



**Per-provider and  
per-customer line costs  
and charges for  
Carrier Pre-selection**

**A draft direction by Ofcom**

**Consultation document**

**Issued: 24 March 2005  
Closing date for responses: 28 April 2005**

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## Section 1

# Summary

1. Carrier Pre-Selection (CPS) is a mechanism that allows customers that have BT or Kingston Communications telephone lines to select alternative Communications Providers in advance for their calls without dialling additional codes on the telephone, or having special equipment installed at their premises. The customer subscribes to the service of one or more alternative Communications Providers and chooses the type of calls (e.g. all national calls) that will be routed through the alternative Communications Provider's network (or, if the Communications Provider does not have a network, through the network of a partner Communications Provider).
2. Ofcom is publishing a draft Direction setting out its proposals on BT's per-provider and per-line costs and charges for providing Carrier Pre-Selection. These are the charges paid by Communications Providers to BT, and do not relate to the charges (if any) paid by consumers for CPS. The draft Direction proposes to modify BT's current charges, based upon the forward looking long run incremental costs for the provision by BT of Carrier Pre-Selection Facilities under the provisions of BT's SMP Condition AA8 set in place in Ofcom's *Review of the Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets* published on 28 November 2003.
3. As Ofcom intends for the proposed Direction and the proposed charges to take effect on the day that the direction is published, Ofcom considers that the notification period set out at BT's SMP Condition AA6(a).2 could potentially delay the introduction of the proposed charges, therefore Ofcom is publishing a draft Consent to disapply the notification period in respect of the proposed Direction.
4. It is proposed that all of the CPS charges within the scope of this draft Direction will be altered by the proposed Direction. Some of the proposed revised charges will be lower than the current charges and others will be higher. The main changes proposed are as follows:
  - the per-provider setup charge (which is paid once only by each Communications Provider when it first starts to use CPS) will reduce from £22,730 to £13,448;
  - the per-provider ongoing charge (which is paid monthly by each Communications Provider using CPS) will rise from £1,400 to £2,393 per month; and
  - the per-customer line charge for the most popular transaction type (a successful set-up order) will reduce from £3.79 per order to £2.80 per order.
5. The net impact of the proposed changes for most Communications Providers will be a significant reduction in their CPS charges because the per-customer line charges are the largest component of the costs considered in this review. Communications Providers that generate only small volumes of orders will have a net rise in their charges because the

reductions in the per-customer line charges will not offset the rise in the per-provider ongoing charge.

6. These charges may change before the final Direction in the light of responses to this draft.
7. This consultation is shorter than Ofcom's standard 10 week consultation period because Ofcom believes that this is a subject that is of interest to a specific group of Communications Providers only and is of little interest to the general public. Also Ofcom has held detailed discussions about the proposed changes with the Communications Providers that will be directly affected.
8. Comments are invited in writing on the draft Direction by 28 April 2005. Written comments will be publicly available on Ofcom's website, except where clearly indicated to be confidential. Respondents are therefore asked to separate out any confidential material in a clearly marked annex. In the interests of transparency, respondents are asked to avoid confidentiality markings wherever possible.

## Section 2

# Introduction and background

## What is Carrier Pre-Selection?

9. Customers who have BT or Kingston Communications telephone lines can use alternative Communications Providers by dialling 3, 4 or 5 digit access codes. These codes allow the calls to be routed to the Communication Provider of their choice. This system is known as indirect access, and it requires the customer always to dial the extra digits (or install equipment to dial the extra digits automatically) to use the alternative provider.
10. Carrier Pre-Selection (CPS) is a mechanism that allows users to select alternative Communications Providers in advance without dialling additional codes on the telephone or installing special equipment on their premises. The customer subscribes to the service of one or more alternative Communications Providers (a CPS Provider) and chooses the type of calls (e.g. all national calls) that will be routed through the CPS Provider's network (or, if the CPS Provider does not have a network, through the network of a partner Communications Provider).

## The legal framework

11. Prior to the introduction of the new regulatory framework for electronic communications networks and services, EC Directive 98/61/EC (the Amending Interconnection Directive) required Member States to ensure that CPS was made available from 1 January 2000 by operators with Significant Market Power (SMP) in fixed telephony<sup>1</sup>. In the UK, British Telecommunications (BT) and Kingston Communications Ltd (KCL) were determined by the Director General of Telecommunications (the Director) as having SMP in fixed telephony. The Director therefore implemented the CPS obligation by means of inserting Condition 50A in the Public Telecommunications Operators' (PTO) licences of BT and KCL.
12. The new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The new framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is five new EU Communications Directives:
  - Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ("the Framework Directive");
  - Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive");

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<sup>1</sup> Oftel obtained a derogation of 3 months for this obligation for BT – see paragraph 20 for details.

- Directive 2002/20/EC on the authorisation of electronic communications networks and services (“the Authorisation Directive”);
  - Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, (“the Universal Service Directive”) and;
  - Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (“the Privacy Directive”).
13. The first four Directives were implemented in the UK on 25 July 2003. This was achieved via the Communications Act 2003 (“the Act”). The fifth directive was adopted slightly later than the other four Directives and was implemented by Regulation that came into force on 11 December 2003.
  14. However, on 25 July 2003 the Director published a *Continuation Notice to British Telecommunications Plc Under Paragraph 9 of Schedule 18 to the Communications Act 2003*<sup>2</sup> (The Continuation Notice). This extended the provisions of Condition 50A pending the completion of the Market Review (see following paragraphs).
  15. The new regime also required that National Regulatory Authorities (NRA's) undertake reviews of communications markets to establish whether Significant Market Power (SMP) exists in any market and, where it does, what regulatory obligations are considered necessary. As a consequence a number of market reviews were carried out by the Director who exercised the functions of Ofcom under the new regime prior to 29 December 2003.
  16. The Director’s *Review of the Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets*<sup>3</sup> was published on 28 November 2003 (“the Market Review”). The Market Review found that BT and Kingston Communications Limited (KCL) have SMP in call origination on fixed public narrowband networks in their respective service areas<sup>4</sup>. Other markets were also reviewed as part of the Market Review.
  17. The Market Review contained a discontinuation notice to BT that discontinued Condition 50A.
  18. One of the regulatory remedies imposed on BT to address its SMP in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area is the requirement on BT to provide CPS. This obligation is set out in BT’s SMP Condition AA8: *Requirement to Provide*

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<sup>2</sup> A copy is available at Ofcom's website:  
[http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/cont\\_notices/bt.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/cont_notices/bt.pdf).

<sup>3</sup> A copy of the review is available at Ofcom's website:  
[http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband\\_mkt\\_rvw/fixednarrowbandstatement.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/fixednarrowbandstatement.pdf)

<sup>4</sup> The Hull area for KCL and the whole of the UK (excluding the Hull area) for BT.

CPS<sup>5</sup> (Condition AA8). A similar remedy was imposed on KCL and is set out in SMP Condition AB6.

19. On 29 December 2003, the Director ceased to exist and Ofcom took on responsibility for regulation of the communications sector under the new framework established by the Act.

### Introduction of CPS

20. CPS was made available from KCL's network on 1 January 2000. However, BT's switches, unlike those used in other Member States, had no inherent capacity for CPS. Therefore the UK obtained from the European Commission a derogation of 3 months of the obligation to provide CPS in the case of the BT network. Thus CPS was available on BT's network as from 1 April 2000. The type of CPS introduced on BT's network from 1 April 2000 involved the use of auto diallers. This solution was known as 'Interim CPS' (ICPS).
21. Permanent CPS which uses software at BT's switches to route calls to alternative providers was introduced later in two phases:
  - CPS for national and international calls was available on BT's network from 12 December 2000; and
  - Phase two of CPS, allowing customers to choose CPS for international, national, both international and national or "all calls" (excluding certain special categories) was available on BT's network from 12 December 2001.

### Recovery of the costs of CPS

22. In February 1999, Oftel published a statement *Implementation of Carrier Pre-Selection in the UK*<sup>6</sup> (the February 1999 Statement). This statement did not discuss retail prices for the CPS service but rather the way in which BT and KCL were expected to recover their costs for implementing CPS. The statement described how the six principles of cost recovery (The Six Principles of Cost Recovery) (developed originally by Oftel in the context of number portability) should apply to CPS. The six principles may be briefly described as follows:
  - *cost causation* costs should be recovered from those whose actions cause the costs to be incurred where there are externalities;
  - *distribution of benefits* costs should be recovered from the beneficiaries especially where there are externalities;
  - *effective competition* the mechanism for cost recovery should not undermine or weaken the pressures for effective competition;

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<sup>5</sup> See page 118 of the November 2003 Statement, a copy of Condition AA8 is provided in Annex 4.

<sup>6</sup> A copy of this statement is available at Ofcom's website:  
[http://www.ofcom.org.uk/static/archive/oftel/publications/1995\\_98/competition/cps298.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/competition/cps298.htm)

- *cost minimisation* the mechanism for cost recovery should ensure that there are strong incentives to minimise costs;
  - *reciprocity* where services are provided reciprocally, charges should also be reciprocal; and
  - *practicability* the mechanism for cost recovery needs to be practicable and relatively easy to implement.
23. In the February 1999 Statement Oftel relied on The Six Principles of Cost Recovery to establish how the different categories of cost associated with CPS should be recovered. At that time, Oftel identified three broad categories into which it believed the costs of making available the CPS service would fall:
- system set-up costs, which are the costs of development and implementing the software needed for the capability to provide CPS and the cost of modifying support systems;
  - per-provider set-up costs, which are the costs of enabling CPS for any individual provider, including activity similar to data management amendments and the setting up of commercial arrangements for the electronic transfer of customer orders; and
  - per-customer line set-up costs, which are the costs of implementing CPS for individual customer lines.
24. Oftel concluded based on The Six Principles of Cost Recovery that the costs that were driven by the number of providers using CPS or the number of lines on which CPS was being implemented should be recovered from the operators themselves. It was only the costs associated with CPS system set-up (i.e. BT's/KCL's costs in fulfilling their regulatory obligation to make CPS possible on their networks, even if no provider actually wanted CPS) that were appropriate to be recovered via a surcharge across all relevant calls (i.e. all calls originated on the BT network of a type that could be subject to CPS, whether or not they were actually subject to CPS). The surcharge is generally referred to as the CPS Pence Per Minute (PPM) surcharge.
25. The requirement to categorise costs as described in paragraph 23 was subsequently included in Condition 50A when the PTO licences of BT and KCL were modified to require them to provide CPS. Condition 50A also stated the cost-basis that BT and KCL should use when calculating their costs. Condition 50A.4(a)(i) stated:
- (a) Any determination specifying costs or charges made under 50A.4 shall:*
- i. unless some other cost-basis shall have been substituted by the Director, be based upon the Licensee's long-run incremental costs of providing Carrier Pre-Selection Standard Services;*
26. On 8 January 2001, Oftel issued its *Final Determination on Costs and Charges for Permanent Carrier Pre-Selection*<sup>7</sup> (the January 2001

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<sup>7</sup> A copy of the determination is available on the Ofcom's website at [www.ofcom.org.uk/static/archive/oftel/publications/carrier/pcps0101.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/carrier/pcps0101.htm)



Determination) in which it applied the principles set out in the February 1999 Statement, to set the charges for CPS. In the January 2001 Determination, Oftel additionally determined a per-provider ongoing charge for the reasons among others set out in paragraphs 75-77 of that Determination, because Oftel considered that an additional type of charge was a more accurate reflection of cost causation. The new charge did not reflect an increase in BT's costs, but rather a different structure for cost recovery.

27. The January 2001 Determination explicitly excluded consideration of charges for BT's FeatureNet, FeatureLine and Embark services, as CPS functionality for these types of customers had not been developed at that point in time, and as a result, the per line costs were not available. However, by 26 November 2001, Oftel was able to issue a determination of the charges for the provision by BT of Carrier Pre-Selection standard services for BT FeatureNet, FeatureLine and Embark customers (*Final Determination on costs and charges for provision by BT of permanent carrier pre-selection standard services for FeatureNet, FeatureLine and Embark customers*<sup>8</sup>) (the November 2001 Determination), as by that point in time, this functionality had been developed and data relating to costs had become available.
28. After the introduction of Permanent CPS, BT and the CPS Providers agreed significant changes to the CPS ordering process. In particular a paper-based order confirmation known as a 'reply slip' (customers had to fill this in and post it to BT to confirm the order) was withdrawn as from July 2002. As a result, some of the costs relating to the receiving and processing of the reply slip were no longer incurred by BT. The charges determined by Oftel in January 2001 included these costs and therefore no longer correctly reflect BT's costs after the CPS ordering process was modified. BT therefore proposed revised charges to take effect when the CPS process was modified. Oftel re-determined the charges in September 2002 (*Final Determination Of Costs And Charges For The Provision By BT Of Permanent Carrier Pre-Selection Facilities Under The Provisions Of Condition 50a Of BT's Telecommunications Act Licence*) (the September 2002 Determination)<sup>9</sup> removing the reply slip component from the charges but leaving the charges otherwise unaltered.
29. As previously noted, with the introduction of the new regulatory regime on 25 July 2003 Condition 50A was continued by means of the Continuation Notice<sup>2</sup>, however the various applicable Determinations were discontinued.
30. After the publication of the Market Review in November 2003, BT became subject to SMP Condition AA8. SMP Condition AA8.4 requires BT to base its charges on the reasonable forward looking long run incremental costs of providing CPS Interconnection Facilities:

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<sup>8</sup> A copy of this document is available at Ofcom's website at:  
<http://www.ofcom.org.uk/static/archive/oftel/publications/carrier/feat1101.htm>

<sup>9</sup> A copy of this Determination is available at Ofcom's website:  
<http://www.ofcom.org.uk/static/archive/oftel/publications/carrier/2002/pcps0902.htm>

*AA8.4 The Dominant Provider shall ensure that charges for the provision of the respective facilities mentioned below shall be made by the Dominant Provider as follows:*

*(a) Subject always to the requirement of reasonableness, charges shall be based on the forward looking long-run incremental costs of providing Carrier Pre-Selection Facilities unless:*

*i. the Dominant Provider and the Pre-selected Provider have agreed another basis for the charges; or*

*ii. any other basis for the charges be used as directed by the Director from time to time;*

31. Condition AA8 requires BT to categorise its CPS costs according to the four broad categories (also set out in the January 2001 Determination), namely:
- Carrier Pre-Selection Per-Provider Set-Up Costs;
  - Carrier Pre-Selection Per-Provider On-Going Costs;
  - Carrier Pre-Selection Per Customer Line Set-Up Costs; or
  - Carrier Pre-Selection System Set-Up Costs.
32. The Market Review did not review or modify BT's charges for CPS and BT maintained the charges as specified in the January 2001, November 2001, and September 2002 Determinations. Licence Condition 50A was also discontinued at that time by means of a discontinuation notice published in the Market Review.

