



BT's response to Oftel's consultation document
"Review of the retail leased lines, symmetric
broadband origination and wholesale trunk
segments markets"

20 June 2003

This paper is the non-confidential version of BT's formal response to Oftel's consultation issued on 11 April 2003.

BT would welcome any comments on its position as laid out in this document which will also be available electronically at <http://www.btplc.com/responses>.

Comments should be addressed to Alan Lazarus at alan.lazarus@bt.com.

Executive Summary

Retail Leased Lines

- BT welcomes the deregulation of the competitive Retail High Bandwidth (HBW) and Very High Bandwidth (VHBW) markets.
- We welcome the proportionate approach taken to remedies for Low Bandwidth (LBW) retail circuits. However, we believe that there are strong grounds for extending deregulation to the LBW market where Partial Private Circuits (PPCs) are nationally available (i.e. for Kilostream and 2Mbit/s circuits).

Wholesale Trunk Segments

- BT considers that Oftel's Tier 1 demarcation point between terminating segment and trunk segment markets constitutes only one possible view of the trunk market.
- BT considers the trunk market is effectively competitive (and hence there is no need for a mandated requirement to provide trunk PPCs). BT has some concerns about Oftel's analysis behind its SMP conclusion – we consider that additional Other Licensed Operator (OLO) information is needed and that BT data may not have been analysed correctly.
- In BT's view, there should be no requirement to provide VHBW PPC trunk segments.

Wholesale Symmetric Broadband Origination

- BT does not agree with Oftel's market definition with regard to *Wholesale Symmetric Broadband Origination*. It goes beyond the European Commission's Recommendation by extending the SMP designation relating to PPC terminating segments to Radio Base Station (RBS) links, Local Loop Unbundling (LLU) Backhaul or Symmetric Digital Subscriber Line (SDSL) services.
- BT strongly opposes the potential extension of regulation to SDSL services, which have not yet been launched at the retail level.
- We also do not consider that BT should be required to provide RBS backhaul links. In BT's view, Oftel has not adequately analysed what BT considers to be a clearly separate retail market segment with strong buyer power driving bespoke solutions. We regard Mobile Other Licensed Operators (MOLOs) as retail customers in this instance and hence do not consider there is a need for RBS backhaul links.
- We welcome the fact that there is no requirement to provide VHBW PPC terminating segments; we additionally believe that the competitive nature of the HBW retail market is understated by Oftel's market share data and hence the HBW PPC remedies, as currently proposed, are not proportionate.

1. Introduction

This paper sets out BT's comments on Oftel's review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets.

Specific comments on the individual markets and answers to Oftel's consultation questions are provided in the main body of the response. However, we have five general comments to make on Oftel's analysis:

- a) A rigorous, evidence-based approach should be taken to the assessment of BT's market power: BT is concerned that the analysis of the competitiveness of the trunk market may be incomplete. This is because we consider that specific additional information on OLO nodes and circuit purchases is needed. We also have some detailed comments on the way in which BT data has been analysed. In addition, BT's view is that specific market analysis should have been undertaken for RBS backhaul link circuits.
- b) Retail regulation should not be imposed where regulation at the wholesale level is sufficient to address any perceived market failure: BT does not consider that there is a need for LBW retail regulation where PPCs have successfully been implemented (i.e. for Kilostream and 2Mbit/s circuits).
- c) Market analysis should be forward-looking: BT feels that insufficient focus has been given to looking at future competitive constraints on BT, rather than current pricing, profitability and market share data. For example, in the retail market, Oftel appears to have focused on historical market share and ROCE data relating to a retail market before the dynamic effects of PPCs are taken into account. Once PPCs have been introduced, the basis for competition exists at the retail level.
- d) Care should be taken when regulating new and emerging markets: BT considers that there is no justification for extending regulation to SDSL, especially before any retail offerings have been launched.
- e) Regulation should not discourage innovation: BT is concerned that the proposed regulation of SDSL could act as a disincentive to innovation. In our view, the proposal to allow MOLOs to be able to obtain PPCs for essentially retail purposes also undermines the PPC regime and weakens infrastructure competition.

2. Retail Markets

2.1 Market Definition

1. Do stakeholders agree with the market definition?

BT supports Oftel's view that the Retail leased lines market can be divided into three separate markets: Low Bandwidth (LBW), High Bandwidth (HBW), and Very High Bandwidth (VHBW). BT agrees with Oftel on the cut-off points between these markets.

2. Is there evidence that might support an alternative view?

BT is not aware of any evidence to support an alternative view.

2.2 SMP Findings

3. Do stakeholders agree with the SMP criteria used by the Director?

BT agrees with the SMP criteria used, but has additional comments below on the use of market share and international price comparison data.

4. Do stakeholders agree with the Director's assessment of SMP in each of the leased lines markets being reviewed?

Oftel states that its intention is to define retail markets in the absence of wholesale remedies in the first instance and subsequently to conduct analysis of market power in the downstream market "in the presence of any proposed regulation in the upstream market". However, in BT's view, Oftel has not fully taken account of the presence of wholesale regulatory measures in all defined retail markets.

We consider that Oftel has not taken due account of the obligations on BT to supply PPCs. In our view, this is a consequence of the fact that Oftel has not conducted a sufficiently forward-looking market analysis.

2.2.1 VHBW

BT agrees that, on the basis of its low market share, it does not have SMP in the VHBW market and supports Oftel's finding.

2.2.2 HBW

Again, BT agrees with Oftel's finding that BT does not have SMP in this market. However, we have some additional comments below on the BT market share figures and international price comparisons quoted by Oftel.

Market Shares

The BT market share figures provided by Oftel (tables B9 and B10) appear to be inconsistent with analysis in the PPC Phase 1 Consultation Direction. Whilst it is difficult for BT to estimate the size of the total market and hence share figures, BT considers that the quoted BT High Bandwidth market shares (given as 42% based on volumes and 47% on revenue) are above BT's true market share.

One possible reason for this is that the bulk of BT high bandwidth sales are to OLOs, not to retail customers. We would expect most OLO high bandwidth sales to be to retail customers, i.e. to end users. This would indicate that BT's share of the end user retail market is likely to be significantly lower than the figures quoted by Oftel. Oftel has previously acknowledged this 'double-counting' issue, but has not addressed it in this consultation.

BT is also concerned that not all OLOs may have responded to Oftel's information requests. This again may lead to inaccurate conclusions being drawn.

International Price Comparisons

BT considers that the international price comparisons quoted by Oftel may overstate BT's pricing. This is because such comparisons may be misleading due to the differing pricing and discount structures in place in different countries.

With respect to BT's pricing, BT would like to clarify whether Oftel has taken into account BT's term and volume based discounts, which can result in a 40% reduction in price. Price comparisons which do not take into account these various discount options may be incorrect.

Below are the figures BT would quote (in Euros) for high bandwidth circuits of the distances quoted, including discounts. Also given are typical prices for 55km circuits which are much nearer the average distance of such circuits:

BT Price Euros	2Km	55Km	200Km
34MBit/s	49,882	78,584	157,108
155 MBit/s	140,505	223,022	448,778
<i>BT Prices assume 10% Digital Discount Options (DDO), 35% term.</i>			
OFTEL Quoted BT Price Euros	2Km	55Km	200Km
34MBit/s	53,464	N.A.	335,778
155 MBit/s	159,817	N.A.	959,064
OFTEL Quoted Average Price Euros	2Km	55Km	200Km
34MBit/s	31,765	N.A.	226,440
155 MBit/s	59,210	N.A.	425,516

In general, BT considers that a basket comparison across a range of circuit types is likely to present a more accurate picture than a comparison based on individual circuits.

2.2.3 LBW

BT does not consider that a forward-looking analysis would lead to a conclusion that BT has SMP in the LBW market. The existence of PPCs means that there is already competition and this competition is likely to increase further.

BT does not consider that Oftel's conclusion that PPCs still represent an immature market is substantiated; there have been in excess of 76,000 PPC sales and this number will clearly increase significantly over the period before Oftel's next Market Review commences. As such, we believe that sufficient wholesale regulation already exists to provide a level playing-field in terms of retail competition - entry barriers no longer exist. Consistency with the approach set out in the EU Directives would therefore clearly suggest that BT no longer has SMP at the retail level where PPCs exist.

5. How do stakeholders think the position is likely to change, if at all, during the next two years?

As indicated above, BT believes that there will be continued growth in the take-up of PPCs, increasing the ability of OLOs to compete in downstream markets. We consider that Oftel should take a forward-looking approach when proposing any SMP designations and regulatory obligations in this Review, as set out in the European Commission's guidelines.

6. What impact, if any, do stakeholders think might be exerted on the market by the dominant provider's position of SMP during the next two years?

The nationwide availability of PPCs makes it impossible for BT to exert any power in the downstream retail market. On the contrary, on the basis that BT retains an SMP obligation in the LBW market over the next two years, we believe that the resultant regulatory obligations are likely to result in reduced customer benefits. For example, requirements to publish prices are likely to continue to lead to 'price following' which dilutes price competition.

2.3 SMP Remedies (LBW only)

7. Do stakeholders agree with the Director's assessment of the appropriate regulatory options for the low bandwidth retail leased lines market?

The Commission has stated that “regulatory controls can only be imposed at a retail level where relevant wholesale or related measures would fail to achieve the objective of ensuring effective competition”. Therefore, in order to impose remedies at a retail level in the leased lines market, Oftel must undertake a forward-looking analysis and show that PPC’s and other wholesale obligations will not be sufficient to enhance competition in the retail market.

The fact that Oftel has concluded that certain retail markets are not effectively competitive at present is not in itself enough to justify the imposition of obligations at a retail level.

Hence, our comments below on Oftel’s proposed remedies are notwithstanding our view that no SMP remedies are needed for retail Kilostream and 2Mbit/s circuits where PPCs already exist nationally.

- BT agrees with the obligation to supply a minimum set of Leased Lines and continue to supply existing 8Mbit/s circuits.
- We do not believe that any express *ex ante* condition on non-discrimination adds anything over and above the powers that Oftel has (and Ofcom will have) under the Competition Act. If any requirement not to unduly discriminate is imposed, any interpretation of ‘*undue* discrimination’ should take into account differing geographic conditions of competition. BT welcomes Oftel’s suggestion that some geographic flexibility in terms of discrimination may be appropriate (para 5.44).
- BT has particular concerns about Oftel’s proposed requirement for BT to offer a retail reference offer and Oftel’s comments regarding volume discounts. These are covered below.

Requirement to publish a Reference Offer

BT has a number of concerns with the draft regulations outlined in Annex D.

In defining the term “reference offer” as “...the terms and conditions on which the dominant provider is willing to enter into an agreement for the provision of a retail leased line” Oftel’s intent appears to be to apply areas of regulation stemming from EU Directives into the service contract between BT and its customers. It is BT’s opinion that this is not necessary. The publication requirements drafted within condition I.4, which are presently met by BT, do not form part of the contract for service and hence are published separately.

BT acknowledges the obligations placed on NRAs to apply elements of the Leased Lines Directive 92/44/EC as referred to in Annex G and, with respect to this Market Review, takes no issue with the continuation

of those publication requirements. However, there is uncertainty over what is the appropriate vehicle to apply those publication requirements that are related to, but do not specifically form part of, the contracted service.

The BT price list clearly covers the pricing and contract term requirements, but it would seem more appropriate that the "General Conditions of Entitlement" should be the vehicle for ensuring the publication of the technical characteristics as outlined in draft condition I.4.2 (a), and the provision and repair timescales outlined in I.4.d and I.4.f. As OfTel is already aware "Supplier Information Notes" (SINs) provide information on the technical aspects and BT believes that SINs should continue to be the publication method for the technical aspects, as they are already familiar and well understood by relevant parties.

With regard to publication of lead times, BT presently publishes the lead times for different services and, within the contract, the reduced charges scheme recompenses for delays in both provision and repair if actual contracted appointed times are not met. As OfTel is aware, BT submits data to OfTel for inclusion in OfTel's annual submission to the European Commission, and in addition BT's quality of service pages on www.bt.com show the general performance of provision and repair as required by the Leased Lines Directive.

By moving these publication requirements into the contract for service, as it appears from the draft condition, OfTel is changing the status of an EU Directive-based obligation to publish a performance measure and formalising it as a provision requirement under contract. If that is the intent, BT would like clarification on the reason for the status change.

