



Ofcom's Consultation

**Draft determination to resolve
disputes between BT and various
communications providers about
changes to AIT terms**

**BT Response
(Non-Confidential)**

6th July 2009



BT's response to Ofcom's draft determination to resolve disputes between BT and various communications providers about changes to AIT terms

EXECUTIVE SUMMARY

- BT is pleased that Ofcom has concluded that the proposed changes to the Standard Interconnect Agreement ("SIA") as set out in the revised Annex E are fair and reasonable.
- the revised Annex E was designed with industry to provide a more efficient and effective process for the management of incidents of AIT by all parties involved.
- There are areas of confusion within the draft determination as to the level of responsibility attributed to Originating and Terminating Communications Providers
- BT is willing to assist where appropriate but does not believe that there is merit or requirement for BT to formally perform the role of arbiter.



INTRODUCTION

BT, in general, welcomes the conclusion made by Ofcom in the draft determination. BT is particularly pleased that Ofcom has found that the terms of the revised Annex E of the SIA are fair and reasonable. With signature to the revised terms of those Communication Providers ("CP"s) who are in dispute with BT, we can now move forward to implement the changes and deliver, with industry, a more structured and appropriate process.

The original purpose of the AIT process, as developed with industry, was to provide a pan-interconnect (SIA) industry mechanism to ensure that payment would not be made to a service provider if there was suspicion of illegitimate calling. It was intended to provide the opportunity for such suspicion to be addressed and resolved. The intention of the latest industry discussions, accepted by the majority of CPs, is to improve that original AIT process. However, some paragraphs of the draft determination appear to look far beyond what the industry has developed and agreed.

Whilst obviously welcoming the general support given by Ofcom to the proposals, there are three main areas where BT has real concerns with the text of the draft determination:

- The potential for a reader to be misled about the scope of the existing AIT provisions, as a result of general comments in the draft determination text - largely from the references to the existing AIT definition
- The role of the Terminating Network Operator (TNO) – where Ofcom appears generally to agree with the need for direct Originating Network Operator (ONO)/Terminating Network Operator (TNO) fact-finding and review, yet in other parts of the document Ofcom appears to suggest a minimal TNO responsibility and role
- The activity of BT as Transit Operator (TO), and the unreasonably exaggerated role envisaged in parts of the determination.

EXISTING SCOPE OF AIT

In a number of paragraphs (e.g. 2.8 and note 8, 2.19, 2.22, 5.44, 5.53) Ofcom comments on the wording of the existing Annex D definition of AIT without putting the comments into context (Note: BT recognises the more careful wording of paragraphs 5.60 and 5.61). The potential for confusion is compounded by Ofcom implication that the scope is governed by Ofcom pronouncements on revenue share number ranges, when the current AIT scope is, in fact, independent of number ranges, and the definition cross-refers to a contractual definition of "Revenue Share Service".

As explained in my note of 19 June, the AIT provisions must be read as a whole and in context – and a concentration on the definition itself in Annex D alone seriously underestimates the practical application of AIT under the SIA:

"The reading of the "AIT" definition in Annex D of the Standard Interconnect Agreement is only one aspect of the application of AIT. There are

- the definition
- the wider provisions in Paragraph 14A of the main body
- Annex E itself
- potentially other contract provisions – as in e.g. the Personal Numbering Service, the 118 Directory Enquiry Service and Virtual Mobile Network Service product schedules
- historic and ongoing industry practice
- legal and court interpretation of all of those, and in a wider legal context."



It is important that this is made clear by Ofcom. Without such clarity there could be attempts made by some parties to re-open earlier settlements, and to challenge current retention cases, based on the apparent authority of the Ofcom comments.

THE ENVISAGED ROLE OF THE TERMINATING NETWORK OPERATOR

Under paragraph 14A.1 of the main body of the SIA, all parties, and for the purposes of AIT this means both ONO and TNO, and for transit cases also BT as Transit Operator (TO) - are obliged to use reasonable endeavours to detect, identify, notify the other contract party and to prevent AIT.

The new process looks:

1. to better discipline and structure the iteration between the parties. This certainly relates to the ONO re the A1 Retention Notice, the supply of AIT Call Data, the A3 Withdrawal Notice and the A4 Dispute Notice (and therefore also to the TO where exceptionally it is responsible for initiating a case and therefore for these activities). The process also applies to the TNO, where its response to the "case" made by the ONO in the A1 Retention Notice/provision of AIT Call Data by way of the A2 Rejection Notice may well be key to the "reasonable suspicion" either falling away or moving to "strong and convincing" e.g. that the service is clearly legitimate, or the service is clearly bogus.
2. to mandate direct dealing between "the principals to the case" in the case of transit, the ONO and the TNO. This is obviously what already happens in the case of non-transit where BT as ONO deals with each TNO terminator in respect of BT originated traffic, and BT deals with each originating network in respect of calls to BT service providers. There may well be parallel relationships to the extent that the non-BT parties have other interconnects.

