BT's response to Oftel's consultation document "Review of the Wholesale International Services markets and related remedies" issued on 17th March 2003

30th May 2003

BT would welcome comments on this response. Comments should be addressed to Teresa Wright, BT Group Regulatory Affairs, PP202 Holborn Centre, 120 Holborn, London EC1N 2TE, or by email to teresa.wright@bt.com.

A non-confidential version of this response will be made available electronically at http://www.btplc.com/responses.

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1. EXECUTIVE SUMMARY

BT has been in discussion with Oftel for a number of years on the need to remove *ex ante* regulation on International Direct Dial (IDD) calls at both the retail and wholesale level. This has resulted in some welcome deregulation of some routes. However, the new regime, with an entirely new mechanism for the assessment of regulatory intervention, gives a further impetus to this process. BT is encouraged by Oftel's proposals in two areas:

- an increase in the number of routes proposed to be effectively competitive - around 95 per cent of the overall UK wholesale IDD market; and

- the removal of all *ex ante* regulation, particularly price publication obligations, on competitive routes, as required by EU Directives.

However, BT considers that the accompanying analysis and conclusions do not go far enough. Oftel notes the collection of some relevant information is difficult to obtain, but we do not consider this provides a good reason for not recognising the highly competitive nature of wholesale IDD services. Specifically, Oftel's analysis gives too little weight to vital market developments revealing competition at the wholesale level, such as:

- wholesale international services being supplied indirectly through arbitrage opportunities presented by alternative routing methods such as VoIP, hubbing and international private leased circuits; and

- refiling, which removes a potential barrier to entry, since the operator has made no investment in direct links, and so can dip in and out of an operation in contrast to the high exit barriers faced by operators like BT.

Taking account of the above factors, and an analysis of the pricing behaviour of competitors, suggests that the market is highly competitive and that BT does not have market power. The imposition of *ex ante* regulation is, in BT's view, not appropriate in this market and the proposed remedies will inhibit rather than promote competition.

Whilst BT has a significantly weaker market position compared to its continental European peers, for example the German, Italian, French and Swedish regulators have all recognised the competitiveness of international wholesale services by deregulating them more extensively. Oftel would thus appear to be out of step with regulatory practice in major EU markets, raising serious obstacle to harmonisation of regulation and achievement of the Single Market.

In conclusion, BT urges Oftel to reconsider its decisions in the light of the information presented in this response and to step back from ex ante regulation for these services.

2. INTRODUCTION

The new EU regulatory framework for electronic communications sets out the key principles governing the regulation of SMP in the new regulatory environment. It is perhaps helpful at this stage to remind ourselves of these principles. In particular:

- the nature of the problem to be remedied must be defined; markets should be thoroughly and rigorously examined before an obligation is imposed;
- the ability of competition law to provide adequate remedies must be assessed;
- wherever possible, regulation must be applied at the upstream level only; and
- all remedies must be proportionate and targeted at the identified problem.

As in the case of all regulatory measures, SMP remedies must be applied on a consistent basis across all Member States. BT's comments on SMP remedies are without prejudice to its position on the appropriateness of any proposed SMP designations. In order to apply the above principles to wholesale IDD, it is important to consider both the activity and the nature of the environment.

2.1 Growth in operators and in international traffic

In the past decade market forces and technological innovations have driven down prices and increased traffic flows in wholesale international services. The increasing volume of international traffic and the corresponding growth in the number of carriers have moved electronic communications from a traditional monopoly to a market with growing competitive pressure.

The economics of the entire industry have changed significantly, with power shifting toward consumers and hundreds of new carriers. Reflecting this shift, Oftel[1] reports growth of more than 300 operators in the year to March 2002, whilst *TeleGeography* reports that, between 1990 and 2000, the share of international traffic attributable to new carriers rose from less than 1% to 31%, compared to a decline for established carriers from 86% to 50%.

[1] Paragraph 1.20 of the consultation

Table 1: The growth of the global market for wholesale international services[2]

Indicator	1990	1995	2000
International Traffic (Billions of minutes)	33.5	61.6	132.7
Revenue from International Traffic (Billions of US$)	37	55	70
Countries permitting carrier competition	6	18	49
Top 20 carriers' share of world traffic (%)	86	72	50
Market share of new carriers (%)	<1	5	31

2.2 Relationship between BT and CNS[3]

Oftel has chosen to merge BT and CNS for the purposes of the Market Review. Whilst we accept that the legal entity, when undertaking a market analysis, comprises all of the controlled dependant economic entities within BT group that provide substitutable services within the defined market, CNS' separate legal existence must be considered in the imposition of any *ex ante* conditions. They are separate entities in this regard. In particular, failure to consider CNS as a separate entity for the purposes of imposing *ex ante* conditions would be inconsistent with the *effet utile* of Article 10 of the Access and Interconnection Directive (which specifically refers to subsidiaries) and would run counter to Oftel's statement relating to the CNS and BT relationship after the dissolution of Concert on the 1st of April 2002[4] as well as the freedom of an organisation to select the most appropriate contracting vehicle for its operations. BT has, in a separate submission to Oftel, further developed the arguments referred to above and Oftel should refer to that submission in relation to this matter.

For the purposes of this response, we use 'BT' to refer to BT and CNS.

2.3 Market definition under Article 7 of the Access Directive

It is recognised that Oftel has the power to impose *ex ante* conditions on products and services outside the European Commission recommended list if it <u>only</u> affects the UK market. In relation to wholesale international services, Oftel recognises that this review is a departure from the Commission's recommended list but considers this justified based on the importance of the UK wholesale international services market, both to the UK and to other EU Member States.

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[2] Source: Telegeography 2002
[3] Communications Networking Services
[4] Competition in International Markets, March 2002, at paragraph 1.10

Due to the nature of wholesale international services and the many agreements across geographical boundaries to enable such services, it is highly important that regulatory measures are implemented in a consistent manner across all Member States. Indeed the Framework requires this.

Oftel's proposed imposition of *ex ante* regulation on BT in the UK market for wholesale IDD services would *de facto* result in the unbalanced application of *ex ante* regulatory burdens in the single European Market. As the majority of Member State incumbents are active in the provision of such services in the UK, Oftel's proposed imposition of *ex ante* regulation on BT in this global market would inhibit BT's ability to compete. Competing European incumbents would not face the same situation in their domestic markets, if *ex ante* regulation does not apply. The absence of harmonised regulation would restrict the development of the Single Market.

It is therefore disturbing to note that, to the extent that they have made their views known, no other Member States[5] have chosen to review this market, and as such concluded that wholesale IDD is fully competitive.

The following chapters provide BT's responses to the specific questions raised, presenting relevant evidence and analysis.

[5] Belgium, Denmark, France, Sweden and Netherlands

3 MARKET DEFINITION

3.1 Approach

Q1: Do you agree with Oftel's reasons for reviewing the wholesale international services markets?

Oftel provides the following reasons for reviewing these markets:

"The Director believes that evidence of potential competition problems in previous reviews, coupled with the overall size of the UK wholesale international services and the reliance that providers in other EU Member States have on UK providers demonstrates a national circumstance which justifies the review of wholesale international services."

BT does not consider that: (i) evidence of competition issues in previous reviews; (ii) the UK being a 'large market'; or (iii) the relationship between EU Member States and UK providers individually or collectively provides an exceptional reason for conducting this review. Our reasons for this view are as follows:

(i) evidence in previous reviews

The extent to which there is evidence of potential competition problems has been overstated by Oftel in previous reviews. BT continues to stress the extent of competition provided by direct infrastructure links, indirect routing methods and alternative forms of international communication to fixed line voice calls. BT has lost the vast majority of the carriers' carrier market to other wholesale providers of international connectivity.

(ii) the UK being a 'large market'

Market size has never in itself been a criterion for a market investigation. Nor is Oftel being consistent – if market size was a criterion, BT would expect Oftel to consider that *ex ante* the regulation on 121 BT routes that account for only 5% of outbound international volumes is unjustified.

(iii) the relationship between EU Member States and UK providers

The fact that other EU Member States choose to route their traffic indirectly via the UK does not of itself justify the need for *ex ante* regulation. If anything, such activity demonstrates a high degree of competition and keener prices than available in other countries, since IDD traffic migrates to the lowest-cost routes.

Although BT does not agree with Oftel's reasons for reviewing wholesale international services, and notes that such a review will not be undertaken in some countries, it does support any review that may lead to unfettered competition in the supply of wholesale international services.

3.2 Initial conclusions on the relevant market(s)

Q2: Do stakeholders think it appropriate to consider the market on a route by route basis with hubbing considered as part of the market assessment, or do they consider it more appropriate to consider a broader geographical market on the basis that any direct route can be replicated with a combination of indirect routes?

BT considers that any market analysis for wholesale international services should be made on a global, rather than route by route basis. The primary reason for this is the existence of indirect routing and the emergence of VoIP as an alternative delivery mechanism for international voice calls, which means there is supply side substitutability for virtually all routes. We provide further evidence of these universal practices below, drawing from various independent sources, all of which we have referenced in the footnotes.

3.3 Indirect Routing

- In *Africa's Grey Market – Technology and Markets Go Round Regulation* (2002), the telecommunications company Storm argues describes the reality of wholesale conveyance as follows:

  "There is a grey market in every African country and it will grow larger unless the regulators get to grips with why it occurs. It makes the international accounting rate system largely meaningless. Some grey market services operate in the margins of legality, whilst others are currently illegal… The smarter incumbent telcos are beginning to understand how to fight back but the regulators seem largely clueless.

  The monopoly revenue streams of the incumbent telcos are locked in competition with grey market services. This should come as no surprise as new entrants always target the most profitable sectors. The new services can be found both on the incoming and outgoing calls:

  Outbound international voice minutes use "call-back" and PC/internet telephony.

  Inbound international voice minutes use what is known as "leaky PABX" (ISPs, local hotels and call centres, VSAT) and refile.

