



BT's use of Cancel Other

Direction amending the Direction of 21 January 2005
regarding BT's use of Cancel Other

Consultation

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Direction modifying a Direction made under section 49 of the Communications Act 2003 (“the Act”) and Condition AA1(a) imposed on British Telecommunications plc (“BT”) as a result of the market power determinations made by the Director General of Telecommunications that BT has significant market power

WHEREAS:

- A. as a result of a market analysis carried out by the Director General of Telecommunications (“the Director”), he proposed on 17 March 2003 and on 26 August 2003, in accordance with section 80 of the Act that BT has significant market power in the markets for, inter alia, wholesale residential analogue exchange line services, and wholesale call origination on fixed public narrowband networks;
- B. the Director having considered every representation duly made, and thereafter on 28 November 2003 pursuant to sections 48(1) and 79 of the Act by way of publication of a notification (“the Notification”), identified the relevant markets, made a market power determination to the effect referred to in recital (A) above and set certain significant market power conditions on BT to take effect on 28 November 2003, such as Condition AA1(a);
- C. by virtue of section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003 the Director was able to exercise powers under the Act for an interim period;
- D. this Direction concerns matters to which Condition AA1(a) relates;
- E. for the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that, in accordance with section 49(2) of the Act, this Direction is: (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; (ii) not such as to discriminate unduly against particular persons or against a particular description of persons; (iii) proportionate to what it is intended to achieve; and (iv) in relation to what it is intended to achieve, transparent;
- F. for the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with the six Community requirements set out in section 4 of the Act and their duties in section 3 of the Act;
- G. on 18 April 2005, Ofcom published a notification of the proposed modified Direction in accordance with section 49 of the Act;
- H. by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the notification, with or without modification, only if:
 - a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- I. Ofcom have considered every representation about the proposed modified Direction duly made to them and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose; and

Therefore, pursuant to section 49 of the Act and Condition AA1(a) in Schedule 1 to the Notification, Ofcom gives the following Direction:

1. BT shall only be permitted to use Cancel Other in the following circumstances:
 - a) where a request for CPS and/or WLR has been made without the Customer's express knowledge and consent ("Slamming"), that is, in the following circumstances:
 - i. where the Customer has never been contacted by the Gaining Provider;
 - ii. where a Customer has been contacted by Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider;
 - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - iv. where the Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider;
 - b) at a Customer's request, where the Gaining Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
 - c) where the telephone line is ceased during the Transfer Period ("Line Cease");
 - d) for other specified reasons not related to a Customer's request to BT to cancel a transfer, and agreed by the CPS and WLR Service Providers Forum (the "SPF");
2. Before using Cancel Other in cases of Slamming and/or Failure to Cancel, BT shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place;
3. After using Cancel Other, BT shall confirm the cancellation of the CPS and/or WLR order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased;
4. Where a Customer is the subject of Cancel Other, BT shall keep a record of all contact made with that Customer during the Transfer Period where such contact relates to BT's use of Cancel Other and BT shall retain such records for a period of at least six months;
5. Subject to paragraph 4 above, BT shall provide, within 15 working days of a reasonable request by a Gaining Provider, save in exceptional circumstances, the following information (in relation to that Gaining Provider):
 - a randomly selected representative sample, covering a period of one month, of the records of contact between BT and a Customer, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available; and

- all records of any contact between BT and an individual Customer specified by the Gaining Provider, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available;
6. BT shall record its reason for using Cancel Other in each case, according to categories (a) (i) to (iv) and categories (b) to (d) set out at paragraph 1 above, and shall within a reasonable period, pass this information to the CPSO or WLR Service Provider;
 7. For the purpose of interpreting this Direction, the following definitions shall apply:
 - a) "Act" means the Communications Act 2003;
 - b) "BT" means British Telecommunications plc, whose registered company number is 1800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989;
 - c) "Cancel Other" means a functionality, which pursuant to this Direction, allows BT to cancel an order for CPS or for WLR during the Transfer Period;
 - d) "CPS" means Carrier Pre-Selection as defined in Schedule 1 to the Notification;
 - e) "CPSO" means a provider of a public electronic communications network that interconnects with BT's network to allow BT customers to subscribe to CPS services provided by means of that operator's network;
 - f) "Customer" means the retail end user;
 - g) "Gaining Provider" means the communications provider that has a direct retail relationship with the Customer, and to whom some or all of the Customer's calls and/or the Customer's line rental will transfer at the end of the Transfer Period, except where the transfer is cancelled;
 - h) "Notification" means the notification made on 28 November 2003 pursuant to sections 48(1) and 79 of the Act which identified that BT had significant market power in the markets for, inter alia, wholesale residential exchange line services and wholesale call origination on fixed public narrowband networks;
 - i) "Ofcom" means the Office of Communications as established under section 1 of the Communications Act 2003;
 - j) "SPF" means the forum for industry discussion and implementation of processes for CPS and WLR;
 - k) "Transfer Period" means the period of ten working days starting from the date on which an order for CPS and/or WLR is accepted by BT;
 - l) "WLR" means Wholesale Analogue Line Rental as defined in Schedule 1 to the Notification;
 - m) "WLR Service Provider" means a communications provider that purchases WLR from BT in order to provide exchange line services to end users;
 8. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this modified Direction and otherwise any word or

expression shall have the same meaning as it has in the Notification, or, if the context so permits, in Schedule 1 thereto, as appropriate;

9. For the purpose of interpreting this modified Direction:
 - a) headings and titles shall be disregarded; and
 - b) the Interpretation Act 1978 (c.30) shall apply as if this modified Direction were an Act of Parliament.
10. This modified Direction shall take effect on the day it is published.

