

**Consents to disapply BT's
SMP services conditions that
require the notification of charges,
terms and conditions and technical
information in respect of certain
products and processes relating to
LLU and LLU backhaul**
Explanatory statement and notification

Consultation

Publication date: 10 February 2005

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

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Section 1

Summary

Introduction

- 1.1 This statement sets out Ofcom's decision on consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and services relating to local loop unbundling ("LLU") and LLU backhaul.

Market reviews

- 1.2 In the *Review of the wholesale local access market*, 16 December 2004¹, Ofcom identified, among others, the market for wholesale local access in the UK excluding the Hull Area. Ofcom determined that BT has significant market power ("SMP") in that market and imposed certain SMP services conditions on BT in that market and in respect of co-location. The wholesale local access market covers local loop unbundling ("LLU") services.
- 1.3 In the *Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets*, 24 June 2004², Ofcom identified a number of markets, determined that BT has SMP in those markets and imposed certain SMP services conditions on BT in those markets. The provision of LLU backhaul falls within one or more of the markets identified in the review, as appropriate.

Relevant SMP services conditions

- 1.4 The following SMP services conditions have been imposed on BT in the market reviews identified above:
- requirement to notify charges and terms and conditions; and
 - requirement to notify technical information.
- 1.5 The requirement to notify charges terms and conditions requires BT to notify changes to charges and terms and conditions for existing Network Access 90 days in advance and the charges and terms and conditions to be applied to new Network Access 28 days in advance.
- 1.6 The requirement to notify technical information requires BT to notify new technical information within a reasonable time period but no less than 90 days in advance.

The Telecommunications Adjudicator

- 1.7 The Telecommunications Adjudicator (the "Adjudicator") is independent of Ofcom and industry and has been established to facilitate the swift implementation of fit for purpose products and processes necessary to enable competitors to gain access to BT's local loop on an equivalent basis to that enjoyed by BT's own downstream activities.

¹ <http://www.ofcom.org.uk/consult/condocs/rwlam/statement/>

² <http://www.ofcom.org.uk/consult/condocs/llmr/statement/?a=87101>

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The December consultation

- 1.8 On 16 December 2004, Ofcom consulted on consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul. The consultation arose as a result of the Adjudicator and BT raising concerns with Ofcom that the notification periods could potentially delay the introduction of a set of deliverables that had been agreed by those participating in the Telecommunications Adjudication Scheme for the implementation of fit for purpose LLU products and processes during 2005 (the "set of deliverables").

Ofcom decision

- 1.9 Ofcom has considered carefully all the responses to the December consultation. On balance it considers that it should consent to disapply the notification requirements set out in the relevant SMP conditions until December 2005, on the basis that the notification periods may unnecessarily delay the implementation of fit for purpose products and processes to the detriment of LLU operators and the development of LLU.
- 1.10 Ofcom notes that BT has given a voluntary undertaking to provide 28 days' notice of any changes or new services covered by the consent, unless otherwise agreed with Ofcom. Ofcom considers that this will provide useful protection to LLU operators but will allow for flexibility in cases where a shorter notification is appropriate.

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Section 2

Background

Regulatory framework

- 2.1 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The 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 EU Communications Directives³.
- 2.2 The new framework was implemented in the UK via the Communications Act 2003 (the "Act").

Market reviews

- 2.3 The new framework requires national regulatory authorities ("NRAs"), such as Ofcom, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.
- 2.4 In the Review of the wholesale local access market, 16 December 2004, Ofcom identified, among others, the market for wholesale local access in the UK excluding the Hull Area. Ofcom determined that BT has significant market power ("SMP") in that market and imposed certain SMP services conditions on BT in that market and in respect of the provision of co-location. The wholesale local access market covers local loop unbundling ("LLU") services.
- 2.5 In the Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets, 24 June 2004, Ofcom identified, among others, the following markets:
 - the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second within the UK but not including the Hull Area;
 - the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second and up to and including one hundred and fifty five megabits per second within the UK but not including the Hull Area;
 - the market for the provision of alternative interface symmetric broadband origination all bandwidths within the UK but not including the Hull Area; and
 - the market for the provision of wholesale trunk segments at all bandwidths within the UK.

³ Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities

Directive 2002/20/EC on the authorisation of electronic communications networks and services;

Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services

Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector

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- 2.6 Ofcom determined that BT has SMP in those markets and imposed certain SMP services conditions on BT in those markets. The provision of LLU backhaul falls within one or more of the markets identified, as appropriate.

Relevant SMP services conditions

- 2.7 The following SMP services conditions, among others, have been imposed on BT in each of the markets identified above:
- requirement to notify charges and terms and conditions (SMP services conditions FA5, G6, GG6, H5 and HH5); and
 - requirement to notify technical information (SMP services conditions FA6, G8, GG8, H7 and HH7).
- 2.8 The requirement to notify charges terms and conditions requires BT to notify changes to charges and terms and conditions for existing Network Access 90 days in advance and the charges and terms and conditions to be applied to new Network Access 28 days in advance.
- 2.9 The requirement to notify technical information requires BT to notify new technical information within a reasonable time period but no less than 90 days in advance.
- 2.10 Each of the relevant SMP services conditions includes an express power for Ofcom to be able to consent to disapply the obligations contained within that condition.

The Telecommunications Adjudicator

- 2.11 The Telecommunications Adjudicator (the "Adjudicator") is independent of Ofcom and industry and has been established to facilitate the swift implementation of fit for purpose products and processes necessary to enable competitors to gain access to BT's local loop on an equivalent basis to that enjoyed by BT's own downstream activities. Participation in the Telecommunications Adjudication Scheme is open to all communications providers interested in providing communications services using LLU.

Section 3

The December consultation

Introduction

3.1 On 16 December 2004, Ofcom consulted on consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul. The consultation arose as a result of the Adjudicator and BT raising concerns with Ofcom that the notification periods contained in the relevant SMP conditions, set out in Section 2 above, could potentially delay the introduction of a set of deliverables that had been agreed by those participating in the Telecommunications Adjudication Scheme for the implementation of fit for purpose LLU products and processes during 2005 (the "set of deliverables").

Responses to the consultation

3.2 All respondents agree with the need to ensure that there is no delay to the implementation of fit for purpose LLU products and processes and that consents to disapply notification requirements are essential to ensure this.

No notification period

3.3 BT agrees that Ofcom should disapply the notification requirements set out in the relevant SMP conditions. However, BT believes that no notification for regulated LLU services would not be in the interests of BT or LLU operators. Therefore, BT proposes to voluntarily commit to providing 28 days' notice for new products and services, changes to products and services, new technical interfaces and changes to technical interfaces, which aligns with the notification periods that apply in the wholesale broadband access market⁴. BT proposes that, in the exceptional circumstances where a shorter notification is required, BT will ask Ofcom to agree to a shorter notification period on a case by case basis.

3.4 One respondent considers that Ofcom should impose a 28 day notice period.

Ofcom response

3.5 Ofcom welcomes BT's voluntary undertaking and considers that 28 days' notice will provide useful protection to LLU operators. However, it is important that the 28 day notification period does not delay the implementation of products and processes in the same way as the current notification requirements. Therefore, where appropriate, and, specifically where a product is ready to be launched, Ofcom expects BT to approach Ofcom in order to agree a shorter notification period. This approach gives more flexibility than if Ofcom imposed an SMP condition that required a 28 day notification period that could not be deviated from. In this instance, given the unique position of the Telecommunications Adjudicator Scheme and industry co-operation, Ofcom considers that the combined approach of disapplying the notification periods and BT's voluntary undertaking is appropriate.

