



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

A direction by Ofcom

Statement

Issued: 18 August 2005

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Section 1

Summary

- 1.1 Carrier Pre-Selection (CPS) is a mechanism that allows customers that have BT or Kingston Communications (“Kingston”) telephone lines to select Carrier Pre-Selection Providers (“CPS Providers”) – that is, providers who are permitted to provide calls over a BT or Kingston line – in advance for their calls without needing to dial additional digits before dialling the person or service that they are intending to call, or having equipment at their premises which automatically dials the relevant digits. The customer subscribes to the service of one or more CPS Providers and chooses the type of calls (e.g. all national calls) that will be charged for and, quite frequently, routed by the CPS Provider(s) of their choice.
- 1.2 On 24 March 2005, Ofcom published a consultation document entitled *Per-provider and per-customer line costs and charges for Carrier Pre-Selection* (the “March consultation”) and also included with that a draft Direction in which it set out proposed revised costs and charges for certain CPS facilities. The proposed charges were those that BT charges CPS providers for activating CPS on a per-operator basis on its network, liaising with and billing CPS Providers on an ongoing basis, and establishing CPS on a per-customer basis. They are not charges paid by end-users. The proposed charges were based on BT’s forward looking long-run incremental costs (LRIC) in providing the facilities concerned. Responses were sought by 28 April 2005.
- 1.3 Ofcom received six responses two of which were confidential. Respondents welcomed generally the proposed reductions to the per-provider and per-customer set up charges. BT agreed that the charges needed to be revised and, therefore, welcomed the clarity that the revised charges would bring about. CPS Providers, however, remained concerned that the proposed charges would not bring about real equivalence as, they stated, Ofcom set charges on the basis of cost causation and did not consider the pooling of these costs across all providers including BT. They argued that BT had no incentive to provide these facilities on a cost effective basis. To a certain extent, BT agreed. BT stated that it seemed sensible to consider charge controls in the future. CPS Providers also expressed disappointment that the proposed charges would not be backdated. They considered that BT should have backdated its charges voluntarily.
- 1.4 Ofcom has considered all of these factors – and the more detailed discussion set out in responses – in coming to its final conclusions and setting the charges that BT is permitted to levy for providing various CPS facilities. These charges are set out in the Direction at Annex 1. These revised charges should be implemented as soon as possible. Ofcom has, therefore, given its consent under section 49 of the Communications Act 2003 (the “Act”) for BT to implement these charges immediately. In the normal course of events, as set out in SMP services condition AA6(a), BT would be required to give ninety days’ notice. Ofcom considers, however, that this is not in the best interests of the industry or citizen-consumers. The consent is set out at Annex 2.
- 1.5 The main charges are as follows:

	Present charges	Draft Direction, March 2005	Directed charges, August 2005
Per-provider set up charge (applied on a per code basis)	£22,730	£13,448.98	£13,448.98
Per-provider ongoing (monthly) charge	£1,400	£2,138.72	£2,417.68
Per-customer transaction charge for an order successfully set up ¹	£3.79	£2.80	£2.72

- 1.6 The per-customer set up charges are lower than those proposed in the draft Direction. The reason for the reduction in these charges is due to a significant increase in the volume of transactions used to calculate BT's costs. Ofcom has analysed recent trends in the number of transactions handled by BT on a monthly basis and this has shown that BT handles significantly more orders per month than set out in the March consultation. The effect of this is to reduce per-customer set up charges. The per-provider ongoing charge is, however, higher than that proposed in the March consultation. The reason for the increase in this charge is due to a decrease in the number of CPS Providers used in the calculation of this charge. The March consultation proposed to set the charge on the basis of the number CPS Providers (23), but the charge was actually calculated on the basis of the number CPS prefixes – these are the codes that CPS Providers need to utilise CPS and are not known or need to be known by the end-user – in use (26). BT's total costs are, therefore, divided by a smaller number and the effect of this is to increase charges.
- 1.7 Ofcom also considered CPS Providers' other comments. In particular, respondents argued that the indirect overheads applied on top of direct labour costs were excessive and this suggests that they are not efficiently incurred. They stated that Ofcom should analyse indirect overheads critically. It could be argued that indirect overhead costs should not increase in proportion to direct labour costs, as the incremental indirect overhead costs should be lower than the average. For this very reason, Ofcom scaled down incremental indirect overhead costs in determining BT's appropriate costs for number portability.
- 1.8 Ofcom has not, however, chosen to scale down indirect overhead costs at this present time. There are two main reasons for not doing so. These are that Ofcom did not consider scaling down incremental indirect overheads in

¹ The charge set out in the table relates to one order type only. There are, however, other order types

coming to the draft conclusions set out in the March consultation and, secondly, it does not wish to delay implementation of the revised costs and charges set out at Annex 1. In addition, the costs on which the charges are based give a good approximation of BT's average indirect overheads. Ofcom intends, however, to carry out a further review of the appropriate costs and charges for CPS transaction activities in 2006 (the "2006 review").

1.9 The net impact of the changes between present charges and those set out in the Direction (see Annex 1) will result in a significant reduction in the charges paid by most CPS Providers. This is because the per-customer line charges are the largest component of the costs considered in this review. CPS Providers that generate small volumes of orders only will notice 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. The impact of the changes between the draft Direction and the final Direction will also result in a net benefit to CPS Providers who generate larger volumes of orders.

