

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

**Consultation**

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Closing Date for Responses: **17 January 2005**

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## Section 1

# Summary

### Market reviews

- 1.1 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 co-location. The wholesale local access market covers local loop unbundling ("LLU") services.
- 1.2 In the *Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets*, 24 June 2004, 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

- 1.3 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.
- 1.4 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.
- 1.5 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

- 1.6 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.
- 1.7 The Adjudicator, BT and LLU operators participating in the Telecommunications Adjudication Scheme have agreed a set of deliverables for the implementation of fit for purpose LLU products and processes during 2005 (the "set of deliverables").

### The proposed consents

- 1.8 The Adjudicator and BT have raised concerns with Ofcom that the notification periods set out in the relevant SMP conditions could potentially delay the introduction of the agreed set of deliverables.

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- 1.9 Ofcom considers 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 and that therefore it should consent to disapply the notification periods in respect of the agreed set of deliverables until the end of December 2005.

### **Next steps**

- 1.10 Consultation on the proposed consents in this document closes on 17 January 2005. When Ofcom has considered the representations made in response to this consultation, including any comments made by the European Commission, it will decide whether to give effect to its proposed consent, with or without modifications. It will do this by publishing a further statement early next year.

## Section 2

# Background and reasons for proposed consents

## 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 Directives.
- 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.
- 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.

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### **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.
- 2.12 The Adjudicator, BT and LLU operators participating in the Telecommunications Adjudication Scheme have agreed a set of deliverables for the implementation of fit for purpose LLU products and processes during 2005 (the "set of deliverables").

### **The proposed consents**

- 2.13 The Adjudicator and BT have raised concerns with Ofcom that the notification periods set out in the relevant SMP conditions above could potentially delay the introduction of the agreed set of deliverables.
- 2.14 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.
- 2.15 However, given that the set of deliverables has been discussed and agreed over a period of time by relevant parties and that the timely implementation of the set of deliverables will actually benefit those that the relevant SMP conditions are designed to protect, Ofcom considers that it should consent to disapply the notification periods in respect of the agreed set of deliverables until the end of December 2005. Ofcom considers that without such consent the notification periods may unnecessarily delay

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the implementation of fit for purpose products and processes to the detriment of LLU operators and the development of LLU.

2.16 The Adjudicator has provided Ofcom with details of the following 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;
- 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;
- availability of choice between rack mounted and single network termination equipment (“NTE”); and
- co-ordinated delivery of co-location and backhaul.

In respect of LLU backhaul:

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- availability of choice between rack mounted and single NTE;
- co-ordinated delivery of co-location and backhaul;
- improved backhaul forecasting processes;
- 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.

2.17 Ofcom proposes that it consents 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 draft consents are set out in the Schedule to the Notification at Annex 1 of this explanatory statement.

### **Communications Act tests**

2.18 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.

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

2.20 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.

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

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



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### **Next steps**

- 2.22 Consultation on the proposed consents in this document closes on 17 January 2005. When Ofcom has considered the representations made in response to this consultation, including any comments made by the European Commission, it will decide whether to give effect to its proposed consent, with or without modifications. It will do this by publishing a further statement early next year.

## Section 3

# Responding to this consultation

## How to respond

- 3.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Monday 17 January 2005**.
- 3.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- 3.3 Please can you send your response to [selina.chadha@ofcom.org.uk](mailto:selina.chadha@ofcom.org.uk).
- 3.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Selina Chadha  
Competition and markets  
Fourth floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

- 3.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- 3.6 It would be helpful if your response could explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

- 3.7 If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Selina Chadha on 020 7783 4147.

## Confidentiality

- 3.8 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as possible after the consultation period has ended.
- 3.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

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- 3.10 Please also note that copyright in responses will be assumed to be relinquished unless specifically retained.

### Next steps

- 3.11 Following the end of the consultation period, Ofcom will consider all responses to this second consultation, including comments made by the European Commission, and decide whether to give effect to its final proposals, with or without modifications, by identifying relevant markets, making market power determinations, setting conditions and giving directions. It will do this by publishing further notifications and an explanatory statement later in the year.
- 3.12 Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### Ofcom's consultation processes

- 3.13 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.
- 3.14 This consultation is shorter than Ofcom's standard 10 week period because the organisations involved would like the proposals set out in this consultation implemented as quickly as possible.
- 3.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- 3.16 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

## Annex 1

# Notification of proposed Consents

## NOTIFICATION OF PROPOSALS UNDER SECTION 49(4) OF THE COMMUNICATIONS ACT 2003

**Proposals for giving Consents 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 and SMP Conditions G6.1, G8.1, GG6.1, GG8.1, H5.1, H7.1, 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:

1. Ofcom hereby makes, in accordance with section 49 of the Act, the following proposal for Consents 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 and SMP Conditions G6.1, G8.1, GG6.1, GG8.1, H5.1, H7.1, 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.
2. The draft Consents are set out in the Schedule to this notification.
3. The effect of the draft Consents, and the reasons for making the proposals are set out in section 2 of the accompanying explanatory statement.
4. Representations may be made to Ofcom about the draft Consents by 17 January 2005. Representations shall be addressed to the person named in, and otherwise made in the manner set out in, section 3 of the accompanying explanatory statement.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other member State.
6. For the purposes of this notification:
  - “**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
  - “**Ofcom**” means the Office of Communications.
7. Except as otherwise defined in this notification, words or expressions used shall have the meaning ascribed to them in the Act.

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**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

16 December 2004

## **SCHEDULE**

**[Draft] 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 and the attached schedule), 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 and the attached schedule) 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

**[DATE]**

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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 Availability of choice between rack-mounted and single NTE.
- 23 Co-ordinated delivery of co-location and backhaul.



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**[Draft] 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:
- D. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - a. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - b. proportionate to what it is intended to achieve; and
  - c. 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:
  - a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

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- 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 and the attached schedule), 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 and the attached schedule) 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

**[DATE]**

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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. Backhaul forecasting processes.
4. New high speed backhaul products.
5. Backhaul resilience features.
6. Planning processes for backhaul extension services.
7. New process for backhaul regrades.
8. Service level agreements for wholesale backhaul services.
9. Backhaul DC power.

**[Draft] 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:
  - a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

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

- 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 and the attached schedule), 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 and the attached schedule) 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

**[DATE]**

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. Backhaul forecasting processes.
4. New high speed backhaul products.
5. Backhaul resilience features.
6. Planning processes for backhaul extension services.
7. New process for backhaul regrades.
8. Service level agreements for wholesale backhaul services.
9. Backhaul DC power.

**[Draft] Consent to be given to BT under SMP Conditions H6.1 and H8.1, 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:
  - a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

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

- 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 and the attached schedule), 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 and the attached schedule) 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

**[DATE]**



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. Backhaul forecasting processes.
4. New high speed backhaul products.
5. Backhaul resilience features.
6. Planning processes for backhaul extension services.
7. New process for backhaul regrades.
8. Service level agreements for wholesale backhaul services.
9. Backhaul DC power.

**[Draft] 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:
  - a. the technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

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

- 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 and the attached schedule), 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 and the attached schedule) 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

**[DATE]**

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

## **Annex 2**

# **Ofcom's consultation principles**

A2.1 Ofcom has published the following seven principles that it will follow for each written consultation:

### **Before the consultation**

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### **During the consultation**

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses, other than on dispute resolution.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### **After the consultation**

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: 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

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing  Name/contact details/job title

Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

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

### DECLARATION

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

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

Name  Signed (if hard copy)

## Annex 4

# 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.