



Proposal that BT's and
Kingston's price controls in
respect of rental of hardwired
telephone apparatus should be
removed and replaced by written
undertakings

Consultation

Publication date: **10 June 2004**

Closing Date for Responses: **22 July 2004**

Proposal that BT's and Kingston's price controls in respect of rental of hardwired telephone apparatus should be removed and replaced by written undertakings

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Section 1

Summary

What this consultation is about

1. Ofcom is seeking views on its proposals to change the way in which it regulates the rental prices of hardwired telephones.

Hardwired telephones

2. Most UK consumers with a landline use a 'plug and socket' telephone, which they can easily plug in and unplug, and have a terminal connection which allows them to fit and use different telephone equipment ('a universal socket').
3. However, BT and Kingston still have a small number of customers who rent an older style of telephone, which is fixed or 'hardwired' into their premises and cannot be easily removed by hand. Before they can connect and use other telephone equipment, these customers ('hardwired customers') need to have their terminal connection altered to a universal socket. BT and Kingston no longer fit hardwired apparatus.

The current price control

4. BT and Kingston have been required, by means of formal price control licence conditions, which were first put in place in 1993 and 1999 respectively, not to raise their rental prices for hardwired telephones above RPI+0% per year. The price control conditions in place in July 2003 were continued by means of continuation notices given to BT and Kingston under the Communications Act ('the Act'), following the abolition of licences on 25 July 2003. These continued conditions (Condition 67 for BT, Condition 66 for Kingston) are referred to in this document as the 'Continued Hardwired Price Controls'.

The regulatory framework

5. The Communications Act 2003 has changed the way in which communications services, including telecommunications, are regulated. Individual licences made under the Telecommunications Act 1984 have now been replaced in part by General Conditions made under the Act.
6. However, there are a number of specific conditions previously included in some individual licences which cannot be replaced by new conditions under the powers contained in the Act without first conducting a market review. Such conditions include the Continued Hardwired Price Controls.
7. Ofcom cannot leave the Continued Hardwired Price Controls in place indefinitely. They need to be removed as soon as practicable and can only be replaced by new conditions if, having reviewed the relevant market, Ofcom finds that the communications provider is dominant, that is, it has a certain degree of market power known as 'Significant Market Power' ('SMP').
8. Under section 93 of the Act, Ofcom is able to impose certain types of conditions in respect of hardwired telephone rentals where it finds that the communications provider

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has SMP in the relevant market. Under section 93 of the Act, Ofcom can set SMP apparatus conditions which:

- require the communications provider to maintain separate accounts in relation to hardwired telephones; and/or
- impose price controls.

Ofcom's regulatory principles

9. Ofcom's approach to regulation is to operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required. Ofcom is also committed to seeking the least intrusive regulatory mechanisms to achieve its policy objectives.

Ofcom's proposal

10. Ofcom believes that this is an area requiring continued consumer protection, particularly because:
 - there is no option to buy hardwired apparatus, only to rent;
 - rental prices appear high, in relation to the costs to the provider;
 - hardwired customers have often been paying rent for many years (BT last installed a hardwired telephone over 20 years ago); and
 - customers may be deterred from requesting that their hardwired terminal connection be converted to a universal socket where the provider makes a charge for conversion.
11. However, in keeping with its regulatory principles mentioned above, Ofcom believes that its objectives to protect consumers and give incentives to consumers to change to universal sockets can be best achieved through informal regulation at this time.
12. Preliminary discussions with BT and Kingston indicate that they are prepared to give undertakings that will help reduce the number of customers with hardwired apparatus and ensure that rental prices of hardwired telephones do not increase by more than RPI + 0% per year.
13. Ofcom therefore proposes to:
 - remove the Continued Hardwired Price Controls on BT and Kingston; and
 - obtain written undertakings:
 - from BT and Kingston not to raise rental prices of hardwired prices by more than RPI + 0% per year;
 - from Kingston to provide free socket conversions upon request; and
 - from BT to provide free socket conversions to elderly customers and customers it considers 'vulnerable' upon request, and to publicise the availability of free conversions appropriately.
14. In making this proposal, Ofcom has taken into account that the undertakings are wider-ranging than the conditions which Ofcom could impose following a market review.