1.10 The European Commission did not comment on Ofcom's proposals.

Kingston

1.11 The Direction does not cover the costs and charges for provision of CPS by Kingston. Kingston has not received any requests for interconnection from CPS Providers wishing to offer calls services in the Hull area and, therefore, there has been no need to determine CPS charges.

Next steps

1.12 BT has confirmed that it will implement the charges set out at Annex 1 at the earliest possible opportunity.

1.13 As explained in paragraph 1.8, Ofcom will reassess the appropriate costs and charges for CPS transaction activities in the 2006 review. The 2006 review will also consider, amongst other things, the need to apply charge controls.

Section 2

Introduction and background

What is Carrier Pre-Selection?

- 2.1 Customers who have BT or Kingston Communications (“Kingston”) telephone lines can use alternative Communications Providers (“Providers”) by dialling 3, 4 or 5 digit access codes. These codes allow the calls to be routed to the Provider of their choice. This system is known as indirect access. Indirect access requires the customer to dial the extra digits or needs the Provider of their choice to install equipment at their premises which will automatically dial the relevant digits to use that Provider.
- 2.2 Carrier Pre-Selection (“CPS”) is a mechanism that allows users to select Providers in advance without needing to dial additional digits or require their Provider to install equipment at their premises. The customer subscribes to the service of one or more alternative Carrier Pre-Selection Providers (“CPS Providers”) and chooses the type of calls (e.g. all national calls) that will be charged by and, more often than not, routed by the CPS Provider of their choice. In some instances, the CPS Provider will not have a communications network themselves and the call would, in such cases, be routed by the network of a partner CPS Provider.

The legal framework

- 2.3 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 Providers with Significant Market Power (SMP) in the provision of fixed telephony². BT and Kingston were determined by the Director General of Telecommunications (the “Director”) as having SMP in the provision of 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 Kingston.
- 2.4 A 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”);

² The Director obtained a derogation of 3 months for this obligation for BT

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (“the Access Directive”);
 - 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”).
- 2.5 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.
- 2.6 On 25 July 2003, however, the Director published a *Continuation Notice to British Telecommunications plc Under Paragraph 9 of Schedule 18 to the Communications Act 2003*³ (“The Continuation Notice”). This extended the provisions of Condition 50A pending the completion of a market review.
- 2.7 The new regime required National Regulatory Authorities (NRAs) to undertake reviews of communications markets to establish whether any Provider had SMP in any market and, where SMP was found, consider the regulatory obligations which should be applied. As a consequence, the Director carried out a number of market reviews, as the Director continued to exercise the functions of Ofcom under the Act until 29 December 2003.
- 2.8 On 28 November 2003, the Director published a document entitled *Review of the Fixed Narrowband Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets*⁴ (the “Market Review”). The Market Review found that, amongst other things, BT and Kingston had SMP in call origination on fixed public narrowband networks in their respective service areas⁵. At the same time, Condition 50A was discontinued.
- 2.9 As a result of these findings, BT and Kingston are required to provide CPS. BT’s obligation is set out in SMP services condition AA8. Kingston is required to do so under SMP services condition AB6.
- 2.10 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.

³ A copy is available at Ofcom's website:
http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/cont_notices/bt.pdf.

⁴ A copy of the review is available at Ofcom's website:
http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/fixednarrowbandstatement.pdf

⁵ The Hull area for Kingston Communications and the whole of the UK (excluding the Hull area) for BT.

Introduction of CPS

- 2.11 On 1 January 2000, Kingston's network was a capable of delivering CPS. BT's network did not, however, have any inherent capacity for CPS. The UK obtained, therefore, a derogation of three months from the European Commission under which BT would not be obliged to provide CPS. CPS was not, therefore, available on BT's network until 1 April 2000. At that time, CPS was introduced via the use of auto diallers. This solution was known as Interim CPS.
- 2.12 Permanent CPS, which does not require the use of auto diallers to route calls to CPS Providers, was introduced in two phases:
- On 12 December 2000, BT introduced CPS for national and international calls; and
 - On 12 December 2001, BT introduced CPS for national, international, both national and international, or "all calls" (excluding certain special categories).

Recovery of the costs of CPS

- 2.13 In February 1999, the Director published a statement entitled *Implementation of Carrier Pre-Selection in the UK*⁶ (the "February 1999 Statement"). This statement considered the way in which BT and Kingston would be allowed to recover their costs for implementing CPS. The statement described how *the six principles of cost recovery*, which were developed originally by the Director 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;
 - *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.
- 2.14 In the February 1999 Statement, the Director 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, the Director identified three broad categories into which it believed the costs of making available the CPS service would fall:

⁶ 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

- 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.
- 2.15 On the basis of the six principles of cost recovery, the Director concluded 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 CPS Providers. It was only the costs associated with CPS system set-up (i.e. BT's/Kingston'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). This surcharge is generally referred to as the CPS pence per minute surcharge.
- 2.16 The requirement to categorise costs as described in paragraph 2.14 was subsequently included in Condition 50A. It was this condition that required both providers to provide CPS. Condition 50A also stated the cost-basis that BT and Kingston should use when calculating their costs. In particular, Condition 50A.4(a)(i) stated:

