




Costas Pittas  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
LONDON  
SE1 9HA

7<sup>th</sup> December 2012

By e-mail

**Reference: Case CW/01092/09/12 - Dispute relating to BT's POLOs for 0845 call termination**  
**NON-CONFIDENTIAL**

Dear Costas

With respect to the aforementioned Dispute opened on 3<sup>rd</sup> October 2012 and the provisional conclusions published on 29<sup>th</sup> November 2012 (the "Draft Determination"), following my e-mail correspondence and telephone conversation with Martin Hill, I write  regarding the potential for unforeseen consequences within the industry should the Draft Determination become final.

As a broad matter of principle, BT's Payments to Other Licensed Operators ("POLOs") are derived from the BT Retail NTS Formula in their Significant Market Power ("SMP") Condition AAA11. Whilst Gamma has views on the construction on this condition and the formula, in essence, if BT has erred in calculating the input variables into this formula, then it stands to reason that the POLO is also wrong and is subject to change.

However, there exists, at least in Gamma's case, a nexus of contractual arrangements which relies on the output of the BT Retail NTS Formula and SMP Condition AAA11 as a benchmark. Direct interconnect relationships are founded on a reciprocal benefit of sharing the benefit of avoiding BT Transit and use such a relationship in both directions with the BT POLO as a reference. Gamma

recently settled with ₤ a dispute arising from ₤ 0845 termination charges ₤ which also includes this as a benchmark.

All of this has the effect of creating a complex set of transactions that could potentially need to be unwound and recalculated in a final determination.

To illustrate, we estimate, on the basis of one month's traffic, we could have a liability of ₤ for each 0.01 pence per minute the POLO increases by and ₤ for each 0.01 pence per call the POLO increases by. Over 12 months, and an increase of 0.1ppm and 0.1ppc, we already come to a net potential liability of ₤.

We welcome Ofcom's analysis and BT's comments in sections 3.131 and 3.132 which do help to negate any liability we have derived with BT themselves ₤, however, it is very much our experience that determinations made between two parties on a product subject to SMP regulation does result in uncertainty and further disputes arising within the industry and to that end, noting our discussion above, we ask that Ofcom take care in the construction of the final determination to minimise any such impacts on Communications Providers that were not Parties to the Dispute.

If you have any questions, please don't hesitate to contact me, Peter Farmer (0333 240 3217, [peter.farmer@gamma.co.uk](mailto:peter.farmer@gamma.co.uk), at the address below), for further detail in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Farmer', written in a cursive style.

Peter Farmer