under the new regime are completed.
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In the UK, there have been numerous disputes resolved under Article 9 of the Interconnection Directive (Regulation 6(6)) of the former Telecommunications (Interconnection) Regulations 1997). A number of the directions made resolving these disputes, supplement and elaborate on the provision of interconnection by an SMP operator pursuant to condition 45 of the former licence. These implement Article 4 of the Interconnection Directive and must be continued pursuant to Article 7 of the Access Directive. The Director considers (as discussed further below) that there are exceptional circumstances which justify the issue of the notices to continue 57 Interconnection Directions until such time as he can complete his assessment of appropriate regulation (if any) under the new regime.

- 2.6 Also, there are a number of other licence obligation not listed in Article 7 of the Access Directive or Article 16 of the Universal Service Directive which have had to be continued. However, the Director considered that exceptional circumstances existed such that he has issued Continuation Notices in reliance upon Article 7(6) of the Framework Directive until such time as he can complete his assessment of the new regime. An example of his consideration of such continuation is that it would create great uncertainty and cost to the industry if he had let regulation lapse on 25 July 2003 by not continuing the provisions. Then some months later (when he had completed his assessment under the new regime) re-imposing similar regulation.
- 2.7 Each of the provisions in paragraphs 9(4)(a), 9(4)(b) and paragraph 22 of Schedule 18 have limitations imposed on their use. Licence Conditions could only be continued pursuant to paragraphs 9(4)(a) and 9(4)(b) of Schedule 18 if the provisions corresponded to a provision which could be imposed as an SMP or an Access-Related Condition under the Act. This ensures consistency in transition from the old, to the interim and then to the new regime. In particular, it ensures that no provisions have been continued which do not correspond to measures in the new regime. In the case of paragraph 22 of Schedule 18, Interconnection Directions are only permitted to be continued if they equate to a condition which could be set under the new regime or a provision set out in a direction resolving a dispute under the new regime.

### **Continuation of certain Licence Conditions**

- 2.8 The Act at Schedule 18, paragraph 9 allows the Director to issue Notices to continue provisions in Licence Conditions pending full transition to the new regime. Under paragraph 9(3) of Schedule 18 the Director is permitted to continue provisions in Licence Conditions where a provision regulates premium rate services or the provision falls within paragraph 9(4). Paragraph 9(4) provides for continuation of :

*a) a provision contained in the Act that the Director has the power to include in SMP Conditions ("Paragraph 9(4)(a)");*

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- b) a provision authorised by section 73(2) or (4) of the Act for inclusion in Access-Related Conditions (“Paragraph 9(4)(b)”); or*
- c) a provision relating to matters mentioned in Article 16 of the Universal Service Directive or Article 7 of the Access Directive (“Paragraph 9(4)(c)”).*

- 2.9 The Communications Act Schedule 18, paragraph 9(7) permits modifications to be made to the existing Licence Conditions in order to secure that they continue to have effect while the Notice is in force.
- 2.10 Schedule 18, paragraph 22 permits Interconnection Directions made under Regulation 6 of the Interconnection Regulations to be continued by a Notice and they will continue to have effect while that Notice is in force.
- 2.11 The texts of the Continuation Notices and the Interconnection Directions can be found at [http://www.oftel.gov.uk/publications/eu\\_directives/cont\\_notices/index.htm](http://www.oftel.gov.uk/publications/eu_directives/cont_notices/index.htm)
- 2.12 Further details of the content of the Continuation Notices (and the modifications which have been made to some provisions within Licence Conditions) are set out in Chapter 3.

### **Continuation of instruments made under Licence Conditions**

- 2.13 The Director has made a number of other instruments which supplement the provisions in conditions (e.g.: directions, determinations and consents). Where a Licence Condition is continued pursuant to a Continuation Notice under paragraph 9(4) of Schedule 18 of the Act, any instruments made under that Condition are continued automatically. They will remain in force for as long as the Continuation Notice is in place. This is provided for in paragraphs 9(8)(b) and (c) of Schedule 18. Accordingly, Continuation Notices were not necessary for these other instruments.

### **Continuation of Interconnection Directions**

- 2.14 However, the position in relation to Interconnection Directions made under the Interconnection Regulations is different. These directions are not carried forward automatically and therefore have had to be the subject of separate Continuation Notices<sup>3</sup>. A list of these Interconnection Directions is included in the table at Annex 3 and each is referred to specifically in Chapter 4. No changes were made to any of these Interconnection Directions. The Directions themselves are not set out in this Statement, but electronic links have been provided.

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<sup>3</sup> See paragraph 22 of Schedule 18.

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**Continuation of Conditions relating to premium rate services**

- 2.15 These conditions are continued to ensure that a coherent regime continues to exist in the UK relating to premium rate services until such time as new conditions are considered under sections 120 to 124 of the Act.
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## Chapter 3

### Continuation Notices for Licence Conditions

- 3.1 Insofar as possible where provisions in an operator's Licence have been continued, a single Continuation Notice was issued to that operator. For reasons explained below, separate Notices had to be issued to BT and Kingston in respect of SMP Apparatus. Separate Notices have been issued also to BT and Kingston and other operators to continue PRS Conditions.
- 3.2 The provisions being continued (with any necessary modifications) are set out in a schedule attached to the Notice. Modifications have been made only where this was necessary in order to render the Conditions effective and to enable existing regulation to continue. In other words to maintain the status quo and to ensure that the provisions continue to have effect after 25<sup>th</sup> July 2003. Schedule 18 of the Act confines the scope and extent of any such modifications, to those for the purpose of securing that the provision to which they relate continues to have effect for so long as the Notice is in force.
- 3.3 The majority of the modifications are no more than technical changes. For example the inclusion of definitions which were set out previously at the beginning of Schedule 1 of the Licence. Most of the Telecommunications Act 1984 has been repealed. However, where necessary some of the definitions contained in that Act have been incorporated into the continued Condition by reference (as they were in the licences themselves).
- 3.4 Other changes have been made only in order to ensure that the conditions retain their effectiveness and enforceability for as long as they remain valid in the new regime. Some of the minor modifications which have been made include the following:
- References to telecommunication systems, services and apparatus have been incorporated into the continued conditions. The Telecommunications Act 1984 has, for the most part, been repealed. The inclusion of the definitions ensures that those terms continue to have meaning in the continuation regime. These terms have not been updated to reflect the language of the new regime (i.e. there is no reference to ECNs and ECSs) because it is not the intention to use continued conditions to update the regime, only to retain the previous regime in a workable form;
  - References to the existence of licences under section 7 of the Telecommunications Act 1984 have had to be removed or modified because the licensing regime no longer exists;
  - New Numbering Conditions are now in place as part of the General Conditions (including the new National Telephone Numbering Plan).
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Accordingly, references to the current numbering regime have been deleted and replaced in the continued conditions;

- The definition of 'Schedule 2 Public Operator' has been modified to ensure that a workable regime is in place for the period of the continuation regime;
- Modifications have been made to recognise the fact that other conditions in the Licence no longer apply. The continued conditions therefore refer to the relevant General Condition;
- Modifications have been made to reflect the fact that new Universal Service Conditions are now in place (instead of Part A of the now revoked PTO licences);
- Conditions which contained triggers, that is to say Conditions 44 and 56 of the PTO licences and Condition 9 of the Access Control licence, have been modified to remove the trigger. It has however been noted in the triggered conditions that they apply in accordance with determinations previously made; and;
- The Conditional Access Class Licence is being continued only in relation to the provision of electronic programme guides (EPGs). New Conditional Access Conditions (excluding EPGs) are now in place. These can be found at [http://www.oftel.gov.uk/publications/eu\\_directives/2003/condac0703.pdf](http://www.oftel.gov.uk/publications/eu_directives/2003/condac0703.pdf) However, both the Conditional Access Class Licence and the Access Control Class Licence referred to Conditional access services and systems. The Director recognises that the definitions of Conditional Access services and systems differ as between the old and the new regime. He did not receive any comments in relation to this. It has been decided not to update the definitions in these class licences. This would have been a substantive change not consistent with the purpose of the continuation regime.
- References to provisions of, and definitions in, the current legal regime (e.g. references to the Interconnection Directive and the Interconnection Regulations) have been maintained in the continued conditions, notwithstanding that the interconnection directive and its implementing Regulations have been repealed. This was done in order to avoid substantial modifications which would have involved simply copying out large pieces of legal text. This means that the substance of the proposed obligation must be read together with those pieces of legislation. The same approach has been adopted in relation to references to the Broadcasting and Wireless Telegraphy Acts.

3.5 There follows a brief description of each Condition which is the subject of a Continuation Notice, together with the rationale for its continuation.

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- 3.6 Some Licence Conditions had to be carried over in order to comply with Article 7 of the Access Directive (AID) and Article 16 of the Universal Service Directive (USD). Other conditions and Interconnection Directions have been continued pursuant to Article 7(6). In the absence of the continuation of existing operator specific Licence Conditions beyond 25 July 2003 and the inability of Oftel to complete the new EC market reviews before that date, would mean that the obligations therein would have ceased to bind the operators concerned. Oftel would not have been able to re-impose any similar obligations need for a period until the market reviews had been completed and implemented.
- 3.7 This would have created a period of regulatory gap which would have been disruptive for the telecommunications industry and wholly contrary to the public interest in the efficient and proper regulation of the telecommunications industry. Further it would have undermined the important public interests which are safeguarded under the pre-25 July specific obligations. Such interests must still be safeguarded until it is decided whether new obligations need to be imposed after a period of consultation under the new regime.

**Condition 43. Requirement to provide Telecommunication Services other than voice telephony services on request. (BT and Kingston)**

- 3.8 Provisions in this condition have been continued pursuant to paragraphs 9(4)(a) and 9(4)(b) of Schedule 18 of the Act. Its continuation as an urgent and temporary measure is consistent with the power for Member States to derogate under Article 7(6) of the Framework Directive in order to safeguard competition and to protect the interests of users. The exercise of this derogation in respect of Condition 43 has been communicated to the European Commission and other national regulatory authorities.
- 3.9 The Condition requires the provision of services which may become the subject of an Access-Related Condition under section 73, or an SMP Condition under section 87 of the Act. Services covered by this Condition are included in the broadband market review, the retail market review and the wholesale access, call origination, conveyance and transit market review.
- 3.10 Until the appropriate markets are reviewed and decisions are taken on those obligations under the new regime this Condition needs to be continued to avoid any regulatory gap. The only alternative would have been to remove all of those obligations placed currently on BT and Kingston and if necessary, following the completion and implementation of the relevant market reviews, to reimpose them. In deciding to continue these provisions the Director considered that it would be inappropriate to create such a regulatory gap. He has taken into account also the possible reduction in the efficacy and effectiveness of any of these obligations if re-imposed following such a gap. In the consultation, Oftel stated that it would
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consider disapplying Condition 43 in relation to particular services pursuant to the mechanism contained in Condition 43.