2.1 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;

- 2.17 On 8 January 2001, the Director issued the document entitled *Final Determination on Costs and Charges for Permanent Carrier Pre-Selection*⁷ (the "January 2001 Determination") in which, in line with the principles set out in the February 1999 Statement, it set the charges for CPS. In the January 2001 Determination, the Director additionally determined a per-provider ongoing charge for, amongst other reasons, those set out in paragraphs 75-77 of that Determination. The Director 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.
- 2.18 The January 2001 Determination did not consider charges for BT's FeatureNet, FeatureLine, and Embark services, as CPS functionality for these had not been developed at that point in time and, as a result, the per line costs were not available. On 26 November 2001, the Director was, however, able to determine the charges for the provision of these CPS services in its

⁷ A copy of the determination is available on the Ofcom's website at www.ofcom.org.uk/static/archive/oftel/publications/carrier/pcps0101.htm

document entitled *Final Determination on costs and charges for provision by BT of permanent carrier pre-selection standard services for FeatureNet, FeatureLine and Embark customers*⁸ (the “November 2001 Determination”).

- 2.19 After the introduction of Permanent CPS, BT and the CPS Providers agreed significant changes to the CPS ordering process. In particular, from July 2002, a paper-based order confirmation system known as a 'reply slip' – under which customers had to complete this slip and post it to BT to confirm that they wished service – was withdrawn. BT's costs in processing these orders were therefore no longer incurred. As a consequence, BT proposed revised charges to take effect when the CPS process was modified. In September 2002, therefore, the Director re-determined CPS transaction charges in the document entitled *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”)⁹.
- 2.20 As explained in paragraph 2.8, Condition 50A was discontinued following completion of the Market Review. Thereafter, BT became subject to SMP services condition AA8. Paragraph AA8.4 of that condition requires BT to base its charges on the reasonably incurred forward looking long run incremental costs of providing CPS Facilities:

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;

- 2.21 Condition AA8 also requires BT to categorise its CPS costs according to four broad categories (also set out in the January 2001 Determination). These are:
- 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.

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

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

- 2.22 The Market Review did not review or modify BT's charges for CPS and, therefore, charges remained as specified in the Determinations of January 2001, November 2001, and September 2002.

Purpose of the Direction

- 2.23 From September to November 2003 BT proposed new charges for CPS to the Industry (the "November 2003 proposals"). BT subsequently revised its proposals and shared its revised proposals with Industry in February 2004 (the "February 2004 proposals"). These proposals were set out at Annexes 9 and 10 respectively of the consultation document entitled *Per-provider and per-customer line costs and charges for Carrier Pre-Selection* (the "March consultation").
- 2.24 As a result of discussions with Ofcom, BT revised its proposals in July 2004 (the "July 2004 proposals"). These were not, however, circulated to the industry. All the proposals helped to inform Ofcom and were important steps in setting the charges set out in the Direction at Annex 1.
- 2.25 The principal purpose of this statement and the Direction set out at Annex 1 is, therefore, to set the charges for various CPS transaction activities. These are based on Ofcom's view of the long-run incremental costs incurred by BT in the provision of these activities.

The scope of the Direction

- 2.26 The Direction set out at Annex 1 covers 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.
- 2.27 The Direction does not directly address concerns set out by certain CPS Providers in their responses in relation to the monthly charges for CPS and whether they should be on a per code or per provider basis and nor does it consider whether the service establishment costs for a second CPS prefix should be reduced. Ofcom's reasoning for this is set out in Section 3. However, the principal reason for not doing so is to avoid delaying implementation of the charges set out in the Direction at Annex 1. CPS charges are presently out of line with costs and Ofcom considers, therefore, that it should revise these charges as soon as possible. Any further delays in setting revised charges would not be beneficial to CPS Providers and nor would it benefit citizen-consumers. Ofcom intends, nonetheless, to commence a further review of CPS transaction charges in 2006 (the "2006 review").

Kingston

- 2.28 The Direction does not cover the costs and charges for provision of CPS by Kingston. Kingston has not received any requests for interconnection from CPS Providers wishing to offer calls services in the Hull area and, therefore, there has been no need to determine CPS charges.

FeatureNet and Embark Charges

- 2.29 Per-customer line set-up charges for FeatureNet and Embark line types are outside the scope of this 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

- 2.30 The CPS system set-up costs are also outside the scope of this Direction. SMP services 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 the Director in the Determination published in February 2002 which was entitled *Final Determination of surcharges for the provision by BT of carrier pre-selection facilities* <http://www.ofcom.org.uk/static/archive/oftel/publications/carrier/2002/cps0202.htm>. The surcharge was implemented by BT on 1 April 2002.
- 2.31 At present, 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. This surcharge remains, therefore, applicable.

Same and adjacent calls (SAD)

- 2.32 On 30 July 2004, Ofcom published a statement entitled *Addressing the local call disadvantage*¹⁰. In that, Ofcom required BT to offer an additional routing option within CPS for calls which are originated and terminated on the same digital local exchange (DLE) or originated and terminated on DLEs which are directly connected. 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. Ofcom considers that the SAD CPS routing option work has no impact on the CPS transaction charges that are the subject of this Direction.