The problem is rife. On outbound international in South Africa, Storm estimates that 25-30% of corporate voice traffic is carried over callback or IP. And on inbound international traffic a well-informed insider from an African state telco told us: "A year ago, 9 out of 10 calls made by budget prepaid calling card from the UK and USA into the country, came over illegal routes".[6]

- We note also the impact of alternative routing in India, where it accounts for some 40 per cent of incoming calls:

  "High collection charges in India have had a negative impact on outgoing traffic, but have encouraged incoming traffic through callback and refill (call turnaround). Callback and refile services account for an estimated 40% of India's total incoming traffic."[7]

- The view that the use of indirect routing makes the appropriate scope of the market for wholesale international services global rather than a series of country pairs gains further support from Castelli, Barroso, and Leporelli, in *Global Universal Service and International Settlement Reform (2000)*[8]. Examining the international settlement rate system, they conclude that:

  "competition among developed countries' carriers pushing prices towards costs provides incentives to reduce the current level of accounting rates. On the other hand, arbitrage (least cost routing) and refiling provides incentives to reduce the widespread "non-cost-based" heterogeneity among the accounting rates of different country pairs. In any case, if accounting rate reform is not achieved, then an increasing share of the traffic currently carried by the public telephone system will simply shift to the Internet, where there is no formal settlement system."

- Ure also has the same message in *The Era of International Simple Resale: not waving, but drowning?*[9]

  "…there are mechanisms through which the effects of ISR and other forms of accounting rate by-pass will be transmitted to economies of all sizes, regulatory obstacles notwithstanding."

- Findings by a recent Australian *Productivity Commission* investigation into international services appear to confirm the conclusions of Storm, Castelli and Ure regarding the growth of alternative, competing international flows to standard voice PSTN call volumes:

  "Despite the continuing growth of international PSTN traffic, other types of traffic including international data traffic, Internet traffic and international simple resale have been increasing at a faster rate."[10]

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[6] http://www.balancingact-africa.com/news/back/balancing-act_123.html
[7] http://www.icraindia.com/biz-arch/200202intllongdist.pdf
[8] ttp://www.diw.de/deutsch/publikationen/vierteljahrshefte/docs/papers/v_00_4_14.pdf
[9] http://www.trp.hku.hk/publications/isr.pdf
[10] http://www.pc.gov.au/inquiry/intelmkt/finalreport/chapter2.pdf

BT considers this evidence of indirect competition to be very powerful. It would also explain the results we describe in **Annex B** where for circa 200 routes we found retail prices below BT conveyance rates and at 15 ppm or under.

In its assessment of the market for wholesale IDD Oftel makes the presumption that BT's 'vertical integration' (as a provider of IDD at both the wholesale and retail level) and pre-existing relationships with operators in other countries confer competitive advantage to BT. However, a review of the main UK IDD providers at a wholesale level, clearly shows that neither BT's vertical integration nor its overseas relationships are in any way 'unique', with all of the major UK wholesalers having a vertically integrated retail operation and ready access to overseas markets. Indeed, as covered in more detail below, for many routes it is apparent that if any advantage is conferred from historical relationships, then operators other than BT are most likely to be the beneficiaries.

	Outbound Market Share (%age of Minutes)					
Country/Carrier	1999	2000	2001		Operator Status	
BT	39.7	37.2	33.3		Global	Vertically Integrated
Cable & Wireless	31.3	28.5	24.5		Global	Vertically Integrated
WorldCom	10	11.8	13.7		Global	Vertically Integrated
Primus		3.5	5.5		Global	Vertically Integrated
Teleglobe	4.8	5.6	4.5		Global	Vertically Integrated
COLT			4.1		Pan-European	Vertically Integrated
Energis Carrier Services		4.2	3.9		European	Vertically Integrated
Telia		2.1	2.7		European	Vertically Integrated
Others	14.2	7.3	7.9			
TOTAL	100	100.0	100.0			

3.4 Hubbing

Q3: Is the Director's conclusion in paragraph 2.70 about the availability of reliable information on hubbing correct?

BT does not consider the Director's conclusion to be correct. Irrespective of whether the geographic market should be defined on a country pair or global basis, what is clear is that refile[11] is highly significant in the supply of wholesale international services. As long ago as 1998, *Ovum*[12] estimated that refiled traffic accounted for 10-30 per cent of global traffic. As noted above, refile and callback account for 40% of India's incoming traffic.

More recently, Cable & Wireless Optus, in its response to the Productivity Commission investigation into international services[13], stated that the accounting rates for international traffic are becoming less relevant as the proportion of traffic routed via the refile market increases:

"The international telecommunications market has historically comprised a series of bilateral agreements between countries, with disparate call volumes. The refile market takes advantages of arbitrage opportunities within this system, and has had the effect of driving down the price of terminating calls to some of the traditionally high cost countries, such as China, India and Pakistan. As an illustration, prices to China and Pakistan have halved on the refile market between 1997 and 1999, while Indian refile prices have fallen by nearly 10 per cent over the same period."

3.5 Voice over IP (VoIP)

Oftel suggests that substitution of voice over IP (VoIP) calls for circuit-switch fixed line calls by consumers is limited:

"The Director believes that the two issues of voice quality and access to facilities are, at present, sufficient to prevent widening the market definition of retail IDD calls to include Internet telephony."[14]

However, the following evidence, set out in some detail over the following pages because of the growing significance of this type of delivery mechanism, supports the view that VoIP is an effective substitute for circuit-switched fixed line calls and thus adds competition at the wholesale level:

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[11] A refiled call is defined thus: Customer dials international number; originating carrier sends call to hub country via PSTN or over international private line (International Simple Resale); refile carrier re-originates call over PSTN; call is delivered to final destination via refile carrier, which pays settlement charge to terminating carrier.
[12] The Rise of Cost-Based Interconnect and the Collapse of International Accounting Rates, 1998
[13] http://www.pc.gov.au/inquiry/intelmkt/subs/sub005.pdf
14 http://www.oftel.gov.uk/publications/eu_directives/2003/eu_idd/

No access to special facilities like computers, software packages or the Internet is necessarily required. Suppliers like Quick2Call (www.quick2call.com) use VoIP as a underlying transport mechanism for international calls whilst still allowing consumers to use their traditional fixed line phone. Jensen reports that even in Africa, "Because neither party needs to have an internet account or computer, anyone with a phone and a local PSTN-IP gate-way service can use the internet to make cheaper calls."[15]

The costs of "special facilities," if they are required, can be minimal. Callserve offers a free download of necessary software, which is easy to install via an install wizard, and "an entry-level internet telephone handset, available at www.callserve.com. Priced at £8.00 plus shipping, these handsets give any computer novice the ability to turn their PC into a telephone…This unit sounds like a regular telephone handset because it is. We priced this product to enable anyone to turn their computer into a telephone."[16]

Consumers are indifferent to the technology underlying their outbound voice calls. According to the ITU, "the fact that a particular call travels for part of its journey via the Internet or another IP network is irrelevant [to end users], as long as the price is low and the quality is acceptable."[17] Jensen concurs, pointing out that "Normal telephone users may even use VoIP without realising it."[18] Using VoIP as a transport mechanism is an alternative telecommunications model, the quality of service and cost of which will help determine its commercial success. "In reality the success of VoIP will depend on whether it proves to be more economically viable than its circuit switched equivalent."[19]

Customer feedback reveals a willingness and ability to make trade-offs between price and call quality:

"In the past few years I have used various services and service providers, from BT and FirstTelecom, to Quip and voice over internet services. The cost and quality of these services are as varied. It is usually the case that expensive providers (e.g. BT) provide better quality compared to cheaper (or free!) services such as netmeeting. There are of course exceptions to this, I have had crystal clear conversation on netmeeting on a few occasions. I believe that telediscount falls somewhere between the two, it is very cheap and provides a fairly consistent quality of service over a standard phone line."[20]

Moreover, as the ITU points out, "the majority of IP Telephony now travels over managed, private IP networks as opposed to the public Internet", so the quality issues surrounding calls routed via the public Internet are much

[15] http://mbendi.co.za/indy/cotl/af/p0011.htm
[16] http://www.callserve.com/EN/news/index.asp?PrNbr=1
[17] http://www.connect-world.com/past_issues/latin_america/2001/first_quarter/r_blois_ITU_2001.asp
[18] http://mbendi.co.za/indy/cotl/af/p0011.htm
[19] http://www.cit-online.com/info/13122002.htm
[20] http://www.dooyoo.co.uk/services/telecommunications_services/telediscount_co_uk/_review/406243/

reduced. This point is also supported from Gartner Dataquest, which does not consider VoIP to have inferior call quality:

"A strong perception among enterprises is that VoIP quality is poor, and it is often cited by incumbent carriers as a reason to delay the introduction of VoIP. While this may have been a valid reason a few years back, VoIP quality on effectively peered and well-engineered IP networks is frequently now at, or near, par with PSTN voice quality. In fact, in countries with an underdeveloped telecom infrastructure and in remote regions of developed countries, VoIP may well even outperform existing circuit-switched services. This may be true even in developed countries where elements of the network (for example, backbone or switches) may be poorly engineered." [21]

BT now uses VoIP as its primary delivery mechanism to one of the larger African countries. BT does not market this specifically as VoIP and as quality levels are comparable with circuit-switched services there is no reason for customers (either wholesale or retail) to know that VoIP is in use. Potentially many offerings in the market may be based on VoIP without either the wholesale or retail customers being aware.

Many PTOs in countries which Oftel claims have uncompetitive inbound routes "now realise that if you don't join the bandwagon [to provide VoIP] the new kids on the block will eat your lunch and then your dinner too." [22] Consequently, many such PTOs are now embracing VoIP, on the principle that "that's the best way to do it; if you can't beat them, join them." [23] The examples below come from Egypt, Nigeria, Gambia and Zimbabwe.

"In early 2000, Telecom Egypt convinced the government to block Net2Phone's traffic. This had limited success since users could try any of the dozens of other IP telephony services. So using a different approach, last year Egypt Telecom became the first operator in Africa to provide a public PC-to-Phone VoIP service through a joint venture with Eglobe and TransGlobal Communications….users of the Egypt Telecom service obtain significantly cheaper rates to some destinations, for example, around US 21c/min to the US, compared to US 95c/min for PSTN calls using the traditional network. This is considerably below the official settlement rate with the United States, which is about US35c/min.[24]

Nigerian Telecommunications Ltd (Nitel) recently commissioned the US firm Deltathree to introduce VoIP services. The arrangement will see Nitel establishing a point of presence (POP) specifically to interconnect to Deltathree's global IP network, which will then carry the voice traffic.[25]

Gambia has reached a similar arrangement with ITXC and will implement the network once it has finished its GSM roll-out.