### **Responses to the consultation**

- 3.11 Energis was concerned that Oftel had neither set out a transparent process for the disapplication of specific services from Licence Conditions nor considered the implications of the modification to this Licence Condition upon the applicability of another Licence Condition. It noted that the proposal for C.43 restricted the application of the continuation of C.58 (publication of charges, terms and Conditions), since under the proposed drafting it would not be possible to require publication of charges for a service that did not need to be provided. Additionally, it suggested that Oftel should not bring about the proposed disapplication of C. 43 until sufficient and appropriate consideration had been given to the leverage of SMP and full consultation has been concluded.
- 3.12 BT suggested that C.43 should not be continued during the interim period for the following reasons.
- 3.13 It considered that C.43 of its Licence was a USO Condition and as such it did not meet any of the criteria set in the Communications Bill for maintenance after 25<sup>th</sup> July 2003. It suggested also that the retention of obligations from SMP designations made under the "1998" Directives would be fully achieved through the inclusion of conditions in parts C, D and E of the BT licence in the Continuation Notice and therefore there was no need to keep C.43
- 3.14 Furthermore, BT considered that there was a risk that the broad application of C.43 post 25<sup>th</sup> July might lead to the unintentional retention of obligations in relation to undefined services after the completion of Oftel's market reviews.
- 3.15 Finally, BT argued that the continuation of C. 43 was inconsistent with the intention of the new Directives. Only existing obligations to be reviewed in market analyses conducted according to Article 16 of the Framework Directive should be kept in force. That is to say those referred to in Recital 12 of the Access Directive, Article 7 of the Access Directive and Article 16 of the Universal Service Directive). BT argued also that the regulatory principles of transparency and targeting would not be adhered to in that it would not be clear which services are covered and why.
- 3.16 Nevertheless, BT stated that, if the Director still considered it necessary to keep C.43 in force during the interim period, he should limit from the outset its application to services falling within the markets covered by Oftel's market reviews. These markets should be annexed to the Notice. This BT argued, would provide certainty, transparency and consistency with the Directives. It would also warrantee the efficiency and the effectiveness of the revocation process. BT also commented that disapplication of C 43
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through the consent mechanism would be subject to the 90 day consultation period.

### **The Director's conclusions**

- 3.17 As was set out in the introduction to this Statement, the principal reason for the Continuation Notices was to maintain the status quo. The provisions being continued generally correspond to conditions which may be introduced under the provisions of the Act if the market reviews conclude that such conditions are necessary.
- 3.18 Condition 43 placed a large number of obligations on the two incumbents, reflecting their ubiquity and historical market position. It would have been impossible in the time available prior to 25<sup>th</sup> July to identify each of the individual services which could be the subject of SMP or Access-Related Conditions. The only way to manage this issue in the short term was to continue with the status quo and apply the consent process where services where specific regulation was no longer required under the new regime.
- 3.19 It is correct that the origins of Condition 43 lie in universal service. However, the rationale for continuing this condition lies firmly within the context of the market review process. The Condition encapsulates services which individually and collectively may become the subject of an SMP or Access-Related condition under the broadband market review, retail market review and the wholesale market review. Until such time as those reviews are concluded the status quo of Condition 43 has to be maintained. When the market reviews are concluded and implemented Condition 43 will be discontinued in its entirety.
- 3.20 Nevertheless, consideration has been given as to whether or not it would be possible during the interim period to continue to consent to services being removed from the scope of Condition 43 and the obligations which it places on the two incumbents for whom the Condition has been triggered. In the consultation document the Director indicated that, during the interim period he would consider whether the application of this Condition should be disapplied from particular services using the consent mechanism contained in that condition.
- 3.21 BT has argued that even if this were done the process of consultation as set out in the Condition would take at least seventy days to complete. BT therefore states that any acceptance by the Director of a need to remove a specific obligation would be of little practical effect in view of the time such a consultation would take.
- 3.22 The Director has accepted this argument and has made a modification which he considered necessary for securing that the Condition continued to have effect for so long as the Notice was in force, but which has enabled him to remove any unnecessary obligations without undue delay. Noting that under C43 as drafted, a 90-day consultation period applied and
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bearing in mind that this Condition has a limited life span, that procedure has been removed. Condition 43 may be disapplied from certain services by consent. Oftel understands that price publication is triggered pursuant to Condition 58 by virtue of an obligation to supply services under Condition 43. Accordingly, bearing this in mind, the Director would expect to carry out at least a 14-day consultation on any such consent. Also the Director will be consulting separately on a list of services currently provided under Condition 43.

**Condition 45. Interconnection agreements with Annex II public operators including co-location and facility sharing. (BT, Kingston, Vodafone, O2)**

- 3.23 This Condition had to be carried over in order to comply with Article 7 of the Access Directive (AID). Accordingly, it has been continued pursuant to paragraph 9(4) of Schedule 18 to the Act. The majority of the provisions in this Condition have been continued. The Condition relates to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial, broadband leased lines/DSL, mobile access and call origination.
- 3.24 The provision contained in Condition 45.2 relating to an ability to seek directions under the Interconnection Regulations has not been continued. That procedure has ceased to exist (save for any transitional arrangements in the Act). Some further modification to this Condition has been necessary to ensure that the rights of Schedule 2 Public Operators are maintained during this interim period. This list will be continued and can be added to in the event that further applications for interconnection status are made before the new regime is implemented. Oftel has written to all those who prior to 25<sup>th</sup> July were included in the list held by the Director of all Public Operators listed for the purpose of that Schedule. A copy of that letter is reproduced at Annex 1

**Summary of responses**

- 3.25 Your Communications sought further clarification on the removal from C.45 of the cross-reference of the right of Schedule 2 Operators to refer a dispute to Oftel under the Interconnection Regulations. Your Communications stated that such a removal creates a risk of Schedule 2 Operators not having the same degree of explicit redress as they have currently when a dispute arises with BT.
- 3.26 Vodafone considered that it was contrary to the Directives and disproportionate for SMP obligations under any directions under C. 45 to be applied in relation to mobile access and origination, given Oftel's provisional conclusions that there is no operator with SMP in the mobile access and origination market. Vodafone argued that the directions relating to mobile indirect access (set out on p. 546-547 of the first consultation document) are inconsistent with Oftel's provisional conclusions in the market review. Nevertheless, they suggest that if C.45 can be justified for
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inclusion, then the Notice should be time-framed, so as to apply only for so long as is necessary for Oftel to complete its market review, to conduct its consultations and to adopt the appropriate final measures.

### **The Director's response**

- 3.27 There is no need to continue the reference to the ability to refer a dispute to the Director under the previous regime. The new regime encompasses a new dispute resolution procedure which enables any operator to refer an interconnection (or other) dispute. Accordingly the Director removed C45.2. Operators can refer disputes under section 185 of the Act, which replaces and extends the previous dispute resolution procedure, which anyone dissatisfied in negotiations for interconnection can utilise.
- 3.28 In relation to Vodafone's comments, the Director considers that it would be inappropriate to anticipate the outcome of the market reviews. A course of action along those lines would be contrary to the new regime and would be inequitable in cases where the conclusions to a review did not reflect the view put forward in the consultation. These reviews have to be implemented following consultation with other NRAs and the European Commission. Maintaining the status quo is the appropriate way forward in this interim period until these consultation procedures have been completed and a final view formed.
- 3.29 Paragraph 9(11) of Schedule 18 of the Act places a duty on the Director as soon as reasonably practicable to analyse markets and to decide whether or not to impose a condition under the powers in the Act. It also requires him as soon as reasonably practicable in such circumstances to issue a notice bringing to an end the continuation of any continued provisions. On 4 August 2003 the Director issued a further consultation on the market review for mobile access and call origination. The consultation period closes on 4 September 2003 and after that time, having considered comments from stakeholders, the European Commission and other national regulatory authorities, the Director proposes to finalise this market review. He will also at that time, consider the discontinuation of Condition 45 in relation to this market.
- 3.30 Since the completion of the consultation on the Continuation Notices several additional and minor amendments have been made. First, Condition 45.X, which contains the cross-reference to the SMP determination, has been updated to reflect the determination made in December 1997. The definition of "Schedule 2 Public Operator" has also been amended slightly as it referred incorrectly to a "Licensee". As persons will no longer be "licensed" in the new regime, this was changed, in paragraph (ii)(A) of the definition to "Public Operator".
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**Condition 46. Requirement to publish a reference interconnection offer (BT and Kingston)**

- 3.31 All of the provisions in this Condition must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4) of Schedule 18 to the Act, the provisions in this Condition have been continued. The texts of the Condition differ slightly as between BT and Kingston. The continuation of the Condition relates to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial and Broadband leased lines/DSL.
- 3.32 Oftel did not receive any specific responses to its consultation on the continuation of the provisions in this Condition, although Vodafone's comments referred to above were intended to apply to all of the SMP type Conditions which were continued. It is not proposed to repeat those comments throughout this document.
- 3.33 Modifications were proposed in the consultation, and have been made in the final version of the Condition. They have been made for the purpose of ensuring that the provisions in this Condition are effective after 25 July 2003. In particular, as for Condition 45, a reference, has been added to the SMP determination under the old regime which triggered this Condition. References to section 19 of the 1984 Act (now repealed) have been removed and minor modifications have been made.

**Condition 47. Requirements relating to Schedule 2 Public Operators. (BT, Kingston, Vodafone and O2)**

- 3.34 Condition 47 must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued and relate to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial and Broadband leased lines/DSL.
- 3.35 Vodafone was the only respondent and repeated the comments it made in respect of Condition 45.
- 3.36 Only two modifications have been made to ensure that this Condition continues to have effect. Firstly, a reference to the SMP determination made in the old regime has been included as for the preceding Conditions. Secondly, the reference to Condition 33 (relating to information gathering) has been modified because Condition 33 no longer exists. Oftel considers that a reference to powers gather information under the new regime reflects more accurately the current position and this reference has been added.
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**Condition 48. Requirements to meet requests for access other than from Schedule 2 Public Operators. (BT, Kingston, Vodafone and O2)**

- 3.37 The provisions in this Condition must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued. The continuation of this Condition relates to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial and mobile access and call origination.
- 3.38 Oftel did not receive any comments in response to the consultation on the retention of the provisions in this Condition or the proposed modifications. As was the case for the preceding Conditions, Oftel retained the modification which simply refers to the SMP determination under the old regime which triggers this Condition. Condition 48.5 dealt with directions made under the Interconnection Regulations. That procedure has now ceased to exist (save for any transitional arrangements in the Act). Accordingly, the reference to the power to make Interconnection Directions under those regulations has been modified to remove this reference as for Condition 45.2.

**Condition 49. Requirement to send interconnection agreements to the Director. (BT, Kingston, Vodafone and O2)**

- 3.39 This Condition must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued. The continuation of this Condition relates to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial, broadband leased lines/DSL and mobile access and call origination.
- 3.40 Oftel did not receive any comments during the consultation on the retention of this Condition or the proposed modifications. As was the case for the preceding conditions, Oftel retained the modification which simply refers to the SMP determination under the old regime. This triggers this Condition. Oftel has also retained the modification to remove the reference to section 19 of the 1984 Act which has now been repealed. Oftel has modified the Condition to remove all references to the Interconnection Regulations in the light of their repeal and to replace the reference to "Part C" of the former licence with cross references to the continued Conditions that equate to Part C of that former licence.

**Condition 50. Requirement to have cost accounting systems and accounting separation for interconnection purposes. (Kingston and BT)**

- 3.41 This Condition must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act,
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the provisions in this Condition have been continued. Continuation is in respect of the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market, international direct dial and Broadband leased lines/DSL.

- 3.42 Very minor modifications have been made to this Condition to remove references to legislation which has now been repealed and to include reference to the SMP determination made under the old regime which triggered this Condition. BT queried the continuation of this provision in the light of the fact that Condition 78 is being continued also and that there are overlaps between the two. However, the Director notes that Condition 50 is disapplied to the extent that Condition 78 applies for BT. He considers that the retention of Condition 50 for BT along with Condition 78 simply maintains the status quo as is the primary purpose of this regime until the market reviews are completed.

**Condition 50A. Carrier pre-selection (BT, Kingston)**

- 3.43 This Condition implements Article 12(5) of the ICD. This must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued and relate to call origination conveyance and transit markets. With the exception of a modification to retain a reference to the SMP determination under the old regime, this Condition remains unchanged. Consideration will be given to discontinuation of Condition 50A as the relevant market review (call origination) is completed.