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Next steps

15. Interested parties are invited to comment on the proposal contained in this document no later than 22 July 2004. Arrangements for submitting comments are detailed in Section 4.

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Section 2

Hardwired Telephones

What is a hardwired telephone?

16. Most UK consumers with a landline use a telephone handset which they can easily plug in and unplug from the wall ('a plug and socket telephone'). These customers also have a terminal connection which allows them to fit and use different telephone equipment ('a universal socket').
17. However, a small percentage of BT and Kingston's customers continue to rent older style telephones, which are fixed or 'hardwired' into their premises.
18. Section 93 of the Communications Act 2003 states:

'...a telephone is hardwired to an electronic communications network where, in order for it to be used with that network –

 - a. *it has to be physically attached to apparatus comprised in the network; and*
 - b. *the attachment has to be effected by a process that requires the use of a tool.'*
19. Hardwired customers need to have their terminal connection altered to a universal socket before they can connect and use other telephone equipment, eg a new telephone handset, a fax machine or a personal computer.
20. BT and Kingston no longer install hardwired apparatus.

Background to the hardwired conditions

21. Under the Continued Hardwired Price Controls, BT and Kingston must ensure that they do not increase any periodic or other charge relating to hardwired telephone rentals 'by more than the amount of the change in the Retail Prices Index' in the relevant 12 month period.
22. The former telecommunications regulator, Oftel, was concerned about the level of BT's rental charges for hardwired telephones, bearing in mind that it was the only provider of such apparatus (with the exception of Kingston in the Hull area) and imposed the price control in 1993. As the only provider of hardwired telephone rentals in the Hull area, Kingston's licence was modified in 1999 to include a similar price control.
23. When Oftel reviewed the fixed telephony market in 2002, it concluded that BT's charge for socket conversion might prevent customers from upgrading and provide BT with an opportunity to raise rental charges above what would be the competitive level. Oftel therefore decided that the RPI+0% control should remain. However, Oftel said that, if BT were to offer free socket conversions on a permanent basis, it would propose to waive the control.

BT data

24. As at 31 October 2003, BT had approximately 162,000 hardwired telephones in total. This figure is steadily declining; by 31 December 2003, it had fallen to approximately

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156 000. This represents significantly less than 1% of its total customer base. Further key facts are:

- About a quarter of BT's hardwired customers are retired.
- BT last installed a hardwired telephone in, or around, 1981.
- Residential customers pay a rental charge of £ 11.00 or £13.00 plus VAT per year depending on the type of hardwired handset. Over 99% pay £11.00.
- Business customers pay a rental charge of £ 14.60 or £16.60 plus VAT per year depending on the type of hardwired handset. Over 99% pay £14.60.
- Rental prices for hardwired telephones have remained static for the last five years. This means that, whilst it has not reduced its prices in absolute terms it has not increased them in line with inflation.
- BT charges £25 plus VAT for socket conversions. It waives this charge where the hardwired apparatus is faulty or the customer is 'vulnerable', ie where the customer needs a universal socket because of 'illness or impairment'.

Kingston data

25. As at the end of November 2003, Kingston had about 3200 hardwired customers. This represents about 2% of its residential customers. Further key facts are:

- The date that Kingston last installed a hardwired telephone is not known but, as with BT, is likely to have been a number of years ago.
- Kingston charges the same for rental of hardwired telephones as it does for ordinary plug and socket telephones, ie £15 plus VAT per year.
- Kingston offers free socket conversions upon request from any hardwired customer. If the conversion involves additional work, it may make a time-related charge. However, Kingston has advised Ofcom that in practice additional work is typically not required.

Consumer protection

26. Ofcom notes that the number of hardwired customers is relatively small and continues to fall.

27. However, Ofcom believes that these customers still need protection, for the following reasons in particular:

- hardwired customers cannot buy their telephones outright and have often been paying rental for many years;
- the costs to BT and Kingston of supplying and maintaining hardwired telephones are low in relation to the associated profits;
- if hardwired customers want to stop paying rental and buy their own handsets, they first need to get the hardwired termination point converted to a universal socket; and
- hardwired customers may be deterred from socket upgrades where there is a charge for this.