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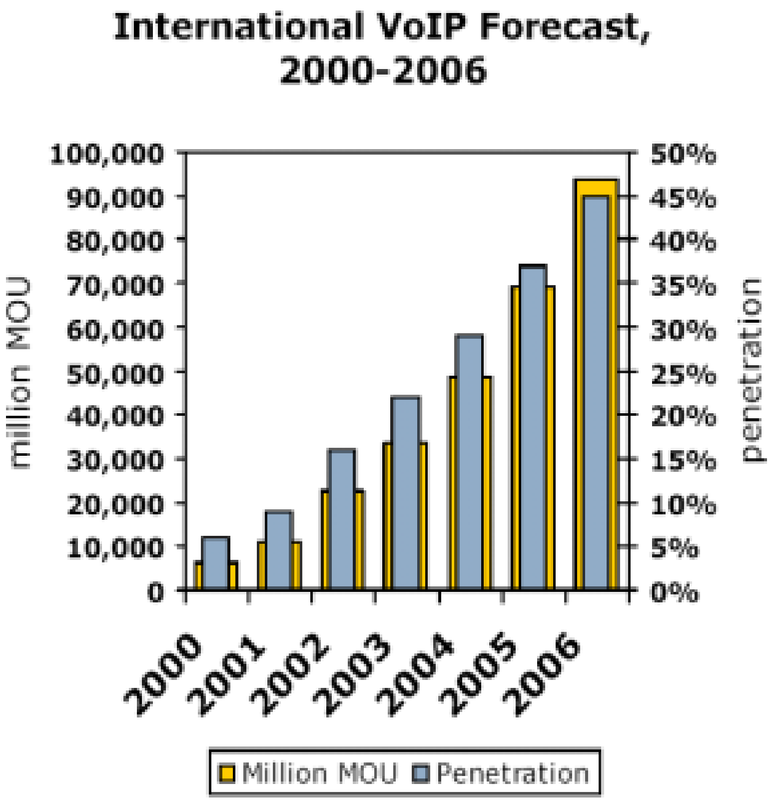
[21] Gartner Dataquest, Wholesale VoIP: The Secret Ingredient in International Voice, 29 November, 2002.
[22] http://mbendi.co.za/indy/cotl/af/p0011.htm
[23] http://mbendi.co.za/indy/cotl/af/p0011.htm
[24] http://mbendi.co.za/indy/cotl/af/p0011.htm
[25] All taken from http://mbendi.co.za/indy/cotl/af/p0011.htm

In March this year Zimbabwe's national operator, ZPTC, announced that it has plans to route voice traffic via IP.

Against the backdrop of these forces, it is not surprising that VoIP calls are rapidly growing in importance - from less than 1% of total international calls in 1998 to circa 10% in 2002."[26] "In countries with sufficient infrastructure and high settlement rates, VoIP accounts for up to 20% of total incoming traffic."[27] On a forward-looking view, they are expected to account for between 25%-40% of the global total by 2004. This clearly makes such a mechanism relevant to a forward-looking review of competition at the wholesale level.



Source: *TeleGeography 2002,* Probe Research 2001

[26] http://news.zdnet.co.uk/story/0,,t269-s2129372,00.html
[27] http://www.telegeography.com/press/coverage/2002/11-25-2002.html

3.6 Summary

A route by route approach to the analysis of wholesale international services is flawed, because:

- Indirect routing means international traffic travels to its destination by the easiest/cheapest route, not necessarily the most direct one;
- Refiling is used extensively to reduce costs below those of traditional bilateral arrangements; and
- VoIP is increasingly substituting for circuit-switched technology, and means that international calls can look like local calls.

BT urges Oftel to take account of these factors which, as we have shown, are being recognised the world over. Failure to do so would result in the continuation of a regulatory system which distorts competition and does not offer any benefits to customers.

4 MARKET ANALYSIS

4.1 Criteria for assessing Significant Market Power

Q4: Do stakeholders agree with the criteria Oftel has proposed for assessing SMP?

BT does not have any concerns over the criteria themselves, although, as will be clear from other sections of this response, we do not feel that Oftel has given full consideration to the factors it has identified for analysis.

Q5: Do stakeholders consider that there are any criteria that should be added to or removed from the list and if so why?

BT suggests that Oftel consider evidence of retail prices below benchmark wholesale prices. We have provided such an analysis in **Annex B.**

4.2 Initial conclusions on Significant Market Power (SMP)

Q6: Do stakeholders agree with the Director's approach to assessing SMP across wholesale international services markets? If not, what should the approach be, and why?

In finding SMP for BT on certain routes, Oftel has overwhelmingly looked at perceived barriers to entry; only to 'supplement' its thinking has Oftel considered market share data. Oftel has not evaluated the perceived effect on competition that these barriers to entry might have, if indeed any at all. In carrying out an assessment of SMP one only has to looking at pricing to see a demonstration of highly competitive supplier activity and the part that BT plays in the assessment.

As such, BT does not consider that Oftel have undertaken an SMP assessment which is consistent with the European Commission's guidelines, Oftel's own guidelines, previous utterances in similar circumstance, and EC case law. We therefore do not support Oftel's approach to assessing SMP in the wholesale IDD market. Our reasons are further developed in **Annex A**.

Helpfully IDD provides a rare example of a market where there is a high degree of price transparency – the prices of different retail suppliers are readily available. Therefore, there is directly observable data for the overall impact of entry barriers such as vertical integration, economies of scale, and countervailing buyer power; and also of the impact of alternative forms of routing. All of these factors are 'in the price' offered by each supplier. As such, to assess potential SMP for BT in international wholesale services it is useful to compare the retail price offered by competitors to the wholesale price offered by BT.

Retail prices below BT wholesale prices are indicative of the fact that competitors are using alternative, cheaper, wholesale capacity to that offered by BT, otherwise their businesses would not be financially sustainable. This precludes and constrains any SMP for BT. Combined with evidence of the use made of alternative routing, the speed of new entry and the views of third parties, this approach does, we believe, provide a more practical and realistic assessment of any SMP.

Our empirical assessment in relation to pricing is set out in **Annex B**.

Oftel has not thus far established the case for continuing regulation in accordance with the guidelines for market assessment set out by the European Commission or Oftel, or one which is consistent with EC case law and UK constitutional law. We therefore do not support Oftel's approach to assess SMP in the wholesale IDD market.

Q7: Do stakeholders agree with the Director's conclusions about competitive status of each international market (as set in the detail below [pages 47-55 of the consultation])? If not, which markets are incorrect, what should the conclusion be and why? What evidence do you have to support this?

BT does not agree that the analysis of individual routes supports Oftel's conclusions that BT has Significant Market Power in 121 destinations. Instead, the available evidence supports the view that BT is unlikely to have SMP in the provision of wholesale service to any international destination.

BT has provided more detailed analysis of 21 destinations by way of example, using factors applicable across all routes.

Even were it to be **assumed** that those routes not individually analysed were **not** competitive, they represent only circa 0.4% of the market with a maximum BT wholesale revenue value of £2.5m per annum. Given the scale of this 'remaining' part of the market (where BT's share is, in any case, demonstrably low) it is reasonable to assume that it is too small for it to be credible that any operator would significantly benefit from exploiting any perceived dominance. It is also too small for any regulation proposed by Oftel to be considered proportionate.

4.3 Market Share evidence

In **Annex C**, provided in confidence to Oftel, BT shows its share for all proposed SMP routes based on Oftel's latest published information (July-September-02) and BT's own volumes during that period.

We would like to point out that of the 121 routes on which Oftel proposes to regulate BT, Oftel has only reviewed market share evidence on <u>four</u> routes. For the other 117 routes, this has been entirely on the basis that either BT has the only UK direct route or that no carrier in the UK has a direct route and that BT is presumed to have some competitive advantage because "BT's legacy position as a vertically integrated monopolist means that it has existing relationships with a large number of operators in other countries."[28]

BT does not believe this is justified given the widespread use of alternative means of delivery, which mean that the existence of a UK direct route gives no obvious competitive advantage. Similarly we do not believe that where no UK operator has a direct route that BT has some presumed advantage over competitors (many of whom are them selves "global operators"). BT believes that a proper review of market share and other information for these routes is essential in order to reach any robust conclusions about the state of competition.

30 largest routes in the 121

Of the 121 provisionally BT SMP routes, 30 are sufficiently large that Oftel produced market size data for the last quarter published (Jul-Sep 2002).

Only for six routes is BT's market share more than 40% and these six are reviewed in more detail in the annex. In each case the available evidence demonstrates the availability of alternatives and the effectiveness of competition.

A further two routes show BT share of 25%-40%. We have provided additional analysis of these routes to demonstrate that any assumption of SMP is unfounded.

A further twenty two destinations show BT share below 25% and Oftel has provided no argument as to how SMP can be found in this cases.

Remaining 91 routes

For the remaining 91 routes Oftel has not published market size data, so BT cannot directly calculate market share. However, we note that for all destinations too small to be published individually the market size in the quarter was 41m minutes and BT's total volumes 6m minutes. This implies a market share of 14%.

We believe these shares represents evidence of active competition. This interpretation is reinforced by the view that BT's shares excluding own-supply are substantially smaller. This shows that those wholesale customers who have a choice as to where to the route their minutes overwhelmingly send their traffic by means other than BT's regulated IDD offering. Put simply, there can be no bottleneck in need of access regulation in such circumstances.

Full tabulation of the market share data can be found at the Confidential **Annex C.**

[28] Paragraph 3.41 of the consultation

Finally, on the data, we understand that Oftel has concerns about the quality of the market share data and BT accepts that inaccuracies will be present. However, BT believes that Oftel's measure of market size understates the size of the market by failing to capture data for various alternative delivery mechanisms (some of the detailed route analysis below points to this effect). BT's share may be even lower than that shown in **Annex C** and discussed above. We do not therefore consider that concerns about the quality of data can override the conclusion that BT does not have market power on any route.