### **Purpose of this draft Direction**

33. From September to November 2003 BT proposed new charges for CPS to the Industry (the November 2003 proposals) (a copy is attached in Annex 9). BT subsequently revised its proposals and shared its revised proposals with Industry in February 2004 (the February 2004 proposals) (a copy is attached as Annex 10). As a result of discussions with Ofcom, BT again revised its proposals in July 2004 (the July 2004 proposals) although these were not circulated to Industry. The July 2004 proposals form the basis of the proposed Direction and are listed in the draft Direction in Annex 6.
34. The aim of this draft Direction is to specify the modified charges based on reasonable costs for the provision of CPS by BT under Condition AA8. Condition AA8 gives Ofcom the power to modify the charges for the provision of CPS from time to time.
35. In this document, Ofcom seeks the views of interested parties on Ofcom's approach to reviewing BT's charge proposals and on Ofcom's proposed Direction of BT's CPS charges.

### **The scope of this draft Direction**

36. The Notification and proposed draft Direction at Annex 6 cover the following costs and charges for the provision of CPS by BT:
- per-provider set-up charges;

- per-provider ongoing charges; and
  - per-customer line set-up charges for PSTN, ISDN and FeatureLine line types.
37. It does not cover the costs and charges for provision of CPS by KCL because KCL has not received any requests for interconnection from CPS Providers wishing to offer CPS in the Hull area.

#### FeatureNet and Embark Charges

38. Per-customer line set-up charges for FeatureNet and Embark line types are outside the scope of the draft Direction. The charges for these line types were first set in the November 2001 Determination and were subsequently revised in the September 2002 Determination, when minor changes were made to the processes relating to how corporate end-users would confirm the list of CLIs on a FeatureNet/Embark installation. At present, the CPS capability for FeatureNet and Embark lines is not yet in service, although it is being trialled by the Industry. Therefore BT does not have any operational experience of the actual costs associated with the provision of CPS on these types of line. Ofcom considers that there is therefore insufficient additional information to warrant a review of the charges for these line types at this time.

#### System Set-Up Costs

39. The Carrier Pre-Selection system set-up costs are also outside the scope of this Direction. SMP Condition AA8 specifies that BT should recover these costs via a surcharge on specified 'relevant' types of call over a recovery period of five years. The starting level of this surcharge was previously set by Ofcom in Ofcom's February 2002 *Final Determination of surcharges for the provision by BT of carrier pre-selection facilities* <http://www.ofcom.org.uk/static/archive/ofcom/publications/carrier/2002/cps0202.htm>. The surcharge was implemented by BT from 1 April 2002.
40. At the time of writing, Ofcom considers that ongoing quarterly monitoring of the progress of BT's cost recovery is the only action required to ensure that the surcharge is recovered within the specified period, barring a formal dispute.

### Other Ofcom work on CPS

#### SAD Calls Development

41. On 30 July 2004, Ofcom published a final statement *Addressing the local call disadvantage*<sup>10</sup>. In this document Ofcom required BT to offer an additional routing option within CPS for calls which are originated and terminated on the same DLE or originated on one DLE and terminated on an adjacent directly-connected DLE (known as Same/Adjacent DLE (SAD) calls). Ofcom set out the principles for how the call charges for this routing option should be calculated. Ofcom also said that the development costs for the SAD call routing option should be recovered through the PPP surcharge.

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<sup>10</sup> [http://www.ofcom.org.uk/consult/condocs/cps\\_option/cps\\_statement/?a=87101](http://www.ofcom.org.uk/consult/condocs/cps_option/cps_statement/?a=87101)

Therefore Ofcom considers that the SAD CPS routing option work has no impact on the CPS charges that are the subject of this draft Direction.

### Section 3

## Ofcom's review of BT's proposed charges

42. In September 2003, BT proposed revised charges to CPS Providers for the following CPS charges:
  - per-provider set-up charge; and
  - per-provider ongoing charge.
43. In November 2003, BT proposed revised charges to CPS Providers for the per-customer line charges (simple order types only).
44. The proposals were made available to CPS Providers that participate in the CPS Commercial Group. In this document, the proposals for these three charges are referred to collectively as the November 2003 proposals. A copy of the proposed charges is attached as Annex 9 for reference.
45. At the time the proposals were presented BT had not completed its work on revisions to the per-customer line charges for the FeatureLine line type, therefore these charges were omitted.
46. There has been significant dialogue and regular meetings between BT and Ofcom's CPS project team during which the underlying calculations and information supporting the charges was reviewed in detail. Ofcom also received submissions from representatives of the CPS Commercial Group detailing their questions and concerns about BT's proposals. Some issues raised by CPS Providers had not previously been dealt with during Ofcom-BT discussions. Ofcom pursued these matters with BT and provided feedback to CPS Providers. During this time BT made several revisions to its proposed charges, one of which was circulated to the CPS Commercial Group in February 2004 (the February 2004 Proposals) (a copy is attached as Annex 10 for reference).
47. In reviewing the proposals, Ofcom has sought to ensure that the changes proposed by BT:
  - are based on costs reasonably and efficiently incurred by BT in the provision of CPS;
  - fall within the framework of the Industry agreed End-to-End CPS Process;
  - are in accordance with the principles set out in the February 1999 Statement for handling BT's costs which Ofcom considers are still relevant, (namely, the application of The Six Principles of Cost Recovery to CPS) (see paragraphs 22 to 32); and
  - are in line with the cost categorisation and recovery requirements of SMP Condition AA8 (see paragraphs 22 to 32).

## General points common to all charges

### Confidential information

48. BT has provided Ofcom with detailed information in support of its proposed charges including spreadsheets for each of the charges. These show how each charge has been calculated and also list each of the underlying costs that contribute to the charges. Where appropriate the spreadsheets also show how individual component costs were calculated. They also include supporting information used in the calculations such as historical transaction volumes, transaction forecasts, average activity durations and manpower rates. BT has not circulated the detailed spreadsheets to CPS Providers because it considers that they contain commercially sensitive information although BT has provided some higher level information to the CPS Commercial Group.
49. Ofcom considers that some of the information in the spreadsheets is commercially sensitive for BT and notes that they also contain personal information, namely the salaries of individual members of BT's staff. Ofcom has not therefore published the complete spreadsheets (or all the information they contain) with this document. Ofcom has discussed the level of disclosure with BT and has agreed with BT that more details of the calculations and underlying costs can be included in this document than previously circulated to CPS Providers. In this section Ofcom has:
  - described in detail the calculations used by BT for each of the charges;
  - shown the costs of each of the underlying activities that contribute to each charge; and
  - listed key assumptions and measurements used in the calculations.
50. Ofcom considers that the labour rates associated with individual activities and the time taken to perform those activities is commercially sensitive for BT and has not disclosed them.

### Margin

51. In the January 2001 Determination, Oftel set out its decision that BT's charges could include a reasonable return on the capital employed (if BT provided evidence of the capital employed) but not an additional mark-up or margin. At the time of the determination, BT was unable to provide any evidence relating to capital being employed and now accepts that no capital is employed in the provision of CPS. The charges determined by Oftel at that time did not therefore contain any allowance for margin or return on capital employed.
52. BT's current proposals for CPS charges do not include any allowance for return on capital employed or margin and the CPS charges proposed by Ofcom in this draft Direction do not contain any margin or return on capital employed either. Ofcom considers that this is appropriate since according to BT there is no capital employed, all the costs are derived from manpower or system usage.

## Overheads

53. In calculating the costs of CPS, an “overhead” factor is applied to BT’s direct labour costs so that BT can recover other indirect costs associated with the labour resources such as accommodation, vehicles, general office costs, travel and subsistence, and so on. For example, the time taken for a product manager to attend an industry meeting would be captured as part of the labour costs attributed to the per-provider ongoing costs, whereas the travel costs (e.g. rail fares) would be treated as an overhead.
54. In its February 2004 charge proposals (circulated to members of the CPS Commercial Group), BT indicated that it had applied a revised overhead rate of 90% to the per-provider set-up charge. This led some CPS Providers to query the level of the overhead and whether it should be applied at all.
55. Overheads have always been included in the CPS charges although it is possible that this may not have been completely transparent to CPS Providers due to the way that the per-provider ongoing charge came about. Oftel introduced the per-provider ongoing charge in its January 2001 determination. BT had previously proposed to include the costs of ongoing management of CPS as an uplift on the per-customer line set-up charges, but Oftel considered that an per-provider ongoing charge was more cost reflective. The current per-provider ongoing charge was determined by Oftel based on a calculation that included both pay and non-pay related overheads. (Indeed in Oftel’s determination, there is a reference to the fact that overheads are included in the per-provider charges – see paragraph 37 of the January 2001 Determination).
56. SMP Condition AA8.4 (as set out in paragraph 30) requires BT to ensure that its charges are based on LRIC costs. In Ofcom’s view, this allows BT to recover all relevant costs, including indirect costs, when setting charges.
57. BT has applied the 90% overhead to all of the activities undertaken by BT Wholesale. A different overhead is applied to the activities undertaken by BT Retail (see further discussion in paragraph 146). Ofcom has challenged the 90% overhead figure and in response BT has indicated that its accounting system is unable to identify the actual indirect costs associated with its CPS activities. It has therefore used a figure of 90% which is consistent with several activity types (known as plant groups) that relate to activities carried out by BT Wholesale that BT considers are analogous with the CPS activities.

58. Ofcom asked BT for further detail in support of the overhead figure and in response BT provided Ofcom with reports generated by its ASPIRE<sup>11</sup> accounting system, for the plant groups that it considers to be analogous to CPS activities. The reports summarise all of the direct and indirect costs by type that have been attributed to the plant group. Ofcom has studied each report in detail and has asked BT to provide a detailed explanation about:
- the types of activity included in each plant group;
  - the calculations used to produce the overhead figures; and
  - the types of cost that are used in the overhead calculation (both direct and indirect costs).
59. Ofcom's initial view is that the calculations satisfactorily reflect the ratio of indirect costs to direct costs for the plant groups examined and that the activities associated with the plant groups are sufficiently similar to the CPS activities to support BT's proposal to use the overhead for these plant groups as a proxy for those of the CPS activities. Ofcom's initial view is that the overhead charge remains a valid component of BT's recoverable costs of providing CPS and that the proposed 90% overhead is a reasonable approximation of the overheads associated with CPS.
60. When examining BT cost information, where relevant, Ofcom has carried out additional analysis of the most recently published Financial Statements and additional financial information, to assist in its review of BT's estimates.

### Per provider set-up charge

61. The per-provider set-up charge is payable once only by each provider wishing to become a CPS Provider. The applicable costs are the costs of enabling CPS for an individual provider, including implementing the necessary software changes in BT's network and the setting up of arrangements for the electronic transfer of customer orders. The proposed charge is listed in Annex 6.
62. The table below lists all of the activities that contribute to the charge.

Activity	Description of activities
Commercial Management	<p>Management of the commercial relationship between BT and the CPS Provider, including: ensuring that the provider's requirements are met, gathering data from the provider that BT requires to implement CPS for the provider and ensuring customer satisfaction.</p> <p>Input into billing and DMA requirements.</p>

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<sup>11</sup> ASPIRE is the system BT uses to prepare its regulatory Financial Statements and additional information. It identifies costs, revenues, assets and liabilities at the level of specified regulatory Businesses and disaggregated activities.



Technical Account Management (TAM)	BT's <i>Technical Account Management (TAM)</i> function views the provider's traffic forecast at the initial point of interconnection between BT and the provider's network and assesses the routing plan for the provider. TAM holds regular meeting with the CPS Provider.
Data Management Amendment (DMA)	BT's <i>Central Operations Unit (COU)</i> initiates a <i>Network Change Request (NCR)</i> to instigate the necessary software changes in BT's network to implement CPS for the CPS Provider. The NCR is issued to BT's Routing Control department (NCRD) who distribute it to BT's <i>Data Management Teams</i> and then track progress and report on successful completion.
Operational Test Manual (OTM) Testing	A series of interconnection tests between BT and the CPS Provider's network are performed. The tests are specified in BT's OTM manual. Interconnect testing is instigated only when the DMA activity is successfully completed. The time taken to perform the testing is determined by the number of points of connection per switch per-provider.
Electronic Data Interchange	Specification, implementation and testing of an electronic link from BT's <i>B2B Gateway</i> and the CPS Provider's systems. Installation and testing of a firewall for the protection of both parties. Also ensuring that the connectivity requirements of both parties are compatible.
Order Readiness Testing	Liaison with the all key areas identified above. BT issues a certificate upon completion.

63. The proposed charge is based on BT's measurements of the average effort required to perform each of the activities listed in the table above for an individual CPS Provider. The charges are based on measurements made during the period July to September 2003.
64. Ofcom asked BT whether any check or audit of the measurements had been made and BT indicated that the measurements were checked by the management of the operational teams that carried out the tasks and were also reviewed by BT's CPS Product Management Team.

#### Data management amendment

65. One of the main reasons that the per-provider setup charge proposed in the November 2003 proposals was significantly higher than the extant charges (£44,095.78 compared with £22,730) was that the DMA activity proved to require almost twice as much effort as originally forecast.
66. In January 2004 BT informed Ofcom that it had implemented a number of productivity improvements for this activity that resulted in a large reduction in the effort required. BT therefore proposed a lower revised charge in the February 2004 proposals. The reduced charge for the DMA activity contributed to a reduction in the proposed per-provider set-up charge from £22,730 to £13,448.98.