⁴ *Review of the wholesale broadband access markets*, 13 May 2004, <http://www.ofcom.org.uk/consult/condocs/wbamp/wholesalebroadbandreview/?a=87101>

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Agreed set of deliverables

- 3.6 BT considers that the agreed set of deliverables is too granular and specific, given that it is likely that further deliverables will be required in the coming months. BT notes that reverse migrations, such as LLU to wholesale line rental, have not been included.
- 3.7 VNL considers that 'simultaneous provision of WLR, shared access, and number portability' is missing from the set of deliverables. Bulldog considers that Ancillary Service Structure ("ASS") product pricing and MPF/SMPF forecasting processes should be included. One respondent considers that Backhaul Extension Service ("BES") products should be included.

Ofcom response

- 3.8 Ofcom considers that BT's suggested headings are too broad. A heading such as 'provision and modification of LLU SMPF products and services' would capture all changes and new services relating to shared access. The notification requirements are there to protect LLU operators and it is only in the limited circumstances where deliverables have been agreed that these requirements should be removed.
- 3.9 The Adjudicator has advised Ofcom that reverse migrations have recently emerged as an important issue. However, given that Ofcom has not consulted on these, it is unable to include these within the current consents. Ofcom expects that sufficient time will be available for BT to plan for the introduction of these services and therefore the notification periods that apply to them should not delay their launch.
- 3.10 'Simultaneous provision of WLR, shared access, and number portability' was included in the agreed set of deliverables set out in the December consultation. ASS product pricing should not be included, as the Adjudicator has advised that it is not part of the set of agreed deliverables. Forecasting processes were mistakenly included in the list of LLU backhaul deliverables and not in the list of LLU service deliverables. This has now been corrected. The consents as drafted apply to BES products.

Consent period

- 3.11 One respondent considers that the consent should only apply as long as the Telecommunications Adjudicator Scheme is in place and that the period until December 2005 is too long and will send the wrong signals to industry.

Ofcom response

- 3.12 The Adjudicator has advised that the period up to December 2005 is an appropriate length for the consents to apply. While many of the deliverables are planned to be launched in the next 3 to 6 months, Ofcom does not consider that the length of this period will send the wrong signals to industry. Ofcom is satisfied that the Telecommunications Adjudicator Scheme is making sufficient progress to ensure that deliverables are launched on time.

Requirement to provide a reference offer

- 3.13 BT notes that the SMP condition, 'Requirement to provide a reference offer', requires BT to provide Ofcom with 10 days notice of amendments to its reference offer. BT would like Ofcom to clarify whether it is sufficient for BT to provide a list of such changes rather than the finished document, as providing the finished document may cause further delay.

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Ofcom response

3.14 Ofcom agrees that BT does not need to provide the entire reference offer to Ofcom each time it makes a change. However, it would expect BT to provide sufficient detail of the proposed amendments.

Long term solution to disapplying notification requirements

3.15 BT would like Ofcom to develop a long term solution to deal with situations where no notification period or a shorter notification is appropriate, such as in the case of a typo error.

Ofcom response

3.16 Ofcom sent a letter to certain industry stakeholders on 11 October 2004, outlining its proposed approach to giving consents to shorter notification periods. In that letter, Ofcom set out that it would consider giving a reduced consultation period for certain consents or waivers, including where this was necessary to correct typographical errors. These procedures still apply.

Documentation issues

3.17 One respondent is concerned with BT providing insufficient documentation for new LLU products and processes and considers that the removal of notification periods will mean that BT is less likely to provide such information. It would like BT to be required to disclose detailed software release plans before any notification requirements are disappplied.

Ofcom response

3.18 While Ofcom understands the difficulties that LLU operators face if insufficient documentation is provided by BT, Ofcom notes that BT is required to provide sufficient documentation by the SMP condition 'Requirement to provide a reference offer', which will apply to BT irrespective of whether the notification conditions are disappplied. Ofcom hopes that the Telecommunications Adjudicator will be able to resolve documentation issues in the first instance.

