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Date: 30 June 2008

Dear Markham

### **Telephone directory information obligations and regulations**

I am writing to provide SSE's comments on the above consultation. As you may know, SSE entered the market for provision of retail telephony services a few years ago based on use of the regulated wholesale products available. We have noted a number of areas in this market where coordination between companies providing services would appear beneficial to the interests of end customers of communications products. From a review of the issues raised in the consultation, we consider that a further area where this applies is in the provision, organisation and maintenance of directory information.

We have provided a response to the consultation questions in the attached appendix and below, expand on our two main areas of comment on the issues raised in this consultation paper.

#### Maintaining the Central Database of Directory Information

We are very concerned about the core deregulatory proposal in this consultation, which is that BT would no longer have any regulatory obligation to maintain the comprehensive database of the basic directory information of all telephony subscribers in the UK. This would provide BT with an unregulated commercial monopoly of a data resource which is crucial to the business models of directory information providers (DIPs), who in turn provide directories and directory enquiry facilities to UK citizens and consumers. In our view, the risks associated with unregulated monopoly behaviour and the possibility of other unintended consequences make this a very unattractive option which could severely damage consumer interests.

We believe that there is another option that Ofcom could consider and that is to impose a General Condition (GC) on communication providers (CPs) who allocate numbers i.e. "numbering CPs" to co-operate to maintain the required central database of directory information and to provide access to this information to eligible DIPs. We believe that Ofcom has the powers to set such a GC under sub-paragraphs (1)(a) and

(c) of section 51 of the Communications Act (the Act) i.e. in order to protect the interests of consumers and to ensure that the networks can operate effectively (because directory information is maintained and available to consumers).

We believe that this approach would formalise the co-operation that has to happen between these numbering CPs at present, in order to ensure that directory information on the subscribers associated with the numbers held by all CPs reaches the database held by BT. It would therefore not add significantly to existing regulatory burdens on numbering CPs and also has the potential to reduce the specific burden on BT by removing its formal pre-eminence in current arrangements due to the current interpretation of the Universal Service Obligations, which we understand may be part of the appeal filed by parties to the related dispute that Ofcom determined at the same time as it issued the consultation paper.

In practice, we would expect that the starting point for such a co-operative approach would be BT's current database. Over time, this might evolve into being a database held by a body representing all the numbering CPs or it might continue to be provided by BT acting as the agent for the numbering CPs. Either way, Ofcom and the general body of consumers would have some comfort against the mis-use of market power because of the enduring regulatory obligation which could provide for appropriate transparency and cost-orientation of charges for this regulatory asset. It may also be appropriate for Ofcom to consider a co-regulatory approach, given its range of duties with respect to numbering generally under the Act. Although it would be unlikely to be necessary for Ofcom to be involved in the day to day administration of directory matters, there may be advantages in it being aware of and able to influence the response of this directory body to queries and developments in the directory markets. We note, from Ofcom's discussion of arrangements in other EU countries (paragraph 5.25), that there is some precedent for the regulator to have some involvement in a centralised numbering database. We consider other advantages in more detail in our response to question 5.2 of the consultation.

#### Clarity on Obligations of Different Communications Providers

Our second area of comment relates to the proposed amendment of GC19, which is concerned with providing directory information. It is not clear to us which CPs would be subject to the obligations set out in the amended version of GC19. Ofcom's discussion sometimes refers (e.g. paragraph 4.11) to the CP "who has a contract with the subscriber" and sometimes to the CP who acts as "controller of the telephone number" (e.g. paragraph 4.14 and in paragraphs 37 to 42 of the impact assessment in annex 7). We believe that these are two different parties in the case, for example, of a reseller like ourselves who provides BT's regulated wholesale products to an end customer. In this situation, we have the retail relationship with the customer but we do not "control" the telephone number, which is provided by BT.