### OTM testing

67. BT provided Ofcom with information about the activities undertaken during OTM testing for specific CPS Providers and also the effort required to perform the tests for each of the CPS Providers. Ofcom contacted the CPS Providers to cross check this information and found a good level of correlation.

### Forecasting

68. The resource required to carry out the forecasting component of the TAM function has reduced significantly compared with the current charges. This is because BT no longer needs to produce Inter-Tandem forecasts, also BT believes that due to the relative stability of the BT network with regards to CPS traffic that the rigour associated with earlier forecasting is no longer required.

### Charge calculation

69. For each of the activities listed in the table above, the average effort required to complete the task has been multiplied by the labour rate corresponding to the grade of the staff performing the function. Then the overhead has been applied to the total labour cost (see paragraph 53 for further explanation of overheads). The table below breaks down the proposed per-provider setup charge showing the cost of each of the constituent activities.

Activity	Cost per provider
Commercial Management	£677.51
Technical Account Management	£451.68
Data Management Amendment	£8,848.71
Operational Test Management	£2,552.75
Electronic Data Interchange	£677.51
Order Readiness Testing	£240.83
Total	£13,448.98

70. Ofcom has reviewed the calculations used by BT to calculate the per-provider set-up charge from the effort measurements for each of the activities listed in the table above. These include BT's labour rates, and the staff grade for each activity. Ofcom has verified that current standard labour rates from BT's central labour rate system GATIS have been used and that the staff grade is appropriate to each activity.

### Possible transfer of costs between the per-provider set-up charge and the per-provider ongoing charge

71. Some CPS Providers have expressed concerns to Ofcom that BT might have transferred some costs from the per-provider set-up charge to the per-provider ongoing charge since the fall in the former seemed to be mirrored by an increase in the latter. Ofcom has reviewed the basis of both charges in detail with BT. The reasons for the change are twofold:
- firstly, the per-provider set-up charge has reduced significantly because as previous indicated BT has streamlined the DMA and forecasting activities which are two of the most labour intensive of the per-provider set-up activities; and
  - secondly, the per-provider ongoing activity costs have risen because the costs of providing ongoing support has proved to be higher than the pre-launch estimates that are the basis of the current charges.
72. Ofcom has found no evidence of any reallocation of costs, between the activities, in setting these two charges.

### Initial conclusions in relation to the CPS per-provider set-up charge

73. Ofcom's initial view is that the proposed cost of each of the activities is an accurate reflection of the actual costs incurred in undertaking these activities and that therefore the per-provider set-up charge proposed in this draft Direction by Ofcom (see Annex 6) is an accurate reflection of BT's costs of setting up a CPS Provider for the CPS service
74. The proposed charge (as specified in Annex 6) is £13,448 and will be less than the current charge (£22,730). The difference is mainly due to the reduction in the cost of the DMA and forecasting activities.

*Question 1: Do you agree with Ofcom's initial view that the per-provider set-up charge for CPS should be as set out in Annex 6?*

### **Per provider ongoing charge**

75. This charge covers the additional cost to BT of supporting each CPS Provider that uses the CPS service. The annual charge is converted pro-rata to a monthly charge, which is made for each provider from the time that it first submits CPS transactions for processing. The proposed charge is listed in Annex 6.
76. The table below lists all of the activities that contribute to the charge.

Activity	Description of activities
Product management	<p>Liaison between BT's product management group and industry bodies such as the CPS Commercial Group</p> <p>Service establishment and certification</p> <p>Management of the CPS forecasting process and forecasting changes (when CPS Providers wish to exchange forecast order volumes in order to avoid forecasting penalties and/or rejection of orders above their previously forecast order volumes. These changes need to be agreed and registered with BT)</p> <p>Documentation of the CPS processes.</p> <p>Dealing with billing enquiries from CPS Providers.</p> <p>Capacity management</p> <p>Product development and enhancement activities</p>
Billing	<p>Production and distribution of transaction based charging data.</p> <p>Invoicing CPS Providers.</p> <p>First level support of BT's transaction based billing system.</p>
Customer Relationship Management (CRM)	<p>Liaison with CPS Providers, dealing with invoices, customer payment disputes, chasing debt and issuing demand letters.</p>
Financial and regulatory reporting	<p>Liaising with Ofcom, BT Wholesale and BT Retail on regulatory and financial issues ensuring BT's licence is not breached for failure to meet regulatory obligations. To ensure that appropriate costs are recovered and charges determined.</p>

77. The proposed charge is based on BT's measurements (during the period July 2003 to February 2004) of the average effort required each month to perform the activities listed in the table above for all CPS Providers.
78. Ofcom asked BT whether any check or audit of the measurements had been made and BT indicated that the measurements for the billing and CRM activities were checked by the management of those teams and that the other activities were compiled and reviewed by BT's CPS Product Management Team.

## Product management and financial & regulatory reporting

79. BT's figures for product management and financial and regulatory reporting activities have been challenged by Ofcom. In response BT has provided a complete list naming all staff that carry out each of these activities, almost all of whom are known to Ofcom from meetings with BT. BT has also confirmed that the costs of regulatory compliance activities and specific investigations (such as the CPS Save Appeal<sup>12</sup>) are excluded from the costs.

## Service establishment and certification

80. Ofcom has asked BT whether the cost of the service establishment and certification activities should be attributed to the per-provider set-up charge since they are part of the per-provider set-up process. BT has confirmed that this was an oversight and has indicated that these costs have been included in the per-provider ongoing charge because they are activities that are performed by the product manager that performs all of the other product management activities listed in the table above. BT has indicated that these activities constitute a very small amount of the time attributed to product management and doesn't therefore have a significant impact on the level of the charge. Ofcom's initial view is the amounts involved are not material.

## Charge calculation

81. For each of the activities listed in the table above, the average effort required to complete the tasks has been multiplied by the labour rate corresponding to the grade of the staff performing the function. Then the overhead has been applied to the total labour cost (see paragraph 53 for further explanation of overheads). The sum of the costs of the activities represents the total cost to BT of supporting all CPS Providers. BT has therefore divided these figures by the number of Carrier Pre-selection Codes (CPS Codes) that were in use during the period that the measurements were made to calculate the average cost per CPS Provider.
82. BT has used the number of CPS Codes rather than the number of CPS Providers because it believes that its costs are driven by the number of CPS Codes rather than CPS Providers. This question is discussed further in paragraphs 96 to 98.
83. The table below breaks down the proposed per-provider ongoing charge showing the cost of each of the constituent activities.

Activity	Average cost per provider per month
Product Management	£1,725.10
Billing	£76.23

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<sup>12</sup> Case No. 1025/3/3/04 British Telecommunications PLC and the Office of Communications

Customer Relationship Management	£34.58
Financial and Regulatory Reporting	£302.81
Total	£2138.72

84. Ofcom has reviewed the calculations used by BT to calculate the per-provider ongoing charge from the effort measurements for each of the activities listed in the table above. These include BT's labour rates, and the staff grade for each activity. Ofcom has verified that current standard labour rates from BT's central labour rate system (GATIS) have been used and that the staff grade is appropriate to each activity.

#### Justification for an ongoing charge

85. CPS is currently the only regulated product provided by BT apart from Wholesale Line Rental that incurs an ongoing per-provider charge. Others such as FRIACO and Indirect Access do not. Some CPS Providers have queried whether it would be more appropriate to recover the costs via an uplift on eligible calls as with the CPS system set-up costs.
86. As previously indicated, Oftel introduced the per-provider ongoing charge in the January 2001 Determination for the reasons set out in paragraphs 75-77 of that Determination – namely that this structure would most closely reflect cost causation. Ofcom's initial view is that Oftel's reasoning is still valid and that an ongoing charge remains the most appropriate cost recovery mechanism because it promotes economic efficiency by requiring CPS Providers to pay for costs which they directly cause to be incurred.

#### Recovery of BT's regulatory and financial costs

87. Some CPS Providers have stated that they do not believe that BT's regulatory and financial costs should be recovered through the per-provider ongoing charge but should instead be recovered via the PPM surcharge.
88. Ofcom's initial view is that Oftel's conclusions in the February 1999 Statement on the recovery of BT's regulatory and financial costs are still valid – namely that BT's regulatory and financial costs for CPS are driven by the number of CPS Providers and that in line with the principle of cost causation these costs should therefore be recovered from CPS Providers via a per-provider ongoing charge. In Ofcom's view it is appropriate that only costs associated with CPS system set-up (i.e. BT's regulatory obligation to make CPS possible on the BT network, even if no Communications Providers actually wanted CPS) should be recovered via a PPM surcharge across all minutes.

#### Potential for double recovery of BT's regulatory and financial costs

89. Some of BT's regulatory and financial support costs for interconnection products in general are recovered across a range of products through the PPP mechanism. Generally these are costs that can not be identified as product (e.g. CPS) specific. Costs that are identified as CPS specific can be allocated directly to the CPS per-provider ongoing charge.

90. Both Ofcom and CPS Providers have expressed concern about the potential for double recovery of these costs via the CPS charges and the PPP mechanism. Ofcom has asked BT to provide proof that any costs allocated to the CPS per-provider ongoing charge have been removed from the PPP charge. Although BT believes that it has not double counted its regulatory and financial costs it is currently unable to prove that this is the case. BT therefore has an ongoing action from Ofcom to improve the audit trail for the allocation of its regulatory and financial costs. This work is likely to take some time and Ofcom's initial view is that the Direction of the CPS charges should not be held up pending its completion.

#### Whether BT should pay the ongoing charge

91. Some CPS Providers have expressed the view that BT's retail division should pay the per-provider ongoing charge since it participates in the CPS process.
92. Whilst Ofcom agrees that BT's retail division participates in some parts of the CPS process and also attends some industry meetings, BT Retail does not use the CPS service and therefore does not drive the costs that are currently recovered via the per-provider ongoing charge. As such, Ofcom's view is that BT Retail should not be obliged to pay the charge.
93. During the review of BT's charge proposals, Ofcom has confirmed with BT that there is no element of the costs of CPS regulatory investigations nor the cost of any component of BT's retail activity included in the per-provider ongoing charge.

#### Initial conclusions in relation to the CPS per-provider ongoing charge

94. Ofcom's initial view is that the proposed cost of each of the activities is an accurate reflection of the actual costs incurred in undertaking these activities and therefore Ofcom considers that the proposed per-provider ongoing charge (as specified in Annex 6) is an accurate reflection of BT's per-provider costs of providing ongoing support for the CPS service.
95. The proposed charge (as specified in Annex 6) is £25,664.64 per-provider per-annum, which is higher than the current charge (£16,800) mainly because the amount of support required by CPS Providers (and therefore the costs of providing those activities) has proved to be significantly higher than the pre-launch estimates that are the basis of the current charges.

*Question 2: Do you agree with Ofcom's initial view that the per-provider ongoing charge for CPS should be as set out at Annex 6?*

#### **Basis of charges for CPS Providers with two Carrier Pre-selection Codes**

96. Carrier Pre-selection Codes (CPS Codes) are 4 digit codes commencing with 8 (e.g. 8XXX) allocated by Ofcom to CPS Providers. CPS Codes are routing codes that are associated with each line that has CPS. BT uses the CPS code to identify CPS Providers in order to route CPS calls to CPS Providers' networks. Although most CPS Providers have only one CPS Code, some CPS Providers have applied for and been allocated two CPS Codes by Ofcom, where they have been able to justify this for technical reasons. Some CPS Providers are therefore currently using two codes.

This enables them (where there are no practicable alternatives at a technical level) to separate their customers into two groups and to apply different routing arrangements for each group.

97. BT has recently informed Ofcom that it regards CPS Providers with two CPS Codes as two separate CPS Providers for charging purposes, on the grounds that it incurs per-provider set-up and per-provider ongoing costs twice for such providers. However, Ofcom is aware that some CPS Providers believe that not all of BT's costs are duplicated in this way when a CPS Provider uses two CPS Codes.
98. Ofcom notes that BT has used the number of CPS Codes rather than the number of CPS Providers when calculating the proposed per-provider ongoing charge.
99. Ofcom has not had time to consider this question in detail during this review and is therefore asking for respondents views on this subject to inform its consideration of this matter.

*Question 3: Do you agree that CPS Providers with more than one CPS Code should be treated as more than one CPS Provider for charging purposes?*

### **Per-customer line set-up charges**

100. Per-customer line set-up charges are designed to recover the costs incurred by BT each time it enables the use of CPS on a new individual customer line. BT makes a transaction charge to the CPS Provider for each network calling line identity (CLI) on which the CPS Provider requires CPS to be set-up or changes to be made to the CPS configuration. The proposed per-customer line set-up charges are listed in Annex 6 and the current charges are listed in Annex 8.
101. There are various different types of CPS transaction defined in the CPS Industry End-to-End Process Description including set-up, change, cancel, remove and renumber transactions. In this review the charges for Simple and FeatureLine order types are under consideration, a total of 30 chargeable transaction types.
102. Eleven component costs contribute to the overall cost of the per-customer line charges. These are shown in the table below:



Support Systems:	Data Exchange Distribution System (DEDS) CPS Gateway Customer Service System (CSS) Switch Manager
Support Teams:	Application Support Group BT Wholesale Service Centre Interconnect Fault Reporting Centre FeatureLine Operations Management Centre
Postage Costs	
Additional Inbound Call Costs	

103. BT's charge calculations are based on a forecast of 6 million orders per year (or an average of 500,000 orders per month). This volume is consistent with recent order volumes. For reasons discussed in more detail in paragraph 170, Ofcom believes that future order volumes are quite difficult to predict. Therefore Ofcom's initial view is that recent order volumes are a reasonable basis for forecasting future order volumes.