**Condition 53. Special Network Access. (BT and Kingston)**

- 3.44 This Condition implements Article 16 of the RVTD. It must be carried over in order to implement Article 7 of the AID. Those who responded to the consultation made no comments on this Condition. The Condition is being retained in the interim period. Its provisions will be used when a Service Provider without Annex 2 status, requests access to BT's network in ways which are different from normal retail services and interfaces. Such requests for access are a part of the new framework (Article 12 of the Access Directive) and these provisions are needed during this interim period.
- 3.45 The nearest equivalent obligation under the new regime would be an obligation to provide network access to providers of publicly available ECSs and public ECNs. Following the completion and implementation of the relevant market reviews, it is possible that such a condition will be imposed on SMP provider(s) in the following markets. Call origination, conveyance and transit markets, fixed geographic call termination market and international direct dial.
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**Condition 54 Tariffs cost accounting principles and discount schemes. (BT and Kingston)**

- 3.46 This Condition implements Article 17 of the Revised Voice Telephony Directive and therefore must be carried over in order to implement Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued for BT and Kingston. The Condition has been continued in respect of the residential and business access markets, the local, national and international retail markets and the calls to mobile markets.
- 3.47 In the consultation document the Director proposed amendments to deal with references to the Revised Voice Telephony Regulations and section 19 of the 1984 Act, both of which have now been repealed. The Director also modified this Condition to maintain a reference to the relevant SMP designation as for Condition 53. No comments were received on the proposed continuation or modification to this Condition. Since the consultation the Director has amended the reference to the SMP designation. The Director also noted that potentially the contents of Condition 54 could overlap with the provisions of the new Universal Service Conditions. Accordingly, the Director modified Condition 54.X to the effect that this Condition would only apply to the extent that the Universal Service Conditions do not apply.

**Condition 55. Leased Line Directive Conditions. (BT and Kingston)**

- 3.48 This Condition implements Articles 3,4,6,7,8,10 of the Leased Lines Directive and must be carried over in order to implement Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued for BT and Kingston. The Condition is being retained in respect of the broadband leased lines market.
- 3.49 The Director had proposed to modify this Condition so as to maintain a reference to the SMP determination (now amended to reflect that made under the Leased Lines Regulations) and to remove references to the Leased Lines Regulations and the 1984 Act which have been repealed. Condition 55.15 was also amended to refer to Condition 58 rather than "Part G of the licence". The Director proposed to maintain references to the Leased Lines Regulations, where effectively they add definitions. Where these references are retained, reference should be made to the relevant part of the Leased Lines Regulations as if they are still in force. The Director did not receive any comments on the continuation of this Condition.
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**Condition 57. Prohibition on undue preference/discrimination (BT, Kingston, Vodafone, O2 and Cable & Wireless)**

- 3.50 This obligation was triggered for BT, Kingston, O2 and Vodafone because of SMP designations made under the previous regime. It therefore implements Article 6(a) of the Interconnection Directive and must be carried over in order to implement Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued for those operators.
- 3.51 Condition 57 applied in the licence for Parts A (USO), B (C43), C (C45, 46, 47, 48, 49, 50 & 50A), D (53 & 54) and E (C55) as appropriate. In the new regime Part A has been replaced by new USO Conditions and this has not been continued. Accordingly, Condition 57 has only been continued (and has been modified in this respect) for Conditions in Part B, C, D or E.
- 3.52 BT, in its consultation response, did not consider that Condition 57 should continue to be applied to Condition 43, but should apply only when determinations were made under the 1998 Directives. It argued that the reference in the proposed amended C57 in the consultation document should not include a reference to C43. The Director has responded to BT's issues in his response on C 43 above.
- 3.53 Vodafone in its response contended that the continuation of C57 was disproportionate and ran contrary to the Directives if applied to mobile access and origination. It argued also that it should be time framed.
- 3.54 This Condition requires no undue discrimination in any case where an operator is obliged to provide a service. Until the relevant market reviews are concluded and implemented, the Director needs to maintain the status quo and cannot anticipate what the outcome of any particular market review may be. The time limitation point raised by Vodafone has been dealt with earlier in this Statement.
- 3.55 Cable and Wireless was determined as having Market Influence under the previous regime. Accordingly, Condition 57 is triggered to apply in accordance with that determination. In the case of Cable & Wireless, this Condition is considered to correspond to a Condition which could be set as an SMP Condition under the new regime after the relevant market review (international direct dialling) has been completed. Accordingly, the Condition is retained pursuant to paragraph 9(4)(a) of Schedule 18 to the Act.
- 3.56 Also in the case of Cable & Wireless this Condition is continued in accordance with Article 7(6) of the Framework Directive which has been discussed in Chapter 2 above. The Director considers that the use of Article 7(6) is justified for the following reason. Until the IDD market review is completed and implemented, it would be inappropriate to remove the price publication and non-discrimination obligations in respect of those
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routes in which Cable & Wireless had been deemed to have had market power under the previous regime.

- 3.57 No comments were received on the continuation of this Condition. The continuation of this condition for Cable & Wireless has been communicated to the European Commission.

**Condition 58. Publication of charges terms and Conditions (BT, Kingston and Cable & Wireless)**

- 3.58 This Condition corresponds to a transparency Condition which may be set under the new regime as an SMP Condition (section 87(6)). It is therefore retained pursuant to paragraph 9(4)(a) of Schedule 18 of the Act for these operators until the appropriate market reviews are completed. Condition 58 applied to Part A (USO), Part B (C43) and Part F (where there has been a market influence determination – relevant to Cable & Wireless only). As noted above, Part A has been replaced by Universal Service Conditions under the new regime and has not therefore been continued. Part F is relevant to Cable & Wireless only. Part B is relevant to BT and Kingston for the purposes of this Condition and appropriate modifications have been made.
- 3.59 BT commented that this Condition was not a SMP Condition and therefore it did not meet the criteria to be continued. It argued that C. 58 is only triggered by Part A (USO), Part B (C. 43) and Part F (Market Influence). BT contended also that the issue of price publication for services covered by SMP designations made under the “1998” Directives has already been dealt with by other continued conditions.
- 3.60 The Condition needs to be retained to maintain transparency during the interim period until the market reviews are completed and implemented. Part A of the licence is not retained because it has been replaced by the new Universal Service Conditions. The other applications are still relevant in relation to the overall provisions which are being continued.
- 3.61 Cable & Wireless has the Condition continued in respect of the determination of Market Influence under the old regime. The Condition needs to continue in respect of the international IDD market review for the reasons set out above for the continuation of C57.
- 3.62 Finally, it should be pointed out that the consultation document incorrectly listed the continuation of this Condition as applying to O2 and Vodafone. This was an error. The Condition did not apply to those mobile operators even though they had both been determined as having SMP in the mobile market under the previous regime.

**Condition 65. Quality of Service for products on the quality schedule. (BT)**

- 3.63 This corresponds to an SMP Services Condition which may be set under section 87 in the new regime. It is retained therefore pursuant to paragraph
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9(4)(a) of Schedule 18 of the Act until the appropriate market reviews are completed. There is a need to maintain the Condition in the interim regime until a decision is taken by the Director on whether or not a quality of service Condition is to be imposed on BT under the powers contained in the Act. To have allowed the Condition to have lapsed would have left a gap which would have removed the obligation on BT to provide a quality of service to other operators at a level comparable with that which it provides to its own service business. The continuation of this Condition is pursuant to Article 7(6) of the Framework Directive. Its continuation has been notified to the European Commission and other national regulatory authorities.

- 3.64 Several minor modifications were proposed (and have been made) in order to ensure that this Condition continues to have effect post 25 July. They deal with the revocation of section 19 of the 1984, Act, the licensing regime and Condition 33. The need for these drafting changes has been explained above in relation to other Conditions. There were no consultation responses in respect of the continuation of this Condition.

**Condition 69 - Charge control for standard services. (BT)**

- 3.65 The continuation of this Condition implements Article 7 of the Interconnection Directive (further to Condition 47 for BT) and therefore must be continued under Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued. The Director proposed only one very minor modification and did not receive any comments during the consultation on the retention of this Condition or the proposed modifications. Accordingly, this Condition has been continued as proposed in the consultation document.
- 3.66 This Condition is relevant to the following markets. Call origination, conveyance and transit markets, fixed geographic call termination markets, access to emergency operator assistance, international Direct Dial and Broadband/ leased lines markets.

**Condition 69A - Charge control for portability standard services. (BT)**

- 3.67 This Condition corresponds to either an access-related or SMP Condition and has therefore been retained pursuant to paragraph 9(4)(a) and (b) of Schedule 18 to the Act. The Condition is continued in respect of the market for number portability and regulates the prices charged for porting numbers from BT as the operator with SMP under the previous regime . The continuation of the Condition is necessary in order to maintain the status quo until the relevant market review is completed.
- 3.68 This condition is continued pursuant to Article 7(6) of the Framework Directive as the Director considered it was necessary to continue this Condition pending the completion of the relevant market review. The
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continuation of this condition has been communicated to the European Commission and other national regulatory authorities.

- 3.69 The Director has modified this Condition so that it will continue to have effect post 25 July by removing the reference in Condition 69A.22 to “Condition 28” (which has ceased to exist). It has been replaced with a reference to Condition 28’s successor (namely, General Conditions of Entitlement 18 (Number Portability)). No comments were received during the consultation and the Condition has been continued as proposed in the consultation document.

### **Condition 69B - Requirement to provide, and control of charges for access services (BT)**

- 3.70 This Condition corresponds to an access-related or SMP Condition and has therefore been retained. Accordingly, this Condition has been retained pursuant to paragraph 9(4)(a) and (b) of Schedule 18 to the Act. The relevant market review is the wholesale access markets.
- 3.71 Until the market reviews have been completed the Director decided that this Condition needed to be continued pursuant to Article 7(6) of the Framework Directive. The continuation of this Condition has been communicated to the European Commission and other national regulatory authorities.
- 3.72 It was proposed that the provisions in the Condition relating to a dispute resolution procedure should be removed as, during the interim period, they will be dealt with under the new dispute procedure in the Act. No comments were received on the proposed continuation and modification of this Condition. It has therefore been continued as proposed in the consultation.

### **Conditions 70 and 71 - Control of general prices - (BT)**

- 3.73 These Conditions correspond to SMP Conditions which may be set under section 91 of the Act in relation to control of retail prices. Accordingly, these Conditions have been retained pursuant to paragraph 9(4)(a) of Schedule 18 of the Act until the appropriate market reviews have been completed. The Condition is relevant to the retail market review.
- 3.74 The Director has decided that it is necessary to continue both of these Conditions in order to maintain the status quo until a decision can be taken on whether or not it is appropriate to impose price controls on BT using the powers in the Act. It has therefore been continued pursuant to Article 7(6) of the Framework Directive in order to safeguard competition and protect the interests of users. The continuation of these conditions has been notified to the European Commission and other national regulatory authorities. The price controls on services which under the previous regime had been considered to be uncompetitive, or prospectively competitive,
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need to be continued until such time as the appropriate market reviews have been completed and implemented and a decision can be taken on which price controls should be maintained.

- 3.75 Minor modifications were proposed to deal with the fact that other Licence Conditions referred to would no longer exist. No comments were received in relation to the continuation of these Conditions.

**Condition 73 - Control of private leased circuit prices. (BT)**

- 3.76 The obligations in this Condition correspond to an SMP Condition which relates to retail prices and may be set under section 91 of the Act and can be retained until the retail market review is completed (in particular, in relation to the retail low bandwidth leased lines market). The continuation of this Condition implements Article 7 of the Interconnection Directive and therefore must be continued under Article 7 of the AID.
- 3.77 Accordingly, this Condition has been retained pursuant to paragraph 9(4)(a) of Schedule 18 of the Act until that market review has been completed. No modifications were proposed and no comments were received in response to the consultation. The continuation of this Condition has been notified to the European Commission and other national regulatory authorities.