¹⁰ http://www.ofcom.org.uk/consult/condocs/cps_option/cps_statement/?a=87101

Section 3

Transaction charges: responses to consultation

- 3.1 In section 3 of the March consultation Ofcom set out in detail the costs underlying the proposed charges that were set out in Annex 6 to that document. Ofcom does not consider that it is necessary to repeat the detail set out therein within this statement. A full account of the costs underlying the charges was included at:
- for per-provider set up charges, paragraphs 61 to 74;
 - for per-provider ongoing charges, paragraphs 75 to 95; and
 - for per-customer transaction charges, paragraphs 100 to 180.
- 3.2 Ofcom in this section considers respondents' views and sets out Ofcom's views in relation to these. It also gives detailed explanation as to why the charges set out in the Direction at Annex 1 differ to those set out in the March consultation. In particular, Ofcom has explained in paragraph 3.30 why it has adjusted charges for per-customer transactions having concluded that recent trends show that BT is undertaking on average more transactions per month than estimated in the March consultation. The effect of this is to reduce charges for volume-sensitive products. It has also explained in paragraph 5.4 why it has set a higher per-provider ongoing charge than that set out in the March consultation.
- 3.3 Ofcom has also given considerable thought to the concerns raised by respondents in relation to the indirect costs applied to direct labour rates. Ofcom has concluded, however, that, as set out in paragraphs 3.16 to 3.18, it needs to consider this matter further and is not presently in a position to address the concerns that were set out in CPS Providers' responses. Any further deliberations on this topic would result in a further delay to the implementation of reduced charges based on a new assessment of costs. Ofcom considers that this would not be appropriate.

Background

- 3.4 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.
- 3.5 In November 2003, BT proposed revised charges for per-customer line transactions. These were shared with the CPS Commercial Group. BT had not, however, completed the work that it had been undertaking to assess the appropriate costs that it considered should be apportioned to the per-customer line transaction charges for FeatureLine orders. These did not form, therefore, part of BT's proposals.

- 3.6 BT and Ofcom continued to discuss the underlying cost calculations that BT had used to support its proposals. Ofcom also received submissions from representatives of the CPS Commercial Group. These representations proved to be useful in discussions between Ofcom and BT. The ongoing dialogue and submissions caused BT to reflect further on the relevant costs that it incurred in carrying out all CPS transactions types. As a result, BT submitted revised proposals to the CPS Commercial Group in February 2004 (the "February 2004 proposals").
- 3.7 In reviewing BT's proposals, Ofcom wished to ensure that the changes proposed by BT:
- were based on costs that were reasonably and efficiently incurred by BT on the basis of the costs that it incurs in providing CPS on a long-run incremental basis;
 - fall within the framework of the Industry agreed End-to-End CPS Process;
 - were 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); and
 - were in line with the cost categorisation and recovery requirements of SMP services condition AA8.
- 3.8 The charges proposed in the March consultation and also those that are set out in the Direction (see Annex 1) are consistent with these principles.

The detailed analyses set out in the March consultation

- 3.9 Ofcom has chosen not to repeat the detailed analyses of costs that were set out in the March consultation. These analyses explained how Ofcom had gone about establishing BT's reasonably incurred costs in providing CPS and, therefore, in setting the charges for various activities that BT is required to undertake in order to provide CPS. For these analyses, interested parties should refer back to the March consultation. Paragraph 3.1 provides references.

The consultation questions

- 3.10 Ofcom asked stakeholders to comment, in particular, on seven questions set out in the March consultation. Section 4 considers respondents' comments in relation to Ofcom's Impact Assessment. This section focuses on respondents' comments in relation to the costs analyses that were set out in the March consultation.

Per-provider set-up charges

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

- 3.11 BT, in general, accepted that the charge proposed provided an accurate reflection of the costs that it incurs in establishing CPS on a per-provider

basis. It stated, however, that these costs are incurred whenever it is asked to set up a new CPS prefix and, therefore, the charges should be paid on a CPS prefix basis and not on a CPS Provider basis. BT, nonetheless, acknowledged that the costs that it incurs in establishing a second prefix might be lower than those that it incurs in establishing a prefix for a CPS Provider for the first time. For instance, it suggested that the Operations & Testing Manual costs might not be incurred when setting up a second prefix.

- 3.12 CPS Providers expressed concerns as to whether the costs underlying the charges were reasonably and efficiently incurred. They also questioned the level of the proposed indirect overheads which were estimated at 90% on top of direct labour costs. They suggested that mark-ups on direct labour rates of this magnitude might point to inefficiency or to the mis-allocation of costs.