Commission response

3.19 The Commission made no comments in response to Ofcom's proposals.

Section 4

Ofcom decision

- 4.1 Ofcom considers that the notification of charges, terms and conditions and technical information is important to ensure that providers have sufficient time to plan and prepare for changes, such as restructuring the prices of their downstream offerings in response to charge changes at the wholesale level or introducing new equipment or modifying existing equipment to support a new or changed technical interface. In general, notification therefore helps to ensure stability in markets and without it incentives to invest might be undermined and market entry made less likely.
- 4.2 However, in this instance, the set of deliverables has been discussed and agreed over a period of time by relevant parties and the timely implementation of the set of deliverables will actually benefit those that the relevant SMP conditions are designed to protect. Without such consents, the notification periods may unnecessarily delay the implementation of fit for purpose products and processes to the detriment of LLU operators and the development of LLU.
- 4.3 Ofcom notes that BT has given a voluntary undertaking to provide 28 days' notice of any changes or new services covered by the consent, unless otherwise agreed with Ofcom. Ofcom considers that this will provide useful protection to LLU operators but will allow for flexibility in cases where a shorter notification is appropriate. As stated above, where appropriate, and, specifically where a product is ready to be launched, Ofcom expects BT to approach Ofcom in order to agree a shorter notification period.
- 4.4 The following are the agreed set of deliverables:

In respect of the provision of LLU services:

- bulk migration product – broadband DSLAM to LLU DSLAM with no change to telephony;
- automation of migration processes;
- migration process for BT PSTN with broadband to BT PSTN with shared access;
- migration process for BT PSTN or wholesale line rental (“WLR”) line to shared access with WLR;
- migration process for BT PSTN or WLR line with broadband to shared access with WLR;
- migration process for BT PSTN with or without broadband to fully unbundled access with number portability;
- migration process for WLR line to fully unbundled access with number portability;
- migration process for WLR line with broadband to fully unbundled access with number portability;
- migration process for BT PSTN line with shared access to fully unbundled access with number portability;
- migration process for WLR line with shared access to fully unbundled access with number portability;
- simultaneous provision of BT PSTN line, shared access and number portability;

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- simultaneous provision of WLR, shared access and number portability;
- homemover products;
- address matching processes and systems;
- automated ordering processes;
- service level agreements for ordering and fault reporting automated interfaces;
- online raw characteristic line data system;
- copper quality database;
- offline testing system;
- care packages;
- automation of repair processes;
- billing systems; and
- forecasting processes.

In respect of LLU backhaul:

- availability of choice between rack mounted and single NTE;
- co-ordinated delivery of co-location and backhaul;
- new high speed backhaul products;
- backhaul resilience features;
- planning process for backhaul extension services;
- new process for backhaul regrades;
- service level agreements for wholesale backhaul services; and
- backhaul DC power.

4.5 Ofcom has considered carefully all the responses to the December consultation. Ofcom has decided to consent to disapply the relevant SMP conditions in respect of the set of deliverables identified above until the end of December 2005. Ofcom will consider at the end of this period whether it is necessary and appropriate to extend the application of the consents for a further period of time. The consents are set out at Annex 1 of this explanatory statement.

Communications Act tests

- 4.6 Before giving its consent to disapply an obligation imposed in an SMP services condition, Ofcom must satisfy the requirements set out in section 49(2) of the Act. In addition, Ofcom must consider and act in accordance with its general duties under section 3 of the Act and the six Community requirements in section 4 of the Act.
- 4.7 Section 49(2) requires consents to be objectively justifiable, non-discriminatory, proportionate and transparent. The consents are objectively justifiable, in that they are necessary for the timely implementation of the agreed set of deliverables. They are proportionate, as they remove the notification requirements on BT where they are not necessary. They do not unduly discriminate as the Telecommunications Adjudication Scheme only applies to BT and, although similar SMP services conditions have been imposed on Kingston, Kingston does not at present supply any LLU services or LLU backhaul. Finally, they are transparent in that they are clear in their intention to ensure

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that BT is able to introduce changes to its existing services and new fit for purpose services in respect of the agreed set of deliverables without notifying them in advance.