**Condition 78 - Separate accounts (BT)**

- 3.78 This Condition implements (for BT, in addition to Condition 50) the requirements for accounting separation in the Interconnection Directive. The obligations must be carried over in order to comply with Article 7 of the AID. Accordingly, pursuant to paragraph 9(4)(c) of Schedule 18 to the Act, the provisions in this Condition have been continued. It is a more detailed Condition than Condition 50 which it displaces insofar as it applies. It relates to the following markets. Wholesale Access, call origination, conveyance and transit markets, fixed geographic call termination, international Direct Dial and Broadband Leased lines/ DSL.
- 3.79 Minor modifications have been made to ensure that the Condition continues to have effect post 25 July 2003, for example, to remove the reference to Conditions 33 and 77 which have not been continued and section 19 of the 1984 Act which is repealed.
- 3.80 Your Communications responded that it was not clear why Conditions 78.1(c) and 78.11(f) were amended. The said amendment to condition 78.1(c) was an amendment inserted when BT's licence was modified to include Condition 83 (Requirement to provide network access facilities). Condition 78.11(f) is modified to remove the reference to section 19 of the 1984 Act which has been repealed by the Communications Act. The Director received no other comments in relation to the proposed continuation of this Condition.
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**Condition 83 – Requirement to provide network access facilities (BT)**

- 3.81 The obligations in this Condition correspond to obligations which may be imposed following the relevant market review if SMP is found. It is therefore continued pursuant to paragraph 9(4)(a) of Schedule 18 of the Act until the relevant market review is completed. The continuation of this condition relates to the Wholesale unbundled access market.
- 3.82 This Condition places obligations on BT in respect of Local Loop Unbundling by virtue of its determination of SMP under the previous regime. The Director has decided that the Condition needs to be continued to maintain the status quo until a decision on whether or not to impose a Condition under the powers in the Act can be taken. He has therefore continued this pursuant to Article 7(6) of the Framework Directive already discussed in Chapter 2.
- 3.83 It was proposed that the provisions in the Condition relating to a dispute resolution procedure be removed as, during the interim period, they will be dealt with under the new dispute procedure in the Act. No comments were received on the proposed continuation and modification of this Condition. It has therefore been continued as proposed in the consultation.

**Conditions 66 and 67 (CNS)**

- 3.84 These Conditions mirror the SMP Conditions in Part C of the former PTO licence. They correspond to SMP Conditions which may be set under the new regime under section 87 of the Act. They are retained therefore pursuant to paragraph 9(4)(a) until the relevant market review is completed. The market for which these Conditions are continued is the International Direct Dial market.
- 3.85 The Director has decided that these Conditions need to be continued to maintain the status quo until a decision on whether or not to impose Conditions under the powers in the Act can be taken following the completion of the relevant market reviews. He has therefore also continued this pursuant to Article 7(6) of the Framework Directive.
- 3.86 In the consultation document, it was proposed that Condition 66A should be continued. However, on consideration of BT's comments on Condition 66A of CNS licence made on behalf of CNS, it has been accepted that there was no reason to continue this Condition. Condition 66A provided for the rollover of Network Charge Controls up to 31st March 2002. A number of definitions which are no longer required have also been removed. The modifications made are in line with those made to the corresponding provisions which existed in Part C of the former PTO licence.

**Condition 69A. National Roaming (Vodafone and O2)**

- 3.87 This Condition corresponds to an Access-Related Condition which may be imposed under section 73 of the Act. Accordingly, pursuant to paragraph
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9(4)(b) of Schedule 18 to the Act, this Condition is retained until such time as the Director completes his assessment of whether a Condition should be imposed pursuant to section 73 of the Act. The Director has already issued a consultation in relation to this issue.

- 3.88 The Director has continued this condition pursuant to Article 7(6) of the Framework Directive. He considers that it is necessary to continue this National Roaming Condition in order to maintain the status quo until the consultation on proposals to set a National Roaming Condition after 25<sup>th</sup> July 2003 is complete. The continuation of this condition has been communicated to the European Commission.

### **Responses to the Consultation**

- 3.89 Vodafone noted that there is little explanation of the legal basis for the Continuation Notices as a whole. It said that it had particular concerns over the legal basis for the continuation of the National Roaming Condition.
- 3.90 It welcomed the removal of the dispute resolution clause and stated that it would expect the Director to have the utmost regard to the existing guidelines in any consideration of a dispute.
- 3.91 It stated that the amended condition was unnecessary, disproportionate and clearly discriminatory in that it only applied to Vodafone and O2. It asked Oftel to reconsider urgently the need for any continued condition at all in respect of National Roaming.
- 3.92 It highlighted that the 'sunset' date of 2009 should not be included, emphasising that the EC framework allowed only measures to be maintained for a temporary period to allow the necessary market analysis.
- 3.93 O2 asked for clarification on how the Director's enforcement powers under the 1984 Act (s16-18 and 23) will be carried forward. It believed as a point of principle that the sunset date of 2009 should be retained.
- 3.94 It asked that, as the operator that has entered into a roaming agreement with 3, O2 was not put in a less favourable commercial position than under the existing condition.
- 3.95 3 stated that (from representations from Oftel, DTI, RA) it had a legitimate expectation that it would benefit from a National Roaming Condition including retail minus price controls and requiring reasonable terms in any agreement until the end of 2009. It stated that the ability to obtain fair, non-discriminatory roaming services based on retail minus was fundamental to its decision to participate in the 3G spectrum auction.
- 3.96 In relation to the removal of the dispute resolution clause - it stated that Oftel's view that it had no power to carry over substantive Access-Related conditions previously set out in paragraph 69A.7 was incorrect. In any event it believed that its removal was disproportionate and irrational.
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- 3.97 3 said that the rights it enjoyed currently under Condition 71 were protected by the European Convention on Human Rights. It stated that before taking away these rights the Director must consult adequately and ensure the removal was proportionate to the objective. 3 believed Oftel had not consulted at all on this point.
- 3.98 It stated also that the "procedural uncertainty" argument which Oftel used to justify the removal of the dispute resolution clause was disproportionate.
- 3.99 It asked also for reasons for the removal of 69A.11 (the sunset clause), stating that it was unable to comment on this in the absence of reasons.

### **Further consultation**

- 3.100 Following consideration of these responses the Director carried out a further very short consultation suggesting changes to his proposals in respect of this Condition. Only one response was received to that Consultation, from '3'.
- 3.101 3 elaborated on the response to the main consultation and it is not proposed to set out those expanded comments here.

### **The Director's response**

- 3.102 For the reasons set out in paragraphs 3.87 and 3.88 above the Director is satisfied that this Condition can be continued lawfully. Subject to the conclusion of the consultation referred to above, a similar condition will be imposed under the provisions of the Act if that is considered appropriate. The status quo has to be maintained until a decision has been made in order to continue regulatory certainty.
- 3.103 However, following consideration of the responses to the consultation and to the subsequent short consultation the Director decided that it would be appropriate to make some changes to the Condition. This he has done.
- 3.104 The 2009 end date has now been included. Originally this was removed from the draft condition to be continued because it seemed inconsistent with a continued provision which would only be in place for a short period and which will certainly be withdrawn long before the end date of 2009. Nevertheless, the proposed new condition, the draft text of which is already in the public domain, includes such an end date and therefore regulatory certainty would seem to require that end date to be in place in respect of an interim measure. Therefore, this clause has been reinstated.
- 3.105 The Director does not accept the argument put forward by 3 that he is entitled to continue the dispute resolution procedure set out on the face of the original condition and has not therefore reinstated it. He does however recognise that 3 may have relied on the reference to retail minus as a method of determining the costs of roaming if a dispute arises. Some changes to the continued condition have been made to ensure that this is a
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factor for consideration in any dispute which may be referred to him. Any such dispute will be dealt with under the new dispute resolution procedure as set out in the Act.

- 3.106 The existing guidelines would be taken into account when considering a dispute, until such time as they are replaced by new guidelines which are presently the subject of a public consultation.
- 3.107 Also the Director does not accept the point made by Vodafone in its response that the continuation of the Condition is discriminatory. Vodafone contends that the Condition is discriminatory because it applies only to Vodafone and O2 and not to Orange and T-Mobile. On the other hand it is proposed that the new condition to be imposed as an Access-Related Condition under the Act would, subject to the consultation, apply to all four mobile network operators.
- 3.108 The powers granted to the Director under Schedule 18 of the Act do not permit him to impose conditions on operators during this interim period which were not on 25<sup>th</sup> July attached to a licence prior to the licence being revoked. He may continue a condition and within strict limits as set out in Schedule 18, modify that condition. He cannot impose a condition on an operator anew.
- 3.109 As has been stated earlier in this Statement the intention throughout this exercise is to maintain the status quo until the reviews can be completed and implemented and therefore the condition is being continued in respect of those operators whose licences prior to 25<sup>th</sup> July included the Condition.

**Conditions 70A and 70B (T Mobile and Orange). Conditions 70B and 70C (Vodafone and O2). Calls to Mobiles.**

- 3.110 These Conditions correspond to SMP Conditions which may be set under section 87 of the Act. They need to be retained pending the outcome of the relevant market review. It was necessary however to make modifications to the Conditions in order to maintain the price reductions introduced by the Licence Modification following the review by the Competition Commission. This is consistent with the Director's policy of maintaining the status quo until a decision can be taken on whether or not a Condition should be imposed on these mobile operators following the conclusion and implementation of the relevant market review. The market review on which these Conditions have been continued is the mobile termination market.
- 3.111 The Director has not continued the provisions in the 4<sup>th</sup> April 2003 licence modifications which required the mobile operators to make an offer by 2 May 2003 to certain other operators to amend their interconnect agreements. Conditions 70B.4 and 70C.4, for Vodafone and O2, and Conditions 70A.4 and 70B.4, for T-Mobile and Orange, have therefore been deleted. Those provisions did not need to be continued after 24 July
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2003 because they were time expired in the sense that the Director simply requires the 15% cap on the existing level of charges to be maintained.

- 3.112 Oftel received three responses from mobile operators regarding the continuation of Conditions relating to the controls on mobile termination charges. Vodafone was one of these respondents but the other two marked their representations as confidential.
- 3.113 Vodafone stated that the Consultation Document did not explain adequately the legal basis for the proposed continuation of the controls on mobile termination charges. It claimed that as a result, Vodafone was not sufficiently aware of the legal basis and justification for the proposed continuation of the Conditions on control of mobile termination charges. In particular as it believes that it does not have Significant Market Power (SMP) in any purported market for mobile telecommunications services.
- 3.114 The Director does not accept that the Consultation Document is deficient in any way in explaining the legal basis (see Schedule 2 to the Continuation Notices which makes this clear). The Director considers that the Continuation Notices fall under paragraph 9 of Schedule 18 to the Communications Act 2003 and being fully compliant with the provisions of this paragraph, there is no need for him to make an SMP designation. Indeed, the issue of continuing the mobile termination charges control Condition was considered specifically by Mr Justice Moses in the recent Judicial Review brought by three mobile operators (See paragraphs 94-112 of his judgement) where he confirmed fully the lawfulness of the Director's proposals.
- 3.115 Vodafone questioned also the extent to which the Director relied on Article 7(6) of the Framework Directive for continuation of the charge controls. Vodafone contended that the matter did not satisfy the tests for there being "exceptional circumstances" and the need to "safeguard competition and protect the interests of users". They alleged that as BT could not make any corresponding reduction in retail prices for calling mobiles for 55 working days, any action would be disproportionate.
- 3.116 However, the Director's response is that his proposals are consistent with the requirements of paragraph 9 of Schedule 18 to the Communications Act. Indeed, Mr Justice Moses agreed, in his judgement, that these tests were met (see paragraphs 108-109 of the judgement). Further, BT's retail prices for calls to mobiles are covered by a price control and all reductions in termination charges have eventually to be passed on to consumers so that they gain the full benefit over the year as a whole. Furthermore, the Competition Commission, in its report of its investigation into mobile termination charges published in January 2003 concluded that it would be against the public interest for mobile termination charges to be higher than RPI-15%. In the light of that report the Director believes that he is fully justified in maintaining the control on termination charges post 24 July and
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pending the implementation of the current market review on the mobile termination market.