The above points aside, BT notes and welcomes the same day notification requirement for publication of prices.

Volume Discounts

BT notes OfTel's comments within paragraphs 5.16, 5.17 and Annex B with respect to its consideration of a separate investigation into "volume contracts". BT does not consider that any investigation is necessary.

<p>8. Do stakeholders consider that there are other regulatory measures that should be imposed in this market?</p>

BT believes that given the conditions of competition that exist, there is no justification for any other regulatory measures to be imposed.

9. What are stakeholders' views on the Director's proposed co-regulatory option for a voluntary customer price guarantee in relation to analogue and 8Mbit/s digital retail leased lines?

Whilst we accept that BT has a significant market share of the analogue private circuit market, it is, as acknowledged by Oftel, a stable but declining market. In this environment, price movements with significant customer impact are unlikely to be necessary under any regulatory regime. However, a cost-oriented regulatory approach necessarily carries an extra burden of administrative, management and system costs to BT and Oftel alike. Hence, we believe a move from the existing price cap regime to a cost-orientation approach to regulation in this type of environment to be unnecessarily heavy handed and disproportionate.

We therefore consider that a co-regulatory approach to pricing of analogue private circuits and 8Mbit/s represents a reasonable balance of pragmatism and flexibility to pricing control. As such, BT would be prepared to implement a voluntary price cap until the end of 2005 of an annual RPI increase on a basket of analogue and 8mbit/s private circuit products. We consider it important that we maintain individual price flexibility within the basket but constrain the overall annual basket price cap to RPI. This in effect moves the existing regime for analogue private circuits onto a voluntary basis and extends it to include 8Mbit/s products.

3. Wholesale Trunk Market

3.1 Market Definition

1. Do stakeholders agree with the market definition?

BT agrees that core, or “trunk”, conveyance constitutes a separate economic market to “origination”.

We consider that BT SDH Tier 1 nodes, and the equivalent in operator networks, are one possible demarcation point between origination and trunk segments. However, in our view, it is also useful to analyse the market independently of any operators’ network to assess the competitiveness of the wholesale trunk market. This is discussed in more detail below.

BT does not agree with Oftel’s expansion of the market definition for wholesale trunk segments to include the Hull area. BT has no Tier 1 node within the Hull area and therefore cannot supply trunk segments in that region. Oftel has concluded that Kingston does not need a trunk network. Therefore, the Hull area is not part of the trunk market.

BT also considers that VHBW trunk segments should be viewed as a separate market. Oftel has concluded that BT does not have SMP in the market for VHBW symmetric broadband origination, and therefore any regulation at the trunk level for these bandwidths would be inconsistent. Furthermore, the nature of the network infrastructure for such services is such that any breakpoint between trunk and termination is much more difficult to draw, and would not bear any relationship necessarily to the SDH Tier 1 node point upon which Oftel bases its analysis of LBW and HBW markets.

2. Is there evidence that might support an alternative view?

As stated above, we consider that the use of Tier 1 equivalent nodes may be regarded as a pragmatic way of demarcating between BT’s “origination” and “trunk” leased line services, allowing historic data analysis techniques to be re-used.

However, BT recognises that a definition of the trunk boundary which relates to specific types of node within BT’s own network must be regarded as arbitrary. This definition has drawbacks including the fact that SDH Tier 1 nodes are defined only for a limited time window – advances in technology inevitably mean that newer generations of transmission network do not necessarily pass through or near to these node sites. Indeed, older generations of network (e.g. the Digital Private Circuit Network used to transport BT’s sub-2Mbit/s services) also have topologies which are not closely related to SDH Tier 1 node

sites. Basing market definition (and pricing structures) on such engineering factors may not be an ideal arrangement and may lead to inappropriate pricing distortions – for example, if SDH node sites change or if new services are developed using newer network technologies, etc. It should be noted that the choice of where BT's SDH Tier 1 nodes were originally sited was made by BT several years ago, based upon various factors (including availability of space in BT buildings, power and ventilation capacity, etc.) none of which would normally be expected to have a significant long term effect on theoretical market definition.

Therefore, there may be benefit in using more independent and transparent methods to define the market boundary – to reflect which routes can be regarded as “trunk” routes, between centres of population chosen on a more transparent basis. Later in this section, we describe an alternative method of assessing market power in the trunk market, based upon analysis of market presence defined by major postcode areas. It may be that a similar approach could be used to define the boundary of the trunk market more robustly.

3.2 SMP Findings

3. Do stakeholders agree with the SMP criteria used by the Director?

BT agrees with the SMP criteria used, but has additional comments below on the use of BT PPC Point of Handover (PoH) data.

4. Do stakeholders agree with the Director's assessment of SMP in each of the leased lines markets being reviewed?

BT does not agree with Of tel's assessment that we have SMP in the Wholesale Trunk Market. This is because, whether based upon Of tel's proposed definition based on BT's Tier 1 SDH node locations, or on other transparent bases (i.e. the post-code area method described below), our analysis set out in this response suggests that the core conveyance market is fully competitive. We also discuss in more detail below our specific comments on Of tel's analysis.

Of tel states (in paragraph B.154) that it has based its conclusion that BT has SMP in the national market for trunk segments on the following factors in particular:

1. Ubiquity of BT's infrastructure and number of routes subject to little or no competition;
2. Barriers to entry;
3. Economies of scale, and;
4. Relatively high percentage of terminating segments with which trunk segments purchased from BT (especially given the charge set by BT).

Our comments on each of these factors are provided below:

Ubiquity of BT's infrastructure and number of routes subject to little or no competition

BT's analysis suggests that, in fact, 98% of Inter-tier 1 routes are subject to competition from at least 1 operator, 87% from at least 2 operators and 71% from at least 3 operators. The basis for this conclusion is explained in more detail below.

Of tel states (in paragraph B.115) that the evidence suggests that there are 26-68% of trunk routes where no competitor exists, and 43-79% of routes on which there is only one competitor.

Of tel quotes these ranges taken from its own analysis based on a range of proximities between 0km and 15km (i.e. Of tel suggests that 26% of trunk routes have no competitors' PoPs within 15km of the T1 node at each end and 68% of routes have no competitors' PoP 0km from each end). From this, Of tel deduces that 26-68% of routes are not subject to competition.

However, we have some concerns regarding the logic behind this analysis. The connection between the competitor network and BT's network does not take place at the T1 node necessarily – Operators can and do interconnect at any SDH node, whether T1, T1.5, T2 or T3. An Operator's entry cost to establish this interconnection is therefore not related to the distance to the T1 node. Additionally, it should be noted that under the main link PPC pricing structure (set out in Of tel's Phase 2 PPC Direction of December 2002), the section of all PPC trunk circuits between the Operator PoP and the nearest BT Tier 1 node is implicitly charged at regulated Terminating Segment rates.

Therefore, in BT's view, proximity of 15km is clearly adequate to indicate that a competitor is able to compete on a route. We consider that the ranges quoted by Of tel are inappropriate and only the lower figure is significant.

Furthermore, BT has replicated Of tel's analysis (the results of which are set out in Table B.5 of Of tel's consultation document), using current data on Tier 1 nodes and Operator PPC Points of Handover. BT's analysis has also taken into account all distances between these nodes (Of tel's analysis appears to have only included distances from operator PoHs to the nearest BT Tier 1 node) and used actual Operator node locations.

This analysis now shows that the corresponding figures are that only 2% of inter-T1 routes have no competitor PoP within 15km of each end, and only 13% have only one competitor present at each end.

In fact, the 2% of routes which this analysis shows to be “not competitive” carry an even smaller fraction of the total trunk traffic volumes – and certainly should not be taken to indicate lack of competition in the whole trunk market.

Furthermore, this analysis is based upon only a subset of Operator network locations - in fact, just PPC Points of Handover. This only forms a subset of those locations at which potential or actual interconnection can take place with Operators' existing networks. Other services (PSTN, ATM) already interconnect at many additional points. If such data was included in this analysis, then an even higher proportion of competitive routes would be seen.

Our analysis is explained in more detail in [Annex 1](#).

To give additional verification to these results and conclusions, BT has also performed an alternative method of analysis. Following the same principle as Oftel uses (i.e. identifying that the competitive status of a route relates to the presence of Operator points of presence at both ends of that route) but replacing the data set of BT's Tier 1 node locations with the complete set of different major post-code areas across the UK. BT has analysed the coverage of all major inter-business routes by other operators. In this way, it can be seen that BT's Tier 1 nodes provide much less coverage of inter-business trunk links than at least three other Operators. This is described in more detail in [Annex 1](#).

In conclusion, BT considers that the inter-BT SDH Tier 1 trunk network is clearly subject to competition on almost every route, and other operator networks have greater coverage.

Barriers to entry

BT does not consider that the barriers to entry in the trunk market are as significant as Oftel concludes (paragraph B.148).¹ Evidence on the breadth and extent of competitor core networks and on the economic considerations involved in the provision of core network infrastructure has been provided in a separate confidential positioning paper submitted to Oftel on 4th June 2003.²

Economies of scale

BT acknowledges that there are likely to be significant economies of scale in the provision of trunk segments. These economies derive from the characteristics of the assets used in the trunk network, which require costs to be sunk.

¹ “it seems certain that the sunk cost required would be very significant”.

² “The Market Reviews & Evaluating the Impact of Supply-side Competition”.

Although Oftel has been unable to estimate Cost Volume Relationships (CVRs) for trunk asset types only, (core network assets have been used as a proxy), the CVRs quoted express the relationship between output and total costs. BT acknowledges that these CVRs are likely to be less than one for these network asset types.

In the main, BT's competitors use similar asset types in the provision of trunk segments (as those listed by Oftel). As such, every efficient operator, including BT, has the potential to achieve similar economies of scale.

BT agrees that other operators have at least the same diversification of products that use the trunk network and, as such, have similar scope to exploit economies of scale.

BT's analysis shows that BT's Tier 1 network can supply trunk links for a lower percentage of routes than a number of our main competitors. The fact that BT's competitors have such ubiquitous networks in trunk suggests that it is economically rational for competitors to build trunk networks rather than buy trunk segments. This would lead one to conclude that BT's competitors are in a similar or better position to exploit economies of scale, i.e. they can achieve similar or better costs than BT for trunk segments.

The apparent advantage BT holds in LBW trunk segments may not derive from the operation of economies of scale. Another explanation might be that most PPCs were supplied prior to the introduction of the Tier 1 pricing breakpoint. The distribution of self-supplied trunk segment services is a reflection of operators' preferences at that time and is not a good indicator of relative scope to exploit economies of scale today (see detailed explanation below in *Percentage of Trunk Segments Purchased from BT*).

In summary, operators use similar assets in the trunk network and therefore have similar potential to exploit economies of scale. The range of services offered by BT's competitors, the ubiquity of their trunk networks and the proportion of trunk segments supplied to other operators that are sub-optimally routed, indicates that BT's position is no stronger than its competitors due to economies of scale and scope.

Access to Capital Markets

Oftel suggests that BT may have better access to capital markets than its competitors, but provides no objective analysis to demonstrate this. However, even if this were the case, easy access to capital markets does not necessarily give an organisation any more market power than its competitors, although an ability to raise funds easily and cheaply may enable its total costs to be lower than those of its competitors. Whether the benefits of relative ease of access to capital are measurable is open to question.

As Oftel points out, other telecommunications companies have undertaken substantial financial restructuring that may give them considerable advantages over BT in some markets, especially where network assets have been written down in their books. This means that although their access to capital markets may still be constrained, their financial structures going forward may enable these companies to compete far more effectively.

Percentage of trunk segments purchased from BT

In BT's view, individual operators have the geographic scope to self-provide much more trunk conveyance than they are currently doing. BT's analysis suggests that while approximately half of new PPCs provided include a trunk segment, if circuits were optimally-routed by operators only 27% of low bandwidth circuits and 41% of high bandwidth circuits would require a trunk segment.

Furthermore, it should be noted that due to the method of definition of the trunk network as being BT's Tier 1 nodes, and the fact that several of these nodes are situated very close together, a large proportion of circuits which pass through the trunk only contain a very small trunk distance – in many cases a few tens of metres. For example, there are two Tier 1 nodes within Cambridge. This means that any PPC circuits from one side of Cambridge to the other will generally include some trunk segment element – and a proportion of the PPC main link radial distance price will reflect the distance between the two T1 nodes.