104. The table below shows each of the component costs for the forecast order volume of 6 million orders.

Component cost	Cost per annum to process 6 million orders
DEDS	£17,640
CPS Gateway	£126,000
CSS	£3,719,620
Switch Manager	£5,119,200
Application Support Group	£610,201
BT Wholesale Service Centre	£389,688
Interconnect Fault Reporting Point	£187,093
FeatureLine	£182,768
Operations Management Centre	£225,301

Postage Costs	£1,290,240
Additional Inbound Call Costs	£3,174,362
Total	£15,042,113

105. Each of these costs is discussed in the following sections.

#### Support systems costs

106. Four of component costs are charges for operational support systems and are listed in the table below.

Support Systems	Description
DEDS	The DEDS system is responsible for managing the transfer of orders between CPS Providers and BT.
CPS Gateway	This system takes the CPS orders from DEDS and places them in CSS for execution. It also provides several other functions: <ul style="list-style-type: none"> <li>• provides updates to CPS Providers as orders progress</li> <li>• allows BT staff to monitor progress of orders and to resolve problems</li> <li>• records transactions for billing purposes.</li> </ul>
CSS	BT's main customer service system for processing PSTN orders. Each CPS order that is validated by the CPS Gateway generates a CSS transaction.
Switch Manager	This system is responsible for configuring CPS orders in BT's network (i.e. set-up, remove and renumber orders)

107. Ofcom has challenged BT in some detail about the basis of the costs for each of the operational support systems listed above and where appropriate has reviewed supporting information supplied by BT. The following sections describe pertinent points.

#### DEDS Costs

108. Every CPS order incurs a DEDS transaction regardless of whether it is validated by the CPS Gateway.

109. The DEDS system is used for other products apart from CPS. BT has indicated that it has attributed a proportion of the operating cost of DEDS to CPS based on the proportion of total transactions that are CPS transactions.

### CPS Gateway Costs

110. One of the functions of the CPS Gateway is to validate CPS orders and therefore every CPS order is handled by the CPS Gateway including those that fail validation.
111. BT has indicated that the operating costs for the CPS Gateway are platform support costs and are independent of order volumes within the range of transactions considered in Annex 11.
112. The CPS Gateway is used exclusively for CPS and therefore BT has attributed the whole operating cost of this system to CPS.
113. Each CPS transaction is allocated an equal share of the total operating cost of this system.

### CSS and Switch Manager Costs

114. BT has indicated that every validated order is processed by CSS, whereas Switch Manager handles only successful set-up, remove and renumber orders.
115. CSS and Switch Manager are also used throughout BT for many other non-CPS transactions. Ofcom has reviewed information provided by BT that shows that the volume of CPS transactions is so small in relation to the overall volume of transactions that the unit cost of the CPS transactions does not decrease materially with an increase in the volume of CPS transactions. Each CPS order that is executed in CSS or Switch Manager therefore incurs a fixed transaction cost.
116. CPS Providers queried the level of per-customer line cost relating to BT's CSS operational support system (CPS Providers have estimated BT's CSS costs to be about £0.69 based on the difference between the charge for transactions that fail pre-CSS validation and those that fail post CSS validation in BT's February 2004 proposal).
117. During the review of BT's charging proposals, Ofcom has challenged BT about the CSS charges. BT has provided information indicating that there is a range of charges for CSS transactions based on their complexity and use of system resources. CPS transactions are charged at the same rate as similar types of transactions (transactions that update exchange line features).
118. Oftel reviewed the basis for the charges relating to BT's operational support systems costs in the January 2001 Determination. Oftel concluded that the correct basis for CSS costs is actually and reasonably incurred incremental costs to deliver the necessary additional functionality, correctly apportioned between CPS and other products and services sharing the facilities (see paragraph 23 of the January 2001 Determination).
119. Ofcom notes that a proportion of the estimated £0.69 CSS cost relates to the cost of BT's Application Support Group team which supports the CPS gateway group of systems (and performs no other function). Ofcom has also challenged BT about these costs and BT has provided information indicating there are no order types that routinely require manual processing by the

Application Support Group and that the Application Support Group is only required to intervene manually when orders or other files fail during execution. The proportion of such failures is very small in relation to the overall volume of transactions. In addition to the support activities previously described, the Application Support Group team also helps trace orders and files through the gateway when CPS Providers query the progress of their orders.

### Support Team Costs

120. Five of the component costs relate to support functions that are involved in the CPS process. These are listed in the table below.

Cost	Description
Application Support Group	This support team is responsible for maintaining the CPS Gateway
BT Wholesale Service Centre	This support team is responsible for monitoring the execution of CPS orders in CSS and manual intervention as required
Interconnect Fault Reporting Centre	This support team is responsible for fault handling.
FeatureLine Team	This support team is responsible for the manual activities involved in FeatureLine orders
Operations Management Centre	This support team undertakes manual network configuration activities for a small proportion of set-up and remove orders that are not automatically executed by the Switch Manager system

121. Ofcom has challenged BT in detail about the costs associated with the support teams listed in the table above and BT has supplied detailed information in support of each.
122. For each of the support teams except the Operations Management Centre (see paragraph 125) the costs are based on the number of staff that are allocated to CPS activities and comprises the direct costs (i.e. labour costs) plus an overhead allowance for indirect costs (see paragraph 53 for further explanation of overheads).
123. BT has listed the team members, their job description and their staff grade. Ofcom has verified that current standard labour rates from BT's central labour rate system ("GATIS") have been used and that the staff grade is appropriate to each activity.
124. BT has indicated that its estimates are based on the actual support costs during the period July 2003 to February 2004 and that they are consistent with transaction volumes of 500,000 orders per month. BT has also provided additional information showing the sensitivity of these staffing costs to higher and lower transaction volumes (see paragraph 165).

## Operations Management Centre Team

125. This support team undertakes manual network configuration activities for a small proportion of set-up, remove and FeatureLine orders that are not automatically executed by the Switch Manager system.
126. BT has calculated the cost of these activities based on measurements of the average effort required to complete them during the period July 2003 to February 2004. The average effort required to complete these tasks has been multiplied by the labour rate corresponding to the grade of the staff performing the function and then an overhead has been applied to the labour costs (see paragraph 53 for further explanation of overheads). Ofcom has verified that current standard labour rates from BT's central labour rate system ("GATIS") have been used and that the staff grade is appropriate to each activity.
127. BT has indicated that it has measured the average incidence of these activities against order volumes and the spreadsheet model that it has supplied to Ofcom shows that its calculation of the overall cost of this support function is driven by the forecast order volumes.

## Postage Costs

128. When a customer transfers from BT to a CPS Provider or from one CPS Provider to another, the CPS Process requires that the losing CPS Provider send the customer a standard-format letter known as an Advice of Transfer letter. The letter is provided as an anti slamming measure and gives the customer a contact number to ring if they have a query. When BT loses a customer to a CPS Provider, BT sends the Advice of Transfer letter.
129. BT proposes to recover the postage costs for the letters that it sends. BT has charged only for the cost of a first-class stamp for each letter and has not added the costs for producing the letters.

## Additional Inbound Call Costs

130. In the January 2001 Determination, Oftel concluded that it was appropriate for BT to recover the costs of certain additional calls generated by CPS orders via the per-customer line charges. In paragraph 71 of the 2001 determination, Oftel set out its conclusions:

*Oftel considers that it is appropriate for BT to recover the costs of handling some of the additional inbound calls to BT customer services that will be generated as a result of the introduction of CPS. The inbound calls for which cost recovery is appropriate will be those calls where a customer has already embarked on the process of obtaining CPS and is calling BT to make enquiries for example about the reply card or the switch over date. Cost recovery is appropriate for these calls as the costs are caused as a result of an individual customer's decision to opt for CPS, and these calls should be regarded as part of the normal process of setting up CPS for an individual customer. However, Oftel does not believe that cost recovery is appropriate for inbound calls which are simply BT customers making general enquiries about CPS and how to obtain it before having embarked on the CPS ordering process. Oftel deems such calls to be part of the cost of competition for BT, similar to any calls that BT may receive about indirect access or switching to an*

*alternative access operator for which BT is not able to recover its costs from competitors.*

131. In paragraph 73 of the January 2001 determination, Oftel also noted that:

*There may be some calls that fall in a grey area between general CPS enquiries and calls from customers already embarked on the process of obtaining CPS, and these will need to be considered in detail during any future review. However, the principle that general CPS enquiries are not subject to cost recovery is unlikely to be reviewed.*

132. Ofcom believes that Oftel's conclusions in relation to general enquiries about CPS are still valid and therefore that it is not appropriate for BT to recover cost for inbound calls which are simply BT customers making general enquiries about CPS and how to obtain it before having embarked on the CPS ordering process.

133. Ofcom has reviewed BT's submissions in relation to these costs in considerable detail and has used its formal powers under Section 135 of the Act to require BT to undertake a detailed analysis of a representative sample of calls. Ofcom has also:

- obtained a six-month time series of the inbound call volumes that BT considers to be attributable to CPS Advice of Transfer letters; and
- analysed a sample set of call recordings provided by BT.

134. The call analysis performed by BT comprised of a statistically significant sample of calls to BT's consumer and business call centres responsible for handling CPS calls. Each call was monitored by a supervisor and the activities undertaken during the call were timed and categorised according to a standard table specified by Ofcom.

135. The call analysis has given Ofcom and BT a much more detailed view of the nature and composition of inbound calls than has previously been available. The analysis revealed that:

- even though BT has provided dedicated telephone numbers for use on the Advice of Transfer letters, consumers sometimes call these numbers on matters unrelated to CPS transfers;
- calls often cover more than one subject, for instance a consumer might first ask for confirmation of the date of a CPS transfer and then make an enquiry about another subject such as billing or a fault; and
- individual calls can include activities that Ofcom considers to be appropriate for BT to recover and other activities that Ofcom considers should not be recoverable.

136. Based on the mixture of activities within individual calls, Ofcom considers that it is often not possible to define whole calls as either recoverable or unrecoverable and that to do so would lead to either understating or overstating the costs that BT would recover. Ofcom's initial conclusion is that only a proportion of the additional inbound call costs should be recovered based on a detailed analysis of the activities in a sample of calls. The proportion can then be applied to the overall volume of calls so that the costs to be recovered may be calculated. Ofcom acknowledges that the

process of timing call activities and categorising them is not an exact science, however Ofcom judges that this approach gives a significantly more accurate outcome than a simple measurement of overall call durations.

137. Ofcom considers that it is appropriate to specify the activities which it regards as appropriate for cost recovery by BT.
138. Ofcom considers that it is appropriate for BT to recover the costs of specified call activities where the customer has already embarked on the process of obtaining CPS (i.e. where the customer has placed an order with a CPS Provider).
139. Ofcom's initial conclusion is that the costs of the following call activities should be recoverable by BT:
- (a) validation of the customer's identity against BT account records provided that the call includes at least one of the other activities listed in (b) to (e) below;
  - (b) processing a misselling allegation (including recording the details of the allegation and cancellation of the CPS Transfer);
  - (c) customer requests for BT to check on progress of a CPS order including:
    - i. customer request for BT to check on progress of a CPS transfer from BT to another CPS Provider; and
    - ii. customer request for confirmation that BT has received a cancellation order for a transfer (from BT to another CPS Provider) or to confirm that the cancellation was successfully completed;
  - (d) customer inquiries that are referred to the gaining CPS Provider, including:
    - i. customer request to cancel a CPS transfer with no misselling allegation; and
    - ii. inquiries about gaining CPS Providers, and their services, tariffs and/or billing.
  - (e) clarification to customer of what CPS is / how CPS works including explaining to customer that BT will continue to bill the customer for the line rental
140. Ofcom's initial conclusion is that it is not appropriate for BT to recover the costs of the following activities:
- (a) provision or cessation of a BT Together or other call/discount package;
  - (b) customer inquiries and orders not relating to CPS, including:
    - i. inquiries about BT products, services and tariffs;
    - ii. orders for the provision or cessation of BT products/ including but not exclusively CLIP, CLIR, voicemail and call waiting etc;
    - iii. any proactive sales activity by BT;

- (c) inquiries resulting in the call being transferred to another BT department, including:
    - i. BT billing and payments inquiries including:
      - a. changes to direct debit payments;
      - b. changes to payment method (e.g. cancellation of a direct debit mandate or requests to start paying by direct debit); and
      - c. requests for refunds of charges already paid in advance;
    - iii. inquiries referred to a BT fault reporting function;
    - iii. inquiries referred to a BT sales function.
141. Ofcom acknowledges BT's view that some of the activities listed above in paragraph 140 are often generated as a direct result of the CPS order but Ofcom does not agree that the costs should be recoverable. Ofcom's initial view is that these costs are incurred as a result of competition and would be incurred by any retail calls provider when it loses business to a competitor and should not therefore be recoverable. BT has acknowledged this point and has not included these costs in its July 2004 proposals. These costs are not included in the proposed charges in Annex 6.
142. With regards to the cancellation or alteration of BT Together or other discount programmes, Ofcom's initial view is that BT has made a commercial decision to offer the BT Together packages and that therefore it should be responsible for the costs of cancelling those packages when customers no longer wish to take the package, whether as a result of CPS or otherwise. BT has acknowledged this point and has not included these costs in the July 2004 charge proposals. These costs are not included in the proposed charges in Annex 6
143. BT has used the call analysis previously described as the basis for calculating the cost of the additional inbound calls that it proposes to recover. The analysis has been used to calculate the average recoverable call duration for calls to BT Retail's Consumer and Business divisions. BT has confirmed that these calculations are consistent with Ofcom's views (as described in paragraphs 139 to 142) about the types of call activities, which Ofcom believes should be recoverable. Ofcom has reviewed data provided by BT that shows how BT categorised every call that it analysed and also showing how it summarised the information and calculated the average recoverable call duration. Ofcom considers that the call analysis is commercially sensitive for BT and has therefore not published it.
144. In July 2004, BT measured the proportion of orders that generated an Advice of Transfer letter (i.e. the trigger for additional inbound calls to BT Retail), the incidence of additional inbound calls and also the proportion that are answered and prove to be valid (i.e. contain recoverable activities). The measurements are reproduced in the table below along with the average call durations.