In our view, both the proposed amendment to GC19 and the impact assessment should be clear about the type of CP which it is proposed should be subject to the obligations. We understand that there are over 400 CPs who are resellers using BT's wholesale line rental product whereas there is a much smaller number of CPs (typically those who operate communications networks) who have allocations of telephone numbers. Currently, the definition of CP for the purposes of GC19 is "a person who provides an

Electronic Communications Network or an Electronic Communications Service” which could cover both types of CP and is therefore unsatisfactory.

We believe that the best approach, consistent with our proposals above for “numbering CPs” to be given a collective obligation on directory information maintenance, is for these numbering CPs to be given the obligation in amended GC19 to provide directory information to eligible DIPs, since this can also be done centrally. These numbering CPs could, as necessary, require any resellers they use to provide them with directory information or updates via their wholesale contracts.

#### Summary

In conclusion therefore, we believe that Ofcom needs to act to safeguard customers’ interests in this area of the maintenance and provision of basic directory information to eligible parties by preserving regulatory protection. We have proposed a way forward whereby a collective responsibility is given to relevant “numbering CPs”, by analogy with the arrangements made to set up a body to take forward arrangements for a database to facilitate number porting. We also believe it would be helpful for Ofcom to clarify responsibilities in the relevant GCs between numbering CPs and other parties involved in providing communications services to end customers.

Apart from these major points, our responses to the consultation questions also contain the following additional proposals:

- That there is no need for GC19 to require end user information to be maintained in directory information as well as subscriber information where this is different;
- That consideration is given to developing a high level GC for directory information obligations with detail held in other associated documentation, to allow for this to be amended more flexibly as the market develops;
- A suggestion on the potential synergy between the central directory information database and the developing requirement to keep track of the different products and suppliers of “next generation” services at a customer premises; and
- Minor additional comments on the proposed wording of GC8 and GC19.

I hope these comments are helpful. We would be happy to discuss them further and will contact you shortly to see if that would be useful.

Yours sincerely

Aileen Boyd  
Regulation Manager

## Consultation Questions

***Question 3.1: Do you agree with Ofcom's proposed revocation of USC7? If you disagree, what are your reasons for this view?***

No. Universal Service Obligation 7 (USC7) requires BT to maintain a database containing directory information for all subscribers (of all communications providers) and to make it available to relevant parties on cost-oriented and not unduly discriminatory manner. The discussion in the consultation paper about the legality of the current obligation is somewhat confusing and we note that this area is subject to further appeal by parties to the related dispute that Ofcom determined at the same time as it issued the consultation paper. It therefore appears that the matter of the legality of USC7 will be determined by the Competition Act Tribunal.

Whatever the precise legal position, it appears to us that having a reliable set of directory information retained in one logical place in the industry is an important facility that it is in the interests of consumers and citizens for Ofcom to maintain. In practical terms, we do not believe that "one place" has to mean by one individual communications provider (CP). Another possible approach would be for a body that is controlled by relevant parties in the industry to maintain the necessary database and interface both with those that need to provide the information and those that wish to use it for the legitimate commercial purposes of directory information and enquiry facilities. We discuss this further in our covering letter and also in our response to the questions in section 5 of the document.

***Question 3.2: Ofcom considers that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability. Do you agree with this assessment? If not please provide a detailed response as to which criteria is not fulfilled and in what way.***

We agree with Ofcom's analysis that currently, directories are provided that appear to meet these criteria. We note that all the directories currently use the comprehensive "OSIS" database maintained by BT and would have concerns about whether directories would continue to be provided in a way that meets these criteria if the obligation to maintain the database was removed. We discuss this further in our covering letter and also in our response to the questions in section 5 of the document.

***Question 3.3: Do you agree with Ofcom's analysis [on the removal of the obligations to provide a printed directory]? If you do not agree please provide your reasons.***

We agree with Ofcom's analysis that the requirements in the General Conditions (GCs) 8 and 14 appear superfluous given that both printed directories and online directory information are readily available.