4.4 Evidence of retail provider behaviour

BT has shown that for the vast majority of routes, retailers are able to offer prices that are significantly below wholesale rates offered by BT. This evidence demonstrates that wholesale customers have widespread availability of options to route traffic by alternative means than BT's regulated wholesale IDD offering.

4.5 Specific Route Analysis

BT has individually analysed a number of routes and this is provided at **Annex D.** This demonstrates the competitive nature of these destinations by reference to factors that been considered by Oftel. Many of these factors will be applicable to a wide range of routes and BT would strongly contend that a similar detailed analysis of ***any*** route could be performed and would clearly demonstrate the extent of competition on that route.

Routes where the existence of competition is clear from wholesale customer behaviour

BT has analysed a number of routes where wholesale customer behaviour clearly shows competition in the market. These include examples of BT losing market share from specific customers, of customers (who are themselves IDD wholesalers) periodically using BT to deliver significant volumes of traffic - which at other times must clearly be going via alternative routes - and examples of consistently low market share.

Routes shown here in **Annex D** include : Albania, Romania, Lithuania, Moldova, Somalia, Sierra Leone, Lebanon, Mauritius, Gibraltar, Algeria and Cuba.

Routes where other operators have interests or power at the distant end

Oftel has found BT to have SMP for four destinations where more than one operator has a UK direct route. In three of these instances (St Kitts & Nevis, Seychelles and Trinidad & Tobago) C&W are either the majority shareholder or a major shareholder in the incumbent carrier at the distant end. BT cannot understand how under these circumstances BT could possibly be construed to have any form of competitive advantage or Significant Market Power.

BT has not conducted a comprehensive review of the ownership structure of C&W or other operators, but it would appear that this essential information has not been considered in Oftel's analysis so far. We would conclude that there are potentially many other instances where another carrier will have potential competitive advantage over BT resulting from historic or ownership factors. For example , Belgacom in the Congo; KPN in Suriname; France Telecom in the Cameroon and "French Overseas Departments" ; Telecom Italia in Bosnia and Macedonia and France Telecom and OTE in Romania.

Routes where supply factors clearly demonstrate that BT has no SMP

We have provided detail in the attached **Annex D** of a number of routes where BT's delivery capability is dependent on other operators who are either themselves active in the UK Wholesale market in competition with BT or who are easily accessible to other wholesalers in the UK. Routes covered here include Diego Garcia, US Virgin Islands and Puerto Rico.

'Routes' which are subsets of other routes or do not exist

There are a number of instances of 'routes' that are effectively subsets of existing routes or to which there is no service. These routes include : Ross Island (effectively part of New Zealand), Vatican City (part of Italy), Ellipso (service withdrawn), and Khabarovsk and Nakhodka (regions within Russia). BT does not believe it can possibly be the case that it has SMP on such routes.

Summary

BT has analysed some of the important factors concerning the market(s) in more detail. We realise there is a lot of information in the Annexes but we believe the information is relevant to Oftel's analysis. In brief, we have shown:

Evidence of the pricing behaviour of IDD retailers (themselves wholesale customers) which demonstrates the availability of alternative lines of supply other than BT for all routes.

Analysis of market share data across all destinations which gives no support to an assumption that BT has SMP for any destination.

More detailed analysis of 21 of the 121 routes where BT is provisionally found to have SMP clearly show the effectiveness of competition on these routes and give no support to the presumption that BT has SMP. These conclusions are reached by analysing in more depth material information from the marketplace. Repetition of analysis with the same degree of vigour for other routes is likely to draw the same conclusions.

5 PROPOSED REMEDIES

5.1 Options for regulation

Q8: Do stakeholders have any comments on the range of options that the Director is proposing for consideration?

Option 1, that no *ex ante* regulation and reliance on the powers of the Competition Act 1998 is the appropriate option to adopt for wholesale international services. This is supported by the Framework Directive, Recital 27 of which states:

> *'It is essential that ex ante regulatory obligations should only be imposed where there is not effective competition , […,] and where national and competition law remedies are not sufficient to address the problem.'*

For the reasons detailed in this response, it is evident that the market is competitive and therefore *ex ante* regulation is not required.

EU and UK competition law provides for remedies against abuses such as excessive pricing, predatory pricing and discriminatory practices. There is no evidence to suggest that such an abuse can or has the potential to occur. Even if competition law is considered to provide insufficient safeguards, the NRA should publish the reasoning behind its decision, providing a detailed analysis, based on the objectives of the new directives, the Communications Bill and the relevant guidelines. In particular if the purpose of SMP obligations is to prevent abuse of dominance concerns, and these should be assessed separately from obligations imposed for any other reasons.

With regards to the proposed conditions that Oftel may impose on a dominant provider - given that, in Oftel's own words[29], the volumes have risen by 130% at a time when revenues have fallen, BT considers that it is disproportionate to introduce conditions that are, at times, more stringent than those currently in place, even if the number of destinations on which they are applicable are fewer.

In addition, the European Commission's stated aim is that NRA's should work towards the achievement of a single market in electronic communications by co-operating with each other and the Commission to ensure consistent application[30] of the Directives and by seeking to agree on the remedies best suited to address particular situations in markets.

[29] Con doc paragraphs 1.38 - 1.39
[30] Access Directive Recital 13

It is important to note that the German wholesale IDD market has been fully deregulated since 1999 and Deutsche Telekom and others are therefore exempt from *ex ante* conditions altogether. There is no evidence that consumers have subsequently been adversely affected.

Oftel has summarised the various remedy options as reproduced in the table below. Oftel's preferred option is '3'.

Option	*Network Access*	*No undue-discrimination*	*Reference Offer*	*Charge notification*	*Safeguard charge cap*
1					
2	Y	Y	Y		
3	Y	Y	Y	Y	
4	Y	Y	Y		Y
5	Y	Y	Y	Y	Y

The following comments on each of the remedies as shown in the table.

Access Condition: *Invoked by Oftel in all cases where ex ante remedies are applied.*

The Access condition is only appropriate where the designated dominant operator is the only provider of UK outbound wholesale IDD. BT considers that this is not appropriate to any routes. Any other application of the 'Access condition' would be disproportionate and go beyond the objectives of Article 8 of the Framework Directive.

Any wholesale IDD provider, including BT, who has spare capacity seeks to offer service to any customer. The competitive nature of the market enables this and does not require regulation to make this a reality.

Non-discrimination: *Condition invoked by Oftel in all cases where ex ante remedies are applied.*

In the event that competition law is considered insufficient, Oftel could impose the requirement on a dominant provider to offer services on non-discriminatory terms and conditions. Recital 17 of the Access Directive emphasises that non-discrimination is of particular importance when ensuring that a vertically integrated company does not, without objective justification, discriminate unfairly its own downstream channel to the detriment of a competing downstream channel.

However, any such obligation for non-discrimination should not prevent a provider with SMP from offering different prices or terms to different customers as long as the differences were objectively justified or the effect was not anti-competitive.

The non-discrimination principle is well defined in EC case law and should be applied accordingly. As such, it would not be proportionate to include an *ex ante* 'non discrimination condition' given the adequate protection provided under the Competition Act, 1998. This is supported in Oftel's *Statement of Competition in International Markets* issued in March 2000 which stated:

> *'Oftel's view is that relaxing the restraints will not affect Oftel's ability potentially to deal with any such attempts under the provisions of the Competition Act 1998 (if, for example, BT is abusing its dominant position in a non-competitive market with an effect on competition in a neighbouring, competitive, market).'*

Given the above, we see no need for Oftel to include a 'non discrimination' condition upon any provider.

Transparency (Oftel Term: Reference Offer): *Condition proposed by Oftel in all cases where ex ante remedies are invoked*

Recital 16 of the Access Directive states that the rationale behind the transparency obligation is that it:

> *'serves to speed up negotiation, avoid disputes [and to] give confidence to market players that a service is not being provided on discriminatory terms'.*

The overarching competition rationale for the imposition of a RIO (Reference Interconnection Offer) is to ensure non-discriminatory treatment between a dominant provider's retail arm or subsidiaries and a competitor. Specifically, the inclusion of some terms and conditions and technical information may speed up negotiation and bolster confidence for the competing service provider.[31] From a competition policy perspective, the objective is therefore to lay down a minimum level of information required by the existing or prospective competing service provider to ensure that it can compete on non-discriminatory terms.

However the RIO specifically does not deal with 'discrimination' *per se*. The terms and conditions of any individual contract may be used for the purposes of investigating any suggestion of discrimination. Additionally any hypothetical complainant will always be able to compare the rate it has been offered by BT wholesale (even without any publication requirement) with BT Retail's IDD service, and hence the customer, without the imposition of a RIO, will be in a position to evaluate whether BT wholesale discriminates the customer in favour of its own retail arm. The RIO does therefore not add any more with regards to 'surveillance' of non discrimination.

[31] Access Directive Recital 16

BT considers that paragraph 4.58 of the consultation document, does not sufficiently outline why the imposition to publish a RIO, on Oftel's suggested terms, is either justified in relation to the objectives set out in Article 8 of the Framework or are proportionate to the achievement of those objectives. This contravenes Community Law in general and the Framework Directive in particular, and is not in accordance with the European Commission's SMP Guidelines.

Prior charge notification: *Invoked in options 3 and 5*

BT considers that prior charge notification is not specifically listed in the Access Directive. Though Article 9.3 of the Access Directive details that the NRA '*may specify […] the manner of publication'* that relates to the precise form and content of any charge notification, it does not embrace the timeliness of such publication. Oftel's inclusion of this requirement must therefore be based Article 8.3 of the Access Directive. As such, Oftel is obliged to inform the European Commission of the inclusion of the condition, if formally applied, and the latter shall, acting in accordance with Article 14.2, decide whether such a condition is required, proportionate and relevant.