This is explained in more detail in [Annex 2](#).

<p>5. How do stakeholders think the position is likely to change, if at all, during the next two years?</p>
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As indicated above, BT considers that more than 98% of inter-Tier 1 routes have at least one competitor present.

This suggests that a significant number of circuit trunk segments currently supplied could be carried over alternatives to BT. Based on footprint analysis, it is clear that at least two operators have sufficient geographic coverage to supply approximately 70% of all trunk segments.

This suggests there is scope for the wholesale trunk circuit conveyance market to develop further. The speed of development of this market to date may have been slowed somewhat due to the relative newness of the BT PPC portfolio, and the uncertainty engendered across the industry due to the extensive regulatory investigations in this product area since initial product launch.

However, as demonstrated above and in [Annex 1](#), even without any

wholesale provision, individual operators have the geographic reach to self-provide much more trunk conveyance than they are currently doing.

6. What impact, if any, do stakeholders think might be exerted on the market by the dominant provider's position of SMP during the next two years?

We do not consider that there is scope for BT to exert pressure on the trunk market as we consider that it is already effectively competitive.

3.3 SMP Remedies

16. Do respondents agree that the Director's proposed non discrimination solution is a proportionate remedy for the wholesale trunk segments market?

We do not believe that an express *ex ante* condition on non-discrimination adds anything over and above the powers that Ofcom has (and Ofcom will have) under the Competition Act. If any requirement not to unduly discriminate is imposed, any interpretation of 'undue discrimination' should take into account, amongst other things, differing geographic conditions of competition. BT welcomes Ofcom's suggestion that some geographic flexibility in terms of discrimination may be appropriate.

Further comments on the requirement not to unduly discriminate are set out in [Annex 3](#).

17. What do respondents consider to be the main factors behind the present situation whereby trunk segment products are all or mainly either purchased from BT or self-provided, rather than purchased from other providers?

See above section for discussion on the level of trunk segments purchased from BT.

18. Do stakeholders consider that, on balance, the benefits of a cost orientation obligation in the wholesale trunk segments market outweigh the costs?

BT's opinion is that the obligations that arise from this condition must be reasonable and proportionate with regard to the market definition and the level of competition that exists in the market.

Notwithstanding our view that the trunk market is effectively competitive and hence there is no need for regulated PPC trunk segments, BT

agrees that the PPC prices, published in the BT Carrier Price List, are cost orientated, as per the PPC Phase 2 Determination. BT agrees that were OfTel to demonstrate that SMP exists, it would be appropriate to carry forward the pricing conditions as per the PPC Phase 2 determination. Further comments on specific pricing issues are contained in [Confidential Annex 4](#).

We understand from OfTel that PPC main link pricing is covered by Condition G4.3, which states that 'the Dominant Provider shall apply the amounts set out in Annex B to this schedule in a manner to be agreed from time to time with the Director'. BT considers that an additional paragraph is needed to clarify this point. Specifically, following the PPC Phase 2 Direction in December 2002, BT has implemented the pricing breakpoint, such that the extent of the PPC terminating segment is bounded by the radial distance to the nearest BT Tier 1 node - in accordance with paragraphs 6-12 of that Direction.

19. Do stakeholders agree that, on balance, it would be inappropriate for the Director to require BT to provide advance notification (beyond same day) of changes to prices, terms and conditions in the wholesale trunk segments market?

BT agrees that advance notification would be inappropriate as additional notice periods would potentially stifle or delay development of downstream markets.

20. Do stakeholders agree that 90 days is a reasonable minimum period for notification of new or changed technical information in the trunk segments market?

Whilst 90 days is consistent with current BT licence condition 15 on interface notification periods, the obligation needs to be considered from the viewpoint of what is the minimum necessary to allow an efficient operator to effect changes in its network.

The telecommunications market has changed markedly over the past decade. Telecommunication suppliers must now operate in a global market and therefore production of equipment to proprietary network operator specific specifications is becoming a thing of the past. Equally, the time to market for telecommunications services has been drastically reduced which puts increased pressure on network operators to use equipment that is readily available on the global market, i.e. to use equipment designed to international or industry standards.

In light of this, BT proposes that the minimum necessary notification period should be 28 days where the equipment is designed to international or industry standards and that 90 days should only apply in the rare cases where non-standard equipment is used. Changing the obligation in this manner is consistent with Article 17.2 of the

Framework Directive that requires Member States to encourage the use of standardised equipment and specifications.

Whilst this proposal is potentially already enabled within the proposed SMP Condition AA6(b).1 by the inclusion of the words "Save where the Director consents otherwise..." BT proposes that this condition is reworded to reflect specifically the different notification periods applicable to standardised and non-standardised specifications as this would reflect the minimum necessary obligation, reflect the requirements of the Framework Directive Article 17.2, and remove unnecessary processes in managing notification of technical information.

As BT has highlighted in responses to previous consultations relating to notification period for technical information³, we believe that the UK has had excessive notification periods compared to the rest of Europe. Whilst we acknowledge that the notification periods have been reduced by OfTel as a result of these previous consultations, notification periods in other European countries remain much shorter than the 90 days proposed by OfTel.

Article 7.2 of the Framework Directive requires that National Regulatory Authorities shall co-operate with each other and with the Commission in a transparent manner to ensure consistent application of the Directives. In view of this, we believe it is essential that OfTel monitors the development of specific conditions applying to SMP designated operators across the EU and take appropriate action should material discrepancies in obligations occur. We would anticipate that such action should include revising the UK conditions where necessary.

21. Do stakeholders agree that there are problems with the SoR process in the trunk segments market? What evidence is there to support this?

BT Wholesale products within the proposed markets are generally provided under the Partial Private Circuit Contract, which contains our SoR process. This process is the same as that of the Standard Interconnect Agreement.

In September 2002, following feedback from Operators about the SoR process, BT improved its internal processes to:

(a) ensure that responses are provided within agreed timescales; and

(b) ensure that Operators raising SoRs are given sufficient opportunity to discuss their requirements with the BT personnel considering the request.

³ BT response to Review of Interface Notification Period (ref. NICC DOC 01/052) - 3 September 2001.

BT performance analysis since the process improvements shows that in almost all cases BT is now providing a response within agreed timescales.⁴ In the isolated case where BT has not met the agreed timescale, BT has maintained a dialogue with the customer.

BT explained the above process improvements at the November 2002 Standard Contract Forum. Based on this, Operators agreed that further discussion of any concerns with the SoR process would be deferred for six months. SoR process concerns have not been raised again in this Forum nor in any specific PPC Industry forum. However, BT would welcome further industry discussion on any outstanding process concerns and believes this is likely to be a more efficient means than *ex-ante* regulation of achieving any additional process improvements Operators consider necessary.

In the year between April 2002 and March 2003, BT received 27 SoRs, which is significantly fewer than in previous years. Of these, our analysis shows that 25% were taken into development/launch, and of the 75% which were rejected, only 10% of these were referred to OfTel as a dispute. BT considers that a large number of SoRs received are not well-considered requests.

22. Do stakeholders agree with the outline proposals set out by the Director for regulation of the SoR process in the trunk segments market?

As outlined in our response to Qs 12 and 21, BT does not consider that specific regulation of the SoR process is appropriate. This is because, the principles of providing an acknowledgement, seeking any necessary clarification and providing a response within set timescales, are already covered within the existing contract. We also believe that the very short timescales proposed will not be adequate to allow proper consideration of new requirements and that these limitations are likely to lead to disputes in situations where more considered discussion of the new requirement would be more productive. More detailed comments on the proposals are outlined below. In making these comments, we would like to emphasise that we are nevertheless willing to consider amendments to the current process, but feel that this is best done through discussion of specific concerns.

The amount of time and effort required to consider any new requirement will depend on the complexity of the issue and the clarity of the original request. A problem with any prescriptive SoR timescales is therefore the need to take into account the time that is reasonably required to consider the more complex cases. We do not believe that the current proposal provides a practicable framework for dealing with

⁴ BT responded to approximately 92% of SoRs received between April 2002 and March 2003 within the required 60 day timeframe.

the range of requests we receive. Specific concerns are outlined below.

Acknowledgement

The current contractual response time is 5 working days. We consider that this timeframe is reasonable and do not think there would be significant benefits in reducing the timeframe by 1 day.

1st Written Response

OfTel proposes that BT should respond in writing to the request within 10 working days. Given the complexity of some issues, BT is concerned that this timeframe may not allow sufficient time for a meaningful first response.

2nd Response No Feasibility Required.

OfTel proposes that where a Feasibility Study is not required, terms and conditions are offered within 20 working days of the request. Given the earlier stages outlined above, this allows around 10 working days to define the product, including any necessary supporting process, and produce a new contract, or contract variation, and prices for the product. Again, we are concerned that this timeframe may not be practical for the more complex SoRs. Our view is that the current practice of seeking to agree a development timetable with the requestor based on the requirements of the product concerned, is a more practicable approach.

2nd Response Feasibility Required.

Here we have further concerns, as the proposed timescale is only extended by 10 working days where a feasibility study is required. We do not consider that this will allow sufficient time for a feasibility study in the case of more complex SoRs.

Requests Not Sufficiently Defined

The proposed process does not explain how the timescales would be affected in those cases where the original SoR submitted does not contain enough information to understand the basic requirement.

We recognise that less complex cases can be accommodated in shorter timescales than the current contractual limit. The difficulty is in agreeing a workable definition of 'less complex' and we would welcome discussion on this point. We would be concerned about reducing the current maximum timescales, but BT could consider reducing the average response times. We could also provide OfTel and the other industry players with regular reports on our performance in this area.

Our initial proposals for average response times, with all responses being subject to the existing maximum timescales are as follows:-

Acknowledgement	5 working days from Request.
1st Response	15 working days from the Acknowledgement BT gives written response <ul style="list-style-type: none"> - More information required (SoR will not proceed into the 2nd phase of analysis until the information is received) - Need to consider further - Reject for given reasons
2 nd Response	35 working days from the Acknowledgement Reject as a Regulatory requirement Accept as a Regulatory requirement and agree a timetable for development (this may involve further technical Feasibility work) Reject as a commercial development Accept as a possible commercial development and propose a timetable for further activities including future go/no go decision points.

23. Do stakeholders agree with the Director's assessment of the appropriate regulatory options for the wholesale trunk segments market?

Cost Accounting and Accounting Separation

Oftel notes that the processes of cost accounting and accounting separation are complex and are therefore subject to a separate consultation – “*Financial reporting in SMP markets: A consultation on accounting separation and cost accounting systems*” (the “Financial Reporting consultation”).

In the Leased Lines Market Review, Oftel has made various proposals on cost accounting and accounting separation. These are supplemented by the more detailed proposals of the Financial Reporting consultation. In the time available between publication of the Financial Reporting consultation and the submission of this response, it has not been possible to consider fully the comments made in the “*Retail Leased Lines, Symmetric Broadband Origination and Wholesale Trunk Segments Markets*” consultation in the context of the detail set out in the separate Financial Reporting consultation.

Our substantive response to Oftel’s financial reporting proposals will be made in our response to the Financial Reporting consultation. However, we would make the following preliminary observations in respect of Oftel’s proposals as set out in the “*Retail Leased Lines, Symmetric Broadband Origination and Wholesale Trunk Segments Markets*” consultation.

Oftel is proposing the imposition of a cost accounting system in the markets set out in paragraph 9.6. We refer to our earlier comments on Oftel’s market assessments. For example, we believe that the market

for wholesale trunk segments is competitive and therefore question whether it is appropriate to impose cost accounting obligations in this market. BT proposes that a co-regulatory approach is appropriate for the retail low bandwidth market (analogue and 8mbit services only).

The proposed cost accounting system is intended to demonstrate:

- (i) that the proposed obligations as to cost-orientation on the basis of LRIC (paragraph 9.10 are being met; and
- (ii) that the proposed obligations of the charge control are being met (paragraph 9.9).

We note that where a price cap operates in a market where a cost orientation obligation also applies, then there is the potential for compliance with one obligation to entail breach of the other. We believe that OfTel should review the proposed imposition of both conditions. If OfTel concludes that both conditions are necessary, then there should be an explicit order of precedence to make it clear what happens should the obligations clash.