Ofcom's views

- 3.13 Ofcom has considered each of the respondents' points in coming to the conclusions set out in this statement.
- 3.14 In terms of BT's comments, Ofcom considers that it is appropriate for BT to recover the costs that it incurs in establishing a second CPS prefix. CPS Providers that choose to opt for more than one CPS code should expect to pay the costs associated with establishing that second code. Ofcom understands that, in practice, BT has charged CPS Providers who have opted for a second CPS prefix. Nonetheless, Ofcom expects BT to omit any costs that are not incurred in establishing the second CPS prefix, as Ofcom does not consider that it would be reasonable to include such costs where they have not been incurred. It is, of course, possible that the establishment costs for a second prefix may differ between CPS Providers, as the requirements of CPS Providers may not always be the same. Ofcom has not, however, analysed the costs that BT incurs in establishing a second CPS prefix and has not, therefore, determined charges for the establishment of a second CPS prefix.
- 3.15 In terms of CPS Providers' concerns, Ofcom considers that the costs set out in the March consultation were reasonable and reflected BT's long-run incremental costs in setting up a CPS prefix on its network. Ofcom accepts, however, that in the longer-term BT needs to be provided with incentives to increase its efficiency in carrying out CPS transactions and Ofcom will, in carrying out its 2006 review, consider whether or not it is appropriate to apply a charge control to encourage BT to reduce its costs. Any charge control may then apply to some or all of the charges that Ofcom establishes in the 2006 review.
- 3.16 Ofcom has also considered CPS Providers' representations in relation to the indirect overheads that Ofcom applied to direct labour rates in establishing the charges set out in the March consultation. These indirect costs cover, for instance, accommodation, transport, and general office costs. One respondent, who wished its response to remain confidential, stated that it expected to incur indirect overheads of no more than £10,000 per employee. Based on a salary of £30,000, this would equate to indirect overheads of 33%. This is far less than the indirect overheads that Ofcom has applied to BT's direct labour rates.

- 3.17 It is worth reiterating, first of all, that Ofcom looked at the indirect overhead costs of a number of product groups that were essentially of a similar nature to CPS and questioned the validity of these costs. This involved rigorous critical analysis of the costs involved. Ofcom accepted, therefore, that on average BT incurs overheads of circa 90% on top of direct labour costs. Ofcom has, however, considered this matter further. It could be argued that indirect overhead costs should not increase in proportion to direct labour costs, as the incremental indirect overhead costs should be lower than the average. For this very reason, Ofcom scaled down incremental indirect overhead costs in determining BT's appropriate costs for number portability in the document entitled *Determination of fixed portability costs and charges*¹¹.
- 3.18 Ofcom has not, however, chosen to scale down indirect overhead costs at this present time. There are two main reasons for not doing so. These are that Ofcom did not consider this option in coming to the draft conclusions set out in the March consultation and, secondly, it does not wish to delay implementation of the revised costs and charges set out at Annex 1. In addition, the costs on which the charges are based give a good approximation of BT's average indirect overheads. Ofcom intends, however, reconsider this matter in the 2006 review.
- 3.19 A significant reason for not considering this issue, and also those in relation to the possible double counting of product management, policy and planning (PPP) (see paragraph 3.23) and BT Retail costs (see paragraph 3.30), is that Ofcom considers that it is preferable to set revised costs and charges now rather than delay implementation of these revised charges, as this would result in CPS Providers and, indirectly, citizens-consumers paying too much for a prolonged period. Ofcom does not consider that this is in CPS Providers' or citizens-consumers' best interests.

Per-provider ongoing 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?

- 3.20 BT accepted broadly that the charge proposed provided an accurate reflection of the costs that it incurs in liaising and billing CPS Providers on an annual basis. It did, however, state that the ongoing charge should be calculated to reflect the number of CPS Operators (23) or the number of CPS prefixes in use (27). BT explained that its total costs could be divided either way. It considered, however, that its costs should be divided on a per-prefix basis as this would be more likely to reflect the causes of its costs.
- 3.21 CPS Providers expressed concerns in relation to the efficiency and reasonableness of the costs incurred (this was considered in paragraph 3.15),

¹¹ A copy of this document is available at <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/2002/nupo0502.htm>

the indirect overheads applied (this was considered in paragraphs 3.16 to 3.18), and the possibility that PPP costs are being recovered twice.

Ofcom's views

- 3.22 In terms of BT's comments, Ofcom's considers that it does not have sufficiently robust information to establish and, therefore, determine the relevant costs that BT incurs in dealing with a CPS Provider with two prefixes in comparison to a CPS Provider with one such prefix. Ofcom doubts that a CPS Provider with two prefixes is likely to cause BT to incur twice as many costs. On the other hand, it is quite likely that BT incurs additional costs in working with a CPS Provider with two prefixes. Ofcom has not, however, analysed the level of these additional costs and has not, therefore, determined BT's ongoing costs and charges on this basis. Ofcom will, however, consider this matter further in its 2006 review. Ofcom has, nonetheless, set revised charges for the reason set out in paragraph 5.4.
- 3.23 In terms of CPS Providers' concerns in relation to the possible double recovery of PPP costs, Ofcom considers that it should not delay implementation of the charges set out in this statement by considering this issue further. As explained in the March consultation, BT has been asked to improve its audit trail for the allocation of its regulatory and financial costs. This work, however, is likely to take some considerable time to complete

Charges per CPS code

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?