The notification period applicable must balance the time it takes the competing service provider to adjust its retail prices or switch provider operating in the same relevant market, with the loss to its competitiveness the dominant provider may suffer as a result of long notification periods. Oftel has not provided any justification why it deems 28 days to constitute the most proportionate and relevant time period to achieve Oftel's desired objectives in introducing the prior charge notification.

Any potential competition impact will only affect existing wholesale IDD customers; not new entrants or prospective IDD customers[32]. As such, any prior charge notification requirement is most proportionally remedied by a contractual obligation on a dominant provider to notify <u>its active customers</u>; not a requirement to publish to the public at large. In order to minimise the negative aspect of prior price publication, price following, only those service providers who actively use wholesale IDD services should receive the notification at an agreed time.

Any broader interpretation of the requirement would mean that any and all competing wholesale providers would be notified of the price changes and this would remove any incentive to lower, if possible, the charges to the destination in question and hence have an impact of being able to compete effectively.

[32] As <u>new entrant</u> customers would be proportionately informed at 0 days prior price notification and <u>prospective</u> customers already receive a service which was, prior to any price change by the dominant provider, more attractive to them than the substitutable service offered by the dominant provider. Not only would the move from another wholesale IDD provider to the dominant provider constitute ample evidence that the market is competitive it would mean that it is in the prospective customer's commercial interest to ensure that switching time is at a minimum.

In any event, from a commercial perspective, in this case BT, interconnect contracts currently specify that the customer is entitled to 7 days notice of any changes to prices (this period is typical of the Terms and Conditions invoked by other operators). Therefore customers will always receive advance notification of price increases.

Oftel suggests that competing retail providers are 'compelled'[33] to use BT' wholesale IDD service to reach certain destinations. BT believes that the evidence available demonstrates the overwhelming majority of destinations where ample alternatives are available. Given this evidence and disincentive for BT to compete on price (if faced with advanced notification requirements) with its UK wholesale IDD competitors, BT considers that a prior charge notification period would be a disproportionate remedy.

Price/Safeguard charge cap: Invoked in *Options 4 and 5*

Oftel acknowledges, in paragraph 4.44, that the introduction of price caps would impose a disproportionate burden on the dominant provider and has neither considered it further nor attached suggested conditions for the dominant provider to comment on. BT agrees that introducing a charge cap would introduce a burden on the dominant provider which would be disproportionate to any benefit it would bring given the availability of competition law and the competitive nature of the overall UK wholesale IDD market.

As such BT supports Oftel's statement that price caps will not be introduced.

Q9. The Director has set out five different options for regulation in this Chapter. Do stakeholders consider that there are additional options that the Director should consider?

The possible *ex ante* regulatory obligations available to Oftel (if reliance on national or European competition law is insufficient) are set out in the Access Directive: Transparency (Article 9); non-discrimination (Article 10); accounting separation (Article 11), obligations for access to and use of specific network facilities (Article 12), and price control and cost accounting obligations (Article 13).

We do not consider that there are additional options that the Director should consider. Should Oftel wish to impose a measure which is outside this list it must rely on the Article 8 (Access Directive) procedure which requires the European Commission's concurrence.

[33] Consultation document, paragraph 4.36

Q10. Do stakeholders agree with the Director's assessment of the advantages and disadvantages of each option for regulation? If not, what other advantages and disadvantages are there?

Access Condition

Advantages/disadvantages - *on its own*, the Access condition has neither advantages nor disadvantages. Any advantages or disadvantages from a competition policy perspective are more likely to be associated with the terms and conditions of any Access obligation.

Non-discrimination

Advantages – non-discrimination places a competing retail provider of IDD in an equivalent position to the retail arm of a dominant supplier.

Disadvantages - any different interpretation of non-discrimination to that under established competition law would result in legal uncertainty, stifle competition and ultimately be detrimental to the interests of consumers.

Transparency (Oftel Term: Reference Offer)

Advantages – transparency may ensure equal treatment between the retail arm of a dominant supplier and a competitor. Additionally, the inclusion of some terms and conditions and technical information may speed up negotiation and bolster confidence for the competing service provider.[34]

Disadvantages - a highly technical and detailed RIO is likely to contain information which confuses the customer and neither promotes the ability of a retail customer to compete with the retail arm of a dominant supplier, nor is likely to be useful in establishing unfair discrimination. A dominant supplier is entitled to discriminate, if this can be objectively justified.

Prior charge notification

Advantages - charge notification provides protection to a retail IDD customer who is dependant upon a wholesale input from the dominant provider. To achieve this outcome in a proportionate manner, Oftel must balance the time it takes the competing service provider to adjust its retail prices or switch provider operating in the same relevant market, with the benefit a dominant supplier may gain in keeping the notification period short.

Disadvantage – charge notification presumes that BT can know, predict and evaluate prices changes of respective IDD routes 28 days in advance. However, the reality is that the main cost item (termination in foreign country) can fluctuate quickly, so that BT has only limited 'control' of the main cost of each individual and respective IDD route. Retailers are also disadvantaged by BT's inability to competing for their business at the wholesale level by rivals using its price as the market reference point.

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[34] Access Directive Recital 16

Price/Safeguard charge cap

Advantages - there are none.

Disadvantages - it assumes the cost of an IDD call is reflected by the RPI in the UK, whereas the main cost driver is the price level in the terminating country.

Q11. Does an obligation on a dominant provider to observe a 28-day charge change notification period allow non-dominant providers to adopt a 'charge following' strategy in the relevant wholesale international services markets? If so, what do stakeholders consider is the effect of charge following in these markets?

As the price of an IDD call is one of the most important factors for retail customers, the obvious effect of charge following is that the party subject to the prior charge notification is unable to gain a first-mover advantage. This constrains competition, and results in a consumer welfare loss through higher prices.

BT has an abundance of evidence and experiences of price following. This price following is both experienced when 28 days prior notification is required (on the currently regulated routes) as well as the 1 day notification obligation (the currently deregulated routes).

For example:

IDD traffic to India (a deregulated route; 1 day price notification)

BT spoke to a potential customer informing them about the availability of a Fixed Volume Offer (FVO). Having published the FVO, on the Friday, the customer informed us that the price was very attractive and that they intended to contract with BT for the traffic during that period. However, as soon as the following Monday, the customer rang us back and explained that they had subsequently been made a matching offer by their existing supplier and that as they could not justify the cost of re-routing the traffic for no gain they would not be buying.

This suggests that, even with a 1 day prior charge notification, price following occurs.

BT has evidence of price following and price matching, but, due to the confidential nature of this information, is unable to pass this on to Oftel in this submission. BT is however happy to discuss its experiences on this matter with Oftel to highlight the commonness of price following and the negative impact it has on competition in the wholesale IDD market.

Q12. Do stakeholders agree that the most appropriate option for regulation where the Director has found a provider to have SMP in a wholesale international services market is Option 2 i.e. access, non-discrimination and reference offer obligations? If not, what remedy or remedies should the Director be considering?

Oftel has previously stated in this consultation and confirmed verbally, that 'Option 3' is the preferred package of remedies, not 'Option 2' as stated in this question.

However, BT considers that Option 1, that is no *ex ante* conditions, is appropriate. This would be consistent with the objectives listed in Article 8 of the Framework Directive and Oftel shall only impose *ex ante* conditions that are proportionate to any perceived problem. Given the competitiveness of the international wholesale services market, any imposition of *ex ante* obligations would be disproportionate to achieve that aim and that reference to general competition law would suffice.

Additionally Oftel is under a duty to contribute to the achievement of a single market in electronic communications by co-operating with other NRAs and the European Commission to ensure consistent application of the Directives and by seeking to agree on the remedies best suited to address particular situations in markets. As stated previously, since 1999 the German NRA, RegTP, has held that no *ex ante* obligations are required to achieve effective competition. Yet Oftel suggests (at paragraphs 1.20, 1.38, and 2.13 of the Review), that greater competition is evident in the UK compared to the German market. Therefore, the imposition of *ex ante* conditions on BT would seem to be at odds with the aim of consistency.

Moreover, given the additional direct evidence that BT has provided regarding the competitive nature of individual routes, we believe the scope of the market Oftel proposes to continue regulating amounts to less than 1% of total UK outbound value in wholesale international services.

Oftel has already found that some 95% of the overall UK wholesale IDD market is fully competitive. This, in conjunction with additional evidence provided by BT that the market as a totality is competitive, raises the question why specific conditions to exceptionally low volume destinations can be justified and how it can be proportionate.

6 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 this consultation, 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 Wholesale International Services 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 this consultation. These are subject to our continuing review of the Financial Reporting consultation.

1. BT does not accept Oftel's SMP findings. We do not believe the proposed imposition of *ex ante* regulation is justified or proportionate. Oftel should rely instead on competition law remedies.

2. The proposed AS obligations are more onerous than existing cost accounting requirements. Specifically BT considers that any requirement for granular AS statements on a route-by-route basis would significantly increase obligations from those today (which are grouped by large geographical regions) and even exceed those pre-Concert (reports based on charge bands).

3. The position that Cable & Wireless, despite being deemed to possess SMP on certain routes, will not have to publish AS statements is discriminatory and not proportionate. If Oftel is concerned about the effect that undue discrimination might have on a route-by-route basis, it is not clear why the AS obligation should not apply to all routes on which SMP is designated, irrespective of the identity of the operator.

4. Volumes on many of the proposed SMP routes are very low, such that any cost analysis would be volatile. A representative LRIC would be very difficult to calculate. The regulatory benefit obtained from an AS requirement for these routes is unlikely to outweigh the costs of preparing the information.

7 COMMENTS ON CONDITIONS

Obligation to provide Network Access to Third Parties

Under the new regime, the remedies imposed ought to be the minimum necessary to correct perceived market flaws. In addition, the principles of good regulation require that regulation is transparent, with obligations clearly defined. In BT's view, draft Condition KA1 should be revised to better reflect these principles.

This condition would require BT to provide network access to every "Third Party", defined in Schedule 2 as "person", who reasonably requests it in writing. However, the definition of network access in the Communications Bill, as it is currently drafted, indicates that the scope of the condition must be limited to the provision of the services covered by the obligation to communications providers and those providing associated facilities for the purpose of the provision of electronic communications services.