Direct dealing in the case of transit is seen as more productive, more efficient and faster and, of course, to diminish BT's administrative burden of relaying information. This has been pragmatically accepted by well over 100 CPs, but in places the draft determination appears to run counter-to-that majority view, presumably because of concerns expressed by the referred minority.

It is indeed true that the TNO may be remote from the provided service; paragraph 2.6 of the draft determination refers. However, it will obviously be "less remote" from the final service than either the ONO or the TO, and as TNO in a better position than either to confirm the services that are being offered on the number ranges for which it is responsible. It would not be reasonable, nor contractually acceptable, for the TNO to be allowed to abnegate its role to the other parties in the call chain.

Similarly of course, the ONO PECN may not be the network on which the call actually originated. However, under the SIA AIT provisions the ONO needs to monitor to detect, identify, notify and prevent AIT and then to undertake further investigation if the ONO's "reasonable suspicion" is either not confirmed by their own investigations or is rebutted in the A2 Rejection Notice.

It is not, therefore, unreasonable to consider that the TNO should be responsible for managing the potential of AIT generated against their number ranges. BT's own PRS number ranges rarely gets an A1 notice raised against them. This is because BT's



Inbound Services scrupulously monitor their own traffic / clients to reduce the incentives/opportunities for fraud. If all TNOs were to equally be conscientious in managing their at risk numbers, the levels of AIT would significantly reduce.

Example of why TNO must be involved in the management of instances of AIT can be found in Annex 1.

THE ENVISAGED ROLE OF THE TRANSIT OPERATOR

Although it is stated that exceptionally for some types of AIT, BT as TO may be in a better position to recognise AIT than an ONO, such a situation is exceptional. (The TNO will, of course, almost invariably be in a better position than the TO). For the normal run of telephony traffic, BT is in a worse position than either, hence the call for direct ONO/TNO iteration.

As TO, BT's knowledge of the legitimacy of transited traffic is extremely limited because BT has no idea who the originating operator's customers/re-sellers, nor who are the terminating operator's re-sellers/service providers. In addition BT is not aware of the nature of the service operated by the TNO's customer. Neither, for example, is the TO aware how calls have been generated at the originating end. BT therefore is in no position to adjudicate in the initial stages of a case what does or does not constitute AIT.

The process provides that it is for an ONO to judge if it has "reasonable suspicion" that AIT has occurred based on what it is seeing, including any indicators which may suggest AIT. That is the basis for the declaration by the ONO on the A1 Retention Notice, and also again as part of the AIT Call Data. It is then the responsibility of the TNO as the owner of the number range and (directly or indirectly) of the relationship with the re-seller or service provider to provide information back to the ONO which either confirms the suspicion, or adequately supports a case that AIT has not occurred (via the A2 Rejection Notice).

The new AIT process allows BT to draw back from a pivotal role in AIT cases. This is partly to diminish unnecessary and unproductive administration by the BT team, but also to provide for much more effective communication by direct dealing and conversations between the two parties closest to "the action".

It was, of course, recognised that there could exceptionally be circumstances where it might be difficult for the two parties to liaise appropriately and that in such circumstances BT might need to agree to act as an "honest broker", because direct dealing had proved unreasonable. This is addressed in paragraph 5.78 of the draft determination, although the final sentence of the paragraph appears to be addressing the situation where, later in the process, ultimately the parties might all agree to BT ceasing to be a party to a transit AIT Dispute.

Pragmatically BT active participation in transit discussions would (exceptionally) happen at a secondary stage in the process. The ONO would make the initial case via service of the A1 Retention Notice and the AIT Call Data, and the TNO in good faith would have responded appropriately in the service of the A2 Rejection Notice. Only if either of the parties then proves unwilling to engage in good faith review of the evidence, would it be necessary/appropriate for BT to actively participate.

BT recognises that part of its role as TO involves an ongoing oversight of the workings of the process, and that this would act as a safeguard against ONO abuse of the right to issue A1 Retention Notices (the BT statement reproduced in paragraph 5.47 of the draft



determination refers). This overseeing role would obviously be activated beyond monitoring for particular dispute situations. It would also be brought into play for “management” reviews of practices and trends (obviously relevant for the planned industry Contract Review), and also for any report to Ofcom. Ofcom appears to recognise this approach in paragraph 5.58 of the draft determination.