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Section 3

Regulatory options

Option 1: Retain the continued provisions (no change)

28. Under this option, the Continued Hardwired Price Controls would simply continue.

Advantages

29. This would have the advantage of not increasing the current regulatory burden upon BT and Kingston.

Disadvantages

30. This option is not permissible under the Act. Paragraph 9(10) of Schedule 18 of the Act requires Ofcom as soon as reasonably practicable after giving a continuation notice, to carry out an analysis of the market which is identified in the notice, to take all steps necessary to enable it to decide whether or not to set an 'SMP apparatus condition' by reference to that market for the purpose of replacing the continued provision and finally to decide whether or not to impose such a condition.

31. It is therefore not possible for Ofcom to leave the continued provisions in place indefinitely – it must either remove them altogether or, having conducted a review of the relevant market, replace them with SMP apparatus conditions.

32. This is not a viable option and is included here purely for completeness.

Option 2: Conduct a market review and, if appropriate, set SMP apparatus conditions under section 93 of the Act

33. As set out above, under paragraph 9(10) of Schedule 18 to the Act, Ofcom has a duty to conduct a formal review of the relevant market as soon as reasonably practicable after giving the relevant continuation notice (however, this duty does not apply where Ofcom has already given a discontinuation notice with regard to the continuation notice in question - see paragraph 9(13) of Schedule 18 to the Act and further below). There are then three possible outcomes:

- Ofcom finds that the communications provider (BT or Kingston) does not have SMP;
- Ofcom finds that the communications provider has SMP but decides not to impose an SMP apparatus condition; or
- Ofcom finds that the communications provider has SMP and decides to impose an SMP apparatus condition under section 93 of the Act.

34. As previously established by Oftel, the rental of hardwired telephones forms a distinct economic market from markets involving other types of equipment rental. Kingston and BT are the only communications providers that rent out hardwired telephones to end-users in their relevant geographical areas (the Hull area and the rest of the UK respectively). It is therefore very likely that, if Ofcom were to carry out a market review, it would find that each has SMP in the defined market (although Ofcom cannot fetter its discretion in this regard).

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35. Ofcom might then decide to set SMP apparatus conditions, having considered the following matters in particular:
- hardwired customers cannot buy their telephones outright and have often been paying rental for many years;
 - the costs to BT and Kingston of supplying and maintaining hardwired telephones are low in relation to the associated profits;
 - if hardwired customers want to stop paying rental and buy their own handsets, they first need to get the hardwired termination point converted to a universal socket; and
 - hardwired customers may be deterred from socket upgrades where the communications provider makes a charge for the work.

Advantages of conditions

36. Under section 93 of the Act, Ofcom can set SMP apparatus conditions which:
- require the communications provider to maintain separate accounts in relation to hardwired telephones; and/or
 - impose price controls.
37. Formal regulation has the advantage of certainty and enforceability. Whilst accounting separation would probably not be proportionate in the context of hardwired telephones (as this represents a relatively small part of both BT's and Kingston retail businesses), a formal price control set at the current level of RPI + 0% would ensure that hardwired customers were protected against non-inflationary increases in rental charges.
38. Ofcom might decide to go further and set more rigorous price controls to prevent even an index-linked increase in rental prices, perhaps even requiring BT and Kingston to drop their rental prices in nominal terms.

Disadvantages of conditions

39. In order to set SMP apparatus conditions under section 93 of the Act, Ofcom would first need to conduct a market review. This would be a resource-intensive exercise and might be considered disproportionately burdensome, bearing in mind the small proportion of BT's and Kingston's customer base affected and the possibility of alternative measures.
40. Also, a price control alone would provide only limited consumer protection. Hardwired apparatus constrains end-users' choices: for example, it is not compatible with technologies such as internet access or text-relay services and hardwired customers do not have the choice of buying their handsets outright.
41. Ofcom therefore believes that not only is there a good case for controlling increases in rental prices but also hardwired customers should be encouraged as far as possible to upgrade to a universal socket. Ofcom's view is that SMP apparatus conditions are unlikely to be the most appropriate means of providing such incentives.