- 3.24 BT agreed that the costs that it incurs in dealing with CPS Providers on an ongoing basis are higher for a CPS Provider with more than one prefix. It stated that, therefore, CPS Providers with more than one code should pay proportionately more than a CPS Provider with one code. In addition, BT stated that, as the number of CPS Providers and the number of CPS prefixes being utilised was not stable, the ongoing per-provider charges needed to be reviewed annually.
- 3.25 CPS Providers were not convinced that it necessarily followed that the establishment of an additional prefix automatically meant that BT's establishment and ongoing costs would be equivalent to those that it incurs in establishing the first such prefix. One argued that BT should be permitted to recover its incremental costs in establishing a second prefix and its ongoing incremental costs only. Further analysis would need to be carried out to determine BT's costs.

Ofcom's views

- 3.26 Ofcom considers BT should not recover more than its reasonably incurred incremental costs in establishing a second prefix on forward-looking long-run basis and nor should it recover more than those costs in handling relationships on an ongoing basis. Ofcom will, however, consider this matter further in the 2006 review.

Per-customer line set-up charges

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?

- 3.27 BT agreed that the charges proposed for per-customer line set-up provided an accurate reflection of the costs that it incurs in establishing each such order.
- 3.28 CPS Providers expressed concerns in relation to the efficiency and reasonableness of the costs incurred (this was considered in 3.16), the indirect overheads applied (this was considered in paragraphs 3.16 and 3.17), the attribution of shared systems costs, the inclusion of BT Retail costs – such as postage costs and inbound call costs – in a wholesale charge, and the level of transaction volumes used to calculate the charges. They argued that there was not sufficient evidence to justify the level of the costs and charges set out in the March consultation.

Ofcom's views

- 3.29 Ofcom considers that the attribution methods used to apportion shared system costs between various transactions including CPS were set out in sufficient detail in the March consultation. Ofcom received data from BT in relation to the types of transactions (updating of exchange line features) that are charged at the same rate as CPS transactions.
- 3.30 Ofcom has also considered CPS Providers' comments in relation to the charges that they pay to BT that include certain costs that are incurred by BT Retail as a result of BT's obligation to provide CPS. However, for the same reasons as those set out in paragraph 2.27 and also for the reasons set out in 3.31 and 3.32, Ofcom considers that it is appropriate to consider these matters in its 2006 review.
- 3.31 Ofcom considers, however, that it can address CPS Providers' concerns in relation to the volume of transactions which take place in an average month. The volume of transactions applied is an important factor in establishing BT's per-customer line set-up costs and, therefore, setting the appropriate charges. CPS Providers stated that Ofcom had underestimated the volume of transactions which take place. Ofcom agrees that the volume of transactions (500,000) used to calculate the per-customer line set-up costs set out in the March consultation is lower than recent trends in the actual volume of transactions. Ofcom has, therefore, set charges on the basis of the average volume of transactions handled by BT on a monthly basis for the period July 2004 to June 2005. The average volume of transactions during this period has been 572,305 transactions per month. This is a relatively stable figure. Six of the months compared were within approximately ten thousand transactions of 570,000 either way. The effect of this is to reduce per-customer transaction charges.

Other issues

Equivalence and the six principles of cost recovery

- 3.32 In its response, UKCTA questioned Ofcom's continued reliance on the six principles of cost recovery to set CPS transaction charges given Ofcom's decisions in relation to PPP, SAD calls, and the provisional outcome of the

Telecommunications Strategic Review (TSR II) in which Ofcom referred to the need for equivalence of inputs between BT Retail and competing providers.

- 3.33 As acknowledged, Ofcom has adopted an 'equivalence based' approach in other areas including in CPS related areas such as in the routing of SAD calls. However, Ofcom has not, as yet, analysed what it could or could not do in terms of CPS transaction charges and it does not wish to delay the implementation of these revised lower charges pending any further analysis and consultation. This would not be in the interests of CPS Providers and nor would it be in the interests of citizen-consumers. Ofcom recognises, nonetheless, that it will need to consider these matters further and will do so in the 2006 review.

European comparisons

- 3.34 One respondent provided evidence which it argued showed that CPS Providers were not getting a good deal in the UK in comparison to the deal they could get in other Member States. Ofcom has not carried out a detailed analysis of the evidence that was supplied. It is, however, worthwhile noting that transaction costs alone are unlikely to be the only relevant consideration that CPS Providers take into account in deciding whether or not there is an economic case for entering a particular national market. Trends in growth suggest that there is a strong case for providing CPS services in the UK and these are likely to include the low conveyance costs available in the UK. Ofcom is not, however, complacent and intends to reassess CPS costs and charges with a longer-term view to set a charge control which will provide CPS Providers with greater certainty in relation to the level of transaction charges.

Retrospection

- 3.35 In its response, UKCTA expressed disappointment that Ofcom had failed to require BT to backdate its charges. They stated that CPS Providers had been overpaying for CPS activities since transaction charges were last set and, therefore, Ofcom should have addressed this issue. They were, however, equally disappointed that BT had not decided voluntarily to backdate charges.
- 3.36 Ofcom notes UKCTA's disappointment and understands that CPS Providers would have wished to see Ofcom backdate charges. However, as stated in the March consultation, Ofcom has powers under Part 2, Chapter 3 of the Act to consider whether the charges paid were appropriate and, if it deems that they were not, determine the appropriate level of charges that should have been paid.