- 3.117 Vodafone questioned why the Condition is expressed as applying indefinitely.
- 3.118 The Director considers that there are adequate and appropriate safeguards in paragraph 9 of Schedule 18 in this respect.
- 3.119 Vodafone argued also that the continued controls related to new requirements rather than the continuation of existing ones and that the measures did not fall within the scope of Article 8 of the Access Directive.
- 3.120 The Director refutes Vodafone's contention that they are new requirements. The charge controls are provisions which were contained in Conditions in Vodafone's licence. As permitted expressly by paragraph 9(2) and (7) of Schedule 18 of the Act, the Director may make certain modifications to such provisions to secure that they continue to have effect for so long as the continuation notice is in force. This is precisely what the Director has done. Further, points such as the measure not being within Article 8 of the Access Directive are irrelevant (Paragraph 96 of Judge Moses' judgement is also relevant to this matter).

**Access Control Class Licence. Conditions applicable to regulated suppliers.**

10. Obligation to supply

11. Intellectual property

12 Requirement to keep separate financial accounts

13. Confidentiality of customer information

14 Prohibition on undue preference discrimination

15. Publication of charges, terms and Conditions

- 3.121 This is a class licence. The Conditions listed above have had to be carried over in order to comply with Article 7 of the Access Directive (AID). Accordingly, they have been continued pursuant to paragraph 9(4)(c) of Schedule 18 to the Act. They are continued and apply only to providers who had been determined by the Director to be Regulated Suppliers. Sky Subscribers Services Limited (SSSL) is the only provider so determined. The Conditions correspond to Conditions which can be set as Access-Related Conditions under section 73 of the Act. Accordingly, pursuant to paragraph 9(4)(b) of Schedule 18 to the Act these Conditions have been continued until such time as the Director completes his assessment of the imposition of new Conditions under the new regime. This will be undertaken by the consultation on the future regulation of Access Control services. Only SSSL responded to the consultation merely to advise that it had no comments to make.
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Some modifications were necessary in order to ensure that the form of each Condition being continued is compatible with other parts of the new regime.

### **Conditional Access Class Licence**

- 3.122 This is also a class licence. Prior to 25 July 2003 the Conditional Access Class Licence regulated both Conditional access and electronic programme guides (EPGs). The Director has issued new Conditional access Conditions pursuant to section 73 and 75(2) of the Act. These took effect on 25 July 2003 and can be found at: [http://www.oftel.gov.uk/publications/eu\\_directives/2003/condac0703.pdf](http://www.oftel.gov.uk/publications/eu_directives/2003/condac0703.pdf) . However, insofar as it related to EPGs and until such time as appropriate Access-Related Conditions on EPGs can be imposed under the Act, the Director has retained certain Conditions of the Conditional access class licence. These Conditions are being continued until the consultation on the future regulation of EPGs has been completed. The Director has continued these provisions pursuant to Article 7(6) of the Framework Directive. The exercise of the power of derogation in respect of these Conditions has been communicated to the European Commission and national regulatory authorities.
- 3.123 In relation to the interpretation section, where changes have been made to what was proposed in the consultation document, some of the definitions, which related to Conditions which have been deleted, have been deleted as well. Comments were received from Sky and these are discussed below.

### **Condition 1. Access supply obligation**

- 3.124 Sky argued that Condition 1.2 represents a misunderstanding of how an EPG service operates. An EPG operator provides third party broadcasters with a "listing" on the EPG and other related functions, which enable viewers to access selected programmes from the EPG. Sky contends the provision of these listings does not involve the interconnection OR interoperability of any systems or apparatus; the broadcaster just purchases a technical service from an EPG operator and does not interconnect with any system operated by the EPG operator. Therefore, it is said C. 1.2 is unnecessary and should be deleted. C. 1.1 is sufficient to ensure that the EPG operator offers these technical services on a FRND basis, so that a broadcaster is able to gain a listing of EPGs.
- 3.125 The Director considers that EPGs are more than a listing. Broadcasters are purchasing the interoperability of their listing with their programming, and they need to transmit information to the network provider for its inclusion on the EPG listing. He has not therefore felt able to accept these comments.
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**Condition 5. Separate accounts**

- 3.126 Currently, there is no obligation for separate accounts to be prepared in relation to the provision of EPG services. The current accounting separation obligation extends to all Conditional Access Services of which EPG Services are a subset. The Continuation Notice intends only to carry over existing regulation and not to impose any additional/new regulation. In any case, any additional regulation would first require a consultation by the Director which has not been conducted. Sky argued that C. 5 would be additional regulation and it should be deleted.
- 3.127 The Director accepts these comments and therefore he has not continued Condition 5 of this class licence.

**Condition 7. Intellectual property**

- 3.128 Sky argues as with C. 5, C. 7, is additional regulation and should be deleted. In its current form, C. 7 extends beyond the provision of EPG services (C. 7. 1 (a)) and it is also not relevant to the EPG services themselves (C. 7.1 (b)).
- 3.129 The Director has accepted these comments and has decided therefore not to include Condition 7 in the Continuation Notice.

**Condition 11. Undue preference/discrimination**

- 3.130 Sky believes C.11(b) is unnecessary, given the absence of any interconnection required for the provision of EPG services and therefore it should be deleted.
- 3.131 The Director is unable to accept these comments. EPGs need to interoperate with the programming, and to allow programming information to be conveyed from the broadcaster to the EPG provider. Until the appropriate consultation has been completed and implemented the status quo needs to be maintained.

**Condition 14. Publication of charges, terms and Conditions**

- 3.132 Sky contends that C.14.1 (a) (i) is incorrect to refer to a “package of such services”. The definition of EPG services is sufficiently wide to encompass all services which the EPG operator is required to offer on an FRND basis. Therefore, the concept of a “package” of services is unnecessary and should be deleted. Subsequently, C. 14.1 (ii) and C. 14.1 (iii) should be deleted given the absence of any interconnection in the provision of an EPG service and a number of changes should be made to C. 14.1 (b) and C. 14.2 (a).
- 3.133 The Director has not been able to accept these comments for the reasons set out above in relation to Conditions 1 and 11. EPGs comprise a listing facility, the ability for viewers to access programming, and the ability of the
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EPG listing to interoperate with the programming. The Conditions have therefore been continued in the form set out in the consultation document.

**Requirement to share sites (Condition 7 National Transcommunications and Condition 8 Crown Castle)**

3.134 These Conditions correspond to either Access-Related or SMP Conditions which could be imposed under the Act. Accordingly, pursuant to paragraph 9(4)(a) and (b) of Schedule 18 of the Act, these provisions have been continued until such time as the Director has completed his assessment under the new regime. These will be the subject of new Conditions in the event that the Director decides such Conditions are appropriate following completion and implementation of the review of broadcasting transmission services. These Conditions and the two which are referred to below on price controls on broadcasting networks need to be continued. These two operators are required to continue with their obligations to each other in respect of site sharing and to broadcast providers in respect of the charges they make for the use of their networks. The difficulties which would be encountered if either obligation were reimposed following a gap, could reduce significantly the effect of any new conditions the Director might impose following the completion of the review and it is necessary therefore to continue them pursuant to Article 7(6) of the Framework Directive. They have been notified to the European Commission and other national regulatory authorities. No consultation responses were received on the proposals contained in the consultation document.

**Restriction of prices for certain services. (Condition 8 National Transcommunications and Condition 9 Crown Castle)**

3.135 These correspond to either access-related or SMP Conditions which could be imposed under the Act. Accordingly, pursuant to paragraph 9(4)(a) and (b) of Schedule 18 of the Act, these provisions have been continued until such time as Oftel has completed its assessment under the broadcasting review. No consultation responses were received on the proposals contained in the consultation document. This is also continued pursuant to Article 7(6) of the Framework Directive and has been communicated to the European Commission and other national regulatory authorities.

**Control of hard wired telephones. (Condition 66 Kingston and Condition 67 BT)**

3.136 This Condition corresponds to an SMP apparatus Condition which may be set under section 93 of the Act. Accordingly it is continued pursuant to paragraph 9(4)(a) of Schedule 18 to the Act. In accordance with paragraph 9(6) of Schedule 18, the Director has identified the relevant market as the market for hard wired telephones.

3.137 The Condition was included in the BT and Kingston Licences only and related to the technology which these two incumbent operators still provide

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for some residential telephone users. Paragraph 9(5)(b) of the Act requires Continuation Notices relating to SMP apparatus Conditions to specify the market which will be the subject of the market review. That review will need to be completed and implemented before an SMP Apparatus Condition is imposed. Separate Continuation Notices were therefore required to continue those two Conditions.

- 3.138 Time constraints prevented these proposals being included in the consultation document. Copies of the then proposed Continuation Notice were however sent to the two operators involved. No comments were received in respect of these proposals and the Continuation Notices have been issued as per the drafts.

### **Continuation of Premium Rate Service Conditions**

- 3.139 As noted at paragraph 2.14 above, conditions regulating premium rate services have been continued for all PTO licences and three class licences (TSL, SPL and the CCL).
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## Chapter 4

### Continuation Notices for Interconnection Directions

- 4.1 Schedule 18, paragraph 22 of the Communications Act contains provision for the continuation of directions made under the Telecommunications (Interconnection) Regulations 1997. These directions must be the subject of separate Notices issued and served on the persons to whom the direction applies. Such Interconnection Directions made under the Interconnection Regulations and which have been continued are listed in Chapter 4.
- 4.2 This procedure applies only to directions made under the Interconnection Regulations. Paragraph 9(8) of Schedule 18 of the Communications Act provides for other subsidiary instruments made under Licence Conditions to continue where the Licence Condition to which they relate has itself been continued.
- 4.3 No modifications have been made to the Interconnection Directions, of which there are 57. All of these have been continued. Many of these directions affect large numbers of operators which required large numbers of Interconnection Direction Notices to be served. Copies of all of the Notices are on the Of tel website.
- 4.4 There follows a short description of each of these Notices and identification of the markets to which they relate. A web link to the individual Interconnection Directions to which the Continuation Notices relate is included in each text.
- 4.5 No comments were received from those who responded to the consultation document on the continuation of any of these Interconnection Directions.

#### **Interconnection Direction 1 – FRIACO under C45(2) and Reg 6(6)**

Link: <http://www.of tel.gov.uk/publications/internet/fria0500.htm>

- 4.6 This direction is a determination of a dispute between BT and MCI Worldcom concerning the provision of a Flat Rate Internet Access Call Origination product under Condition 45(2) and Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997.
- 4.7 The direction is relevant to the Call origination market.

#### **Interconnection Direction 2 – FRIACO under C45(2) & Regs 6(3) and 6(6)**

Link: <http://www.of tel.gov.uk/publications/internet/fria0201.htm>

- 4.8 This Direction is a determination relating to a dispute between BT and Worldcom concerning the provision of a Flat Rate Internet Access Call Origination product under Condition 45(2) and Regulations 6(3) and 6(6) of the Telecommunications (Interconnection) Regulations 1997.
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- 4.9 The Direction is continued in relation the following markets: Call origination market and local-tandem conveyance and transit market.

### **Interconnection Direction 3 – Amending FRIACO Requirements**

Link: <http://www.oftel.gov.uk/publications/internet/2002/stfriaco0502.htm>

- 4.10 This Direction amends the requirements for the provision of a Flat Rate Internet Access Call Origination product under Condition 45 and Regulations 6(6) of the Telecommunications (Interconnection) Regulations 1997.

- 4.11 The Direction is continued in relation the following markets: Call origination market and local-tandem conveyance and transit market.

### **Interconnection Direction 4 – Leased Lines**

Link: [http://www.oftel.gov.uk/publications/broadband/leased\\_lines/ppcs0301.htm](http://www.oftel.gov.uk/publications/broadband/leased_lines/ppcs0301.htm)

- 4.12 This Direction relates to leased lines and is made under Condition 45.2 of the Public Telecommunications Licence granted to BT and under Regulations 6(3) and 6(4) of the Telecommunications (Interconnection) Regulations 1997.