	BT Retail Consumer Division	BT Retail Business Division
Proportion of total transactions that generate an Advice of Transfer Letter	56%	56%
Proportion of Advice of Transfer letters that generate an inbound customer call to BT	26%	4%
Proportion of calls that are answered and are valid (i.e. contain recoverable elements)	80%	59%
Average recoverable call duration	3.1 minutes	5.8 minutes

145. BT used the figures reproduced in the table above to forecast the volume of additional inbound calls to BT Retail for the forecast order volumes. The forecast call volumes were then multiplied by the average call durations reproduced above to calculate the effective effort required. This figure has been multiplied by an adjustment factor to take account of ineffective time of the staff answering the calls (i.e. activities other than answering calls) and also their supervision/management. Finally the total effort has been multiplied by the labour rate corresponding to the grade of staff performing the activity and then an overhead for indirect costs has been applied to produce the total cost to BT of the additional inbound calls.

146. Ofcom has verified that the staff grades used are appropriate to the activities and has also challenged BT about the level of the adjustment factor and overhead. BT Retail has its own overhead factor, which is specific to the BT Retail division. BT has also provided Ofcom with further information justifying the adjustment factor and setting out how it was calculated. BT has confirmed that the adjustment factor accounts for absences (planned and unplanned), time spent on non-call activities and time spent by agents waiting to answer calls. Ofcom is satisfied that both the overhead and adjustment factors seem reasonable.

#### The Cancel Other Direction

147. On 21 January 2005, in resolution of a dispute between BT and other communications providers, Ofcom published a Direction *BT's Use of Cancel Other*<sup>13</sup>. The Direction concerned BT's use of order cancellation transactions<sup>14</sup> to cancel orders initiated by other communications providers

<sup>13</sup> A copy of this document is available on Ofcom's website at: <http://www.ofcom.org.uk/consult/condocs/cancel-other/codir/?a=87101>

<sup>14</sup> Cancellation transactions (both BT and CPS Provider initiated) are listed as "Order cancelled on BT provision and repair systems" in the proposed charges in Annex 6.

(known as Cancel Other transactions by the industry). BT uses these transactions principally in cases of misselling (i.e. where a customer alleges that a CPS order has been generated without their consent) or in certain other circumstances such as when a telephone line is ceased before a CPS order is completed.

148. The Direction introduced new rules specifying when it is appropriate for BT use a Cancel Other transaction. Ofcom's initial view is that it is too early to say whether the changes will have any impact on BT's additional inbound call costs either through a change in the incidence of slamming allegations or a change in the average call duration.
149. The Direction also required BT to keep detailed records of all Cancel Other transactions and to make representative samples of them available to CPS Providers on request. Ofcom's view was that the costs of system set-up or record retrieval should not be substantial and left it to BT to decide whether to seek to raise additional charges to recover these costs. Since BT has not yet proposed such charges they have not been considered in this draft Direction.

#### Apportionment of per-customer line set-up costs to transaction types

150. The component costs are apportioned to the per-customer line set-up transactions to align as closely as possible to the points where the costs are incurred, thereby making the charge for each transaction as cost-reflective as possible. For example all transactions incur a CPS Gateway charge but only those that pass pre-CSS validation incur a CSS charge. Ofcom has challenged BT about the apportionment and BT has provided Ofcom with a spreadsheet model that shows how the component costs have been apportioned to each of the transaction types. There are two inputs to the model:
- a table indicating the distribution of transactions by type; and
  - a cost-allocation matrix indicating which transaction types incur a proportion of each of the component costs.
151. The following table reproduces the transaction distribution table used in the model.

Transaction type	Proportion of total transactions
Pre CSS Validation order rejected	1.6%
Post CSS validation order rejected or cancelled	17.6%
Set-up Order completed	67.0%
Change Order completed	0%
Order cancelled on BT provision and repair systems	9.7%

Remove order completed	4.0%
Renumber order completed	0%
FeatureLine order completed	0.1%

152. The figures in the table above were derived from transactions statistics for October to December 2003. BT provided Ofcom with a copy of these statistics and Ofcom has confirmed that they support the figures shown in the table above. Ofcom has no evidence to suggest that more recent transaction statistics would materially affect the calculation.
153. The cost-allocation matrix is reproduced in Annex 12. Ofcom has confirmed that the matrix is consistent with Ofcom's understanding of each of the cost components as described elsewhere in this section.
154. The cost-allocation matrix is used in conjunction with the transaction distribution table and transaction forecast to calculate the volume of transactions against which each component cost should be distributed. This is then used to calculate a transaction charge for each cost component, which can then be applied to each transaction type. The component costs are therefore allocated equally to all applicable transactions.
155. For example, the cost-allocation matrix indicates that the cost of the BT Wholesale Service Centre should apply to all but one transaction type (the Pre CSS Validation Order Rejected type) or 98.4% of orders. Therefore the cost per transaction is calculated as follows:  $(£389,688 / (6,000,000 \times 98.4\%)) = £0.063$ .
156. The proposed per-customer line set-up charges shown in Annex 6 are simply the sums of the applicable transaction charges for the component costs.

#### Complex orders

157. When CPS was introduced, three types of order were defined:
- simple;
  - complex; and
  - FeatureNet, FeatureLine and Embark.
158. The complex order type has not been used since BT automated the processing of ISDN 30 orders prior to the September 2002 Determination. Therefore, BT has not proposed revised charges for this order type.
159. Even though the complex order type was not in use by the time Oftel made the September 2002 Determination, Oftel determined the relevant charges in case there was a need to reintroduce this order type in future. Ofcom's initial view is that given the scale of the changes proposed to the simple order charges, the complex order charges determined in September 2002 would also need to be re-evaluated should BT ever reintroduce this order type. Ofcom considers that the reintroduction of the complex order type is

unlikely, and therefore is not proposing any modified charges for complex orders in this draft Direction.

#### FeatureLine

160. BT has proposed that the basis of the FeatureLine charges should change significantly, resulting in a reduction in the transaction charges for most orders. At present, FeatureLine shares a common table of charges with FeatureNet and Embark orders. This contains per-site/business group charge elements as well as per-CLI elements. BT's experience of processing CPS orders for FeatureLine has led it to believe that a simpler charging structure based on a single charge element per transaction would be more cost-reflective.
161. The proposed FeatureLine charges for all transaction types except successful set-up orders will be identical to the charges for simple orders. This change has resulted in reductions to the charges for successful Remove, Renumber, Change and Cancel transaction types. For example, the proposed charge for a successful Remove order will be £2.11 rather than £26.27 plus additional charges for each Business Group and CLI. The proposed charge for a successful FeatureLine set-up order is £32.86 and will be applied on a Per-Site basis regardless of the number of lines (up to the maximum of 25 lines that FeatureLine supports). The revised charge will result in savings (particularly for larger orders) compared with the current charges for successful set-up orders which are £28.62 plus £9.37 per Business Group plus £1.68 per CLI.
162. At present, FeatureLine transactions are only a very small proportion of CPS transactions.

#### FeatureNet and Embark Orders

163. As previously indicated, BT has not proposed revised charges for FeatureNet and Embark orders, since it does not yet have significant operational experience of processing these types of orders.

#### Differences between BT's November 2003 and February 2004 proposals

164. Some CPS Providers have expressed concern that there are significant differences in the level of charges between BT's November 2003 (see Annex 9) and February 2004 (see Annex 10) proposals. The main reasons for these differences are described below:
- additional detailed analysis, carried out by Ofcom and BT, based on more up to date data, has led to a more accurate identification of costs, and appropriate attribution of costs to each of the relevant activities;
  - the latest proposal includes the postage costs for the Advice of Transfer letters. These are not included in the current charges or the November 2003 proposals. BT has charged only for the cost of postage and has not added the costs for producing the letters; and
  - as a result of discussions between BT Wholesale and BT Retail, BT identified that the original proposal did not fully account for BT Retail Front Office's costs in the calculation that translated the CPS-related inbound call traffic into costs.

## Transaction volume sensitivity of charges

165. On 16 March 2004 BT provided Ofcom an additional table showing the transaction volume sensitivity of the per-customer line charges. This was subsequently distributed to representatives of the CPS Commercial Group, and is set out in Annex 11 of this document.
166. The table shows that the average unit cost of the proposed per-customer line charges decreases only marginally with rising transaction volumes. Ofcom has reviewed BT's proposals in detail and has ascertained that this is due to a number of factors:
- a significant proportion of the costs relate to BT's CSS and Switch Manager operational support systems. As previously discussed, these systems are also used throughout BT for many other non-CPS transactions. Ofcom has reviewed information provided by BT that shows that the volume of CPS transactions is so small in relation to the overall volume of transactions that the unit cost of the CPS transactions does not decrease materially with an increase in the volume of CPS transactions;
  - the costs related to those systems dedicated to CPS, represent a small proportion of total costs, and these are (mostly) the fixed cost for undertaking current transaction (activity) volumes; and
  - the unit costs of the manual activity required to support the processes do not decrease with rising order volumes.
167. Charges for some transactions do not decline smoothly as volumes increase because additional human resources are added in increments of one (i.e. an additional person).
168. Ofcom's initial view is that the figures shown in Annex 11 accurately reflect the transaction volume sensitivity of BT's costs for the per-customer line charges.
169. BT's proposals are based on a forecast of 500,000 transactions per month, which is consistent with the recent volume of transactions. Ofcom has carefully considered what the appropriate assumption should be for monthly CPS transaction volumes for the calculation of the charges. Ofcom has considered the following factors:
- historical data regarding monthly CPS transaction volumes since CPS was launched;
  - the degree to which 'churn' between different CPS Providers is emerging;
  - the penetration of CPS in the BT fixed line population; and
  - data from other European countries regarding the penetration of CPS.
170. Ofcom's research on the demand for CPS in other countries has led Ofcom to the view that the demand for CPS is quite difficult to predict at the aggregate level. Annex 5 gives a summary of CPS penetration and growth for four European countries (France, Ireland, Spain and Sweden) for which data was readily available. The market penetration figures for France and Ireland indicate that in some countries at least, growth of CPS may begin to

slow at around 11-13% and may even reach a ceiling at this level. However, the market penetration figures for Spain and particularly Sweden indicate that penetration in some countries may rise considerably above this level before slowing.

171. Based on these factors, Ofcom considered that a figure of 500,000 transactions per month is a reasonable assumption to use in the calculation of the charges set out in this draft Direction.

#### Manual Order Processing

172. CPS Providers also inquired about the level of manual intervention required to process CPS orders. Ofcom has challenged BT about this aspect of the CPS charges. BT has confirmed that the vast majority of orders are processed automatically. Indeed, this is the reason that the complex order type (which was specifically for orders that routinely required manual intervention) is no longer in use. In addition to the activities of the Application Support Group team (previously described) some manual intervention is undertaken by BT's BT Wholesale Service Centre team to process order that cannot be processed automatically. The proportion of transactions requiring manual intervention is very small. BT has indicated that most order types are processed automatically and manual intervention is normally required only for orders that fail during execution. Part of the BT Wholesale Service Centre costs attributed to CPS relate to responding to queries from CPS Providers.
173. FeatureLine orders require a greater degree of manual intervention by the BT Wholesale Service Centre than ordinary PSTN orders. This is the main reason why there are separate charges for set-up transactions for FeatureLine orders. The labour costs for the manual intervention are attributed directly to FeatureLine orders.

#### Forecasting

174. CPS Providers have queried whether the requirement to provide BT with per-customer line transaction forecasts should be maintained now that CPS has passed its initial launch phase. Some providers have argued that BT has sufficient experience to have a good view of the level of manual resource needed to process CPS orders.
175. Ofcom's initial view is that there is still a requirement to provide BT with forecasts because the level of manual resource varies according to the number of transactions submitted (i.e. automated processes still require oversight and occasional manual intervention in a way that is likely to depend on order throughput). Whilst BT is now likely to have a good idea from experience what proportion of orders generate a requirement for manual intervention, BT still needs a forward view of the total number of orders expected. Without forecasts, BT might incur costs unnecessarily by staffing up to meet demand that is not required, which would be inefficient. Simple orders (which have always made up the bulk of CPS orders, even when the complex orders were still in use) still generate a requirement for manual intervention for exceptions.
176. Although new subscriptions have hitherto formed the bulk of CPS orders, figures provided to Ofcom by BT indicate that churn between service

providers is increasing as the CPS market matures. Ofcom's initial view is that churn is likely to be market specific and that CPS Providers are best placed to estimate the churn component of order volumes since it is at least partially dependant on the marketing tactics adopted by CPS Providers.

177. Ofcom's initial view is that penalties of some description are still necessary to provide an incentive for CPS Providers to forecast as accurately as possible. There has been considerable discussion in the CPS Commercial Group as to whether operational penalties might be more appropriate rather than financial penalties. Ofcom also notes that the CPS Commercial Group agreed that the contractually binding forecasting timescale be reduced to 3 months, thereby reducing the burden of forecasting on CPS Providers and reducing the scope for forecasting penalties to be incurred. Ofcom welcomes these developments – but considers that the details of the forecasting process itself are beyond the scope of this review of CPS charges.

178. Ofcom also notes that:

- since the proposed CPS per-customer line charges are lower than the current CPS per-customer line charges, forecasting penalties (which are based on the charge for an order that fails at the 'post CSS validation' stage) will also be lower. The declining per-customer line CPS charges thus provides some downward pressure on the magnitude of BT's forecasting penalties; and
- there are currently informal arrangements in place to help CPS Providers avoid forecasting penalties by rearranging the allocation of forecasts between themselves, and that BT Wholesale has in Ofcom's view provided satisfactory support and assistance in this process.

Initial conclusions in relation to the CPS per-customer line charges

179. Ofcom's initial view is that the proposed CPS per-customer line charges (as specified in Annex 6) are an accurate reflection of BT's per-customer line costs of providing and modifying CPS on customer lines.

180. Each of the proposed per-customer line set-up charges is lower than the current charge. For example, the charge for orders rejected at the pre-CSS validation order stage will reduce from £0.78 to £0.13 and the charge for a successful set-up order (the most common transaction type) will reduce from £3.79 to £2.80.