- 4.8 Ofcom has considered its duties under section 3 and all the Community requirements set out in section 4 of the Act. In particular, the proposed consents are aimed at promoting competition and securing efficient and sustainable competition for the maximum benefits of consumers by ensuring that BT is able to introduce fit for purpose products and processes without any delay.

Annex 1

Consents

Consent to be given to BT under SMP Conditions FA5.1 and FA6.1, which are set out in Schedule 1 to the notification published by Ofcom on 16 December 2004 pursuant to sections 48(1) and 79(4) of the Act

WHEREAS

- A. on 16 December 2004, in accordance with sections 48(1) and 79(4) of the Act, Ofcom published a notification identifying the wholesale local access market in the UK excluding the Hull Area, making a market power determination that BT has significant market power in respect of that market and setting certain SMP conditions on BT to take effect on 16 December 2004, including SMP Conditions FA5 and FA6;
- B. this Consent concerns matters to which SMP Conditions FA5 and FA6 relate, in particular the requirement to give prior notification of amendments to the charges, terms and conditions for the provision of existing Network Access and of the charges, terms and conditions for the provision of new Network Access;
- C. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent 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;
- D. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
- E. on 16 December 2004, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;
- F. Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

- 1. The obligation on BT in SMP Condition FA5.2 to give prior notification of amendments to the charges, terms and conditions for existing Network Access or of the charges, terms and conditions for new Network Access shall not apply in relation to charges, terms and conditions for the products or processes set out in the attached Annex.
- 2. The obligation on BT in SMP Condition FA6.1 to give prior notification of the terms and conditions relating to:

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- a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);
- b. locations of the points of Network Access;
- c. or technical standards (including any usage restrictions and other security issues),

for new Network Access or amendments to such terms and conditions for existing Network Access, shall not apply in relation to terms and conditions for the products or processes set out in the attached Annex.

3. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989; and

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

4. Except insofar as the context otherwise requires, words or expressions used in this Consent (including the recitals above) shall have the meaning ascribed to them in paragraph 3 above and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this Consent:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
6. This Consent shall take effect on the date it is published and, unless it is withdrawn pursuant to section 49 of the Act, shall remain in force until midnight on 31 December 2005.

Andrew Heaney
Director of Broadband, Competition and Markets, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

10 February 2005

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Annex

Products and processes to which the Consent applies

1. Bulk migration product (broadband DSLAM to LLU DSLAM with no change to telephony).
2. Automation of migration processes.
3. Migration process for BT PSTN with broadband to BT PSTN with shared access.
4. Migration process for BT PSTN or WLR line to shared access with WLR.
5. Migration process for BT PSTN or WLR line with broadband to shared access with WLR.
6. Migration process for BT PSTN or WLR line with or without broadband to fully unbundled access with number portability.
7. Migration process for WLR line to fully unbundled access with number portability.
8. Migration process for WLR line with broadband to fully unbundled access with number portability.
9. Migration process for BT PSTN line with shared access to fully unbundled access with number portability.
10. Migration process for WLR line with shared access to fully unbundled access with number portability.
11. Simultaneous provision of BT PSTN line, shared access and number portability.
12. Homemover products.
13. Address matching processes and systems.
14. Ordering processes.
15. Service level agreements for ordering and fault reporting automated interfaces.
16. Online raw characteristic line data system.
17. Copper quality database.
18. Offline testing system.
19. Care packages.
20. Automation of repair processes.
21. Billing systems.
22. Forecasting processes.