- 4.13 The Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high bandwidth wholesale symmetric broadband origination market, very high bandwidth wholesale symmetric broadband origination market and trunk segments market.

### **Interconnection Direction 5 – NTS Discounts 1/9/00**

Link: <http://www.oftel.gov.uk/publications/pricing/ntsd0901.htm>

- 4.14 This Direction, made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between BT and the Operators listed in the Schedule to the Direction over BT's proposal to increase its NTS discounts with effect from 1 September 2000.

- 4.15 This Direction is continued in relation to the call origination market.

### **Interconnection Direction 6 – Orange and BT Freephone call origination charges**

Link: <http://www.oftel.gov.uk/publications/mobile/oran0901.htm>

- 4.16 This Direction concerns a dispute between Orange and BT concerning interconnect charges for origination of calls to freephone numbers and was made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations.
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- 4.17 This Direction is continued in relation to the Mobile Access and call origination market.

**Interconnection Direction 7- Orange and BT Freephone call origination charges**

Link: <http://www.oftel.gov.uk/publications/mobile/oran0901.htm>

- 4.18 Same Direction as above.

**Interconnection Direction 8 – Telewest NTS Charges**

Link: <http://www.oftel.gov.uk/publications/pricing/nts0901.htm>

- 4.19 This Direction relates to a dispute between BT and Telewest concerning Telewest's operator specific NTS charges under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997.

- 4.20 This Direction is continued in relation to the call origination market.

**Interconnection Direction 9 – BT's Review Supplemental Agreement**

Link: <http://www.oftel.gov.uk/publications/pricing/supp1001.htm>

- 4.21 This Direction relates to a dispute between BT and other operators set out in the Direction regarding BT's Review Supplemental Agreement under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997.

- 4.22 This Direction is continued in relation to all interconnection markets.

**Interconnection Direction 10 – dispute between BT and Kingston**

Link: <http://www.oftel.gov.uk/publications/licensing/2001/king1001.htm>

- 4.23 This Direction, made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to a dispute between BT and Kingston over the physical interconnection arrangements between BT and Kingston; the dispute resolution provisions in Kingston's reference Interconnect offer; and Kingston's interconnection charges.

- 4.24 This Direction is continued in relation to all interconnection markets.

**Interconnection Direction 11 – xDSL interconnection**

Link: <http://www.oftel.gov.uk/publications/licensing/xdsl0301.htm>

- 4.25 This Direction, made under Condition 9.2 of the Public Telecommunications Licence granted to BT regarding xDSL interconnection and under Regulation 6(3) and 6(4) of the Telecommunications (Interconnection) Regulations 1997
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- 4.26 This Direction is continued in relation to the following markets: Asymmetric broadband origination market and broadband conveyance market.

**Interconnection Direction 12 – EBC matrix charges**

Link: <http://www.oftel.gov.uk/publications/licensing/2001/ebcm1201.htm>

- 4.27 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 concerns a dispute between COLT Telecommunications and BT concerning charges calculated in accordance with the Element Based Charge matrix.

- 4.28 This Direction is continued in relation to all interconnection markets.

**Interconnection Direction 13 - BT termination rates dispute: C&W & Telewest**

Link: <http://www.oftel.gov.uk/publications/pricing/2002/inter0302.htm>

- 4.29 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns disputes between BT and C & W and between BT & Telewest. These disputes relate to termination rates payable by BT to Operators based on BT's own Charges under the Network Charge Control Regime.

- 4.30 This direction is continued in relation to the fixed geographic termination market.

**Interconnection Direction 14- BT termination rates dispute: Inclarity & others**

Link: <http://www.oftel.gov.uk/publications/pricing/2002/inter0302.htm>

- 4.31 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 concerns disputes between BT and Inclarity and between BT and those operators listed in Schedule B to the Direction. These disputes relate to termination rates payable by BT to Operators based on BT's own Charges under the Network Charge Control Regime.

- 4.32 This direction is continued in relation to the fixed geographic termination market.

**Interconnection Direction 15 – DLE FRIACO**

Link: <http://www.oftel.gov.uk/publications/internet/2002/carrier0702.htm>

- 4.33 This Direction, made under Condition 45.2 of the Public Telecommunications Licence granted to BT and Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to DLE FRIACO.

- 4.34 The Direction is continued in relation to the call origination market.
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**Interconnection Direction 16 – BT and Telewest – Call Origination Charges**

Link: <http://www.oftel.gov.uk/publications/pricing/2002/free0802.htm>

4.35 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between Telewest and BT over interconnect charges for origination of calls to freephone numbers.

4.36 This Direction is continued in relation to the call origination market.

**Interconnection Direction 17 – LLU Backhaul**

Link: <http://www.oftel.gov.uk/publications/broadband/llu/back0802.htm#d>

4.37 This Direction made by the Director General under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997 relates to LLU Backhaul services.

4.38 This Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high bandwidth wholesale symmetric broadband origination market and the very high bandwidth wholesale symmetric broadband origination market.

**Interconnection Direction 18 – International 0845 and 0870 calls**

Link: <http://www.oftel.gov.uk/publications/licensing/2002/nts1102.htm>

4.39 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relating to disputes between BT and 90 licensed operators over termination charges for internationally originated calls to UK 0845 and 0870 numbers.

4.40 This Direction is continued in relation to the NTS voice termination market and transit markets.

**Interconnection Direction 19 – transit of C&W NTS calls**

Link: <http://www.oftel.gov.uk/publications/licensing/2002/ntscwc1102.htm>

4.41 This Direction, made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns the transit of calls by Cable & Wireless to certain NTS number ranges on the BT Network.

4.42 This Direction is continued in relation to the transit markets.

**Interconnection Direction 20 – Partial Private Circuits Phase 1**

Link: [http://www.oftel.gov.uk/publications/broadband/leased\\_lines/ppcs0602.htm](http://www.oftel.gov.uk/publications/broadband/leased_lines/ppcs0602.htm)

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- 4.43 This Direction constitutes the first phase in resolving a dispute concerning the provision of partial private circuits between BT and GTS, Fibernet, Global Crossing, Neoscorp, Thus, Worldcom, Energis and Colt.
- 4.44 The Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high bandwidth wholesale symmetric broadband origination market, very high bandwidth wholesale symmetric broadband origination market and trunk segments market.

#### **Interconnection Direction 21 Partial Private Circuits amending Phase 1**

Link: [http://www.oftel.gov.uk/publications/broadband/leased\\_lines/ppc1002.htm#fd](http://www.oftel.gov.uk/publications/broadband/leased_lines/ppc1002.htm#fd)

- 4.45 This is a Final Direction amending the above Phase 1 Direction
- 4.46 The Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high bandwidth wholesale symmetric broadband origination market, very high bandwidth wholesale symmetric broadband origination market and trunk segments market.

#### **Interconnection Direction 22 – Partial Private Circuits Phase 2**

Link:

[http://www.oftel.gov.uk/publications/broadband/leased\\_lines/ppc1202/direction.htm](http://www.oftel.gov.uk/publications/broadband/leased_lines/ppc1202/direction.htm)

- 4.47 This Direction constitutes the second phase in resolving a dispute concerning the provision of partial private circuits between BT and GTS, Fibernet, Global Crossing, Neoscorp, Thus, Worldcom, Energis and Colt.
- 4.48 The Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high bandwidth wholesale symmetric broadband origination market, very high bandwidth wholesale symmetric broadband origination market and trunk segments market.

#### **Interconnection Direction 23 – BT’s Transit Risk Review Supplemental Agreement**

Link: <http://www.oftel.gov.uk/publications/pricing/2003/tran0103.htm>

- 4.49 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to a dispute between BT and the operators listed in the Schedule to the Direction over BT’s Transit Risk Review Supplemental Agreement.
- 4.50 This Direction is continued in relation to the transit markets.
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**Interconnection Direction 24 – BT’s rearrangement charges**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/char0103.htm>

4.51 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 is a Final Direction relating to a dispute between Energis and BT over BT’s rearrangement charges.

4.52 This direction is continued in relation to all interconnection markets.

**Interconnection Direction 25 – BT’s Credit Vetting Supplemental Agreement**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/credit0203.htm>

4.53 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to a dispute between BT and the Operators listed in Schedule 2 to the Direction concerning BT’s Credit Vetting Supplemental Agreement.

4.54 This direction is continued in relation to all interconnection markets.

**Interconnection Direction 26 – DQ118 capacity**

Link: <http://www.oftel.gov.uk/publications/consumer/2003/dqoverflow0303.htm>

4.55 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between C & W and BT over the provision of overflow capacity for DQ118 traffic

4.56 This direction is continued in relation to the following markets: call origination market and transit markets

**Interconnection Direction 27 - BT’s NTS Discounts**

Link: [http://www.oftel.gov.uk/publications/licensing/2003/nts0303\\_5.htm](http://www.oftel.gov.uk/publications/licensing/2003/nts0303_5.htm)

4.57 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, relates to BT’s NTS Discounts for calls to 0844 and 0871 numbers with effect from 1 October 2002.

4.58 This Direction is continued in relation to the call origination market.

**Interconnection Direction 28 – BT’s retail uplift for Number Translation**

Link: [http://www.oftel.gov.uk/publications/licensing/2003/nts0303\\_4.htm](http://www.oftel.gov.uk/publications/licensing/2003/nts0303_4.htm)

4.59 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, concerns BT’s retail uplift charge for calls to operators’ Number Translation Services from 1 April 2001.

4.60 This Direction is continued in relation to the call origination market.

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**Interconnection Direction 29- Energis dispute over BT's NTS Retail Uplift charge**

Link: [http://www.oftel.gov.uk/publications/licensing/2003/nts0303\\_3.htm](http://www.oftel.gov.uk/publications/licensing/2003/nts0303_3.htm)

4.61 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, resolves a dispute between Energis and BT over BT's method of calculating its NTS Retail Uplift charge.

4.62 This Direction is continued in relation to the call origination market.

**Interconnection Direction 30 – BT's retail uplift on number translation**

Link: [http://www.oftel.gov.uk/publications/licensing/2003/nts0303\\_2.htm](http://www.oftel.gov.uk/publications/licensing/2003/nts0303_2.htm)

4.63 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997 relates to BT's retail uplift charge for calls to operators' number translation services from 1 April 2000.

4.64 This Direction is continued in relation to the call origination market.

**Interconnection Direction 31 – bad debt surcharge PRS**

Link: [http://www.oftel.gov.uk/publications/licensing/2003/nts0303\\_1.htm](http://www.oftel.gov.uk/publications/licensing/2003/nts0303_1.htm)

4.65 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, resolves a dispute between C & W and BT over a bad debt surcharge relating to calls to Premium Rate Services.

4.66 This Direction is continued in relation to the call origination market.

**Interconnection Direction 32 – NTS traffic overflow facilities**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/ntstraff0403.htm>

4.67 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between BT and C & W, Easynet, Energis, ntl and Wavecrest over the withdrawal of overflow facilities from NTS traffic.

4.68 This Direction is continued in relation to the call origination market.

**Interconnection Direction 33 – BT & Vodafone – wholesale connections**

Link: [http://www.oftel.gov.uk/publications/broadband/leased\\_lines/btvo0603.htm](http://www.oftel.gov.uk/publications/broadband/leased_lines/btvo0603.htm)

4.69 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 relates to a dispute between BT and Vodafone over wholesale connections between their respective networks.

4.70 The Direction is continued in relation to the following markets: low bandwidth wholesale symmetric broadband origination market, high

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bandwidth wholesale symmetric broadband origination market, and trunk segments market.

#### **Interconnection Direction 34 – BT’s average PRS discounts**

Link: <http://www.oftel.gov.uk/publications/licensing/2002/prsd0402.htm>

4.71 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between C & W and BT over BT’s average Premium Rate Service discounts.