*Question 4: Do you agree with Ofcom's initial view that the per-customer line set-up charges for CPS should be as set out in Annex 6?*

### **Date of applicability of the revised charges**

181. Since the Market Review was published on 28 November 2003, BT has been subject to SMP Condition AA8 that requires it to ensure that its charges for providing CPS Interconnection Facilities are reasonable, based on forward looking Long Run Incremental Costs (LRIC). Under the previous regulatory regime, BT was subject to Licence Condition 50A which also required it to ensure that its charges were based on LRIC.

182. When BT first proposed its revised charges (the November 2003 proposals) some CPS Providers expressed their concerns to Oftel that BT's CPS charges up until that date might not have been LRIC based. This was partly because of the difference between the extant charges and the November 2003 proposals and also because there was a view that BT might already have benefited from economies of scale due to the rapid increase in the volume of transactions.
183. At the CPS Commercial Group meeting held on 20 November 2003, Ofcom indicated that it would consider the date of applicability of the revised charges as part of its review of BT's proposals. Ofcom asked BT to consider voluntarily applying its revised charges retrospectively to correct any variation from forward looking LRIC. BT agreed to consider the request and Ofcom informed the CPS Commercial Group accordingly. On 21 April 2004 BT informed Ofcom that it would not voluntarily apply the revised CPS charges retrospectively.
184. Ofcom then used its formal powers under the Act to request BT to provide information about its costs and charges for CPS. BT has been able to provide Ofcom with details of:
- all of the charges that it has made to CPS Providers (namely the per-provider set-up charges, the per-provider ongoing charges and the per-customer line set-up charges – the PPM surcharge is being monitored by Ofcom elsewhere);
  - the volume of transactions forecasted by Industry, against which BT resourced its CPS processes;
  - the actual volume of transactions executed for which charges were levied; and
  - the costs that BT incurred in relation to per-provider ongoing activities.
185. BT has not kept a continuous record of the costs that it has incurred in relation to the per-provider set-up charges and per-customer line set-up charges but instead gathered information on an ad-hoc basis when it initially set and later reviewed its charges. Therefore for the per-provider set-up charge and the per-customer line charge the only information available (other than that specified in the paragraph above) is:
- the pre-launch estimates of the probable cost of providing CPS which were the basis of charges set by Oftel in the January 2001 Determination, the November 2001 Determination and the September 2002 Determination;
  - the information gathered by BT between April 2003 and September 2003 in support of its November 2003 and February 2004 charge proposals; and
  - additional information about specific cost components gathered by BT at Ofcom's request during Ofcom's review of BT's proposals.
186. In the absence of a complete record of BT's costs, Ofcom has considered whether the costs (for the per-provider set-up charge and the per-customer line charge) can be estimated from the information available. Ofcom's initial view (without fettering Ofcom's future discretion) is that the proposed charges (as specified in Annex 6) with certain allowances (as described in



the following paragraph) are an accurate representation of BT's costs of providing CPS since 28 November 2003. Ofcom considers this assumption to be reasonable.

187. In July 2004 BT undertook further measurements of the costs relating to some elements of the per-customer line set-up charges in response to a formal request from Ofcom. These showed that the BT Retail component of the per-customer line costs had altered since the previous measurements (April to September 2003). Ofcom considers that these changes were significant and should therefore be taken into account when estimating BT's costs. Since BT has no record how these costs changed between September 2003 and July 2004, Ofcom believes that a simple linear transition between the costs measured in September 2003 and those measured in July 2004 would be the most appropriate method to estimate the charges for the intervening period.
188. Ofcom is not proposing that in this case the revised CPS charges should be applied prior to the publication of the Direction and therefore proposes that the revised CPS charges should take effect from the date of the final Direction (most likely one to two months after the closing date for responses to this consultation). However, Ofcom notes that it has powers under Part 2, Chapter 3 of the Communications Act 2003 in relation to disputes between communications providers that would allow it to determine the proper amount of a charge in respect of amounts that have already been paid between parties of the dispute.

## Section 4

# Options

189. Ofcom's principal duty in carrying out its functions, as set out in section 3 (1) of the Act, is to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Section 4 of the Act sets out Ofcom's duties for the purposes of fulfilling Community obligations. During the preparation of this draft Direction on BT's charges for CPS, Ofcom has considered all the requirements in those sections, in particular the furthering of the interests of consumers in relevant markets, where appropriate by promoting competition; the desirability of promoting competition; the desirability of encouraging investment and innovation; and promoting efficient and sustainable competition in the provision of electronic communications networks and services.
190. As explained in Section 1 of this consultation, the Director determined that BT has SMP in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area. The Director imposed a set of regulatory remedies on BT, including Condition AA8. One objective of these remedies is to promote effective competition in this market. The proposed Direction set out in Annex 6 aims to set reasonable charges for the provision of CPS by BT based on forward looking LRIC in accordance with Condition AA8.
191. Condition AA8 gives Ofcom the power to modify the charges made by BT for the provision of CPS from time to time. By exercising this power Ofcom aims among other things to promote competition in this market.

## Regulatory Impact Assessment

192. The analysis presented in this Section, when read in conjunction with the rest of this document, represents a Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003. You should send any comments on this RIA to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
193. RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally we have to carry out RIAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance and its draft Guidelines<sup>15</sup>.

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<sup>15</sup> A copy is available at Ofcom's website at:  
[http://www.ofcom.org.uk/consult/condocs/ia\\_guidelines/?a=87101](http://www.ofcom.org.uk/consult/condocs/ia_guidelines/?a=87101)

## Options considered

194. Ofcom has considered three options in relation to setting the revised charges for CPS as follows:

- Option 1 – Self regulation;
- Option 2 – Ofcom should give a Direction setting the charges;
- Option 3 - CPS charges should be subject to a charge control.

### Option 1 – Self regulation

195. Under section 6 of the Communications Act 2003, Ofcom has a duty to ensure that it does not impose or maintain unnecessary regulatory burdens. Ofcom has considered whether the most appropriate course of action would be not to intervene to give a Direction on BT's charges for CPS.

196. In this case, BT would need to reach agreement on its proposed charges with each of the CPS Providers. Although at the time of writing, no CPS Provider has formally disputed the charges proposed by BT, a number of CPS Providers have expressed concerns to Ofcom about the charges. In the light of the concerns expressed by CPS Providers, Ofcom considers it unlikely that BT will be able to reach agreement with CPS Providers about the revision of the charges.

197. Ofcom believes that one of the major obstacles to an agreement between BT and CPS Providers on revised CPS charges is that BT is unwilling to release full details of the costs and its charge calculations to CPS Providers citing commercial confidentiality concerns. The calculations contain amongst other things BT's labour rates and the times that it takes BT to carry out various functions. Ofcom agrees with BT that the information is commercially sensitive.

### Option 2 –Ofcom to give a Direction setting the charges for CPS

198. The second option is that Ofcom should give a Direction setting the charges for CPS.

199. Ofcom's initial view is that a Direction setting BT's CPS charges will not materially increase the burden on BT. Given the likely difficulty that BT would have in reaching agreement through commercial negotiation with CPS Providers this option may well reduce the burden on BT since BT has been required to deal in the main only with Ofcom and not with multiple CPS Providers.

200. Ofcom understands from discussions at the CPS Commercial Group in the past and with particular CPS Providers that in general the industry welcomes Ofcom's intervention. Oftel has in the past taken proactive steps to determine the charges for CPS despite the absence of formal disputes (for example, the January 2001 Determination, the November 2001 Determination and the September 2002 Determination), and the certainty and clarity provided by these determinations were welcomed by the Industry.

### Option 3 – Charge Control

201. An alternative to Ofcom giving a Direction to set BT's charges for CPS is for Ofcom to implement a charge control. With a charge control, prices for a regulated service are set for a number of years and are made subject to an RPI-X type formula where RPI is a general measure of UK inflation (the Retail Price Index) and X is a figure set by Ofcom according to the amount by which Ofcom forecasts that charges should be reduced during the period.
202. A charge control could offer a number of advantages over Option 2 such as:
- since the charge control would apply for several years it would not be necessary to review the charges so frequently thus saving Ofcom, BT and the Industry a considerable amount of work;
  - a charge control would give CPS Providers greater visibility of charges in the future, thereby enabling them to develop business plans with greater certainty; and
  - BT would be given an incentive to make the CPS processes more efficient since it would be allowed to keep any savings that it could make during the period of the charge control.

### Preferred Option

203. Ofcom believes that Option 1 is not a particularly satisfactory option, given the likelihood that BT will not be able to reach agreement with the CPS Providers.
204. Ofcom's initial view is that a charge control may well present the best long-term solution for setting BT's charges for CPS in the future. However, Ofcom believes that these charges should not be made subject of a charge control at this time because:
- preparation of a charge control would most likely lead to a further delay in the implementation of revised CPS charges; and
  - with charge controls, the initial charges are very important since they form the basis of the charges over a number of years. Ofcom is of the opinion that another review of BT's CPS costs would be appropriate prior to beginning the charge control to recheck the charges as the CPS market matures.
205. Ofcom believes that there will be insufficient time following the completion of this consultation process for the CPS charges to be included in the next revision of BT's Network Charge Control (NCC) which Ofcom expects to publish in Q1 2005.
206. Ofcom's initial view is that the best approach would be to conduct another review of BT's CPS charges in 2006 and to implement a charge control for BT's CPS charges at that time.
207. Given the likelihood of a dispute between BT and other CPS Providers if Option 1 is selected, Ofcom's initial view therefore is that Option 2 should be adopted.

*Question 5: Ofcom has identified three options for evaluation in relation to setting the revised charges for CPS. What other options do stakeholders think that Ofcom should consider?*

*Question 6: Do stakeholders agree with Ofcom's initial view that Option 2 should be adopted?*

*Question 7: Do stakeholders agree with Ofcom's initial view that BT's CPS charges should be made subject to a charge control when next reviewed?*

## **Communications Act tests**

208. In giving Directions, Ofcom is required to take account of various tests set out in the Act. These tests and Ofcom's assessment of how they are met are set out below.

### Section 3 Ofcom's General Duties

209. As mentioned previously section 3 of the Act sets out the general duties of Ofcom. Ofcom is required by this section to carry out its functions in line with these duties.

210. Ofcom considers that the proposal for a Direction setting BT's charges for CPS falls within the scope of section 3 of the Act. In particular, Ofcom considers that the following duties are appropriate to this issue:

- section 3(1)(b) states that Ofcom should "further the interests of consumers in relevant markets, where appropriate by promoting competition";
- section 3(2)(b) states that Ofcom is required to secure "the availability throughout the United Kingdom of a wide range of electronic communications services";
- section 3(4)(b) states that Ofcom must have regard to "the desirability of promoting competition in relevant markets"; and
- section 3(4)(d) states that Ofcom must have regard to "the desirability of encouraging investment and innovation in relevant markets".

211. Ofcom considers that giving a Direction will have three main benefits that support the duties listed above:

- preventing a dispute between CPS Providers and BT over BT's proposals for revised charges going forward for CPS;
- saving BT and CPS Providers time and resource that would otherwise have to be devoted to negotiating the revised charges and to submitting a dispute to Ofcom should the negotiations fail;
- increasing communications providers confidence that BT's CPS charges are LRIC based.

212. Ofcom considers that these benefits will increase CPS Providers' confidence in CPS and more generally communications providers' confidence in CPS. By doing so, Ofcom considers that it will encourage CPS Providers to invest in CPS services and will also encourage other communications providers to provide CPS.

213. CPS is a regulatory remedy that is specifically designed to promote competition in areas that have only limited direct access competition therefore Ofcom considers that the proposed Direction will also promote competition and the wide availability of electronic communications services.

#### Section 4 – European Community requirements for regulation

214. Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation. In summary these requirements are to:
- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
  - contribute to the development of the European internal market;
  - promote the interests of all persons who are citizens of the European Union;
  - not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
  - to encourage the provision of network access and service interoperability for the purpose of securing efficient and sustainable competition; and the maximum benefit for customers of Communications Providers;
  - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of Communications Providers.
215. As previously discussed, Ofcom considers that giving a Direction to set BT's CPS charges will promote competition in the provision of electronic communications services.
216. The requirement for BT to provide CPS stems originally from the Universal Service Directive which requires national regulatory authorities to impose an obligation to provide CPS on all communications providers found to have SMP in the provision of connection to and use of the public telephone network. Ofcom therefore considers that by acting to promote competition in the supply of CPS that it is also acting to promote the development of the European internal market.

#### Section 49 - the setting of directions

217. Section 49 of the Act requires Ofcom to ensure that any direction it gives is:
- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - not unduly discriminatory against particular persons or against a particular description of persons;
  - proportionate to what it is intended to achieve; and
  - transparent in relation to what it is intended to achieve.
218. Ofcom is proposing to give a Direction setting BT's charges for CPS. As discussed above, Ofcom considers that the proposed Direction is objectively

justifiable because it ensures that BT's charges for CPS will be in accordance with Condition AA8 (i.e. they will be reasonable costs, based on forward looking LRIC).

219. Ofcom considers that the proposal is proportionate because the proposed charges will be based on BT's costs (specifically forward looking LRIC). It could be disproportionate to set charges that were either higher than or lower than forward looking LRIC.
220. Ofcom considers that giving a Direction is proportionate because the Direction aims to avoid a dispute between BT and CPS Providers in relation to the charges that are the subject of the Direction.
221. Ofcom considers that giving a Direction to set BT's charges for CPS but not those of KCL is not unduly discriminatory because KCL has not received any requests for interconnection from CPS Providers for the purposes of offering CPS in the Hull area.
222. Ofcom considers that the proposals are transparent because they are clearly set out in this document and Ofcom is consulting upon them and also because Ofcom has maintained a dialogue with BT and Communications Providers whilst conducting its review of BT's charge proposals.

### **Obligation to inform the Commission, other National Regulatory Authorities and the Secretary of State**

223. Pursuant to section 50 of the Act, the notification specifying the proposed condition and modification has been sent to the European Commission, other NRAs and the Secretary of State.