***Question 3.4: Ofcom considers that the DQ market is robust and delivering the level of service required by the Universal Service Directive. It also considers that it is appropriate to maintain the condition on Communications Providers to ensure access to a DQ service to ensure that the universality of provision is maintained. If you do not agree please provide your reasons.***

We consider that Ofcom's analysis does suggest that, in a similar manner to the GCs relating to the provision of directory information, the current obligation to provide

access to directory enquiry (DQ) facilities could be removed as the market is providing plenty of choice (Ofcom notes that there are over 100 DQ service providers). However, this is not an onerous condition and we have no great objection to the condition remaining in force.

***Question 3.5: Do you agree with the redrafting of GC8 set out above [at the end of Section 3]? If you do not agree please provide your reasons.***

With one exception, we agree that the proposed redrafting of GC8 at the end of section 3 of the document is acceptable. The one exception is the way that the clause beginning “except where such services” in paragraph 8.1 runs immediately after the current wording of sub-paragraph b). In the current form of the condition, this clause is shown on a separate line with the implication that it applies equally to both sub-paragraph a) and sub-paragraph b). We believe it would be clearer for the current formatting of paragraph 8.1 to remain.

One further comment would be that, in amending this GC, we think it would be helpful for Ofcom to clarify further which type of CP has these obligations. In line with the discussion in our cover letter, we believe that it is the CP who provides network infrastructure to support the publicly available telephony service (PATS) “a PATS infrastructure provider” rather than the supplier or reseller of PATS to an end customer who should meet the obligations in GC8.

***Question 4.1: Do you agree with Ofcom’s view that GC19 should be modified so as to clarify persons having ‘rights of access’ as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.***

From Ofcom’s description of the sort of persons engaged in providing services in the directory and call connection services market, it seems appropriate to extend the definition in GC19 of the type of person who can have a right of access to directory information to include intermediaries and DQ providers providing onward connection services. This part of GC19 may have to be kept under review in the light of market developments but we recognise that Ofcom will wish to make the new definition of persons eligible to have a right of access to directory information as comprehensive and general as possible.

***Question 4.2: Do you have any other comments about ‘rights of access’?***

In our covering letter, we have proposed that a single industry body maintains the central database of basic directory information that an eligible person would wish to have access to. Continuing to maintain just one single central database would have the benefit that decisions on whether an interested party was indeed “eligible” would rest with one body alone rather than potentially different parties who might make different decisions. The governance of such a body might also usefully allow Ofcom to intervene in the case of disputes as to who was eligible and potentially allow eligibility criteria to be set up outside GC19 so that it could be amended more flexibly as the market developed. We discuss this point further in our response to question 5.2.

***Question 4.3: Do you agree with Ofcom’s view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19***

***incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.***

We agree with the intention that the CP “controlling the telephone number” should have some obligations to provide directory information and have discussed in our covering letter how this could be achieved by means of a GC on CPs who allocate numbers. The obligations in GC19 are logically part of the requirements and we believe they should rest on these “numbering CPs” as we have also discussed in our covering letter.

As it stands, the proposed amendment to GC19 does not provide enough clarity on what type of CP would have the proposed obligations. We believe it would be an unwarranted extension of regulation and lead to costs and issues for resellers (for example, in contracting with another “third party database holder”, who may be a monopoly provider) if the wording of this amendment is not changed to make it clear that it does not apply to them. As discussed in our covering letter, there are a very large number of predominantly small companies who are resellers of BT’s wholesale telephony products. We believe that any role that they should play in the chain of requirements for provision of directory information is best achieved contractually by the “numbering CPs”, who would have the direct regulatory obligation.

***Question 4.4: Do you agree with Ofcom’s view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.***

We agree with Ofcom that it seems sensible to amend the definition of the type of information that is needed for a directory entry to capture the actual end users and business departments that are meaningful for directory users.

***Question 4.5: Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as ‘Directory Information’) to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS)(a proposed redrafting of the condition and definition is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part only (e.g. a reference to public Electronic Communications Service being too wide), how do you suggest that Ofcom should address this matter?***

We support Ofcom in trying to remove an anomaly of the current GC19 that appears to limit the scope of data being maintained for the purposes of directories to those numbers used for Publicly Available Telephone Services i.e. such that other numbers like non-geographic numbers are excluded. We do not know whether the precise definition proposed would create problems.