It is not clear how the proposed cost accounting obligations will demonstrate compliance with the requirement to amend prices consistent with RPI – X. Logically, only information on prices and price changes should be required for this.

In addition, accounting separation obligations are proposed for the markets set out in paragraph 9.19. These are the same markets as identified in paragraph 9.6, to which a cost accounting system is proposed to apply, but with the exclusion of retail low bandwidth market (analogue and 8mbit services only).

We would note our reservations about the need for regulatory remedies to be imposed in respect of wholesale trunk segments.

In paragraph 9.20, OfTel notes that non-discrimination should apply on a service or product basis, such that monitoring cannot be carried out only at the market level. The level to which OfTel proposes that such monitoring be carried out is not clear to BT and we would welcome clarity on OfTel's intent in this matter.

BT believes that it is not appropriate for its charges to its Retail Business to be published as part of the reference offer. Each year BT produces a comprehensive statement of regulatory accounts ("AS") which demonstrates, or in the event of new services can be made to demonstrate, that the external price is the same as that charged to BT's Retail Businesses for the equivalent service. One of the key features of AS is that charges to BT's Business must happen at the external *price*, where an equivalent product exists. These accounts also provide an analysis of the components which are used to build up such services. BT believes that publishing the information in the RO each year as well would not add anything. The AS accounts are a

more useful source of information than simply publishing a transfer charge in a RO. We are therefore of the opinion that the current level of financial reporting is adequate, suitably modified to allow for new products.

As we have previously pointed out, only in the UK and the Republic of Ireland does the NRA require financial information to be made publicly available. We know of no other NRA that requires internal transfers to be made public in the reference offer. This seems an unnecessary requirement on BT, which no other SMP operator in Europe appears likely to experience.

We also note that Oftel has listed 94 network components (Schedule 1, Appendix A as set out in Annex A). This list is substantially the same as discussed between BT and Oftel at the time of the consultation on the Direction of 27 November 2002 following the investigation under Licence Condition 78.14 into BT's regulatory financial statements. It is not clear how, if at all, this list is intended to be incorporated within the proposed cost accounting system. As Oftel is aware, BT would have significant reservations about any requirement to include this list of components within any such system and we would welcome clarity of Oftel's intent.

Eligibility and Scope of obligation to provide Network Access

BT considers that the draft conditions regarding the scope of BT's obligation to provide network access and the definition of the parties to whom this obligation extends should be clarified. The reasons for this are explained in more detail in [Annex 3](#).

Reference Offer

BT has the following two specific concerns with the proposed reference offer:

(1) Transfer Charge Details: BT believes that it is not appropriate for its internal transfer charges to be published as part of the Reference Offer (RO). Each year BT produces a comprehensive statement of regulatory accounts which cover in detail its internal transfer charges. This would be a more useful source of information than publishing a transfer charge in a RO. We are therefore of the opinion that the current level of financial reporting is adequate.

If BT is required to publish this information as part of its RO, we anticipate that significant resource will be consumed explaining BT's internal charging principles to other network providers.

As we have previously pointed out, only in the UK and the Republic of Ireland does the NRA require financial information to be made publicly

available. We know of no other NRAs that require internal transfers to be made public in the reference offer.

(2) KPIs: BT is committed to improving service levels on both retail and wholesale products. However, mindful of the need for ensuring resource expended on service level reporting returns appropriate value, and the fact that detailed issues around service level reporting can involve very complex and labour intensive work, BT would urge OfTel to ensure that regulatory action is only considered as a last resort if co-operative industry discussion has not provided the desired outcome. Furthermore, the scope of any such regulatory requirement would need to be limited to the requirement to show non-discrimination - in line with the motivation for KPI requirements set out by OfTel in the consultation document - which relate solely to transparency and non-discrimination.

BT considers that any requirement for specific KPI reporting should only be mandated after full consideration of the costs and benefits involved - in order to ensure that any required reporting mechanism is proportionate to the end requirement. The costs of producing any such reports will be considered as part of the operational costs of the relevant wholesale products, and would be recovered through normal charges for those products.

BT recognises and underlines the point made by OfTel that it would be impractical to presume that identical processes and systems should be used for services provided to other operators as for those employed for BT's own services. It therefore follows that in some cases the specific performance measures cannot be precisely the same. In such cases, the costs of changing the relevant operational processes in such a way as to enable identical measures may well be disproportionately high, compared to any benefits that might arise from the reporting. KPIs should therefore be "reasonably equivalent" rather than "the same" as a general requirement.

Conditions

Specific comments on the conditions proposed are set out in [Annex 3](#).

<p>24. Do stakeholders consider that there are other regulatory measures that should be imposed in this market?</p>
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No, regulation must be the minimum required to address market failures. In addition, OfTel has imposed a very large amount of new regulatory obligations on this product set in recent months. A period of stability would allow the effects of this to become clearer.

4. Wholesale Symmetric Broadband Origination Market

4.1 Market Definition

1. Do stakeholders agree with the market definition?

BT does not agree with Oftel's market definition with regard to *Wholesale Symmetric Broadband Origination*. This is because it goes beyond the European Commission's Recommendation by including RBS Backhaul circuits, LLU Backhaul and SDSL services within the same market as PPC terminating segments. As explained below, we see no basis for this extension of the market definition.

SDSL

DSL technology can be used to provide part of a PPC, connecting a Serving Exchange to a customer's premises. We have been using HDSL to deliver standard 1Mbit/s private circuits (including PPCs) for some time and would consider using other DSL technologies in future if it became cost effective to do so. The cost benefits of this technology are already included in PPC prices and we would expect future cost savings to be passed on to the customer in a similar way.

BT does not consider that explicit reference to SDSL is necessary in the Leased Lines Market Review. If the service is identical to the current leased lines service, then DSL is just another delivery technology to be included in the average price; it is unusual to define a market by its technology. BT considers it premature to consider regulation of the Datastream Symmetric product currently being trialled. We will set out our views on remedies that could apply to this service in future in our response to the Broadband Market Review.

RBS Backhaul

As stated in BT's response to Oftel's January 2003 consultation on this issue,⁵ we do not consider that the requirements of MOLOs for the purchase of radio base station links (RBS links) meet the criteria of the current Interconnection Directive. In BT's view, Oftel is therefore not empowered to introduce such a requirement under the existing regime and accordingly there is no legal obligation that could be carried forward into the new regime.

BT considers that RBS links fall within a separate retail market segment and that insufficient market analysis has been done to justify a conclusion that RBS links are wholesale circuits, similar to terminating and trunk PPCs.

⁵ See BT's response to 'A dispute between BT and Vodafone regarding wholesale connections between BT's and Vodafone's networks'.

BT's position on this issue is set out in more detail in **Confidential Annex 5**.

LLU Backhaul

In BT's view, LLU Backhaul services should not be considered in this Market Review. This is because, as OfTel acknowledges in paragraphs 3.64 to 3.67, asymmetric broadband services relying on LLU do not fall under the same retail market definition as leased lines.

2. Is there evidence that might support an alternative view?

See our response to Question 1 above.

4.2 SMP Findings

3. Do stakeholders agree with the SMP criteria used by the Director?

BT agrees with the SMP criteria used but we have concerns regarding OfTel's analysis of RBS links, LLU Backhaul and SDSL.

4. Do stakeholders agree with the Director's assessment of SMP in each of the leased lines markets being reviewed?

BT does not agree that OfTel's SMP findings for PPC terminating segments should apply to RBS links, SDSL and LLU Backhaul. This is because, for the reasons set out in our response to question 1 above, we consider that RBS links and LLU Backhaul services fall within separate retail markets to retail leased lines and it is premature to consider regulation of BT's SDSL services currently being trialled.

We agree with OfTel's assessment of SMP with respect to LBW PPC terminating segments, however we consider that the HBW PPC terminating segment market is more competitive than OfTel's analysis suggests.

As explained in section 2.2.2 above, BT retail HBW market share figures provided by OfTel (tables B9 and B10) appear to be inconsistent with the analysis in the PPC Phase 1 Consultation Direction. Whilst it is difficult for BT to estimate the size of the total market and hence share figures, BT considers that the quoted BT HBW market shares, (given as 42% based on volumes and 47% on revenue), are above BT's true market share. We give one possible reason for this in section 2.2.2.

In addition, while we acknowledge that there are likely to be significant economies of scale in the provision of wholesale symmetric broadband origination services, we consider that BT's scale advantages are much less for HBW services than in the case of LBW services. This is

because BT's customer base for HBW services is smaller than that for LBW services.

We have two further points to make concerning Oftel's assessment of SMP in PPC terminating segments:

(1) Geographic Variations

As Oftel acknowledges in paragraph A19, different parts of the UK exhibit different competitive conditions. Oftel have proposed that in the trunk segment market BT should be permitted some pricing flexibility to respond to local variations in the level of competition.

In BT's view, similar flexibility should be permitted for PPC terminating segment pricing – particularly, in the HBW market. As set out in BT's separate confidential positioning paper submitted to Oftel on 4th June 2003,⁶ there is significant competitive access infrastructure in many metropolitan areas.

(2) Access to Capital Markets

Easy access to the capital markets does not necessarily give an organisation more market power than its competitors, although an ability to raise funds easily and cheaply may enable its total costs to be lower than those of its competitors.

As Oftel states, some telecommunications companies have undertaken substantial financial restructuring that may give them considerable advantages over BT in some markets. The writing down of their network asset base may enable these companies to compete more effectively as the need to gain a return on capital invested is lessened.

5. How do stakeholders think the position is likely to change, if at all, during the next two years?

In BT's view, there is likely to be increased competition in the HBW market.

6. What impact, if any, do stakeholders think might be exerted on the market by the dominant provider's position of SMP during the next two years?

BT considers that the remedies proposed in the LBW market will address any market dominance concerns in this market. In the HBW and VHBW markets, we consider that current levels of competition and the scope for this to increase in future mean that BT is unlikely to be

⁶ "The Market Reviews & Evaluating the Impact of Supply-side Competition".

able to impact adversely on the workings of the competitive marketplace.

We consider that Oftel's proposals for RBS links have the potential to distort incentives for competitive entry and investment in the market.

4.3 SMP Remedies

10. Do stakeholders agree that BT should be required to provide more notice of changes to prices, terms and conditions in the wholesale low bandwidth symmetric broadband origination market than in the wholesale high bandwidth symmetric broadband origination market, due to the differences in degree of SMP in those markets?

BT agrees that greater visibility of changes to prices, terms and conditions should be provided where this is appropriate to ensure transparency. BT agrees that a shorter notification period is appropriate in the HBW market, given the greater scope for competition in that market.

However, we would anticipate that any new services launched would be subject to a 28 day notification period as set out in License Condition 69.4. This reduced period will enable BT to respond more quickly to the needs of wholesale customers for new services.

11. Do stakeholders agree that 90 days is a reasonable minimum period for notification of new or changed technical information in the wholesale low and high bandwidth symmetric broadband origination markets?

See answer to Q20.

12. Do stakeholders agree that there are problems with the SoR process in the symmetric broadband origination markets? What evidence is there to support this?

See response to Q21. However, note that these comments are in relation to PPC terminating segments only as, for the reasons set out above, BT does not consider that remedies for SDSL, RBS Backhaul circuits or LLU Backhaul services should be considered in this review.

13. Do stakeholders agree with the outline proposals set out by the Director for regulation of the SoR process in the symmetric broadband origination market?

See response to Q22. However, note that these comments are in relation to PPC terminating segments only as, for the reasons set out

above, BT does not consider that remedies for SDSL, RBS Backhaul circuits or LLU Backhaul services should be considered in this review.

14. Do stakeholders agree with the Director's assessment of the appropriate regulatory options for the wholesale low and high bandwidth symmetric broadband origination markets?

RBS Backhaul/SDSL/LLU Backhaul

BT does not consider that the proposed remedies should apply to RBS Backhaul circuits, LLU Backhaul services or SDSL services for the reasons set out above. Our detailed comments on the RBS Backhaul proposals are set out in [Confidential Annex 5](#).

Basis of charges obligations (cost orientation and a cost accounting system)

BT agrees that the PPC prices, published in the BT Carrier Price List, are generally cost orientated, as per the PPC Phase 2 Determination. BT agrees that it is appropriate to carry forward the pricing conditions as per the PPC Phase 2 determination. Further comments on specific pricing issues are contained in [Confidential Annex 4](#).