## Section 5

# Proposed Consent

## Relevant SMP services conditions

224. The following SMP service condition was imposed on BT in the Market Review:
- requirement to notify charges and terms and conditions (SMP Condition AA6(a));
225. The requirement to notify charges and terms and conditions requires BT to notify changes to charges and terms and conditions for existing Network Access not less than 90 days before any such amendment comes into effect (SMP Condition AA6(a).2(a)).

## The proposed Consent

226. As Ofcom intends for this Direction and any consequent charge changes to take effect on the day the direction is published, Ofcom considers that the notification period set out at BT's SMP Condition AA6(a).2(a) could potentially delay the introduction of the proposed charges, therefore Ofcom considers it should consent to disapply the notification period in respect of this proposed Direction.

## Next steps

227. Consultation on the proposed Consent in this document closes on 28 April 2005. When Ofcom has considered the representations made in response to this consultation, including any comments made by the European Commission, it will decide whether to give effect to its proposed Consent, with or without modifications. It will do this by publishing a further statement later this year.

## Legal tests

228. The section below sets out Ofcom's reasons why it considers that the relevant legal tests under the Act for granting the Consent as proposed in this Section are met. This Section should be read in the light of relevant considerations and Ofcom's conclusions as set out in Sections 1 to 4 of this explanatory statement.

## Relevant tests

229. Ofcom is required to be satisfied that the granting of consents is in accordance with the requirements of section 49(2) of the Act. Ofcom also has to consider and act in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
230. Ofcom's proposal to give the Consent to BT is set out in a notification published at Annex 7. The Schedule to that notification sets out the draft Consent. The effect of, and reasons for making, those proposals are set out in this Section (Section 5) above, in particular at paragraph 226.



231. The period within which representations may be made to Ofcom about the abovementioned proposals, and the procedures for making such representations, can be found in Section 6 of this document.

### **Section 3 and 4 – general duties & the six Community requirements**

232. Section 3 of the Act sets out the general duties of Ofcom in carrying out its functions, in particular that it furthers the interests of citizens in relation to communications and further the interests of consumers in relevant markets. Section 4 of the Act requires that Ofcom acts in accordance with the six Community requirements concerning: the promotion of competition; the development of the European internal market; the promotion of the interests of all EU citizens; non-discrimination; promoting efficiency and sustainable competition and the maximum benefit for consumers; and facilitating service interoperability and securing freedom of choice for consumers.
233. This Consent is necessary to ensure that the introduction of the proposed charges is not delayed.

### **Section 49(2) – general tests**

234. Section 49(2) of the Act requires that Ofcom must not give a Consent unless it is satisfied that to do so is:
- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (c) proportionate to what it is intended to achieve; and
  - (d) in relation to what it is intended to achieve, transparent.
235. In respect of the proposed draft Consent, Ofcom considers that it:
- is objectively justifiable as it will ensure the timely implementation of the proposed CPS charges;
  - does not discriminate unduly even though it only applies to BT as, although similar SMP services conditions have been imposed on Kingston, Kingston does not at present provide CPS Facilities;
  - is proportionate, as it removes the notification requirement on BT where it is not necessary and would not be of any benefit to other Communications Providers; and
  - is transparent, in that it is clear on the face of the Consent (as set out in the notification at Annex 7) what is required from BT in terms of complying.

### **Conclusions**

236. Ofcom has provisionally concluded that a Consent should be granted to BT to allow it to bring in the necessary charge changes to give effect to the proposed Direction without needing to give notice under SMP service condition AA6(a) as required.

237. Ofcom is satisfied that, in proposing the granting of the Consent it has met all relevant tests.

### **Notification to the European Commission**

238. As required by Article 7 of the Framework Directive (as implemented by sections 50 and 81 of the Act), Ofcom's proposals are being sent to the European Commission and to other NRAs as, in Ofcom's opinion, the proposals may affect trade between Member States.

### **Next steps**

239. Consultation on the proposed Consent in this document closes on 28 April 2005. When Ofcom has considered the representations made in response to this consultation, including any comments made by the European Commission, it will decide whether to give effect to its proposed Consent, with or without modifications. It will do this by publishing a further statement early next year.

## Section 6

# Responding to this consultation

## How to Respond

240. Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 28 April 2005.
241. Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
242. Please can you send your response to [clive.hillier@ofcom.org.uk](mailto:clive.hillier@ofcom.org.uk).
243. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Clive Hillier  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Fax: 020 7783 4103
244. Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
245. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 2. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

246. If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Clive Hillier on 020 7783 4674.

## Confidentiality

247. Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk). We will do this on receipt of responses, unless respondents request otherwise on their response cover sheet.
248. All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so

that non-confidential parts may be published along with the respondent's identity.

249. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
250. Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.
251. Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

### Next steps

252. Following the end of the consultation period, Ofcom intends to publish a final direction during the second calendar quarter of 2005.
253. Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### Ofcom's consultation processes

254. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
255. This consultation is shorter than Ofcom's standard 10 week period because Ofcom believes that this is a subject that is of interest to a specific group of communication providers only and of little interest to the general public. Also Ofcom has held detailed discussions about the proposed changes with the Communications Providers that will be directly affected.
256. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
257. If you would like to discuss these issues, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road

London SE1 9HA

Tel: 020 7981 3585

Fax: 020 7981 3333

E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

## Annex 1

# Ofcom's consultation principles

258. Ofcom has published the following seven principles that it will follow for each written consultation:

### Before the consultation

259. Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

260. We will be clear about who we are consulting, why, on what questions and for how long.

261. We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

262. We will normally allow ten weeks for responses, other than on dispute resolution.

263. There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

264. If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

265. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 2

# Consultation questions

Question 1: Do you agree with Ofcom's initial view that the per-provider set-up charge for CPS should be as set out in Annex 6?

Question 2: Do you agree with Ofcom's initial view that the per-provider ongoing charge for CPS should be as set out at Annex 6?

Question 3: Do you agree that CPS Providers with more than one CPS Code should be treated as more than one CPS Provider for charging purposes?

Question 4: Do you agree with Ofcom's initial view that the per-customer line set-up charges for CPS should be as set out in Annex 6?

Question 5: Ofcom has identified three options for evaluation in relation to setting the revised charges for CPS. What other options do stakeholders think that Ofcom should consider?

Question 6: Do stakeholders agree with Ofcom's initial view that Option 2 should be adopted?

Question 7: Do stakeholders agree with Ofcom's initial view that BT's CPS charges should be made subject to a charge control when next reviewed?

## Annex 3

# Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.



## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

**Consultation title:** Costs and charges for permanent Carrier Pre-Selection

**To:** Clive Hillier

**Name of respondent:**

**Representing (self or organisation/s):**

**Address (if not received by email):**

### CONFIDENTIALITY

**What do you want Ofcom to keep confidential?**

**Nothing**

**Name/contact details/**

**job title**

**Whole response**

**Organisation**

**Part of the response**

**If there is no separate annex, which parts?**

**If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?**

**Yes**

**No**

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# The CPS SMP condition

**Copy of Condition AA8 from Oftel's Review of the Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets, published on 28 November 2003.**

### **Condition AA8**

#### ***Requirement to provide Carrier Pre-Selection etc.***

AA8.1 The Dominant Provider shall provide Carrier Pre-selection as soon as it is reasonably practicable on reasonable terms in accordance with the Carrier Pre-selection Functional Specification to any of its Subscribers upon request.

AA8.2 Pursuant to a request under paragraph AA8.1 above, the Dominant Provider shall provide Carrier Pre-selection Interconnection Facilities as soon as it is reasonably practicable on reasonable terms in accordance with the Carrier Pre-selection Functional Specification to the Pre-selected Provider. The Dominant Provider shall also provide such Carrier Pre-selection Facilities as the Director may from time to time direct.

AA8.3 The Dominant Provider shall ensure that prices and other charges imposed upon Subscribers do not constitute a disincentive to the use of Carrier Pre-selection.

AA8.4 The Dominant Provider shall ensure that charges for the provision of the respective facilities mentioned below shall be made by the Dominant Provider as follows:

(a) subject always to the requirement of reasonableness, charges shall be based on the forward looking long-run incremental costs of providing Carrier Pre-selection Facilities unless:

(i) the Dominant Provider and the Pre-selected Provider have agreed another basis for the charges; or

(ii) any other basis for such charges be used as directed by the Director from time to time;

(b) the Dominant Provider shall categorise its costs as falling within one of the following categories:

(i) Carrier Pre-selection Per Provider Set-up Costs;

(ii) Carrier Pre-selection Per Provider On-going Costs;

(iii) Carrier Pre-selection Per Customer Line Set-up Costs; or

(iv) Carrier Pre-selection System Set-up Costs,

and, where the Dominant Provider either fails to categorise its costs in such a manner or the Director considers that any individual item of cost cannot reasonably be categorised in the manner in which the Dominant Provider has made the categorisation, the cost in question shall fall within one of the

categories in sub-paragraphs (i) to (iv) above or, as the case may be, in any new category of cost, as the Director may direct;

(c) the Dominant Provider shall recover the costs for any new category of cost that the Director has directed under sub-paragraph (b) above in the manner in which the Director may direct;

(d) the Dominant Provider shall recover the costs incurred in providing Carrier Pre-selection Per Provider Set-up Facilities, Carrier Pre-selection Per Provider On-going Facilities and Carrier Pre-selection Per Customer Line Set-up Facilities by means of direct charges to Pre-selected Providers;

(e) the Dominant Provider shall recover the costs incurred in providing Carrier Pre-selection System Set-up Facilities by means of a separate surcharge on all Relevant Calls; and

(f) the Dominant Provider shall modify any of its charges for the provision of Carrier Pre-selection Facilities in the manner in which the Director may direct.

AA8.5 The Dominant Provider shall comply with any direction that the Director may make from time to time under this Condition AA8.

AA8.6 This Condition is without prejudice to the generality of the provisions in Conditions AA1(a) to AA7 above.

## Annex 5

## Carrier pre-selection in Europe

The table below gives examples of penetration of CPS in four European countries for which CPS statistics are publicly available. In Ireland, France and Spain, CPS has achieved similar market penetration of 11-13%. However, in France and Ireland penetration seem to be approaching a ceiling whereas Spain is still experiencing steady growth. CPS was introduced in Sweden a year earlier and has achieved the highest penetration of the four countries at 36%. Moreover, Sweden is still experiencing very rapid growth with penetration rising from 29% to 36% of fixed lines in the year to June 2003.

Country	CPS Introduced	Latest Market Penetration of CPS (% of fixed lines)	Recent Trends
France	2000	13% (Dec 2003)	Penetration growth slowed to 1% of fixed lines in the year to Dec 2003
Ireland	2000	11% (June 2003)	Penetration virtually static at around 11%
Spain	2000	13% (April 2004)	Fairly constant growth in penetration since 2002 (approximately 2% of fixed lines per annum)
Sweden	1999	36% (June 2003)	Penetration still growing very rapidly – 7% of fixed lines in the year to June 2003.

## Annex 6

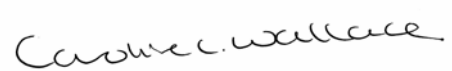
# Legal Notification for modifying charges

## NOTIFICATION OF A PROPOSAL UNDER SECTION 49 OF THE COMMUNICATIONS ACT 2003

**Proposals for giving a Direction under SMP Condition AA8 in Schedule 1 to the Notification at Annex A of the review of the fixed narrowband wholesale call origination, conveyance and transit markets published on 28 November 2003 imposed on British Telecommunications Plc as a result of the market power determination made by the Director General of Telecommunications that British Telecommunications Plc has significant market power in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area**

1. OFCOM hereby make, in accordance with section 49(4) of the Act, the following proposal for a Direction to be given to BT under SMP Services Conditions AA8 in Schedule 1 to the Notification at Annex A of the review of the fixed narrowband wholesale exchange line, call origination conveyance and transit markets published on 28 November 2003 to the accompanying explanatory statement.
2. The draft Direction is set out in the Schedule to this notification.
3. The effect of the draft Direction, and the reasons for making the proposal, are set out in Sections 1 to 4 and the annexes of the accompanying explanatory statement.
4. In making the proposals set out in this Notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. Representations may be made to OFCOM about the proposed draft Direction by 28 April 2005.
6. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State.

Costs and charges for carrier pre-selection

A handwritten signature in black ink that reads "Caroline Wallace". The signature is written in a cursive style.

**Caroline Wallace**

**Director Competition Policy**

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

**24 March 2005**

## SCHEDULE

**[Draft] Direction under section 49 of the Communications Act 2003 and SMP Services Condition AA8 imposed on British Telecommunications Plc as a result of the market power determinations made by the Director General of Telecommunications that British Telecommunications Plc has significant market power in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area**

### WHEREAS:

- (A) as a result of a market analysis carried out by the Director General of Telecommunications (the '**Director**'), he proposed on 17 March 2003 and on 26 August 2003, in accordance with sections 48(2) and 80 of the Act that the Dominant Provider has significant market power in the markets for among others call origination on fixed public narrowband networks in the UK, excluding the Hull Area and the setting of certain SMP conditions;
- (B) the Director having considered every representation duly made, and thereafter on 28 November 2003 pursuant to sections 48(1) and 79 of the Act by way of publication of a Notification identified the relevant services markets, made market power determinations to the effect referred to in recital (A) above and set certain significant market power ('**SMP**') conditions on the Dominant Provider to take effect on 28 November 2003, unless otherwise is stated in Schedule 1 thereto;
- (C) by virtue of the Transitional Provisions, the Director was able to exercise the powers under the Act for an interim period. OFCOM has now assumed those powers as of 29 December 2003;
- (D) this Direction concerns matters to which Condition AA8.4 (f) relates;
- (E) for the reasons set out in Sections [...] of the explanatory statement accompanying this Direction, OFCOM are satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;

- (iii) proportionate to what it is intended to achieve; and
  - (iv) in relation to what it is intended to achieve, transparent.
- (F) for the reasons set out in Section [...] of the explanatory statement accompanying this Direction, OFCOM are satisfied that they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- (G) on 24 March 2005 OFCOM published a Notification of the proposed Direction and accompanying explanatory statement in accordance with section 49 of the Act and invited representations about any of the proposals therein by 28 April 2005;
- (H) by virtue of section 49(9) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if –
- (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
  - (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- (I) OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose; and

**Therefore, pursuant to section 49 of the Act and Condition AA8 in Schedule 1 to the Notification, OFCOM gives the following Direction:**

1. The Dominant Provider shall modify its charges for the provision of Carrier Pre-selection Interconnection Facilities as set out in the accompanying Annex to this Direction.
2. For the purpose of interpreting this Direction, the following definitions shall apply:
  - (a) **'Act'** means the Communications Act 2003;



- (b) **'Dominant Provider'** means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
- (c) **'The Notification'** means the Notification referred to in recital (B) of this Direction;
- (d) **'Transitional Provisions'** means sections 408 and 411 of the Act, Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 and Article 3(2) of the Office of Communications 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003;

3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in The Notification or, if the context so permits, in Schedule 1 thereto, as appropriate, and otherwise any word or expression shall have the same meaning as it has in the Act.