Consent to be given to BT under SMP Conditions G6.1 and G8.1, which are set out in Schedule 1 to the notification published by Ofcom on 24 June 2004 pursuant to sections 48(1) and 79(4) of the Act

WHEREAS:

- A. on 24 June 2004, in accordance with sections 48(1) and 79(4) of the Act, Ofcom published a notification identifying the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity up to and including eight megabits per second within the United Kingdom but not including the Hull Area, making a market power determination that BT has significant market power in respect of that market and setting certain SMP conditions on BT to take effect on 24 June 2004, including SMP Conditions G6 and G8;
- B. this Consent concerns matters to which SMP Conditions G6 and G8 relate, in particular the requirement to give prior notification of amendments to the charges, terms and conditions for the provision of existing Network Access and of the charges, terms and conditions for the provision of new Network Access;
- C. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent 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;
- D. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
- E. on 16 December 2004, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;
- F. Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

- 1. The obligation on BT in SMP Condition G6.2 to give prior notification of amendments to the charges, terms and conditions for existing Network Access or of the charges, terms and conditions for new Network Access shall not apply in relation to charges, terms and conditions for the products or processes set out in the attached Annex.
- 2. The obligation on BT in SMP Condition G8.1 to give prior notification of the terms and conditions relating to:

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- a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);
- b. locations of the points of Network Access;
- c. or technical standards (including any usage restrictions and other security issues),

for new Network Access or amendments to such terms and conditions for existing Network Access, shall not apply in relation to terms and conditions for the products or processes set out in the attached Annex.

3. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc; and

"Network Access" is limited to the provision of LLU Backhaul Services as defined in the annex to the Direction issued by Ofcom on 24 June 2004 under Condition G1.

4. Except insofar as the context otherwise requires, words or expressions used in this Consent (including the recitals above) shall have the meaning ascribed to them in paragraph 3 above and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this Consent:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
6. This Consent shall take effect on the date it is published and, unless it is withdrawn pursuant to section 49 of the Act, shall remain in force until midnight on 31 December 2005.

Andrew Heaney
Director of Broadband, Competition and Markets, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

10 February 2005

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Annex

Products and processes to which the Consent applies

1. Availability of choice between rack-mounted and single NTE.
2. Co-ordinated delivery of co-location and backhaul.
3. New high speed backhaul products.
4. Backhaul resilience features.
5. Planning processes for backhaul extension services.
6. New process for backhaul regrades.
7. Service level agreements for wholesale backhaul services.
8. Backhaul DC power.

Consent to be given to BT under SMP Conditions GG6.1 and GG8.1, which are set out in Schedule 1 to the notification published by Ofcom on 24 June 2004 pursuant to sections 48(1) and 79(4) of the Act

WHEREAS:

- A. on 24 June 2004, in accordance with sections 48(1) and 79(4) of the Act, Ofcom published a notification identifying the market for the provision of traditional interface symmetric broadband origination with a bandwidth capacity above eight megabits per second up to and including one hundred and fifty five megabits per second within the United Kingdom but not including the Hull Area, making a market power determination that BT has significant market power in respect of that market and setting certain SMP conditions on BT to take effect on 24 June 2004, including SMP Conditions GG6 and GG8;
- B. this Consent concerns matters to which SMP Conditions GG6 and GG8 relate, in particular the requirement to give prior notification of amendments to the charges, terms and conditions for the provision of existing Network Access and of the charges, terms and conditions for the provision of new Network Access;
- C. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent 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;
- D. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
- E. on 16 December 2004, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;
- F. Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

- 1. The obligation on BT in SMP Condition GG6.2 to give prior notification of amendments to the charges, terms and conditions for existing Network Access or of the charges, terms and conditions for new Network Access shall not apply in relation to charges, terms and conditions for the products or processes set out in the attached Annex.
- 2. The obligation on BT in SMP Condition GG8.1 to give prior notification of the terms and conditions relating to:

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

- a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);
- b. locations of the points of Network Access;
- c. or technical standards (including any usage restrictions and other security issues),

for new Network Access or amendments to such terms and conditions for existing Network Access, shall not apply in relation to terms and conditions for the products or processes set out in the attached Annex.

3. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc; and

"Network Access" is limited to the provision of LLU Backhaul Services as defined in the annex to the Direction issued by Ofcom on 24 June 2004 under Condition GG1.

4. Except insofar as the context otherwise requires, words or expressions used in this Consent (including the recitals above) shall have the meaning ascribed to them in paragraph 3 above and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this Consent:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
6. This Consent shall take effect on the date it is published and, unless it is withdrawn pursuant to section 49 of the Act, shall remain in force until midnight on 31 December 2005.

Andrew Heaney
Director of Broadband, Competition and Markets, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

10 February 2005

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

Annex

Products and processes to which the Consent applies

1. Availability of choice between rack-mounted and single NTE.
2. Co-ordinated delivery of co-location and backhaul.
3. New high speed backhaul products.
4. Backhaul resilience features.
5. Planning processes for backhaul extension services.
6. New process for backhaul regrades.
7. Service level agreements for wholesale backhaul services.
8. Backhaul DC power.

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

Consent to be given to BT under SMP Conditions H5.1 and H7.1, which are set out in Schedule 1 to the notification published by Ofcom on 24 June 2004 pursuant to sections 48(1) and 79(4) of the Act

WHEREAS:

- A. on 24 June 2004, in accordance with sections 48(1) and 79(4) of the Act, Ofcom published a notification identifying the market for the provision of wholesale trunk segments at all bandwidths within the United Kingdom, making a market power determination that BT has significant market power in respect of that market and setting certain SMP conditions on BT to take effect on 24 June 2004, including SMP Conditions H5 and H7;
- B. this Consent concerns matters to which SMP Conditions H5 and H7 relate, in particular the requirement to give prior notification of amendments to the charges, terms and conditions for the provision of existing Network Access and of the charges, terms and conditions for the provision of new Network Access;
- C. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent 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;
- D. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
- E. on 16 December 2004, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;
- F. Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

- 1. The obligation on BT in SMP Condition H5.2 to give prior notification of amendments to the charges, terms and conditions for existing Network Access or of the charges, terms and conditions for new Network Access shall not apply in relation to charges, terms and conditions for the products or processes set out in the attached Annex.
- 2. The obligation on BT in SMP Condition H7.1 to give prior notification of the terms and conditions relating to:

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

- a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);
- b. locations of the points of Network Access;
- c. or technical standards (including any usage restrictions and other security issues),

for new Network Access or amendments to such terms and conditions for existing Network Access, shall not apply in relation to terms and conditions for the products or processes set out in the attached Annex.

3. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989; and

"Network Access" is limited to the provision of LLU Backhaul Services as defined in the Direction issued by Ofcom on 24 June 2004 under Condition H1.

4. Except insofar as the context otherwise requires, words or expressions used in this Consent (including the recitals above) shall have the meaning ascribed to them in paragraph 3 above and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this Consent:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
6. This Consent shall take effect on the date it is published and, unless it is withdrawn pursuant to section 49 of the Act, shall remain in force until midnight on 31 December 2005.

Andrew Heaney
Director of Broadband, Competition and Markets, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

10 February 2005

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

Annex

Products and processes to which the Consent applies

1. Availability of choice between rack-mounted and single NTE.
2. Co-ordinated delivery of co-location and backhaul.
3. New high speed backhaul products.
4. Backhaul resilience features.
5. Planning processes for backhaul extension services.
6. New process for backhaul regrades.
7. Service level agreements for wholesale backhaul services.
8. Backhaul DC power.