4.72 This Direction is continued in relation to the call origination market.

#### **Interconnection Direction 35 - C&W number ranges and BT’s Retail discount**

Link: <http://www.oftel.gov.uk/publications/pricing/2002/nts0502.htm>

4.73 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to C & W’s proposal that calls to C&W’s NTS number ranges should be excluded from BT’s Retail Discounts.

4.74 This Direction is continued in relation to the call origination market.

#### **Interconnection Direction 36 - NTS call origination charge**

Link: <http://www.oftel.gov.uk/publications/pricing/inca1201.htm>

4.75 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 concerns a dispute over BT’s proposal to charge for NTS call origination using INCA and CLI.

4.76 This Direction is continued in relation to the call origination market.

#### **Interconnection Direction 37 – Permanent carrier pre-selection costs**

Link: <http://www.oftel.gov.uk/publications/carrier/2002/pcps0902.htm>

4.77 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, is a final determination on costs and charges for the provision of permanent carrier pre selection.

4.78 This direction is continued in relation to the call origination market.

#### **Interconnection Direction 38 – BT carrier pre-selection facilities surcharges**

Link: <http://www.oftel.gov.uk/publications/carrier/2002/cps0202.htm>

4.79 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, is a final determination of surcharges for the provision by BT of carrier pre-selection facilities.

4.80 This direction is continued in relation to the call origination market.

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**Interconnection Direction 39 – Permanent carrier pre-selection - FeatureNet, FeatureLine and Embark**

Link: <http://www.oftel.gov.uk/publications/carrier/feat1101.htm>

4.81 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, is a final determination on costs and charges for the provision by BT of permanent carrier pre-selection standard services for FeatureNet, FeatureLine and Embark customers.

4.82 This direction is continued in relation to the call origination market.

**Interconnection Direction 40 – De-averaged NTS Conveyance charges.**

Link: <http://www.oftel.gov.uk/publications/pricing/cwc0401.htm#DETERMINATION>

4.83 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination on a dispute between BT and C & W concerning de-averaged NTS conveyance charges.

4.84 This Direction is continued in relation to the call origination market.

**Interconnection Direction 41 – Dispute – NTS links from 1/1/2001**

Link: <http://www.oftel.gov.uk/publications/pricing/ntsp0601.htm#direction>

4.85 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination of a dispute between BT and a number of operators regarding a proposal to charge for NTS links from January 1 2001.

4.86 This Direction is continued in relation to the call origination market.

**Interconnection Direction 42 – xDSL interconnection at ATM switch**

Link: <http://www.oftel.gov.uk/publications/broadband/dsl/atmi0602.htm>

4.87 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between BT, Energis and Thus concerning xDSL interconnection at the ATM switch.

4.88 This Direction is continued in relation to the following markets: Asymmetric broadband origination market and broadband conveyance market.

**Interconnection Direction 43 – BT & Orange sharing interconnection costs**

Link:

[http://www.oftel.gov.uk/publications/eu\\_directives/cont\\_notices/interconnection/notice\\_43.pdf](http://www.oftel.gov.uk/publications/eu_directives/cont_notices/interconnection/notice_43.pdf)

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- 4.89 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 concerns a dispute between BT and Orange over the sharing of costs for customer site interconnection.
- 4.90 This Direction is continued in relation to the following markets: Call origination, local-tandem conveyance and transit, fixed geographic termination and transit markets.

#### **Interconnection Direction 44 – Vodafone & INMS date to reach agreement**

Link: <http://www.oftel.gov.uk/publications/mobile/ia0400.htm>

- 4.91 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination to change the date by which Vodafone and INMS should reach agreement on the terms and conditions for the provision of indirect access by Vodafone to INMS.
- 4.92 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 45 – BT Cellnet & INMS interim Indirect Access charges**

Link: <http://www.oftel.gov.uk/publications/mobile/iabt0500.htm#DETERMINATION>

- 4.93 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination to set interim charges for the provision of Indirect Access services by BT Cellnet to INMS.
- 4.94 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 46 - BT Cellnet & INMS final Indirect Access charges**

Link: <http://www.oftel.gov.uk/publications/mobile/iabt0700.htm#DETERMINATION>

- 4.95 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination to set the final charges for the provision of Indirect Access services by BT Cellnet to INMS.
- 4.96 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 47 – Vodafone & INMS interim Indirect Access charges**

Link: <http://www.oftel.gov.uk/publications/mobile/iavo0500.htm#DETERMINATION>

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4.97 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination to set interim charges for the provision of Indirect Access services by Vodafone to INMS.

4.98 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 48 – Vodafone & INMS final Indirect Access charges**

Link: <http://www.oftel.gov.uk/publications/mobile/iavo0700.htm#DETERMINATION>

4.99 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination on the final charges for the provision of Indirect Access services by Vodafone to INMS

4.100 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 49 – BT’s NTS Conveyance**

Link: <http://www.oftel.gov.uk/publications/1999/pricing/nts1199.htm>

4.101 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between BT and each of the Operators listed in Schedule 1 of the Direction relating to BT’s NTS Conveyance.

4.102 This Direction is continued in relation to the call origination market.

#### **Interconnection Direction 50 – Vodafone & INMS Indirect Access Dispute**

Link: <http://www.oftel.gov.uk/publications/1999/competition/iavf1299.htm>

4.103 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination of a dispute between INMS and Vodafone regarding the provision of Indirect Access Services by Vodafone to INMS.

4.104 This direction is continued in relation to the mobile access and call origination market.

#### **Interconnection Direction 51 – BT Cellnet & INMS Indirect Access Dispute**

Link: <http://www.oftel.gov.uk/publications/1999/competition/iabt1299.htm>

4.105 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, is a determination of a dispute between INMS and BT Cellnet regarding the provision of Indirect Access Services by BT Cellnet to INMS.

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4.106 This direction is continued in relation to the mobile access and call origination market.

**Interconnection Direction 52 – C&W and BT – 118 origination dispute**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/dqor0603.htm>

4.107 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between C & W and BT concerning BT's retention for the origination of calls to DQ118 services.

4.108 This direction is continued in relation to the call origination market.

**Interconnection Direction 53 – BT's 'Cancel Other' orders**

Link: <http://www.oftel.gov.uk/publications/carrier/2003/cps0703.htm>

4.109 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, regarding BT's use of 'cancel other' orders in the carrier pre-selection process.

4.110 This direction is continued in relation to the call origination market.

**Interconnection Direction 54 – BT & C&W Indirect Access transit dispute**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/indirect0703.htm>

4.111 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, relates to a dispute between C & W and BT over the provision of a local to tandem and inter-tandem transit service for indirect access traffic.

4.112 This direction is continued in relation to the call origination market.

**Interconnection Direction 55 – Vodafone credit vetting clause**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/credvet0703.htm>

4.113 This Direction made under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997, concerns a dispute between Vodafone and both ntl and MCI WorldCom over Vodafone's credit vetting clause.

4.114 This Direction is continued in relation to the mobile termination market.

**Interconnection Direction 56 – Intelligent Network FRIACO charge**

Link: <http://www.oftel.gov.uk/publications/internet/2003/friaco0703.htm>

4.115 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997 relates to the Intelligent Network Charge for flat rate internet access call origination.

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4.116 The Direction is continued in relation the following markets: Call origination market, and local-tandem conveyance and transit market.

**Interconnection Direction 57 – BT’s Retail Uplift – Number Translation**

Link: <http://www.oftel.gov.uk/publications/licensing/2003/nts0703.htm>

4.117 This Direction made under Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997, deals with BT’s Retail Uplift charge for calls to operators’ Number Translation Services from 1 April 2001.

4.118 This Direction is continued in relation to the call origination market.

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## Chapter 5

### Procedure for the revocation of the Continuation Notices

- 5.1 The Continuation Notices which have been issued will continue in force until the Director issues another Notice bringing the continuation of the Continued Provisions to an end. This will be done once the relevant market reviews have been completed and either a Condition within the categories defined in the Act has been imposed on the operator concerned, or the regulatory obligation is removed from that operator following the conclusions of that market review.
- 5.2 Paragraph 9(11) of schedule 18 of the Communications Act requires the Director as soon as reasonably practicable after giving the Continuation Notice, to take all steps necessary to enable him to decide whether or not to set a Condition for the purpose of replacing the continued provision. He must then decide as soon as reasonably practicable whether or not to exercise his power to set a Condition within the categories set out in the Communications Act. There is therefore a need to complete the market reviews and to issue the corresponding Notice to discontinue the Continued Provision as soon as possible after decisions have been reached under the new regime.
- 5.3 The tables at Annexes 2 and 3 show the market reviews and the continued provisions which relate to each. In effect the reverse of what is set out in the text of this document in the description for each continued provision.
- 5.4 As will be seen from the tables, some continued provisions in conditions relate to a number of market reviews. This is one of the transitional difficulties in moving from one regime to another regime. Regulation under the previous regime (prior to 25 July 2003) was not imposed on the basis of an individual market approach. The new regime is based primarily on individual markets. Accordingly, the previous Licence Conditions (and continued provisions in those conditions) apply on the basis of a broad-brush approach rather than on a market by market approach.
- 5.5 The current areas being reviewed by Oftel are set out in the following table along with the current status of each. It should be noted that Oftel may choose to review additional areas.

Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets	Issued for national consultation and consultation with European Commission and other NRAs on 26 August 2003. Consultation closes on 26 September 2003 and a final statement will follow thereafter.
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Review of fixed geographic call termination markets	Issued for national consultation and consultation with European Commission and other NRAs on 26 August 2003. Consultation closes on 26 September 2003 and a final statement will follow thereafter.
Fixed Narrowband Retail Services Market	Issued for national consultation and consultation with European Commission and other NRAs on 26 August 2003. Consultation closes on 26 September 2003 and a final statement will follow thereafter.
Wholesale International Services markets	Issued for national consultation and consultation with European Commission and other NRAs on 26 August 2003. Consultation closes on 26 September 2003 and a final statement will follow thereafter.
Wholesale unmetered narrowband Internet termination services – UK excluding Hull area market	Issued for national consultation and consultation with European Commission and other NRAs on 26 August 2003. Consultation closes on 26 September 2003 and a final statement will follow thereafter.
Mobile access and call origination services market	Issued for national consultation and consultation with European Commission and other NRAs on 4 August 2003. Consultation closes on 4 September 2003 and a final statement will follow thereafter.
Review of mobile wholesale voice call termination markets	A national consultation has occurred. Of tel expects to issue a further national consultation and consultation with the European Commission and other NRAs as soon as consideration of the responses to the first consultation has been concluded.

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Review of the Wholesale Broadband Access Market	A national consultation has occurred. Oftel expects to issue a further national consultation and consultation with the European Commission and other NRAs as soon as consideration of the responses to the first consultation has been concluded.
Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets	A national consultation has occurred. Oftel expects to issue a further national consultation and consultation with the European Commission and other NRAs as soon as consideration of the responses to the first consultation has been concluded.
Review of local loop unbundling	Oftel expects to issue a consultation shortly.
Review of broadcasting transmission services	Oftel expects to issue a consultation shortly.
Review of wholesale end to end calls	Oftel hopes to be able to publish the first consultation before the end of 2003.
Financial reporting obligations in SMP markets	A national consultation has occurred. Oftel expects to issue a further national consultation and consultation with the European Commission and other NRAs as soon as consideration of the responses to the first consultation has been concluded.
National roaming condition	A national consultation has occurred. Oftel expects to issue a further national consultation and consultation with the European Commission and other NRAs as soon as consideration of the responses to the first consultation have been considered.
Access control	Oftel expects to issue a consultation around the end of September 2003.

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Electronic Programme Guides	Of tel expects to issue a consultation around the end of September 2003.
SMP apparatus conditions	Of tel expects to issue a consultation by the end of 2003.