It is difficult to assess the proportionality, appropriateness and effect of a remedy in relation to any identified market failure where the meaning of the condition imposing the remedy is unclear. BT suggests that the phrase "Third Party" in Condition KA1 is replaced with the phrase "provider of public electronic communications networks or services ". Any extension of eligibility beyond communications providers would be inconsistent with the intentions of the Directives and the Communications Bill.

Director's power to make directions

Condition KA1.1 gives the Director an apparently wide power to make directions concerning the provision of network access. We note, however, that the condition must be read in the context of the grounds for imposing regulatory measures contained in the Directives and the Communications Bill, and that conditions requiring compliance with directions imposing network access obligations should reflect the requirements laid down in Article 12 of the Access Directive. In view of this, BT suggests that Condition KA1.1 should be amended as in the text set out below (which also incorporates the change proposed earlier in this section):

"The Dominant Provider shall provide Network Access to every provider of public electronic communications networks or services who reasonably requests in writing such Network Access and, to the extent that it is necessary to to ensure end-to-end connectivity, where the Dominant Provider controls access to the end-user or where the Director considers that denial of the Network Access would hinder the emergence of a sustainable competitive market or would not be in the end-user's interest, such Network Access as the Director may direct in any particular case".

ANNEX A: STRUCTURE OF MARKET ANALYSIS

Oftel states that "it has principally focused on barriers to entry"[35] in assessing whether an undertaking has market power on the route in question. Though BT acknowledges that there is no 'mechanical test' to the assessment of market power, we strongly feel that Oftel not only significantly fails to achieve the required standard of proof in establishing SMP, as laid down by the Framework Directive and general competition law but also that Oftel's 'principal' use of barriers to entry in determining SMP, is illogical, wrong and generates a fundamentally flawed market assessment. We outline our rationale below.

Market share information and purpose of 'barriers to entry' for further assessment of competitiveness

High market share and barriers to entry

Though the existence of a *persistent*[36] market share of 50% or above may give rise to the presumption[37] that an undertaking has the ability to act independently of its competitors, the finding of *market power* (as required to trigger UK and EC competition law and for the purposes of undertaking the market assessments with a view of implementing the new regulatory regime[38]) in such circumstances is by no means a certainty.

After having established the undertaking's market share in the relevant market, we suggest that Oftel needs to scrutinise a number of other factors. Any barriers to entry and, conversely, any factors (legal or regulatory) preventing a presumed dominant provider from abusing its high market share are only a few of the factors which will have an impact on even high market shares[39]. For example, an undertaking's hypothetically high market share may have been achieved in a fully competitive market and be the result of many, fully legitimate factors (marketing, customer preferences and competition neutral pricing decision etc). The barriers to entry to the relevant market may be nil and still enable an undertaking to gain a high market share.

[35] Wholesale International Services Consultation Document, at 3.35
[36] The application of the competition act in the telecommunications sector, (Oftel / Oft), at 6.16
http://www.oftel.gov.uk/publications/ind_guidelines/cact0100.htm
[37] Case C62/86 Akzo Chemie BV
[38] Recital 25 of the Framework Directive and, additionally, paragraph 3 of the EC Commission's "Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services"
[39] The application of the competition act in the telecommunications sector, (Oftel / Oft), at 6.2

Lower market share and barriers to entry

With lower market shares, say below 40%, the general competition authority, the Office of Fair Trading, is unlikely to find that the undertaking has the necessary *market power* to result in a finding that Chapter II of the Competition Act may be triggered[40]. Oftel has expressly concurred with this adopted view[41]. Additionally, with a market share of 40% or below, it is self evident that 60% of the relevant market is served by alternative means which are deemed equally or more appealing and fully substitutable from the customer's perspective; the barriers to entry to the relevant market are therefore, *per definition,* very low.

As a consequence, only in exceptional cases[42] can a market share of 40% or less be sufficient to trigger UK / EC competition law and suffice for the imposition of *ex ante* regulation in the new regulatory regime.

Importance of conducting market share assessment

Oftel itself, drawing on the Office of Fair Trading guidelines on the Chapter II prohibition[43] to the Competition Act, has made the following statements in its own guidelines entitled "The Application of the Competition Act in the Telecommunications Sector:

> *6.13 In determining whether an undertaking has market power <u>the Director General will take into account the undertaking's market share</u>, although even where an undertaking has a high market share there may be constraints that would prevent the undertaking acting anti-competitively.*
>
> *6.14 Market share will normally be measured in terms of either value or volume of sales. The Director General will use whichever measure of market share is more appropriate, although it will generally be useful to obtain information in respect of both the value and volume of sales. (emphasis added)*

[40] Competition Act guidelines, at 3.13
http://www.oft.gov.uk/NR/rdonlyres/esmzu5igdeetjdh4b55az2zqex5rmrct7d5cugokx7eaikls45z4qwuvlthsgbjceericejju37ssom5ifmrgh6coih/oft402.pdf
[41] Oftel's market review guidelines: criteria for the assessment of significant market power, at 2.3
http://www.oftel.gov.uk/publications/about_oftel/2002/smpg0802.htm
[42] It may be that the competing providers all have exceptionally low market shares individually or that the competing providers are only entitled to serve a smaller segment of the market due to licensing or intellectual property issues. Neither of which, or indeed any other matter, applies in the case of UK originated wholesale IDD.
[43] OFT 402, paragraph 3.11

The European Commission's SMP guidelines additionally state:

> *" The criteria to be used to measure the market share of the undertaking(s) concerned will depend on the characteristics of the relevant market. It is for NRAs to decide which are the criteria most appropriate for measuring market presence. For instance, leased lines revenues, leased capacity or numbers of leased line termination points are possible criteria for measuring an undertaking's relative strength on leased lines markets."*[44]

and:

> *" Market shares are often used as a proxy for market power."*

It is therefore unequivocally clear that it is the duty of the NRA to undertake a thorough market share analysis to investigate which, if indeed any, undertaking on the UK wholesale IDD market has market power in the relevant market. The other factors which Oftel have identified and focused on (barriers to entry), are ancillary to the finding of a relevant market share and may be used to identify why even a high market share may not necessarily mean that the undertaking has market power in the sense that it can act independently of its competitors. Indeed, the European Commission's guidelines read:

> *"A finding of dominance depends on an assessment of ease of market entry. In fact, the absence of barriers to entry deters, in principle, independent anti-competitive behaviour by an undertaking with a significant market share."*[45] *(emphasis added)*

The specific reference to '<u>with</u> market share' means that the NRA must <u>first</u> determine whether the investigated undertaking has a relevant market share and only thereafter whether the barriers to entry are such to deter easy market entry (or whether the low barriers of entry mitigate the existence of any high market share).

Finally, Oftel has stressed the requirement to undertake market share assessment in its own Market Review guidelines[46] and, it is worth noting, <u>all</u> market review documents thus far issued by Oftel have included an assessment of market share in light of Oftel's perception of the peculiarities of each individual market review. For the Wholesale International Services market review, however, Oftel has been silent on this point.

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[44] C 165/16, Official Journal, Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services , at 3.1 http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/c_16520020711en00060031.pdf

[45] EC Commission's guidelines, *c.f.* footnote 10, at 3.1

[46] "The appropriate measure will vary between markets, although it is likely that the most appropriate measures will be volume for bulk products (e.g. wholesale conveyance minutes) […]"

Oftel's preferred approach to assessing SMP

Oftel has specifically stated that it has ‘principally focused on barriers to entry’ and that ‘market share data, to the extent that it has been available on a route by route basis, has been used to supplement information on barriers to entry and to improve the Director's understanding of conditions in non liberalised markets’[47] (emphasis added).

BT considers that Oftel’s methodology contravenes its own guidelines, the European Commission's guidelines, EC case law and the Framework Directive.

In the eventuality that Oftel has received unreliable information from stakeholders or that the market information does not capture all substitutable services, we stress that Oftel is armed with investigative powers intended to ensure that the data it receives from providers within a relevant market is of sufficiently high quality. The relevant powers in the context of the current market reviews are those set out in Section 53 of the Telecommunications Act 1984. This empowers the Director to require any person to provide information, and refusal to comply with a request constitutes a criminal offence. Section 53 powers apply to Oftel’s market reviews by virtue of Regulation 10 of the Electronic Communications (Market Analysis) Regulations 2003.[48] Additionally, Oftel bears the burden of proof[49] in establishing market power resulting in any *ex ante* conditions.

[47] Wholesale international services consultation document, at 3.35
[48] Statutory Instrument 2003 No. 330
[49] EC Commission's guidelines, *c.f.* footnote 10, "NRAs will have to ensure that their decisions are in accordance with the Commission’s practice and the relevant jurisprudence of the Court of Justice and the Court of First Instance on dominance", at 3

ANNEX B: COMPETITOR PRICING ANALYSIS

Summary

This paper seeks to establish a cost-effective, practical and rigorous approach that Oftel could apply to the deregulation of international wholesale services. This approach is based on both absolute price levels and the extent to which competitors offer retail prices below the wholesale price of BT. They could only do so if there were alternative, cheaper, sources of wholesale supply. The approach indicates that 208 routes should be declared effectively competitive. In BT's view, continuing regulation on the same number of remaining routes is disproportionate given that Oftel has powers under the Competition Act to prohibit anti-competitive conduct.

Introduction

We have undertaken a substantive comparative analysis of the best available competitor retail price against the lowest (i.e. weekend) BT wholesale price on 224 routes. These were classified into:

- Routes already deregulated by Oftel (46 included in the analysis);
- Routes which Oftel proposes to deregulate (70); and
- Routes which Oftel proposes to continue to regulate (108).

The rationale for this analysis is that the availability of retail prices below the BT wholesale price is only sustainable if there are competing alternative sources of wholesale capacity. It would therefore be mistaken to conclude that BT could have SMP on these routes.

Data Collection

Data on retail prices offered by 5 competitors at early May 2003 was obtained from their web sites. The sites used were those of Telediscount, Callforless, Just Call, Quick 2 Call, and One Tel. Some routes identified by Oftel – Khabarovsk, Nakhodka, Ross Island, Sakhalin, and Tatarstan - were not offered by any of these suppliers. We were able to collect retail prices for 224 routes from the UK. We identified the lowest retail price (incl. VAT) available on each of these routes from these 5 suppliers. BT wholesale prices for each of these routes was obtained from the BT CNS web site.