Section 4

Option assessment: responses to consultation

- 4.1 In the consultation document, Ofcom, as part its Impact Assessment (IA), considered three options in relation to the setting of revised CPS charges. These were:
- Option 1 – self-regulation;
 - Option 2 – Ofcom should give a Direction setting the charges as set out in the draft Direction; or
 - Option 3 – CPS charges should be subject to a charge control.
- 4.2 Ofcom asked three questions in relation to these options and paragraphs 4.2 to 4.5 sets out respondents' views in relation to these questions.

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

- 4.3 Respondents agreed in general that the options considered were appropriate at the least in terms of ensuring that revised costs and, therefore, charges are set as soon as possible. There was, however, no support for Option 1 (self-regulation).

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

- 4.4 Respondents agreed in general that Option 2 was the most appropriate option at least in terms of ensuring that revised costs and, therefore, charges are set as soon as possible. There was little appetite for further delays given concerns in relation to the current level of charges. BT agreed that it was appropriate to set revised charges now and that these should be reassessed at a later date.

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?

- 4.5 Respondents agreed in general that it was appropriate to apply charge controls to CPS services. However, as explained, there was little appetite for further delays and, therefore, respondents stated that CPS services should be subject to charge controls at a later date. CPS Providers stated that the charge controls should apply to charges that are based on reasonably and efficiently incurred costs.

Preferred Option

- 4.6 Ofcom continues to believe that Option 2 is the best way forward. In the longer-term, it is quite possible that future charges for CPS transactions will

be constrained via a charge control mechanism rather than ongoing consideration of the costs involved which does not provide the certainty that can be achieved through a charge control.

- 4.7 However, as explained elsewhere within this statement and in the consultation document, Ofcom considers that it is preferable to set revised charges now which are aligned to costs rather than risk delaying further the implementation of these revised charges by implementing charge controls following a further period of consultation and on the basis of present costs.
- 4.8 Ofcom intends to review CPS transaction charges in its 2006 review and, at that time, will consider whether or not it is appropriate to set charge controls.

Communications Act 2003 (the "Act") tests

- 4.9 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 it has met these tests are set out in paragraphs 4.10 to 4.20.

Section 3 Ofcom's General Duties

- 4.10 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.
- 4.11 Ofcom considers that the 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".
- 4.12 Ofcom considers that the Direction serves four main purposes that support the duties listed above in that:
- it reflects the costs that BT incurs in carrying out transactions on a per-provider and per-customer basis;
 - it makes a dispute less likely between CPS Providers and BT over BT's proposals for revised charges going forward for CPS;
 - it saves 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; and
 - it promotes the interests of consumers in that CPS providers will be charged less for CPS transaction and would, should they so wish, pass on these savings consumers.

Section 4 – European Community requirements for regulation

- 4.13 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.
- 4.14 Ofcom considers that giving a Direction which sets BT's CPS charges will promote competition in the provision of electronic communications services.
- 4.15 The requirement for BT to provide CPS stems originally from the Universal Service Directive which requires NRAs 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

- 4.16 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.
- 4.17 Ofcom considers that the proposed Direction is objectively justifiable because it ensures that BT's charges for CPS are set in accordance with SMP services condition AA8 (i.e. they are based on BT's reasonably incurred forward looking LRIC).
- 4.18 In terms of proportionality, Ofcom considers that the Direction is proportionate because the proposed charges are based on BT's forward looking LRIC

costs. It could be disproportionate to set charges that were either higher than or lower than forward looking LRIC.

- 4.19 Ofcom also considers that the Direction to set BT's charges for CPS but not those of Kingston is not unduly discriminatory because Kingston has not received any requests for interconnection from CPS Providers for the purposes of offering CPS in the Hull area.
- 4.20 Ofcom considers that the Direction is transparent because the effect and reasons for it are clearly set out in this statement. In addition, Ofcom has maintained a dialogue with BT and CPS Providers whilst conducting its review of BT's charge proposals.

The Commission and the Secretary of State

- 4.21 Ofcom has notified the Commission and the Secretary of State of its decision.

Section 5

Conclusions, charges, and next steps

Conclusions and charges

- 5.1 Ofcom considers that it is in the best interests of CPS Providers, BT, and citizen-consumers to publish a Direction setting CPS transaction charges now. The Direction is, therefore, set out at Annex 1 to this statement. As explained in section 3, charges set out in the Direction differ to those set out in the draft Direction because Ofcom has used more recent data in relation to the volume of transactions carried out on a monthly basis. It has also based per-provider ongoing charges on the number of CPS Operators (23) rather than the number of CPS prefixes in use (27).
- 5.2 These changes affect per-provider ongoing costs, and per-customer line set-up costs.

Per-provider set-up charges

- 5.3 The per-provider set-up charge is presently £22,730. The Direction reduces this charge to £13,448.98. This charge is the same as that set out in the draft Direction. The reasons for the reduction were set out in the draft Direction and the main one was due to productivity improvements by BT. For the avoidance of doubt, this charge is payable by CPS Providers asking BT to set up CPS on its network on their behalf for the first time. CPS Providers asking BT to set up a second prefix will pay a proportion of these costs only and this will depend on the work that they ask BT to undertake in setting up that second prefix. As set out in SMP services condition AA8, BT is allowed to recover its reasonably incurred long-run incremental costs only.