We acknowledge that the basis of charges, as defined in condition G3, seems consistent with a finding of SMP.

BT acknowledges that most, but not all, new services in the market should be covered by the same pricing rule. In addition to recovery of costs appropriate to new wholesale services, BT considers that careful consideration needs to be given to the appropriate pricing rules for new products that are the result of innovations in technology. For example, BT would not expect cost-orientation principles applicable to PPCs to apply to SDSL, as this could impact negatively on competitive entry and investment in that market.

BT agrees that proportionality is of the utmost importance with regard to cost accounting obligations. A detailed response on this issue is outlined in BT's response to Q23 above.

Price Control

BT agrees that it is appropriate to impose an interim price change while the longer term price control is being assessed and that the imposition of an RPI-X reduction to PPC prices, with X set at 7%, is a reasonable basis for the interim change. BT believes that it is reasonable that the interim change is set until August 2004.

We have supplied a list of prices that we believe contain errors for Oftel's consideration. BT would like these prices to be amended in the

final version of the conditions imposed as a result of this Market Review, as indicated in [Confidential Annex 4](#).

BT agrees that price caps can promote efficiency, but would like to point out that in the case of PPCs any incentives generated will depend on the form that the price control takes. In particular, BT would strongly support a form of price control that recognises differentials in cost movements in different parts of the network and potential differentials in cost movements for different services.

With respect to ISH and CSH services, BT has very limited scope to influence costs for these services since they are mainly made up of supplier input costs. Any price control in this area should recognise this.

Undue Discrimination

BT's comments on the requirement not to unduly discriminate are set out in [Annex 3](#).

Eligibility and Scope of obligation to provide Network Access

BT considers that the draft conditions regarding the scope of BT's obligation to provide network access and the definition of the parties to whom this obligation extends should be clarified. The reasons for this are explained in more detail in [Annex 3](#).

Reference Offer

See comments in response to Q23.

Conditions

Specific comments on conditions proposed are set out in [Annex 3](#).

15. Do stakeholders consider that there are other regulatory measures that should be imposed in this market?

No.

5. Kingston

25. Do stakeholders agree with the Director's assessment of the appropriate regulatory options for the retail minimum set of leased lines market in Kingston upon Hull?

26. Do stakeholders consider that there are other regulatory measures that should be imposed in this market?

27. Do stakeholders agree that 90 days is a reasonable minimum period for notification of new or changed technical information in the Kingston upon Hull wholesale market?

28. Do stakeholders consider that there are problems with the SoR process in the Kingston wholesale market? If yes, are these problems larger or smaller than those in the BT wholesale markets? What evidence is there to support this?

29. Do stakeholders agree that it would be disproportionate at this stage to introduce regulation of the SoR process in the Kingston upon Hull area?

30. Do stakeholders agree with the Director's assessment of the appropriate regulatory options for the wholesale leased lines market in Kingston upon Hull?

31. Do stakeholders consider that there are other regulatory measures that should be imposed in this market?

BT does not operate in the Kingston area and is therefore not in a position to comment on specific problems in that area. We note that Oftel appears to have carried out a cost-benefit analysis in relation to the SoR process for Kingston. We would welcome a similar approach in all areas where regulation imposes a cost burden on operators, and where the test of proportionality is key..

Annex 1 – Comments on Oftel Inter-Tier 1 Route Competitiveness Analysis

Route Analysis – Network Based

As leased lines are fixed point-to-point links, a route-by-route analysis seems the appropriate approach. Taken to the extreme, all leased lines are in separate markets as a route from business A to business B is not a substitute for one from A to C. However, this is unworkable due to the numbers involved – assuming 2.5 million potential business sites in the UK gives 3 billion possible routes.

The trunk market aggregates these routes to provide connections between concentrations of demand. Any definitions of these centres of concentrations will be arbitrary, but Oftel's choice of BT's SDH Tier 1 nodes as these centres seems inappropriate. These locations have been chosen to create an efficient network and are not based solely on the level of originating traffic but also transit traffic and the availability of suitable buildings etc.

Figure 1 shows the London to Birmingham corridor where many alternative network operators have built. Business density has been plotted to help identify centres of concentration. Areas of white have fewer than 20 businesses in a 1km square, whereas those shown in black have in excess of 80 business sites.

BT's SDH Tier 1 nodes are marked, and labelled, in red. 5km radius circles have been added to aid identification. The green diamonds show the locations of OLO PPC points of handover. In addition to the towns with Tier 1 nodes, there are a number of other centres which act as aggregation points for trunk networks, many of which are already served by alternative operators. In this example, Warwick, Bedford, Aylesbury and St Neots are all served by at least 2 alternative operators although, as they are not Tier 1 nodes, they have been discounted from Oftel's analysis.

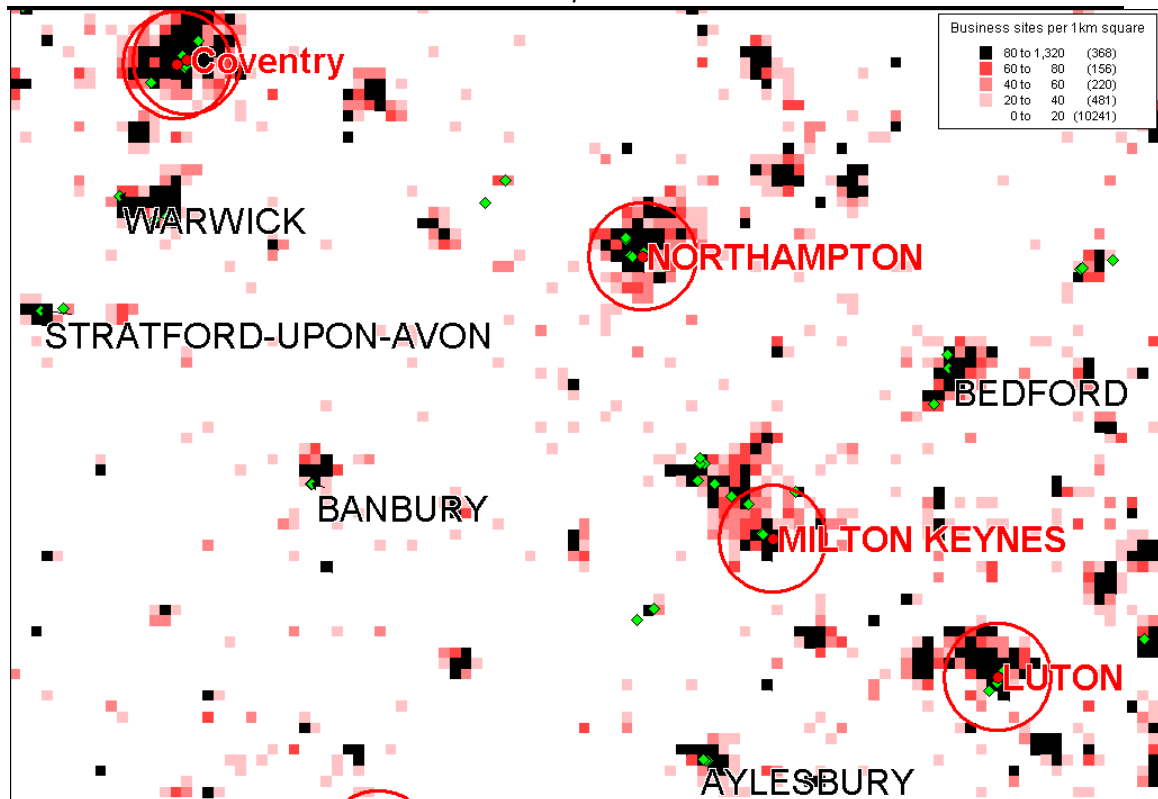


Figure 1: Business density and Trunk network nodes

Figure 1 also highlights the effects of using relatively small distances around network nodes. BT’s Tier 1 node serving the Milton Keynes area is located in an existing exchange building in the south of the city. Many of the OLO PoHs are located in the north of the city 5km to 10km from the BT Tier 1 node, but still in an area of high business density. All of these nodes serve the trunk market from Milton Keynes. OLOs have made a commercial decision on the location of their nodes based on the factors outlined above, and not on the location of the BT Tier 1 node.

To better understand Oftel’s view, we have attempted to replicate Oftel’s analysis of a route-by-route basis between pairs of nodes (Oftel’s table B.5 and associated paragraphs). We have presumed that this analysis is based on information provided by BT which shows the parent T1 node for each of the 858 PPC points of handover and their radial distance from the respective local serving exchange to the parent BT T1 node.

Table 1 – Table B.5 published by Oftel

		Proximity in km				
		0	1	5	10	15
Number of others present	0	68%	61%	39%	34%	26%
	1	79%	73%	52%	50%	43%
	2	84%	80%	68%	57%	50%
	3	88%	84%	73%	63%	63%
	4	92%	89%	78%	66%	66%

OfTel's table establishes the numbers of competitors per inter Tier 1 route, derived from the list of distances from the BT local serving exchange of each point of handover to the parent (nearest) Tier 1 node. Direct use of this data (as performed by OfTel for Table B.5) does, however, produce distorted results as:

- Only the distance to the parent T1 is listed, some of the PoHs will be within 15km of a number of T1 nodes. This is illustrated in figure 2.
- The distances quoted are those from the BT local serving exchange for the OLO PoH and not the location of the OLO node. (This factor should have a less significant effect on the results as some distances will be shorter whereas others will be longer.)

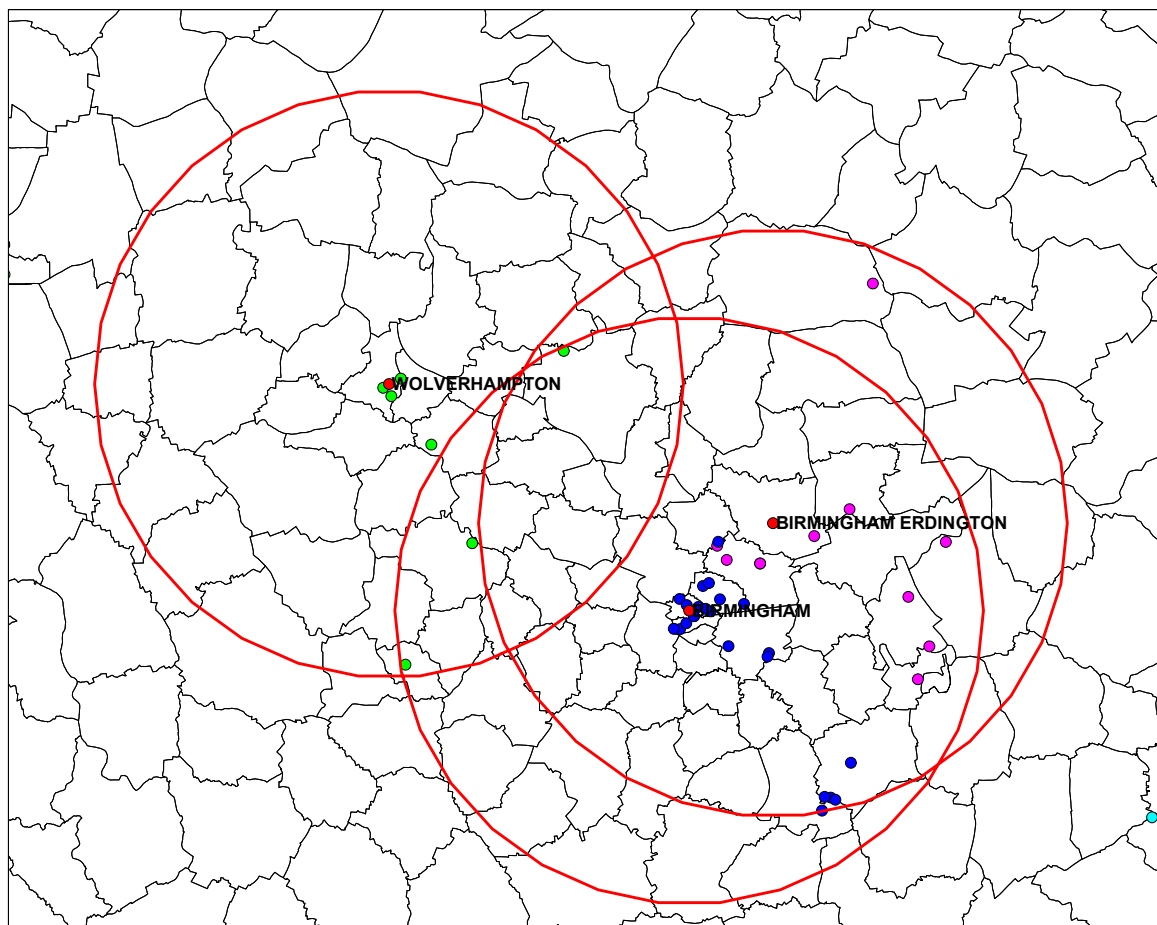


Figure 2: Location of Tier 1 nodes and PPC PoHs

Figure 2 shows the locations of 3 of BT's Tier 1 nodes as red dots. A 15km circle has been drawn around each. The other dots show PPC PoHs and are colour-coded to show the parent Tier 1 node (nearest to each serving exchange). PoH parented on Wolverhampton are coloured green, Birmingham blue and Birmingham Erdington purple. This shows that most PoHs parented onto Birmingham are also within 15km Erdington, thus meaning more OLOs would be able to provide routes to and from Erdington.