Initial data analysis

The best retail price on each of the 224 routes was compared against the lowest BT wholesale price (in practice, the weekend rate), and the percentage discount or premium to the BT rate identified. We then divided the results – in terms of (a) best ppm and (b) discount or premium to BT - according to which one of the three actual or proposed regulatory states each route fell under.

For each classification, the ppm and percentage discount or premium were ranked.

Initial Data Analysis - Results

Visual indications of results from the initial data analysis are shown in Charts 1-3:

- Chart 1 gives the number and percentage of routes where competitors offer retail prices above/below the BT wholesale price;
- Chart 2 shows a plot of the percentage discount/premium for each route;
- Chart 3 shows a plot of the best ppm price on each route.

These charts reveal that:

- Retail prices below BT's wholesale rates are available on 93% (ie 208) of the 224 routes (Chart 1).

- These discounts are such that consumers are already able to pay a maximum of 5ppm on 168 routes and 15ppm on 202 routes (Chart 2).

- 219 routes are priced at or below the 25ppm level of some routes Oftel proposes to deregulate.

- Across the top 46 routes in each category, the discounts are greatest on those routes which Oftel proposes to continue regulating (Chart 3).

- A target average discount of 66% (ie that currently achieved by those routes already deemed to be effectively competitive) is matched by the top 62 routes which Oftel proposes to deregulate and by the top 104 routes which it proposes to continue regulating. These 212 routes (46+62+104) are marked in Chart 3 by three big blobs.

- The discounts to the BT wholesale price are made more significant by the fact that (a) the wholesale price ceiling is based on the lowest (ie weekend) rate, whilst (b) the retail price floor includes VAT. This means the discounts identified in this paper will be greater if BT daytime prices are used in the comparison.

- No discounts appeared to be offered on calls to 16 destinations - Botswana, Jordan, Qatar, Oman, Monaco, Bahrain, Slovenia, Libya, UK Virgin Islands, Cambodia, Liechtenstein, Sierra Leone, Honduras, Suriname, Reunion, and Martinique.

Chart 1: Number and % of Routes Above and Below BT Price

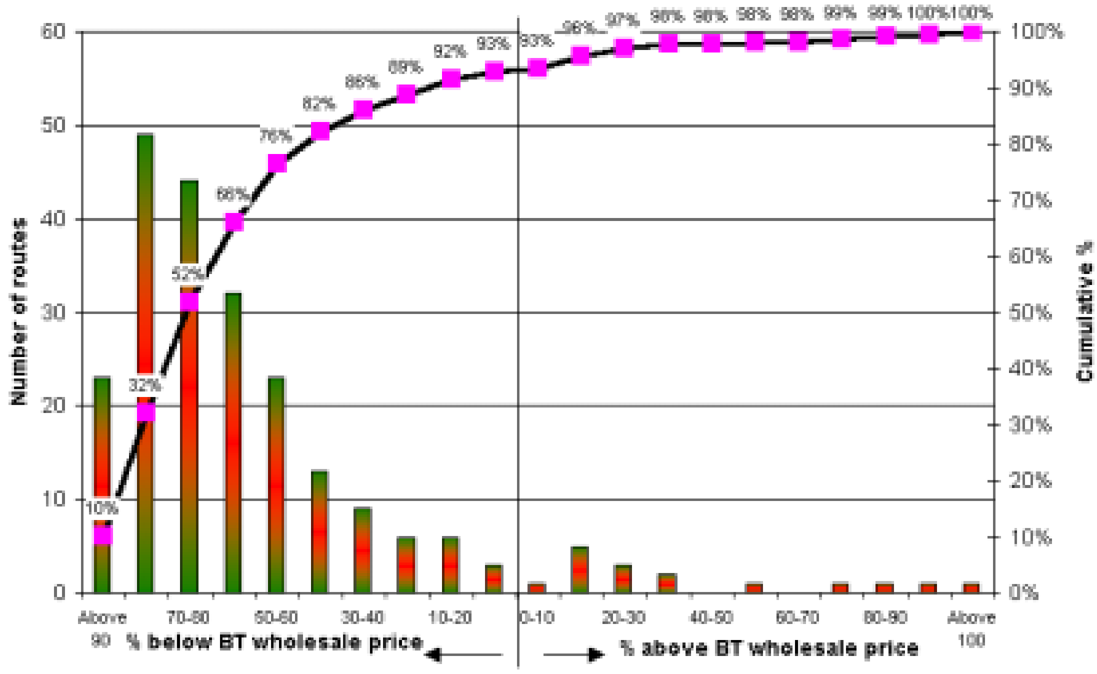


Chart 2: Best ppm price on each route for each of the three actual or proposed regulatory states

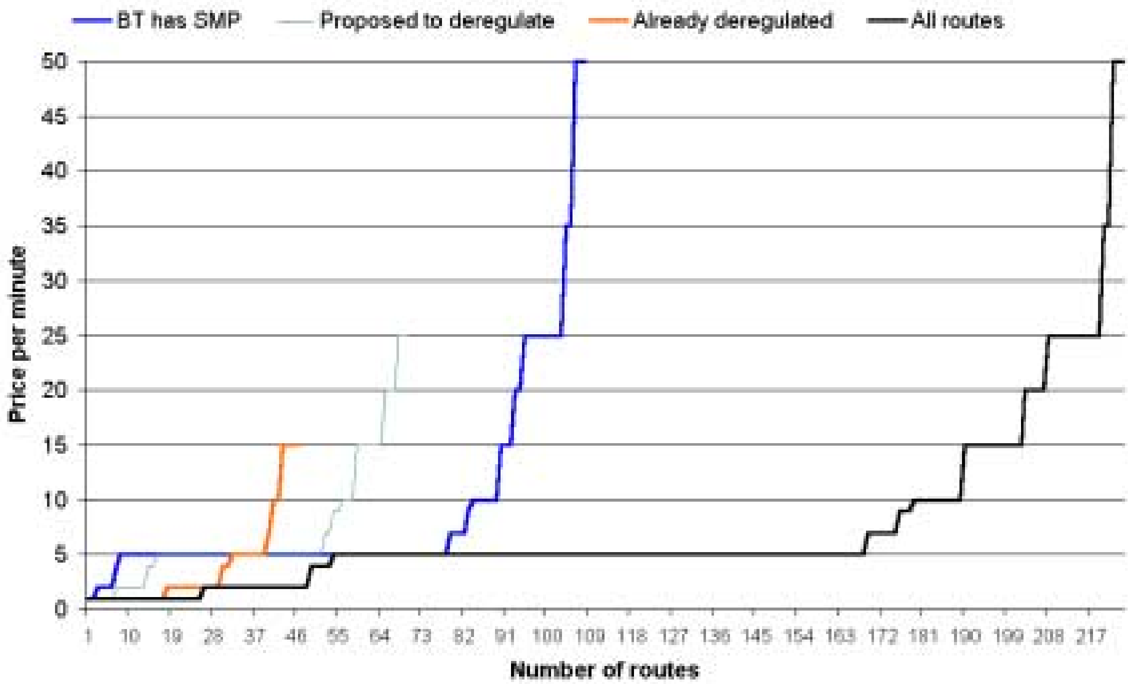
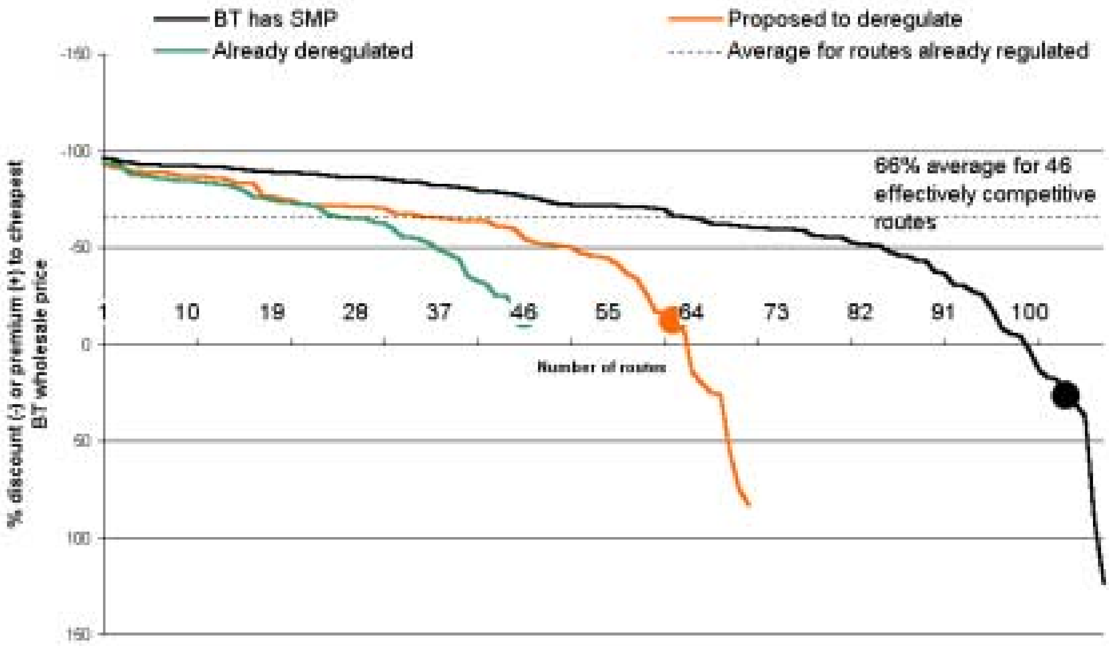


Chart 3: % discount for each of the three actual or proposed regulatory states



Detailed Data Analysis

We have also undertaken a more detailed analysis of the three sets of data. To do this, we identified two options for price levels and two options for the size of discount - giving the four possibilities identified in the matrix below.