Per-provider ongoing charges

- 5.4 The per-provider ongoing charge is presently £1,400 per month. The Direction increases this charge to £2,417.68. The reasons for the increase in this charge were set out in the draft Direction and the main one was due to the level of support required by CPS Providers which has been higher than originally estimated. This charge has been set at a higher level than that set out in the March consultation. The March consultation proposed to set the charge on the basis of the number CPS Providers (23), but the charge was actually calculated on the basis of the number CPS prefixes in use (26). BT's total costs are, therefore, divided by a smaller number and the effect of this is to increase charges. BT, however, does not benefit, as its pot of costs remains the same.

Per-customer line set-up charges

- 5.5 The most common transaction type is for orders that are successfully set up. The current charge for this transaction type is £3.79. The Direction reduces this charge to £2.72. The proposed charge set out in the March consultation was £2.80. The reduction in this charge – in comparison to that set out in the

March consultation – relates to the transaction volumes per month applied. Ofcom has applied a higher figure based on more recent trends than that applied in the March consultation.

Next Steps

- 5.6 As explained in section 6, SMP services condition AA6(a).2(a) requires BT to give ninety days' notification before it is permitted to change charges for services in the market for call origination. This market includes the provision of CPS. The main reason for the notification period is intended to give CPS Providers sufficient time to adjust their retail prices in response to a change in their wholesale costs.
- 5.7 In this instance, the notification period would serve to delay implementation of these reduced charges and Ofcom has, therefore, consented to disapply the notification period. The consent is set out in Annex 2. Ofcom expects BT to apply the charges from the date of this Direction.
- 5.8 As explained in section 1, Ofcom intends to reassess CPS costs and charges in its 2006 review with a view to setting revised costs and charges and, quite possibly, applying a charge control to provide CPS Providers with ongoing certainty in relation to the future movement of charges.

Section 6

Consent

Relevant SMP services conditions

- 6.1 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));
- 6.2 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)).

Consent

- 6.3 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. Ofcom considers, therefore, that it should consent to disapply the notification period in respect of this Direction.

Legal tests

- 6.4 Paragraphs 6.5 to 6.10 sets out Ofcom's reasons why it considers that the relevant legal tests under the Act for granting its Consent to disapply the notification period are met. This section should be read in the light of relevant considerations and Ofcom's conclusions as set out in sections 1 to 5 of this statement.

Relevant tests

- 6.5 Ofcom is required to be satisfied that the granting of consent is in accordance with the requirements of section 49(2) of the Act. Ofcom also has to consider and act in accordance with its principal duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
- 6.6 Ofcom's Consent to BT is set out at Annex 2. The Schedule to that notification sets out the Consent. The effect of, and reasons for making, those proposals are set out in paragraph 6.11.

Section 3 and 4 – general duties and the six Community requirements

- 6.7 Section 3 of the Act sets out the principal 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.

- 6.8 This Consent is necessary to ensure that the introduction of the new charges is not delayed and, therefore, the benefit of the decrease in charges is likely to benefit citizen-consumers sooner.

Section 49(2) – general tests

- 6.9 Section 49(2) of the Act requires that Ofcom must not give 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.
- 6.10 In respect of the proposed Consent, Ofcom considers that it:
- is objectively justifiable as it will ensure the timely implementation of the new CPS charges;
 - does not discriminate unduly even though it applies to BT only 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 2) what is required from BT in terms of complying.

Conclusions

- 6.11 Ofcom has concluded that giving its Consent, in this instance, is appropriate and 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 advance notification under SMP service condition AA6(a).
- 6.12 Ofcom is satisfied that it has met all relevant tests.

Annex 1

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 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 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 Addendum 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.

ANDREW HEANEY
DIRECTOR OF COMPETITION POLICY

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

18 AUGUST 2005

Addendum

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 and ninety eight pence).

b) Carrier Pre-Selection Per Provider Ongoing Costs

The annual charge is £29,012.16 (Twenty nine thousand, twelve pounds and sixteen 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. The charge will apply on a per Carrier Pre-Selection code [**correction – this word should read as “provider” see footnote ¹²*] basis.

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 £2.72.

¹² [Correction to the Statement and Direction entitled *Per-provider and per-customer line costs and charges for Carrier Pre-Selection* – published 18 August 2005.](#)

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
Order stage at end transaction						
Pre CSS Validation order rejected	£0.11	£0.11	£0.11	£0.11	£0.11	£0.11
Post CSS validation order rejected or cancelled	£0.79	£0.79	£0.79	£0.79	£0.79	£0.79
Order completed	£2.72	£28.98	£2.09	£2.09		
Switch change effected	END	END	END	END		
Order cancelled on BT provision and repair systems					£1.46 END	
Order modified on BT provision and repair systems					£1.18 END	

Annex 2

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 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 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 18 August 2005 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 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 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.

Costs and charges for carrier pre-selection

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

**ANDREW HEANEY
DIRECTOR OF COMPETITION POLICY**

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

18 AUGUST 2005