However in paragraph 5.59 (and also in paragraph 5.67), the role seems to have expanded with Ofcom envisaging BT “on behalf of the TNOs” taking “all reasonable steps to scrutinise and challenge the information provided by ONOs”, and providing “support to a TNO without waiting for the TNO to request it”. As demonstrated above, this goes far beyond the reasonable requirement and responsibilities of a transit operator in this matter, and undermines reasonable “time and resource constraints”. If one of the disputing TNOs requires this level of support, perhaps it should consider asking BT to investigate developing an appropriate optional value-add service on a standalone commercial basis, or consider whether it might be more appropriate for another CP to host the services on its behalf.

It must be recognised that if BT informally gives a view on the subject of the sufficiency or not of the evidence supplied by either ONO or TNO, that opinion has no binding power on either ONO or TNO. BT’s informal views would probably have little influence on the ONO/TNO decision whether to fight or settle. For example, ONO A raises an AIT case against TNO B, and BT looks at the evidence provided and thinks that ONO A has provided insufficient evidence to support its case and advises ONO A of its thoughts. Unless ONO A accepts BT’s view and decides to abandon the retention against BT, then BT is still not in a position to release that retention to the TNO. Indeed the traffic could still actually be AIT, and could still be pronounced as AIT by a court. Beyond argument and escalation, the only recourse BT has to recover the debt is legal action against ONO A.

The decision to pursue a dispute in court is always reluctantly taken, and just as for a TNO, BT would need to weigh the balance whether it would make economic sense for BT.

BT recognises the possibility of unreasonable A1 Retention Notes being issued. It agrees with Ofcom that suitable guidance to the ONO community on that would be helpful, perhaps as part of a general industry manual¹. BT agrees that exceptionally it may need to agree to become active in a developing transit dispute. However, BT stresses very strongly that, under the contract, TNOs have responsibilities to be alert for AIT, and to take appropriate action if they are made aware of reasonable suspicion. This can either be through their own monitoring activity; or by a member of the public; PayphonePlus or an A1 Retention Notice.

OTHER COMMENTS

Short-duration calls paragraphs 5.45, 5.69, 5.76, 5.83, 6.5 refer. The situation is merely that BT may be in a better position to see the AIT than the ONO. Of course, the TNO would almost certainly be in the best position.

Paragraph 2.29 – correction to described process - a transit A1 Retention Notice is served on BT as TO by the 14th AIT calendar day. BT then relays that to the appropriate TNO (and copies back to the ONO to complete the communication chain) by the end of the

¹ Note: BT considers that ideally it would be better to try and develop such guidance with an industry group, rather than do so unilaterally. Such a manual could also give useful guidance to TNOs on their role in the process



following Working Day. The AIT Call Data on the 26th AIT calendar day then goes direct from the ONO to the TNO addressee notified by BT – but is copied to BT as TO. Note 14 is presumably speaking about a situation where BT is either the ONO or the TNO.

Page 5 – note 7. Reminder that some TWIXs are charged to the ONO.

CONCLUSION

BT believes that Ofcom has come to the correct conclusion in deciding that the revised SIA Annex E process terms are fair and reasonable. BT would like Ofcom to review and amend, within the final determination, its recommendations in regard to the responsibilities of the parties involved in AIT cases in the light of the comments made by BT in this response.

BT would welcome comments on this response. Comments should be addressed by e-mail to Kath Embleton at kath.embleton@bt.com. BT is also willing to meet with Ofcom to discuss the points raised within this document should Ofcom find that helpful.

Annex 1 Example of Wangiri (Missed call scam)

ONO's are often in a difficult position themselves to determine the extent of Artificially Inflated Traffic and on exactly what ranges the bogus traffic has occurred. It is vital therefore TNO's provide evidence and information to help resolve a case.

For example an ONO may receive complaints from their customers in regard to Wangiri (Missed call scams) the complaints may come from just a handful of customers who report missed calls on only 2 numbers within a range, e.g. 0706661000 and also 0706665000.

The ONO has to decide therefore;

- a) do they make the retention just on those 2 numbers and risk losing a great deal of revenue?
- b) Make the retention on just the 5,000 number block between which the 2 complaints have been received? Or
- c) decide the problem could be bigger, as the TNO owns the entire 10,000 number block, and the ONO therefore needs to retain on the entire range to ensure it does not lose out financially?

In these cases there is no real question that AIT has occurred but without the input of the TNO the ONO can not possibly know the extent of the problem. The TNO is the only party in the chain who can identify which service provider was operating on what ranges and advise the ONO of the extent of the AIT.

Neither the ONO or the TO can know the full extent of the AIT it is therefore vital that the TNO also plays a significant role in resolving AIT cases.