BT therefore repeated this analysis with modifications to address the 2 issues highlighted above.

- The actual location of the PoH was used (based on the location of its postcode), rather than that of its local BT serving exchange. As no OLO nodes are actually located within a BT building, the “0km” column becomes redundant.
- For each tier 1 node, all PoHs within 1, 5, 10 or 15km were selected rather just those parented onto the given Tier 1 node.

With this corrected input data the following results are obtained:

		Proximity in km				
		0	1	5	10	15
Number of others present	0		66%	27%	7%	2%
	1		88%	46%	21%	13%
	2		95%	67%	39%	29%
	3		99%	82%	60%	50%
	4		100%	92%	75%	64%

Table 2 – Inter Tier 1 route competition based on OLO node locations

This shows a significant change to the results presented in the consultation document, and that there are only 2% of inter Tier 1 routes that could not be served by an alternative network, and 87% of routes have 2 or more alternative carriers (using the 15km break-point).

Looking at the route-by-route data, this 2% is dominated by routes from a single Tier 1 node (Irvine) at which only one alternative Operator is present. Therefore all routes from Irvine to a Tier 1 node at which this Operator is not present will therefore have no alternative provider - this accounts for 32 routes (1.4% of the 2278 routes).

To aid understanding, figure 3 shows the results of the node to node matrix. Each of the 68 rows represents routes from a given Tier 1 node, each column represents routes to a given node. Routes are represented twice in the matrix (A to B and B to A) hence the symmetry along the black diagonal representing the X to X route which has been discounted as not a valid trunk route. Routes which are not served by competition are highlighted in red.

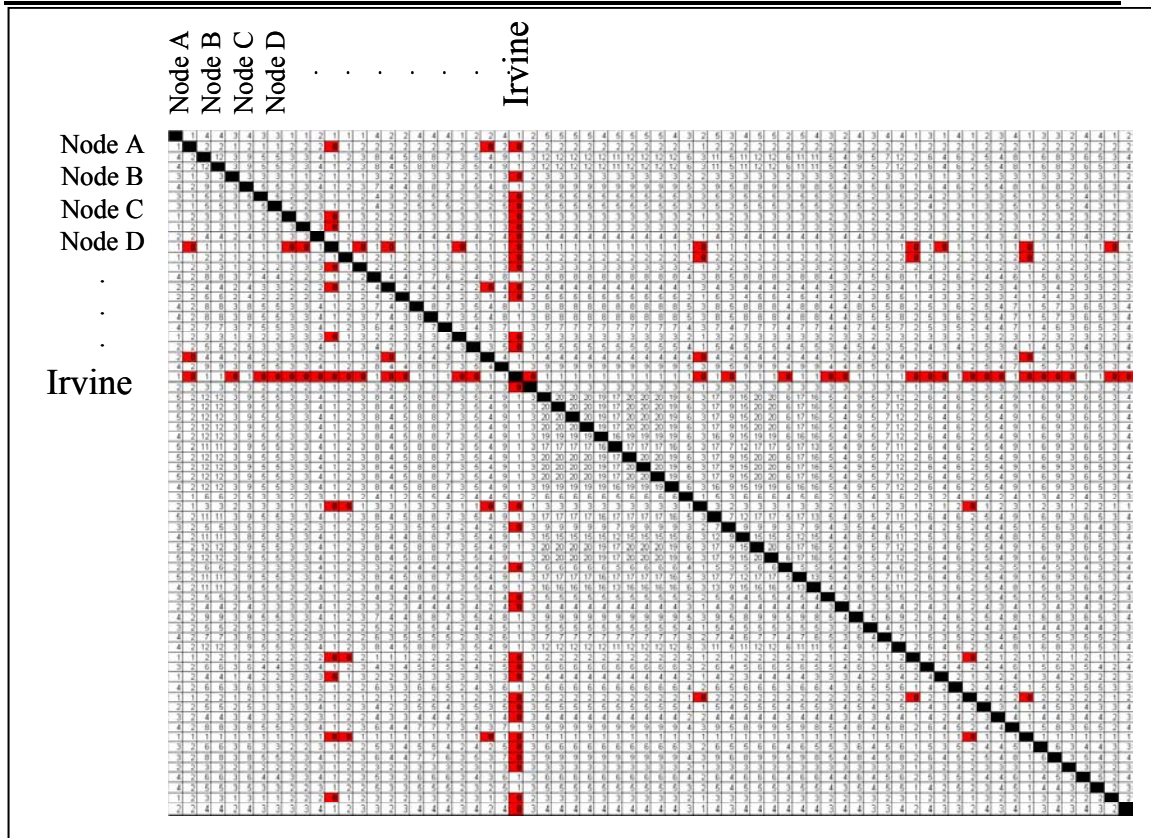


Figure 3: Tier 1 to Tier 1 route matrix

Although routes to and from Irvine dominate the routes classed as non-competitive, they are likely to account for a very small percentage of the actual market due to the demand for leased lines originating from the Irvine area. A more appropriate solution to the analysis of the UK trunk market should therefore take into account the number of businesses around each node.

Following Oftel's chosen analysis method shows that 98% of BT's inter tier 1 routes face competition from other operators (and these routes represent more than 98% of trunk by volume of traffic/bandwidth).

Inspection of the above tables may lead to the question of whether routes should only be considered competitive if Operator points of connection are closer to BT nodes than the 15km benchmark selected. However, in BT's view it would not be appropriate to base any conclusions on anything shorter than the 15km distance.

A detailed examination of the equivalent matrix for OLO nodes within 5km of each Tier 1 shows that routes with OLO PoH within 5km are again dominated by a very limited number of nodes. 24% out of the 27% are those to and from 9 Tier 1 nodes. These are predominately "overflow" sites to off-load traffic from city centre nodes – Dalkeith and Musselburgh for Edinburgh; Clyde Valley and Irvine for Glasgow; Newport for Cardiff, Woolwich, Potters Bar and Wood Green for London. The ninth node is Bishops Stortford in the Northern Home Counties, although other operators serve the area with nodes nearby at

Stansted (6.7km), Harlow (9.8km) and Furneux Pelham (9km), a small village at the intersection of electricity transmission lines.

The lack of OLO PoHs within short distances of these nodes cannot therefore be relied upon as a lack of competition in the UK trunk routes market as it is a result of the restrictive way the market has been defined around a limited number of one operator's nodes. Using short distance only exaggerates the problems of this as it further limits the percentage of the market covered, for example only 27% of UK businesses are within 5km of BT's Tier 1 nodes resulting in only about 7-8% of inter-business routes. Even at 15km there is still only 53% of businesses and hence about 28% of routes covered.

Furthermore, it should be noted that OLOs do not connect exclusively to BT's T1 nodes and so close proximity to them is not important. For example, if an OLO has a cluster of customers 20km from a BT T1 node, then it will site its PoH near the customers and buy short PPCs between the customers and their PoH. It would not site its PoH close to the T1 node as it would then have to buy 20km PPCs to each customer.

Verification of above result using alternative "Post-code Based" Approach to assessing trunk competition

BT believes that there is a need to analyse the market independently of any of the operators' networks if any robust unbiased analysis of trunk competitiveness is to be performed. Any choice of aggregation areas is arbitrary. If a smaller number of areas or nodes are chosen to define the "trunk", each area becomes very large and the node within an area may not realistically "serve" all customers within the area. If larger numbers of areas are chosen, the analysis becomes increasingly complex and it would be increasingly possible for a single node to "serve" adjacent areas.

In our view, postcode areas provide an independent set of areas that is a good compromise, and does represent transparently chosen centres of populations between which routes can be regarded as "trunk". Figure 4 shows these areas across the UK, and figure 5 shows them superimposed on the London to Birmingham corridor example used earlier in this annex.