***Question 4.6: Do you consider that Ofcom should modify GC19 (and related definitions, such as ‘Directory Information’) such that:***

- ***end-user name and address are also required to be provided; and***
- ***business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the***

***condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?***

We support the clarification of “address” information that Ofcom proposes for non-geographic numbers and for end-users, although we are not convinced that the subscriber information should have to be provided in addition to that of the end-user. For example, someone becoming a subscriber to a telephony service on behalf of a relative, where they also have a subscription on their own account, is unlikely to want their own details to appear twice in directory information, including at an address where they do not reside.

We would also comment that the status of the proposed definitions of “end-user name” and “end-user address” that appear as bullet points underneath the proposed definition of “Directory Information” is not very clear as these precise terms are not used in that definition.

***Question 4.7: Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?***

We do not believe there is any necessity for Ofcom to mandate that a wider set of information than already discussed about subscribers and end users is to be collected and maintained for the purposes of directory information. However, as discussed in our response to question 5.3, there may be other information that it would be useful for the central database to contain.

***Question 4.8: Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.***

Further to the discussion in our covering letter and in our response to question 4.3 above on clarifying the responsibilities of different types of CP with respect to provision of directory information, we consider that it would be helpful for Ofcom to clarify its view on the data protection responsibilities of different CPs who may be involved in providing service to the customer. By analogy with our earlier responses, we suggest that it would be useful for the primary obligation to lie with the numbering CPs while the contractual framework between numbering CPs and any resellers they deal with would cover data protection matters.

***Question 4.9: Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.***

We agree with Ofcom that the historical development of mobile telephone services has resulted in the expectation of no inclusion of subscriber information in directories unless subscribers “opt-in”. It appears appropriate that this should be taken to be equivalent to the “unlisted” option in the “opting out” routes provided for fixed line directory information.

***Question 4.10: Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.***

No comment.

***Question 4.11: Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.***

Yes.

***Question 4.12: Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)?***

No comment.

***Question 4.13: Do you have any comments about the operation of the requirement in Privacy Regulation 18(4) as it applies to GC19? We would also be interested to hear your views on whether Privacy Regulation 18(5) is sufficient to protect end-user data.***

No comment.

***Question 4.14: Do you agree that GC19 should be modified so as to refer also to the word “objective” in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.***

We agree with this change, which brings GC19 in line with the Universal Service Directive wording on this point.

***Question 4.15: Do you agree with the proposed redrafting of GC19 and related definitions as set out above [at the end of Section 4] and discussed through that section? If you disagree, please provide detailed reasons for this view.***

We have concerns with the overall effect of the proposed redrafting as discussed above in response to question 4.3. We also believe that some of the detail in the proposed version of GC19 and associated definitions might be more suited to a document outside of GCs. We discuss this further in our response to question 5.2.

Apart from this, we have some more minor comments on drafting:

- in paragraph 19.3, we are not sure that a reference to paragraph 19.2 is needed as the latter now only contains a definition of who is eligible to request information;
- in the definition of “Directory Information”, where a clause is introduced to refer to the end user, we suggest that this should be with an “or” rather than an “and” as discussed in response to question 4.6. We also suggest that it may be clearer to bracket the phrase “or where different, end-user associated with a Telephone Number as provided by the Subscriber” and note that the word “subscriber” just prior to this is not capitalised.

***Question 5.1: Do you consider that BT will have sufficient commercial incentive to maintain the comprehensiveness of OSIS? Or do you consider that Ofcom should consider additional regulation to ensure that it will remain comprehensive?***



We agree with Ofcom's analysis that BT is likely to have sufficient commercial incentive to continue to maintain OSIS on a comprehensive basis. However, we are very concerned that Ofcom is considering removing regulatory controls around the maintenance and use of this database, as discussed in our covering letter and below.