4. For the purpose of interpreting this Direction:

- (a) headings and titles shall be disregarded; and
- (b) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

5. This Direction shall take effect on the day it is published.

**Caroline Wallace**

**Director Competition Policy**

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

**[Date]**

## **Annex**

The Dominant Provider shall make the following charges for:

a) Carrier Pre-Selection Per Provider Set-up Costs

The charge is £13,448.98 (Thirteen thousand, four hundred and forty eight pounds 98 pence).

This charge will be made once only for each communications provider seeking to become a Pre-selected provider.

b) Carrier Pre-Selection Per Provider On-going Costs

The annual charge is £25,664.64 (Twenty five thousand, six hundred and sixty four pounds 64 pence).

The charge shall be converted pro-rata to a monthly charge which shall be made for each provider from the date it first submits CPS transactions for processing.

c) Carrier Pre-Selection Per Customer Line Set-up Costs

The charges are as set out in the following table. Note that these charges are not cumulative. For example, the only charge that will be made for a simple set-up transaction that is processed successfully will be £2.80

**Per-customer line set-up charges for simple and FeatureLine orders**

Order Type->	Set-Up		Remove	Renumber	Change	Cancel
	Simple	FeatureLine	Simple & FeatureLine	Simple & FeatureLine	Simple & FeatureLine	Simple & FeatureLine
<b>Order stage at end transaction</b>						
Pre CSS Validation order rejected	£0.13	£0.13	£0.13	£0.13	£0.13	£0.13
Post CSS validation order rejected or cancelled	£0.82	£0.82	£0.82	£0.82	£0.82	£0.82
Order completed	£2.80	£32.86	£2.11	£2.11		
Switch change effected	END	END	END	END		
Order cancelled on BT provision and repair systems						£1.53 END
Order modified on BT provision and repair systems					£1.25 END	

Costs and charges for carrier pre-selection

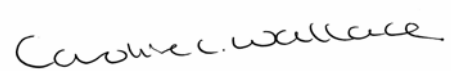
## Annex 7

# Legal notification for proposed consent

## Notification of a proposal under section 49 of the Communications Act 2003

**Proposals for giving a Consent under SMP Condition AA6(a).1 in Schedule 1 to the Notification at Annex A of the review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets published on 28 November 2003 imposed on British Telecommunications plc as a result of the market power determination made by the Director that British Telecommunications plc has significant market power in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area**

1. OFCOM hereby make, in accordance with section 49(4) of the Act, the following proposal for a Consent to be given to BT under SMP Services Conditions AA6(a).1 in Schedule 1 to the Notification at Annex A of the review of the fixed narrowband wholesale exchange line, call origination conveyance and transit markets published on 28 November 2003 to the accompanying explanatory statement.
2. The draft Consent is set out in the Schedule to this notification.
3. The effect of the draft Consent, and the reasons for making the proposal, is set out in Sections 1 to 4 and the annexes of the accompanying explanatory statement.
4. In making the proposals set out in this Notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. Representations may be made to Ofcom about the draft Consent by 28 April 2005. Representations shall be addressed to the person named in, and otherwise made in the manner set out in, Section 6 of the accompanying explanatory statement and consultation document hereto.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member State.

A handwritten signature in black ink that reads "Caroline Wallace". The signature is written in a cursive, flowing style.

**Caroline Wallace**

**Competition Policy Director**

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

**24 March 2005**

## SCHEDULE 1

**[Draft] Consent under section 49 of the Communications Act 2003 and SMP Services Condition AA6(a).1 imposed on British Telecommunications plc as a result of the market power determinations made by the Director of Telecommunications that British Telecommunications plc has significant market power in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area**

### WHEREAS:

- (A) as a result of a market analysis carried out by the Director General of Telecommunications (the 'Director'), he proposed on 17 March 2003 and on 26 August 2003, in accordance with sections 48(2) and 80 of the Act that British Telecommunications PLC has significant market power in the market for call origination on fixed public narrowband networks in the UK, excluding the Hull Area and the setting of certain SMP conditions;
- (B) the Director having considered every representation duly made, and thereafter on 28 November 2003 pursuant to sections 48(1) and 79 of the Act by way of publication of a Notification identified the relevant services markets, made market power determinations to the effect referred to in recital (A) above and set certain SMP conditions on BT to take effect on 28 November 2003, unless otherwise is stated in Schedule 1 thereto;
- (C) by virtue of the Transitional Provisions the Director was able to exercise the powers under the Act for an interim period. OFCOM has now assumed those powers as of 29 December 2003;
- (D) this Consent concerns matters to which Condition AA6(a).2 relates;
- (E) for the reasons set out in Sections [...] of the explanatory statement accompanying this Consent, OFCOM are satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (iii) proportionate to what it is intended to achieve; and

- (iv) in relation to what it is intended to achieve, transparent.
  
- (F) for the reasons set out in Section [...] of the explanatory statement accompanying this Consent, OFCOM are satisfied that they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
  
- (G) on 24 March 2005, OFCOM published a Notification of the proposed Consent and accompanying explanatory statement in accordance with section 49 of the Act and invited representations about any of the proposals therein by 28 April 2005;
  
- (H) by virtue of section 49(9) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if –
  - (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
  
  - (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
  
- (I) OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose; and

**Therefore, pursuant to section 49 of the Act and Conditions AA6 (a) in Schedule 1 to the Notification, OFCOM gives the following Consent:**

1. The obligation on BT in SMP Condition AA6(a).2 to give prior notification of amendments to the charges for existing Network Access shall not apply to those charges set by Ofcom in the Accompanying Direction.
  
2. For the purpose of interpreting this Direction, the following definitions shall apply:

(e) '**Act**' means the Communications Act 2003;



- (f) 'Accompanying **Direction**' means the Direction published by Ofcom on the [...] modifying BT's charges for the provision of Carrier Pre-Selection Interconnection Facilities;
- (g) '**The Notification**' means the Notification referred to in recital (B) of this Direction;
- (h) '**Transitional Provisions**' means sections 408 and 411 of the Act, Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 and Article 3(2) of the Office of Communications 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003;

3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraphs [...] above and otherwise any word or expression shall have the same meaning as it has in The Notification or, if the context so permits, in Schedule 1 thereto, as appropriate, and otherwise any word or expression shall have the same meaning as it has in the Act.

4. For the purpose of interpreting this Consent:

- (c) headings and titles shall be disregarded; and
- (d) the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.

5. This Consent shall take effect on the day it is published.

**Caroline Wallace**

**Director Competition Policy**

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

**[Date]**

## Annex 8

# BT's current CPS charges

### Per provider charges

266. As per the January 2001 Determination.

Charge	Amount (Pounds Sterling)	Explanatory note
Carrier Pre-Selection per-provider set-up charge	£22,730.00	Payable once only by each provider wishing to become a pre-selected provider
Carrier Pre-Selection per-provider ongoing charge	£16,800.00/year	This charge is converted pro-rata to a monthly charge which shall be made for each provider from the time that it first submits CPS transactions for processing

**Per-customer line set-up charges for simple orders**

267. As per the September 2002 Direction

Order Type->

Set-Up	Remove	Renumber	Change	Cancel
Simple	Simple	Simple	Simple	Simple

<b>Order stage at end transaction</b>					
Pre CSS Validation order rejected	£0.78	£0.78	£0.78	£0.78	£0.78
Post CSS validation order rejected or cancelled	£1.44	£1.44	£1.44	£1.44	£1.44
Switch change effected	£3.79	£3.46	£3.46		
	END	END	END		
Order cancelled on BT provision and repair systems					£1.78
					END
Order modified on BT provision and repair systems				£1.78	
				END	

### Per-customer line set-up charges for FeatureLine orders

As per the September 2002 Direction

Order Type->

		Set-Up	Remove	Renumber	Change	Cancel
		FeatureLine	FeatureLine	FeatureLine	FeatureLine	FeatureLine
<b>Order stage at end transaction</b>						
Pre CSS Validation order rejected		£0.79	£0.79	£0.79	£0.79	£0.79
Post CSS validation order rejected or cancelled		£1.46	£1.46	£1.46	£1.46	£1.46
Switch Change Effected	Fixed Activity per Site/Business Group	£28.62	£26.27	£26.27		
	Per Business Group	£9.37	£10.78	£10.78		
	Per CLI	£1.68 (n-1) times  END	£1.48 (n-1) times  END	£1.68 (n-1) times  END		

**Per-customer line set-up charges for FeatureLine orders - continued**

As per the September 2002 Direction

**Order Type->**

Set-Up	Remove	Renumber	Change	Cancel
FeatureLine	FeatureLine	FeatureLine	FeatureLine	FeatureLine

Order stage at end transaction				
Order cancelled on BT provision and repair systems	Fixed Activity per Site/Business Group			£28.33
	Per Business Group			£7.15
	Per CLI			£1.77 (n-1) times END
Order modified on BT provision and repair systems	Fixed Activity per Site/Business Group		£10.03	
	Per Business Group		£0.34	
	Per CLI		£0.34 (n-1) times END	

**Annex 9**

# BT's November 2003 CPS charge proposals

**Per provider charges**

Charge	Amount (Pounds Sterling)	Explanatory note
Carrier Pre-Selection per-provider set-up charge	£44,095.78	Payable once only by each provider wishing to become a pre-selected provider
Carrier Pre-Selection per-provider ongoing charge	£28,783.02/year	This charge is converted pro-rata to a monthly charge which shall be made for each provider from the time that it first submits CPS transactions for processing

**Per-customer line set-up charges for simple orders**

Order Type->	Set-Up	Remove	Renumber	Change	Cancel
	Simple	Simple	Simple	Simple	Simple
<b>Order stage at end transaction</b>					
Pre CSS Validation order rejected	£0.05	£0.05	£0.05	£0.05	£0.05
Post CSS validation order rejected or cancelled	£0.75	£0.75	£0.75	£0.75	£0.75
Switch change effected	£2.37	£1.86	£1.86		
	END	END	END		
Order cancelled on BT provision and repair systems					£0.66
					END
Order modified on BT provision and repair systems				£0.66	
				END	

**Annex 10**

# BT's February 2004 CPS charge proposals

**Per provider charges**

Charge	Amount (Pounds Sterling)	Explanatory note
Carrier Pre-Selection per-provider set-up charge	£13,448.98	Payable once only by each provider wishing to become a pre-selected provider
Carrier Pre-Selection per-provider ongoing charge	£25,664.64/year	This charge is converted pro-rata to a monthly charge which shall be made for each provider from the time that it first submits CPS transactions for processing



**Per-customer line set-up charges for simple and FeatureLine orders**

Order Type->	Set-Up		Remove	Renumber	Change	Cancel
	Simple	FeatureLine	Simple & FeatureLine	Simple & FeatureLine	Simple & FeatureLine	Simple & FeatureLine
<b>Order stage at end transaction</b>						
Pre CSS Validation order rejected	£0.13	£0.13	£0.13	£0.13	£0.13	£0.13
Post CSS validation order rejected or cancelled	£0.82	£0.82	£0.82	£0.82	£0.82	£0.82
Order completed	£3.09	£10.01	£2.11	£2.11		
Switch change effected	END	END	END	END		
Order cancelled on BT provision and repair systems					£1.79 END	
Order modified on BT provision and repair systems					£1.51 END	

**Annex 11**

## Per-customer line set-up charge price sensitivity by transaction volumes

NB: please note that these figures are based on BT's February 2004 charge proposals (see Annex 10).

Number of orders per annum (thousands) ->	400	450	500	550	600	750
<b>Order stage at end transaction</b>						
Pre CSS Validation order rejected	£0.14	£0.13	£0.13	£0.11	£0.11	£0.10
Post CSS validation order rejected or cancelled	£0.84	£0.82	£0.82	£0.80	£0.80	£0.78
Set-up Order completed	£3.12	£3.09	£3.09	£3.07	£3.06	£3.04
Change Order completed	£1.53	£1.51	£1.51	£1.49	£1.50	£1.47
Order cancelled on BT provision and repair systems	£1.81	£1.79	£1.79	£1.77	£1.78	£1.75
Remove order completed	£2.15	£2.12	£2.11	£2.09	£2.09	£2.06
Renumber order completed	£2.15	£2.12	£2.11	£2.09	£2.09	£2.06
FeatureLine order completed	£9.57	£8.75	£10.01	£9.30	£10.30	£9.96

**Annex 12**

## Cost-allocation matrix for the per-customer line set-up charges

Costs incurred in processing per-customer line orders for CPS are apportioned to order types according to the following matrix. The shaded areas indicate the order types that costs are attributed to. Costs are shared equally between applicable order types.

Order type	DEDS	CPS Gate-way	Application Support Group	CSS	BT Wholesale Service Centre	BTR Front Office	Switch Manager	Interconnect Fault Reporting Point	Operations Maintenance Centre	FeatureLine	Postage
Pre CSS Validation order rejected											
Post CSS validation order rejected or cancelled											
Set-up Order completed											
Change Order completed											
Order cancelled on BT provision and repair systems											
Remove order completed											
Renumber order completed											
FeatureLine order completed											