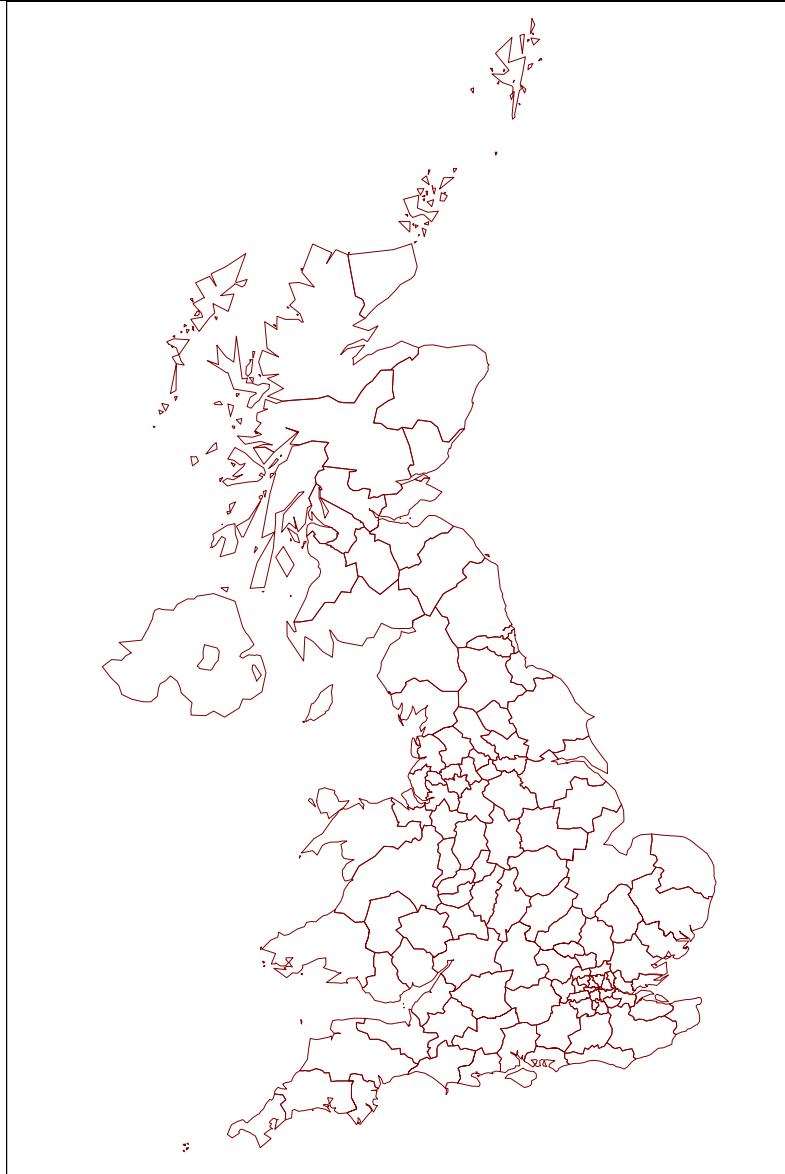


Figure 4: UK postcode areas

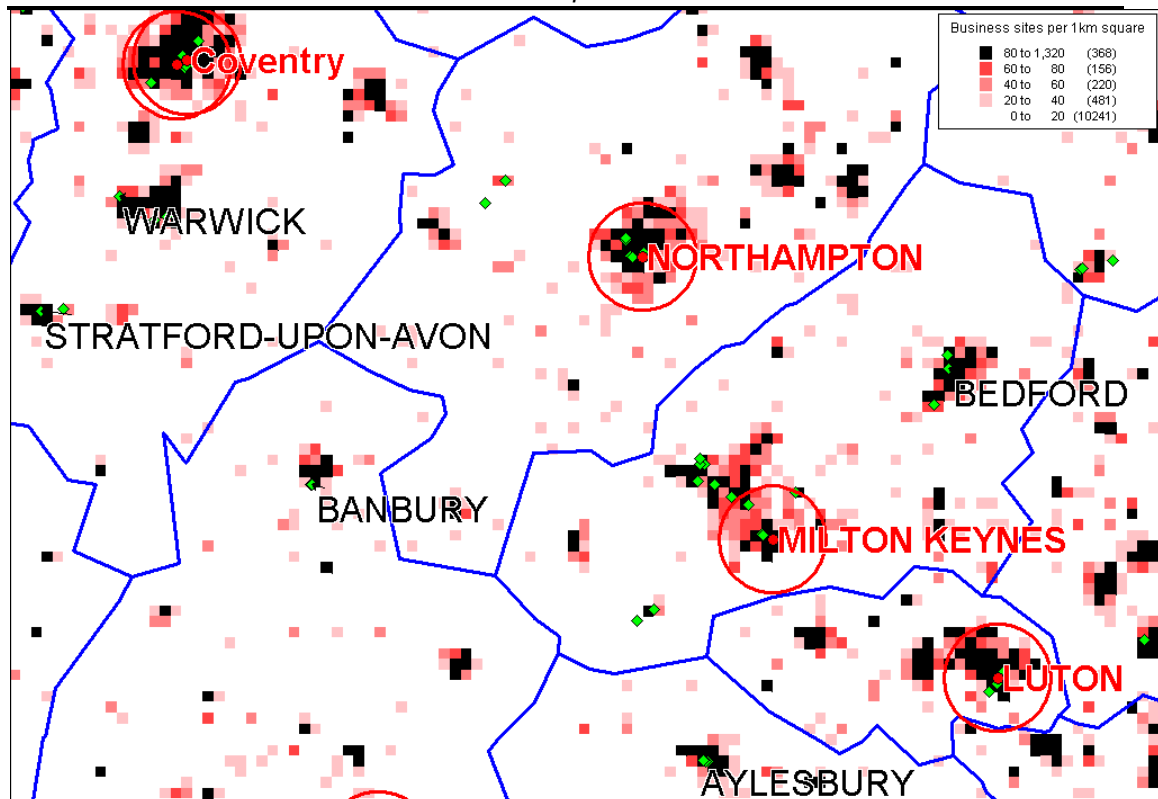


Figure 5: Postcode areas in London-Birmingham corridor
(Circles are 5km in radius)

There are 121 postcode areas in the UK (excluding Guernsey, Jersey and Isle of Man). There are therefore 7,260 inter area routes. There will be some areas with little demand for trunk services. To compensate for the effects of this, the number of business sites within each area has been calculated (from base data taken from a proprietary market database). The relative “size” of each route is therefore the product of the number of businesses served by each end.

An operator’s ability to serve the trunk market can therefore be calculated by:

- identifying the areas it has a presence in,
- calculating which inter area routes it can therefore provide,
- weighting the routes by their “size” (number of inter-business routes, and
- expressing this as a percentage of the total number of inter business routes (2,960 billion, given 2.5 million business sites and excluding routes between businesses in the same area).

This analysis produces an inter-area routes matrix where each intersection represents one of the possible routes. If the areas are ordered by number of business sites, then the most attractive routes would be in the top left of the matrix, whilst the less attractive routes would be in the bottom right. As there are 121 rows and columns, it is not possible to include a readable version in this response. Figure 6 shows the top left-hand corner. Figure 7 shows the blank matrix colour-coded by the “attractiveness weighting factor” for each route. The red routes represent the 25% most attractive routes, the orange

the next 25%, yellow the 3rd 25%, green the next 15% and white the remaining 10%.

PC area	Sites	BT	B	W	SWM	S	N	G	NGL	BS	GU	BN	LE	RG	NE	TN			
		79,725	65,433	63,039	47,932	42,899	41,595	37,962	37,934	37,863	37,568	36,886	36,142	36,095	34,747	33,897	33,338	33,172	
BT	79,725																		
B	65,433																		
W	63,039																		
SW	47,932																		
M	42,899																		
S	41,595																		
N	37,962																		
G	37,934																		
NG	37,863																		
L	37,568																		
BS	36,886																		
GU	36,142																		
BN	36,095																		
LE	34,747																		
RG	33,897																		
NE	33,338																		
TN	33,172																		

Figure 6 – Extract of inter postcode area matrix

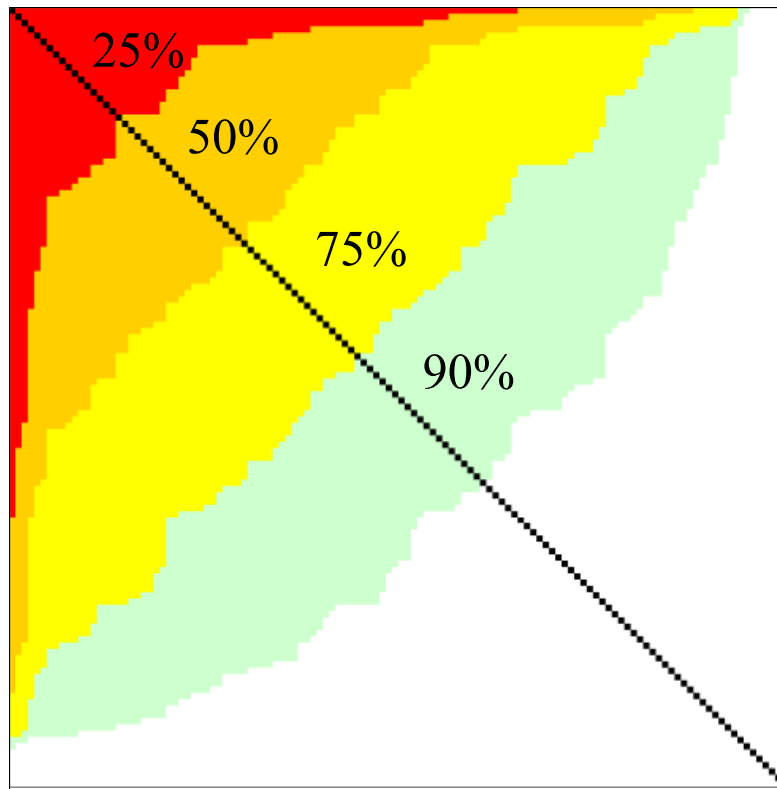


Figure 7– Complete inter postcode area matrix

Routes served by each of the operators can be marked on this matrix. The matrices showing the coverage of these areas by each operator can be

constructed and BT has shared this information with Ofcom separately. The overall coverage figures for these major competing operators are shown in figure 8. This shows that BT's Tier 1 network can supply trunk links for a lower percentage of routes than any of three other operators, and significantly fewer than one of these.

BT therefore does not have SMP in the wholesale trunk market if its inter Tier 1 network is considered as its trunk network.

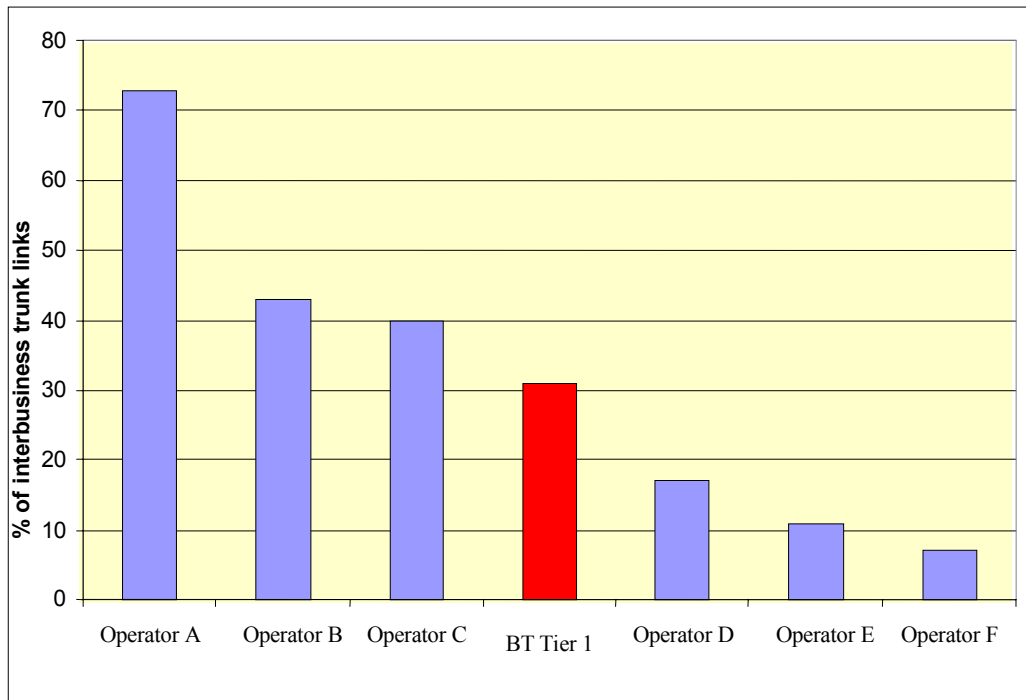


Figure 8: Coverage of inter-business routes based on Postcode Area analysis

Annex 2 – PPC Trunk Segments sold to other operators by BT

Oftel has analysed the provision of PPC trunk segments sold to other operators by BT (sections B.116 to B.124) and has presented its results in Figures B.5, B.6 and B.7 showing that a high percentage of PPCs are provided with trunk segments. Oftel has then coupled this with a statement that OLOs “generally prefer to self-provide trunk segments where they can” (paragraph B.118) to provide evidence that OLOs are reliant on BT’s trunk network.

BT has examined the underlying circuit data to understand if OLOs are in fact choosing to self-provide trunk segments. Before presenting this analysis, it is worth noting that the majority of these circuits have been purchased before the implementation of the Tier 1 price scheme suggested by Oftel. As such, it is not unsurprising that circuits are not optimally routed for this pricing scheme. There may also be cases where it is cheaper for an OLO to route circuits to one of their nearest PPC nodes despite this not being in the same Tier 1 serving area, and hence incur a trunk charge for a portion of the circuit.

For each of the major operators, BT has calculated whether the circuit could be routed without using a PPC trunk segment. The circuits sold with trunk segments have been split between those that need to use BT’s trunk segments and those which do not.