***Question 5.2: Do you consider that there is no need for further regulation on the maintenance and management of BT's OSIS database and it is sufficient to rely on existing market incentives on BT and the option of drawing on ex post competition powers when competition issues are raised? Or do you consider that regulated access to BT's OSIS database is necessary in order to achieve Ofcom's policy objective? Or do you think that there are other options that Ofcom should consider? Please state your reasons.***

We firmly believe that regulated access to a central numbering database should continue for the benefit of citizens of the UK. As discussed in our covering letter, we believe it would be very unwise for regulation to be withdrawn such that Ofcom would only be able to rely on Competition Act powers after the event if there were to be any adverse effects on competition or other unforeseen effects on the integrity and availability of a centralised database of basic directory information. This directory information is, in our view, a key asset of the systems of public communication in the UK and is a natural monopoly which should continue to be regulated.

We have proposed, in our covering letter, an alternative approach for Ofcom to consider, namely to formalise the co-operation that is currently needed between "numbering CPs" in the form of a GC which deals with the required continuing obligations on maintaining the central database. We see advantages in Ofcom having some ongoing involvement – at a high level – in the governance of the collective body that would take responsibility for the database. At one level, this would give Ofcom an awareness of developments affecting the collection and use of directory information so that it could ensure that its own obligations and policies are continuing to be met.

Secondly, we believe that it might be possible for the relevant GC to be fairly general and high level (an aim that we understand Ofcom has for its current review of the GCs) while subsidiary documentation is controlled by the co-regulatory arrangements involving Ofcom and the numbering CPs. These could be more readily reactive to market developments than the wording of a GC. For example, all the issues raised by Ofcom in consultation questions 4.1 and 4.4 to 4.7 could be addressed within the co-regulatory documentation i.e.

- who can have access to the directory information;
- how end users are to be brought in to directory information;
- what type of numbers are to be involved in directory information;
- definitions of the type of basic directory information held; and
- whether there should be any extension of basic directory information.

For all these issues, it can be seen that market developments and individual cases could prompt discussion on the right approach. The outcome of these debates, together with wider matters such as data protection issues could be incorporated in guidelines associated with the main GC but maintained in a co-regulatory manner. We note that the approach of having a fairly general and high level GC with associated guidelines is developing across a number of other areas of Ofcom's work such as

consumer-related GCs and the proposed metering and billing direction. We believe it could also work in relation to details of the specification and use of directory information.

***Question 5.3: Do you have any other comments on assessments made or the matters affecting the issues discussed in this Section concerning access to a UK central database?***

We are aware that Ofcom has already placed an obligation on “numbering CPs” collectively via amendment to GC18 to co-operate to establish a number porting database – initially for mobile numbers and ultimately for fixed line numbers as well. In response, they have set up the body UK Porting and are currently establishing governance arrangements.

We note that there may well be synergies between UK Porting and the body that we are proposing is set up to maintain a database of basic directory information, given that in both cases, actual telephone numbers are a key element. Given that arrangements for the fixed line porting database have a slightly longer timeframe than the requirements for mobile porting (where directory information is less commonly held as Ofcom notes in the consultation paper), we believe that consideration should be given to combining the roles of UK Porting and the body we have proposed in the longer term.

We are also of the view that this central database of directory information could be used to assist in the coordination of different communications products over the new “next generation” fibre access technologies. In a series of consultations and workshops, Ofcom is seeking to develop some standardisation of interfaces as this new technology is poised to be introduced into new build developments. One of the live issues in this respect is the technical delivery of multiple communications products to a customer premises, while preserving the important protection of enabling the customer to choose between different suppliers of these products. We have advocated that this is achieved by requiring product unbundling at the technical and logical level in our response to the recent consultation <footnote>. This approach would require some central logging of details such as which service provider is delivering which products over a communications link. In our view, the synergy between this central logging requirement and the existing database of directory information, which also links customers/premises with certain types of information, is compelling and merits further consideration for the medium term.