- 5.6 It should be noted that completion dates are also subject to any notification by the European Commission pursuant to Article 7(4) of the Framework Directive which has the effect of delaying adoption of the draft proposals for a further two months.
- 5.7 It can be seen from this table that market reviews are likely to be completed at different times. Certain Conditions involve the review of a number of markets and there will be circumstances where some of the reviews have been completed but others have yet to be finalised. This raises a difficult issue about when to give notice that a Continuation Notice ceases to have effect.
- 5.8 Paragraph 9(12) of Schedule 18 to the Act requires that when an assessment under the new regime of a continued provision has been completed, the Director must give a notice under paragraph 9(9) that the continuation notice ceases to have effect. He must do so as soon as reasonably practicable after taking a decision to impose (or not to impose) conditions under the new regime.
- 5.9 In the case of condition 45 for example, it can be seen from Annex 2 that the continued provisions in the condition will not be reviewed until such time as six different reviews are completed. Each is specified to be completed on a different date. Accordingly, it may be said that the duty to cease to apply condition 45 is not triggered until the Director completed his review of all of the provisions in condition 45 in its full scope across all relevant markets. However, this would mean that when a particular market review is completed, new conditions could be imposed and condition 45 would continue to apply to services which were the subject of a different market review.
- 5.10 The Director considers that it is undesirable to have regulation from the old regime applying at the same time as regulation under the new regime and that this will lead to delay in the revocation of the old regime.
- 5.11 Accordingly, the Director favours an alternative interpretation which would enable him to revoke a condition for the purposes of a particular market at the time when that market review is completed and any new obligations in that market are imposed. The Condition would, however, continue to have effect through the continuation notice in relation to other markets where the relevant review had not been completed because the notice would only

have ceased the continuation notice in part. In other words, when the first market review is completed which is relevant to condition 45, that condition would be discontinued for the markets in that first market review. However, the continuation notice in respect of condition 45 would remain effective for all other markets in the other market reviews. The process would then be repeated as each market review concludes. The Director considers that this approach is permitted by Schedule 18, paragraph 9 in that he is able to issue more than one notice under paragraph 9(9) of Schedule 18 to cease the effect of Continuation Notices. Such an approach accords with the intention of the Directives and continues a smooth transition from the old regime to the new regime.

- 5.12 There are other complexities which will arise, for example, accounting separation conditions. The Director is considering accounting separation conditions across a number of markets separately. Accordingly, while some market reviews may conclude, the Director will not have completed his assessment of the provisions continued in relation to accounting obligations. Accordingly, the Director would not propose to discontinue the Continuation Notices for such completed market reviews until such time as he concludes his views on the accounting obligations under the new regime.
- 5.13 In addition, there may be cases where the Director will have completed the market review(s) in question. However, he may not be in a position at that stage to decide whether or not to exercise his power to set conditions for the purpose of replacing each and every continued provision (as defined and required by paragraph 9(11) of Schedule 18). This situation may arise because, for instance, the Director may need more time to analyse further certain matters or, indeed, take further steps necessary to enable him to make a particular decision. In that case, it is the Director's intention at present to isolate such matters and discontinue the continued provisions in respect of all other conditions for which the Director is able to exercise that discretion at the time of the completion of the relevant market review(s). The Director expects to decide upon any isolated matters as soon as reasonably practicable thereafter.

#### **Notices to cease Continuation Notices relating to SMP apparatus conditions**

- 5.14 Paragraph 9(10) of Schedule 18 applies in relation to these notices rather than paragraph 9(11). These notices to BT and Kingston specify the market for hard-wired telephones. Paragraph 9(10) places the Director under a duty to carry out an analysis of that market and to take all steps necessary for enabling him to decide whether or not to set an SMP apparatus condition under the Act. He must carry this out as soon as reasonably practicable now that he has given these Continuation Notices. The table above indicates the current proposed timing for the consideration of these conditions.
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- 5.15 As for the other Continuation Notices in relation to Licence Conditions, paragraph 9(12) of Schedule 18 to the Act then applies. This requires that, having completed an assessment under the new regime of a continued provision, the Director must give a notice under paragraph 9(9) of Schedule 18 that the continuation notice ceases to have effect. He must do this as soon as reasonably practicable after taking a decision to impose (or not to impose) conditions under the new regime.

### **Notices to cease Continuation Notices relating to Interconnection Directions**

- 5.16 Paragraph 22 of Schedule 18 contains provisions similar to those in paragraph 9 as to the cessation of Continuation Notices relating to Interconnection Directions. Paragraph 9(8) provides that the Director may revoke a direction in whole or in part, which has been continued pursuant to paragraph 9(6). Paragraph 9(9) of Schedule 18 provides that the Director is under a duty to take all steps necessary to decide whether or not to set a condition under the new regime to replace the direction subject to the continuation notice, where the direction corresponds to a condition which may be set under section 45 of the Act. He must carry out this assessment as soon as reasonably practicable now that he has issued the Continuation Notices.
- 5.17 The Director has issued 57 Continuation Notices in relation to the continuation of Interconnection Directions. These are set out in Chapter 4. Annex 3 lists each interconnection direction by number (as set out in Chapter 4) and shows the relevant market.
- 5.18 When the Director has completed his assessment under the new regime about whether to replace the interconnection direction he is required, by paragraph 22(10) to revoke the Continuation Notice.
- 5.19 Following on from what is said above in respect of Licence Condition which have been continued, some of the Notices relating to Interconnection Directions relate also to a number of markets. The reviews of those markets are unlikely to be concluded and implemented at the same time. As in the case of the Continuation Notices relating to Licence Conditions, the Director proposes to revoke a continuation notice when he has completed his assessment under the new regime.

### **Consultation on the discontinuation of Continuation Notices**

- 5.20 There is no statutory obligation on the Director to consult when he issues a notice discontinuing a Continued Provision. However, clearly those operators who will have been subject to the Continued Provision and others within the industry who have an interest, will have views on whether or not discontinuation is appropriate in the way it is proposed. There is however a need to proceed to the new regime with as little delay as is possible. Having considered the particular circumstances, the Director has decided that it would be appropriate to carry out a public consultation on each proposal for
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discontinuation for a short period only. In the majority of cases he would expect this to be for a 14-day period. As has been set out above, the Director has a duty under paragraph 9(9) of schedule 18 of the Act to withdraw these continued provisions as soon as reasonably practicable and therefore this interim regime in its entirety must be brought to a conclusion without undue delay.

- 5.21 Also as has been explained at the beginning of this Statement the Director does not have complete control of this exercise. Any decision to complete a market review and thus be in a position to decide whether or not to impose a condition under the Act is dependent on consulting the European Commission and the National Regulatory Authorities of the other Member States. The Commission may require more time (up to two months) and may veto a proposal if they consider it to be inconsistent with the list of markets which they have published.
- 5.22 It may therefore be several months before a decision can be made and the continued provision withdrawn.
- 5.23 It is not possible therefore to include in this Statement a firm timetable for the conclusion of this exercise and complete transfer to the new regime. However predicted dates for the completion of some reviews are included in the annexed tables and subject to the acceptance of these review conclusions by the European Commission, the Director hopes to be able to bring all of these matters to a conclusion at an early date.
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## **ANNEX 1**

### **Letter to Annex II Operators**

Dear Sir

#### **The Annex II list of operators deemed to have rights and obligations under the Interconnection Directive (97/33/EC)**

This letter is addressed to all operators that appear on the Annex II list, whether their status is confirmed or provisional.

As you will be aware a new regulatory framework enters[entered] into force on 25 July 2003. The framework establishes a new interconnection regime for providers of public electronic communications networks (PECNs) brought about by the new Access and Interconnection Directive (2002/19/EC). Oftel has published guidelines on the new interconnection arrangements, the *Guidelines for the interconnection of PECNs*, available at [www.oftel.gov.uk/publications/eu\\_directives/2003/intercon0503.htm](http://www.oftel.gov.uk/publications/eu_directives/2003/intercon0503.htm) . When the guidelines were published in May, it was anticipated that the Annex II list would cease to have effect on 24 July and that a new voluntary register of PECNs would succeed it.

However the new regulatory framework requires the completion and implementation of market reviews before conditions may be attached to specific communications providers. Those market reviews are currently in process but until they are formally concluded it has proved necessary for Oftel to provide for the continuation of certain Licence Conditions to ensure that a regulatory gap is avoided by issuing a series of Continuation Notices. For background on Continuation Notices please see the consultation published at [www.oftel.gov.uk/publications/licensing/2003/cont0703.htm](http://www.oftel.gov.uk/publications/licensing/2003/cont0703.htm) Chapters 3 and 4 are particularly relevant to interconnection arrangements.

One consequence of the interim continuation regime is that existing interconnection agreements with Annex II public operators and Directions made under the Interconnection Regulations will be maintained until the market review process is complete. Furthermore, the rights and obligations of Schedule 2 public operators are to be preserved during this interim period. What this means is that the Annex II list will be continued and can be added to in the event that further applications for interconnection status are made before the new regime is implemented. Operators that currently have provisional status may be confirmed and new applications for provisional status will be accepted. The only significant change is that there is no longer any legal basis for charging fees in connection with processing or maintaining Annex II applications.

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While the continuation regime is in place Oftel will be developing the procedures in order to establish a voluntary register of PECNs, as indicated in the Interconnection Guidelines. A further communication will follow.

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**ANNEX 2**

**Continued Licence Conditions and the  
Applicable Markets**

**MOBILES**

T-Mob Orange	Vodafone O2
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	45	46	47	48	49	50	50 A	53	54	55	57	58	65	69	69 A	69 B	70	71	73	78	83	66 CNS	67 CNS	69 A	70 A	70 B	70 B	70 C	
Wholesale Access																✓					✓								
Call Origination Conveyance & Transit	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓							✓								
Fixed Geographic Call Termination	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓	✓							✓								
International Direct Dial	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓	✓							✓		✓						
Broadband Leased Lines/ DSL	✓	✓	✓		✓	✓				✓	✓	✓	✓	✓					✓	✓									
Mobile Access & Call Origination	✓			✓	✓						✓	✓																	
Access to Emergency Operator Assistance											✓	✓	✓	✓															
Retail Residential & Business Access									✓		✓	✓	✓				✓	✓											
Retail Local, national & international Calls									✓		✓	✓	✓				✓	✓											
Calls to mobile									✓		✓	✓					✓	✓											
Number Portability											✓	✓	✓		✓						✓								
Wholesale Unbundled Access											✓	✓	✓									✓							
Mobile Termination											✓														✓	✓	✓	✓	

**NB – Refer to Para 3.8 for Condition 43**

**Continued Interconnection Directions  
and the Applicable Markets**

**ANNEX 3**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Call Origination	✓	✓	✓		✓			✓							✓	✓										✓	✓	✓	✓
Local-tandem Conveyance and Transit		✓	✓																										
Low Bandwidth Wholesale Symmetric Broadband Origination				✓													✓			✓	✓	✓							
High Bandwidth Wholesale Symmetric Broadband Origination				✓													✓			✓	✓	✓							
Very High Bandwidth Wholesale Symmetric Broadband Origination				✓													✓			✓	✓	✓							
Trunk Segments				✓																✓	✓	✓							
Mobile Access & Call Origination						✓	✓																						
Transit Markets																		✓	✓				✓			✓			
NTS Voice Termination																		✓											
Asymmetric broadband origination											✓																		
Broadband Conveyance											✓																		
Fixed Geographic Termination												✓	✓																
All Interconnection Markets									✓	✓		✓												✓	✓				

	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57
Call Origination	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓						✓			✓	✓	✓		✓	✓
Local-tandem Conveyance and Transit														✓													✓	
Low Bandwidth Wholesale Symmetric Broadband Origination				✓																								
High Bandwidth Wholesale Symmetric Broadband Origination				✓																								
Very High Bandwidth Wholesale Symmetric Broadband Origination																												
Trunk Segments				✓																								
Mobile Access & Call Origination															✓	✓	✓	✓	✓		✓	✓						
Transit Markets														✓														
NTS Voice Termination																												
Asymmetric broadband origination													✓															
Broadband Conveyance													✓															
Fixed Geographic Termination														✓														
Mobile Termination																										✓		