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Option 3: Obtain firm commitments from BT and Kingston, and remove the continued provisions

42. Under this option, Ofcom would remove the continued provisions without conducting a market review on the basis that firm but informal commitments, ie written undertakings, were provided by BT and Kingston regarding hardwired telephones. Ofcom considers that it has this option in light of paragraph 9(13) of Schedule 18 to the Act, which removes the duty to conduct a market review where Ofcom has previously given a discontinuation notice with regard to the continuation notice in question (in this case the continuation notices given to BT and Kingston relating to the Continued Hardwired Price Controls).
43. Preliminary discussions indicate that:
 - BT and Kingston are willing to agree not to raise rental prices for hardwired telephones by more than RPI + 0% per year;
 - BT is willing to agree to provide free socket conversions to elderly and vulnerable customers upon request, and to publicise the availability of free conversions appropriately; and
 - Kingston is willing to agree to provide free socket conversions to all hardwired customers upon request.

Advantages

44. This undertakings are wider-ranging than the conditions which Ofcom could impose following a market review.
45. It is consistent with Ofcom's regulatory principles, in particular that Ofcom will:
 - operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and
 - always seek the least intrusive regulatory mechanisms to achieve its policy objectives.
46. In keeping with these regulatory principles, Ofcom believes that its objectives to protect hardwired customers and to give incentives to hardwired customers to change to universal sockets can be best achieved through informal regulation at this time.
47. Ofcom has had preliminary discussions with both BT and Kingston who have informally indicated that they would be content with this approach.

Disadvantages

48. An informal commitment does not carry the legal weight of a regulatory requirement. If BT and Kingston were to renege on their commitments, which Ofcom does not anticipate, enforcement might be a problem.
49. However, Ofcom retains the discretion under the new regime to conduct a formal market review and, if appropriate, impose SMP apparatus conditions.

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50. Ofcom believes that, out of the possible options, this is the most appropriate.

Next steps

51. Interested parties are invited to comment on the proposal contained in this document. Arrangements for submitting comments are detailed in Section 4. If, after taking into account any representations made, Ofcom remains of the view that, rather than Ofcom's setting formal conditions, BT and Kingston should agree to take specified measures in the interests of hardwired customers, Ofcom will:

- obtain appropriate written undertakings from BT and Kingston; and
- give notices to discontinue Continued Hardwired Price Controls, consulting on those notices as required under the Act.

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Section 4

Responding to this consultation

How to respond

52. Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Tuesday 22 Jul 2004**.
53. 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 2) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
54. Please can you send your response to ritu.manhas@ofcom.org.uk.
55. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation:

Ritu Manhas
Content and Standards - Consumer policy
5th floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3806

56. 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.
57. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

58. If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Ritu Manhas on 020 7981 3853.

Confidentiality

59. 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, as soon as possible after the consultation period has ended.
60. 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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61. Please also note that copyright in responses will be assumed to be relinquished unless specifically retained.

Next steps

62. Following the end of the consultation period, Ofcom intends to publish a further paper confirming the approach it will be taking on this issue.
63. 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.

Ofcom's consultation processes

64. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
65. This consultation is shorter than Ofcom's standard 10 week period because:
- the issue affects only a small number of BT and Kingston customers;
 - Ofcom is required under the Act to withdraw continued provisions such as the Continued Hardwired Price Controls as soon as practicable; and
 - Ofcom has already discussed its proposals informally with BT and Kingston.
66. 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. 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.
67. 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

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Annex 1

Ofcom's consultation principles

There are seven principles which we will follow for each written consultation.

Before the consultation

A1.1 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

A1.2 We will be clear about who we are consulting, why, on what questions and for how long.

A1.3 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.

A1.4 We will normally allow 10 weeks for responses.

A1.5 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.

A1.6 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

A1.7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, as soon as possible after the consultation period has ended, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.4 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

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Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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)

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Annex 4

Consultation questions

Question 1: *What is your view on whether BT and Kingston customers with hardwired phones need to be protected?*

Question 2: *Which of the regulatory options listed in Section 4 do you support, and why?*