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

Consent to be given to BT under SMP Conditions HH5.1 and HH7.1, which are set out in Schedule 1 to the notification published by Ofcom on 24 June 2004 pursuant to sections 48(1) and 79(4) of the Act

WHEREAS:

- A. on 24 June 2004, in accordance with sections 48(1) and 79(4) of the Act, Ofcom published a notification identifying the market for the provision of alternative interface symmetric broadband origination at all bandwidths within the United Kingdom but not including the Hull Area, making a market power determination that BT has significant market power in respect of that market and setting certain SMP conditions on BT to take effect on 24 June 2004, including SMP Conditions HH5 and HH7;
- B. this Consent concerns matters to which SMP Conditions HH5 and HH7 relate, in particular the requirement to give prior notification of amendments to the charges, terms and conditions for the provision of existing Network Access and of the charges, terms and conditions for the provision of new Network Access;
- C. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent 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;
- D. for the reasons set out in the explanatory statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
- E. on 16 December 2004, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;
- F. Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

- 1. The obligation on BT in SMP Condition HH5.2 to give prior notification of amendments to the charges, terms and conditions for existing Network Access or of the charges, terms and conditions for new Network Access shall not apply in relation to charges, terms and conditions for the products or processes set out in the attached Annex.
- 2. The obligation on BT in SMP Condition HH7.1 to give prior notification of the terms and conditions relating to:

Consents to disapply BT's SMP services conditions that require the notification of charges, terms and conditions and technical information in respect of certain products and processes relating to LLU and LLU backhaul

- a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);
- b. locations of the points of Network Access;
- c. or technical standards (including any usage restrictions and other security issues),

for new Network Access or amendments to such terms and conditions for existing Network Access, shall not apply in relation to terms and conditions for the products or processes set out in the attached Annex.

3. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc; and

"Network Access" is limited to the provision of LLU Backhaul Services as defined in the annex to the Direction issued by Ofcom on 24 June 2004 under Condition HH1.

4. Except insofar as the context otherwise requires, words or expressions used in this Consent (including the recitals above) shall have the meaning ascribed to them in paragraph 3 above and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this Consent:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
6. This Consent shall take effect on the date it is published and, unless it is withdrawn pursuant to section 49 of the Act, shall remain in force until midnight on 31 December 2005.

Andrew Heaney
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5. Planning processes for backhaul extension services.
6. New process for backhaul regrades.
7. Service level agreements for wholesale backhaul services.
8. Backhaul DC power.

Annex 2

Glossary

This glossary is without prejudice to the definitions used in the notification set out in Annex 1.

Broadband: a service or connection which is capable of supporting always-on services, which provides the end-user with high data transfer speeds.

Co-location: the provision of space at a BT MDF site that enables a competing provider to locate equipment within that MDF site in order to connect to the dominant provider and purchase LLU services. For the avoidance of doubt, co-location includes co-mingling.

DSLAM (Digital Subscriber Loop Access Multiplexer): apparatus used to terminate DSL enabled local loops, which comprises a bank of DSL modems and a multiplexer which combines many local loops into one data path.

Hull Area: the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.

Local loop unbundling (LLU): a process by which a dominant provider's local loops are physically disconnected from its network and connected to competing provider's networks. This enables operators other than the incumbent to use the local loop to provide services directly to customers.

LLU backhaul: A circuit provided by BT that enables the connection of a communications provider's DSLAM to a communications provider's point of connection with BT's network for the purposes of LLU.

Fully unbundled access: the provision of access to a competing provider to the copper wires from the customer premises to a BT main distribution frame ("MDF") that covers the full available frequency range, including both narrowband and broadband channels, allowing that competing provider to provide the customer with voice and/or data services over such copper wires.

Public Switched Telephone Network (PSTN): A telecommunications network providing voice telephony for the general public.

Shared access: the provision of access to a competing provider to the copper wires from the customer premises to a BT MDF that allows the competing provider to provide the customer with broadband services (including voice-over-broadband) while BT continues to provide the customer with conventional narrowband communications.