Steve Unger

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

27 July 2005

Explanatory statement

1. "Cancel Other" is a functionality that enables British Telecom plc ("BT") to cancel wholesale orders that have been placed by alternative communications providers for Carrier Pre-Selection ("CPS") and Wholesale Analogue Line Rental ("WLR").
2. A number of CPS communications providers (together "the referring parties") asked Ofcom to resolve a dispute about BT's use of Cancel Other, after negotiations between BT and the rest of the industry (including the referring parties) failed to lead to agreement of a new process for managing customer complaints and cancellations when alternative providers attempt to transfer a customer away from BT.
3. Ofcom published its proposals for resolving the dispute, a draft Direction and draft Determination, on 22 November 2004 (referred to throughout this document as "the consultation document"). (See <http://www.ofcom.org.uk/consult/condocs/cancel-other/c-o/cancel-other.pdf>).
4. After considering stakeholders' responses to the consultation document, Ofcom published a final Direction on 21 January 2005 (referred to throughout this document as "the January Direction") which specified when BT is permitted to use Cancel Other and what information it must provide to its competitors about its use of Cancel Other. Ofcom published a separate Determination on 21 January 2005 resolving the dispute. (See <http://www.ofcom.org.uk/consult/condocs/cancel-other/codir/codir.pdf>.)
5. Subsequent to the publication of the January Direction, the CPS Process Group and WLR Process Group discussed how the January Direction should be implemented. As part of these discussions, which included representatives from BT, CPS providers, WLR providers and Ofcom, it was suggested that the second sub-paragraph of paragraph 6 of the January Direction, which inter alia obliged BT to pass certain Cancel Other information to Gaining Providers (as defined in the January Direction) within a set period of time, was not necessary.
6. Paragraph 6 of the January Direction stated:

"BT shall record its reason for using Cancel Other in each case, according to categories (a) (i) to (iv) and categories (b) to (d) set out at paragraph 1 above, and shall:

 - within a reasonable period, pass this information to the CPSO [as defined in paragraph 8(e) of the draft direction] or WLR Service Provider [as defined in paragraph 8(m) of the draft direction]; and
 - on a fortnightly basis, and within five working days of the end of the relevant two-week period, pass this information to the Gaining Provider [as defined in paragraph 8(g) of the draft direction], where the Gaining Provider is not also the CPSO or WLR Service Provider;"
7. At the CPS Process Group and WLR Process Group it was agreed that the requirement for BT to "on a fortnightly basis ... pass this information to the Gaining Provider, where the Gaining Provider is not also the CPSO or WLR Service Provider" was unnecessary. It was agreed that this information would be passed to the Gaining Provider by the CPSO or WLR Service Provider in the standard course of business. Therefore, it was agreed that as long as BT was passing the information to the CPSO

or WLR Service Provider as required in the first sub-paragraph of paragraph 6, then the second sub-paragraph was not required.

8. It was also agreed that establishing a system to implement the fortnightly reporting direct to Gaining Providers would be costly and time-consuming.
9. As BT had already implemented the processes and systems to comply with all aspects of the January Direction with the exception of the second sub-paragraph of paragraph 6, Ofcom considered that paragraph 7 of the January Direction (which required BT to do the necessary work to implement paragraph 6 within three months of the January Direction coming into force) was unnecessary.
10. Ofcom considered that given these factors it was objectively justifiable and proportionate to amend the January Direction. On 18 April 2005, Ofcom published a draft Direction and explanatory statement (referred to throughout this document as the "April Draft Direction"; see <http://www.ofcom.org.uk/consult/condocs/cancel-other/direction/>) proposing to amend the January Direction. The consultation period for the April Draft Direction concluded on 18 May 2005. Ofcom received no responses to the consultation on the April Draft Direction.
11. Therefore, given the factors discussed above and also in paragraphs 5 to 10 of the April Draft Direction (in particular that no additional work would be required by BT or any other party as a result of the modification; that no party would be disadvantaged by the modification; and that the work that would otherwise have been necessary would be costly and time-consuming) Ofcom considers that it is objectively justifiable and proportionate to publish the modified Direction. The changes between the January Direction and this Direction are:
 - The second sub-paragraph of paragraph 6 of the January Direction has been deleted and the first sub-paragraph merged with paragraph 6;
 - Paragraph 7 of the January Direction has been deleted as that work has either already taken place or will no longer be necessary; and
 - The numbering has therefore been amended to reflect these changes.
12. As the changes do not require BT or any other party to take any action, Ofcom considers that it is objectively justifiable and proportionate for the modified Direction to take effect on the day it is published.
13. For the reasons set out above, Ofcom considers that it has acted in accordance with the six Community requirements set out in section 4 of the Act and their duties in section 3 of the Act.