The analysis has been carried out for the 4 operators that accounted for about 90% of the circuits at the time of the data extraction. Based on this analysis and the conservative assumption that the remaining 10% of circuits are optimally routed, we have obtained a lower limit for the number of circuits non-optimally routed and produced modified versions of figures B.5 to B.7, in figures 9,10 and 11 below:

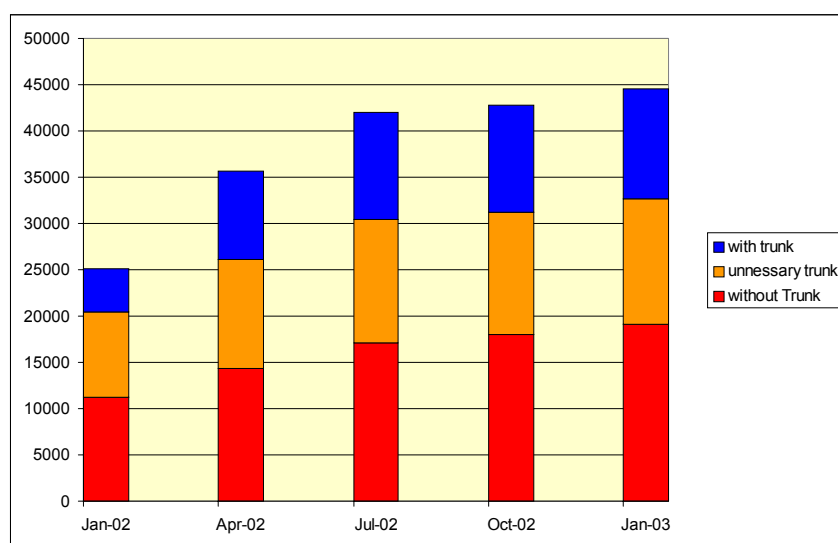


Figure 9: Low bandwidth PPCs – numbers provided with and without BT trunk segments identifying non-optimally routed circuits

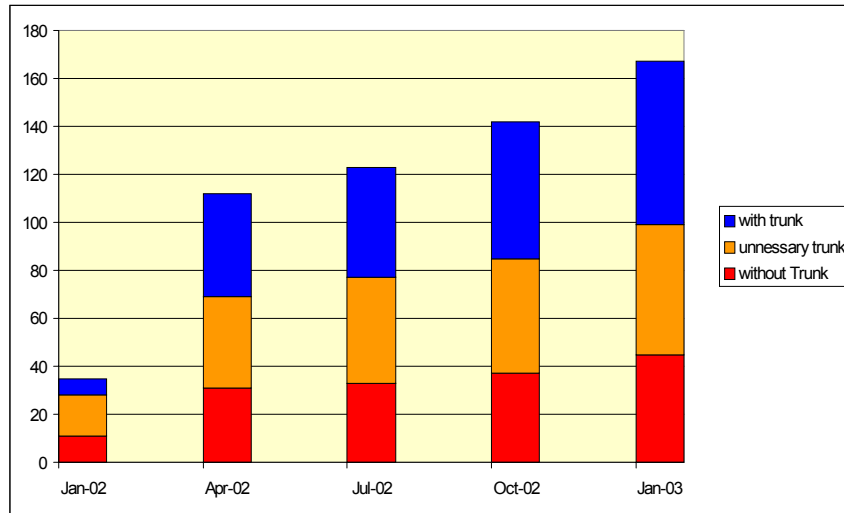


Figure 10: High bandwidth PPCs – numbers provided with and without BT trunk segments identifying non-optimally routed circuits

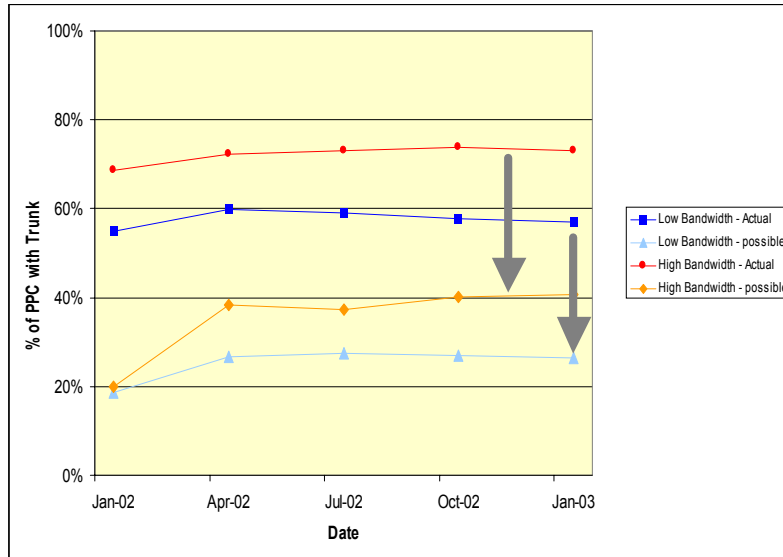


Figure 11: PPCs - % provided with and without BT trunk segments – actual and possible

Annex 3: BT comments on Annex E

BT has both general and specific comments on the conditions proposed. These are set out below:

Eligibility and Scope of obligation to provide Network Access:

Oftel proposes, in the conditions mandating the provision of Network Access (G1 and H1) and in the Directions annexed to the consultation documents concerning the provision of PPCs, RBS backhaul and LLU backhaul, to require BT to provide this access to “Third Parties” who reasonably request such access. Third Parties are defined in the relevant annexes as “persons”. This appears to require BT to provide wholesale access to any person that reasonably requests such access.

However, the term “Network Access”, which is not defined in the annexes but is defined in the Communications Bill at clause 148 (this definition is incorporated into the Conditions in Annex D), is applicable only to providers of electronic communications services and networks or providers of associated facilities. BT suggests that Oftel inserts the following definition into schedule 1 of Annex D.

“Network Access has the same meaning as in the Act”

BT suggests that the definition of “Third Party” is amended in G1 and H1 as follows:

“Third Party means a public electronic communications network operator, a public electronic communications service provider or a provider of Associated Facilities for the purpose of the provision of public electronic communications networks or services”

In chapters 6 and 7 of the consultation document, Oftel justifies the imposition of these obligations on the grounds that “This regulation would allow operators to make reasonable requests to negotiate innovative low and high bandwidth products which will enable them to compete in the retail markets, encouraging competition at the retail level.” Oftel acknowledges that the “focus of the market review has generally been on retail leased lines as the relevant final service.” However, Oftel then considers that “it is possible that there are other end uses in relation to which wholesale services falling within the relevant markets might be requested”. Oftel indicates that such requests may be considered reasonable.

BT is of the view that Oftel, before proposing to mandate wholesale access in relation to retail markets other than the retail market for leased lines, is obliged to identify the retail markets and demonstrate that the remedy is *inter alia* proportionate to the problem (if any) identified in that retail market. Oftel has not, in the course of the current Market Review analysed any retail markets other than the market for retail leased lines. Oftel has not demonstrated that SMP in the markets for wholesale symmetric broadband

origination and wholesale trunk segments restricts or distorts competition in other downstream markets. BT considers that Oftel, having only justified the imposition of these obligation in terms of enhancing competition in the market for retail leased lines should limit eligibility to the forms of access it is proposing to direct BT to provide to the category of persons that compete to provide these retail services.

Accordingly, BT requests that the definition of "Third Party" in the directions in Annex E insofar as they relate to the provision of PPC's, and LLU backhaul is amended as follows: "Third Party means public electronic communications network provider"

BT also notes that in paragraph 4 of Annex E and Annex H, Oftel states "A circuit deemed to be a Qualifying BT Retail Private Circuits under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit".

In addition, paragraph 5 of Annex E and Annex H state "Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits".

Paras 20 and 21 of the Phase 2 PPC Direction refer to Schedule 2 Public Operators and non-Schedule 2 Public Operators. It is clear that these phrases will have no application in the new regime. BT presumes that Oftel must mean that eligible operators in the new regime will be operators who provide public electronic communications networks and that all other operators will not be eligible and it is on this basis that BT would be applying the Directions under the new regime. However, BT would request Oftel to make this clear.

Undue Discrimination

Notwithstanding our view that competition law is sufficient to deter unjustifiable discriminatory practices with a material impact upon the market, BT considers that it is appropriate that the obligation requires BT to refrain only from "undue" discrimination. As Oftel has recognised on a number of occasions and most recently in the non-infringement decision against BT in relation to UK SPN, there can be objective reasons for attaching different terms and conditions to products and services aimed at different categories of customer.

In BT's view, "undue" also relates to the materiality of the conduct in question. Where a strategy adopted by BT has no material impact upon the market, we believe that Oftel ought to find that the conduct is not unduly discriminatory.

Draft Direction imposed under Conditions G1 and H1

These comments refer to the Draft Direction imposed under Condition G1 and H1 for both symmetric broadband origination and wholesale trunk segments at pages 392 and 426 of the Consultation document:

- BT considers that the definition of a Partial Private Circuit should be amended to include the definition of PPCs set out in Oftel's March 2001 Direction.
- We understand from Oftel that PPC main link pricing is covered by Condition G4.3, which states that 'the Dominant Provider shall apply the amounts set out in Annex B to this schedule in a manner to be agreed from time to time with the Director'. BT considers that an additional paragraph is needed to clarify this point.
- We believe that the reference to High Bandwidth Quote on Line should be removed from paragraph 34 as this tool is used purely for 622Mbit PPCs, which under the Market Review BT is obliged to provide.
- BT is concerned that the Reduced Requisite Period (RRP - per Operator timescale targets for each bandwidth) proposal set out in paragraph 42 may be too prescriptive. This is because there appears to be varied requirements across industry. For example, Oftel proposes a target for 70% of circuits to be delivered within 20 days. However, one Operator has stated that it would prefer orders in 25 days not 20. To meet the varied requirements of OLOs, BT proposes that the RRP requirement should be to require BT to deliver 70% of an Operator's circuits in an RRP period between 20 working days and 30 working days for appropriate products (and correspondingly for 34-155Mbit), with the actual target to be agreed with the OLO concerned.
- Paragraphs 42 & 44 refer to Reduced Requisite Period being measured over a three month billing period. However, BT reports on RRP performance on a quarterly basis starting in July 03 and OLOs may have several bills for PPCs. Therefore, in BT's view, a more practical measurement period would be BT reporting periods (April - June, July - Sept, Oct- Dec, Jan - March). This approach has already been discussed and agreed with Industry at a workshop on 1st May 2003.
- Paragraph 36 on Expedited Orders refers to a Committed Delivery Date to be set within 50% of the standard Requisite Period. As with our RRP point above, we consider that this requirement may be too prescriptive. Rather, we would suggest that an improved definition of Expedite timescales would be as follows:
 - 10 day products – expedite is delivery at day 1-9, with the actual target to be agreed with the OLO concerned.

- 30 day products – expedite is delivery at day 1 –20 (the minimum RRP leadtime), with the actual target to be agreed with the OLO concerned.

- Paragraphs 38 & 39 (circuit compensation) 48 & 49 (Network Infrastructure compensation): BT has interpreted the explanation of circuit compensation in the Phase 2 Direction to be that the compensation payable as a percentage of monthly rental covers all aspects of the circuit delivery including any PDH or SDH equipment.⁷ Therefore, BT would like clarity on OfTel's interpretation of Network Infrastructure in Paragraphs 48 & 49. Currently, Third Party Links are included in the table of lead times. However, BT considers that 'Network Infrastructure' should be limited to Point of Handover Equipment, as non-delivery of Third Party Links (e.g an NTU, 4x2 or HDSL) would already be compensated for under circuit compensation.

Draft Direction imposed under Condition G3

These comments refer to the Draft Direction imposed under Condition G3 for both symmetric broadband origination & wholesale trunk segments.

- Paragraph 6 – Currently, the Retail circuits that can be migrated to a PPC must have been installed or in the course of provision on 23rd December 2002. Paragraph 6 extends that date to 24th July 2003, however only for non-annex 2 Operators who subsequently are able to obtain PPCs or who are taken over by PPC Operators. To ensure parity across other PPC Directions, BT considers that this date should remain at the 23rd December 2002 for all OLOs.

Draft Direction imposed under Condition G7

These comments refer to the Draft Direction imposed under Condition G7 for both symmetric broadband origination & wholesale trunk segments.

- BT notes that three reports that were previously only required 'on request' are now part of the regular reporting package required:
 - list or reasons for rejections of orders;
 - list of reasons for faults; and
 - list of reasons for any Committed Delivery Dates beginning 10 working days later than the relevant Requisite Period.

BT does not believe that these reports should form part of the standard reporting as it is not clear that the significant costs involved in preparing them are justified by clear benefits. Rather, we would prefer to continue to produce these reports only when a specific issue is identified.

- BT also notes that there is now a requirement for reports to be published on a website. Whilst BT has no objection to publishing an

⁷ Paragraphs 6.432 and 6.433 refer only to late delivery of POC equipment.

aggregated report of PPC performance, it may not be appropriate to include individual Operator reports (even anonymously). We have no objection to producing such reports but consider the OLOs concerned may have confidentiality concerns, as it will probably still be possible to identify the Operator concerned.

Requirement to publish technical information

Conditions G8 and H7 require BT to publish a written notice of new or amended terms 90 days prior to entering into an Access contract to provide new Network Access or 90 before the amended terms and conditions come into effect. Notwithstanding BT's views that 90 days is an excessive notification period, G8.4(c) and H7.4(c) do not seem compatible with G8 and H7 respectively. If publication is required 90 days prior to provide New Network Access or amending existing terms and conditions the clock must start running at a specific time, whereas the intention seems to be that operators may request copies at any time.

In the interests of clarity, the obligation to provide the Notice on request should be separate from the obligation to publish 90 days prior to the entry into new Access Contracts or the amendment of existing terms and conditions.

PSTN-related Conditions

Conditions G.5.2(h), H4.2(h), G5.2(j), H4.2(j), G6.3(f) and H5.3(f) all appear to be PSTN-related conditions which we do not consider applicable to PPCs.