	5ppm	15ppm
25% discount	**Test 1**: May be more stringent than Test 4	**Test 3**: Most relaxed
50% discount	**Test 2**: Most stringent	**Test 4**: May be more stringent than Test 1

These possibilities gave us four decision-rule tests:

Test 1	Reject route for deregulation if, among the discounted routes of that data set, it fails to offer 5ppm <u>and</u> a discount of at least 25%
Test 2	Reject route for deregulation if, among the discounted routes of that data set, it fails to offer 5ppm <u>and</u> a discount of at least 50%
Test 3	Reject route for deregulation if, among the discounted routes of that data set, it fails to offer 15ppm <u>and</u> a discount of at least 25%
Test 4	Reject route for deregulation if, among the discounted routes of that data set, it fails to offer 15ppm <u>and</u> a discount of at least 50%

We selected 5ppm for a retail base because it is so widely available; 15ppm was selected because that appears to be the cheapest rate available for Egypt, Pakistan, India and Vietnam – routes already deemed effectively competitive.

The discounts of 25% and 50% were to take account of the possible premium that could be attributed to the BT service.

Test 2 – 5ppm and a 50% discount - was the most stringent test. Test 3 – 15ppm and a 25% discount – was the weakest test. We recommend Oftel adopt Test 3 to assess the possibility of SMP for BT in wholesale international services. This is because it is not as restrictive in terms of price level as Test 2, allowing headroom for both variations in costs by route and for operator profitability.

Detailed Data Analysis - Results

Table 1 below summarises the test results:

Table 1: Test Results by Route Classification

	Pass Test 1	Pass Test 2	Pass Test 3	Pass Test 4
SMP	76	73	88	79
Proposed deregulated	51	47	56	51
Effectively competitive	39	35	43	36
Total	166	155	187	166

- 187 routes passed Test 3, almost half of which (88) Oftel proposes to continue regulating.

The detailed results for each route and data set are set out at the end of this Annex.

Risks

Our tests are designed to illustrate routes which 'look' competitive based on retail prices both in absolute terms and against BT wholesale rates. However, there exists the risk that competitive routes are rejected, for two reasons:

(i) Some routes are more costly to provide service on. Our assumption that 15ppm is adequate to cover these costs may be wrong, so that some routes where the retail price exceeds 15ppm are incorrectly rejected. The 10 routes where this type of risk apply are shown in Table 2.

(ii) If the BT price level is already low, our assumption that competitors should be able to offer prices at least 25% lower may be wrong. There are 9 routes where both competitors' prices and their discount to the BT price are low, shown in Table 3.

Table 2: Routes which fail Test 3 only because the price level is too high

SMP routes	**PPM**	**Discount**
Iraq	20	-45.8
Diego Garcia	25	-79.0
Korea PDR (North)	25	-61.7
Cuba	25	-61.0
Afghanistan	25	-51.1
Samoa (Western)	35	-55.8
Rodriguez Islands	35	-31.0
Routes where deregulation proposed	**PPM**	**Discount**
Syria	20	-36.8
Yemen	20	-26.4
Falkland Islands	25	-34.5

Table 3: Routes which fail Test 3 only because the discount is too low

SMP routes	PPM	Discount
Albania	10	-5.7
Vatican City	5	-4.6
Routes where deregulation proposed	**PPM**	**Discount**
Saudi Arabia	15	-17.1
Sri Lanka	15	-15.9
Morocco	15	-12.7
Bangladesh	10	-10.5
Effectively competitive routes	**PPM**	**Discount**
Yugoslavia	10	-25.0
Pakistan	15	-20.6
Turkey	10	-15.6

Further detail on Albania, Cuba, Diego Garcia and Vatican City is included in **Annex D**.

Full Results for Test 3

Table 4 summarises the results for Test 3 once account is taken of the 19 routes that should be accepted, for the reasons set out above. Test 3 reveals that absolute and relative price levels justify deregulation of 206 routes – expanding to 208 when including the two routes proposed for deregulation by Oftel but not included in this analysis.

Table 4: Test 3 Results

Type of route	Test 3 - raw passes	Adjustments due to risk	Total Test 3 passes	Priced above BT wholesale price	Failed Test 3 on both criteria	Total
SMP	88	9	**97**	9	2 (Rwanda and Thuraya)	108
Proposed deregulated	56	7	**63**	7	0	70
Effectively competitive	43	3	**46**	0	0	46
Total	187	19	**206**	16	2	224

Routes where competitor prices are above those of BT

Even where competitors do not price below BT, there should be no presumption of SMP for BT. Sierra Leone and Libya are two routes where competitors' prices appear to be above those of BT. However, **Annex D** shows that BT's volume share on these routes is 10%-40%, as competitors route their traffic via alternative wholesale operators to BT.

Conclusions and Recommendation

Our analysis highlights the fact that for the vast majority of routes the retail price of international services is substantially below the equivalent wholesale price offered by BT. This can only be due to the availability of competing alternative sources of wholesale capacity. This precludes the existence or use of any SMP by BT.

Adopting Test 3 to assess SMP indicates that 208 routes should be deregulated, including the two routes proposed for deregulation by Oftel but not included in this analysis. This compares to a current Oftel proposal of 118 routes. A substantial relaxation of regulation is justified even using the results of the highly restrictive Test 2.

Given this strong evidence of alternative sources of supply and competition, and the availability of the Competition Act to prevent any anti-competitive conduct, the maintenance of *ex ante* regulation on over 100 routes is unnecessary. Deregulation of 208 routes would increase the cost burden of maintaining regulation on the rump of routes.

Results for Routes Oftel Proposes to Continue Regulating

	All Routes (108)	Lowest Retail Price	% Discount or Premium to CBS	All Routes Where These Priced @ Premium (ie 9)	Routes Failing Test 1 (ie 23)	Routes Failing Test 2 (ie 26)	Routes Failing Test 3 (ie 11)	Routes Failing Test 4 (ie 20)
1	Guam	2.00	-98.7					
2	East Timor	5.00	-96.0					
3	French Polynesia	6.00	-94.3					
4	New Caledonia	5.00	-94.2					
5	Palau	5.00	-92.9					
6	Marshall Islands	6.00	-92.9					
7	Micronesia	5.00	-92.9					
8	Cook Islands	5.00	-92.6					
9	Guinea Bissau	5.00	-92.5					
10	Solomon Islands	6.00	-92.4					
11	Vanuatu	5.00	-92.3					
12	Tuvalu	5.00	-92.0					
13	Kiribati	6.00	-91.9					
14	Nauru	5.00	-91.6					
15	Sao Tome & Principe	5.00	-90.7					
16	Chad	5.00	-90.5					
17	Northern Marianas	6.00	-90.0					
18	Comoros	5.00	-89.6					
19	Norfolk Island	5.00	-89.4					
20	Niue	5.00	-89.0					
21	St. Kitts & Nevis	2.00	-88.7					
22	Haiti	5.00	-88.5					
23	Tonga	5.00	-88.2					
24	Tajikistan	6.00	-88.2					
25	Turkmenistan	5.00	-87.4					
26	Greenland	5.00	-87.1					
27	Somalia	10.00	-86.5		Somalia	Somalia		
28	Guinea	6.00	-86.4					
29	Gibraltar	1.00	-86.2					
30	Puerto Rico	1.00	-86.1					
31	Niger	6.00	-86.0					
32	Djibouti	6.00	-85.3					
33	Fiji	5.00	-84.8					
34	Congo	5.00	-84.1					
35	Namibia	2.00	-83.9					
36	Mali	5.00	-82.6					
37	Cape Verde	5.00	-82.4					
38	Papua New Guinea	6.00	-82.1					
39	Eritrea	5.00	-81.6					
40	Moldova	2.00	-80.9					
41	Equatorial Guinea	5.00	-79.9					
42	Liberia	6.00	-79.1					
43	Diego Garcia	25.00	-79.0		Diego Garcia	Diego Garcia	Diego Garcia	Diego Garcia
44	Samoa (US)	15.00	-78.7		Samoa (US)	Samoa (US)		
45	Antarctica Australian Territory	15.00	-77.8		Antarctica Australian Territory	Antarctica Australian Territory		
46	Gabon	6.00	-76.4					
47	Myanmar	15.00	-75.8		Myanmar	Myanmar		
48	Burkina Faso	5.00	-74.7					
49	Cameroon	6.00	-73.8					
50	Burundi	5.00	-72.7					
51	Mozambique	5.00	-72.7					
52	Benin	5.00	-71.9					
53	Senegal	6.00	-71.8					
54	Togolese Rep	5.00	-71.8					
55	Anguilla	5.00	-71.7					
56	Mauritania	6.00	-71.5					
57	Madagascar	6.00	-71.3					
58	Armenia	5.00	-71.0					
59	Ethiopia	10.00	-70.9		Ethiopia	Ethiopia		
60	Lesotho	6.00	-70.8					
61	Dem Rep of the Congo	5.00	-70.1					
62	Trinidad & Tobago	5.00	-68.5					
63	Angola	6.00	-66.2					
64	San Marino	6.00	-65.9					
65	Seychelles	5.00	-64.8					
66	St Pierre & Miquelon	5.00	-62.7					
67	Bhutan	6.00	-62.4					
68	French Guiana	5.00	-61.9					
69	Korea PDR (North)	25.00	-61.7		Korea PDR (North)	Korea PDR (North)	Korea PDR (North)	Korea PDR (North)
70	Cuba	25.00	-61.0		Cuba	Cuba	Cuba	Cuba
71	Macedonia	6.00	-60.6					
72	Mayotte	5.00	-60.1					
73	Cote D'Ivoire	5.00	-59.9					
74	Swaziland	6.00	-59.9					
75	Central African Rep	5.00	-59.5					
76	Aruba	5.00	-59.2					
77	Uganda	4.00	-55.9					
78	Samoa (Western)	25.00	-55.9		Samoa (Western)	Samoa (Western)	Samoa (Western)	Samoa (Western)
79	Kyrgyz Republic	5.00	-55.4					
80	Guadeloupe	5.00	-55.3					
81	Mauritius	10.00	-52.9		Mauritius	Mauritius		
82	Faroes	5.00	-52.0					
83	Malawi	5.00	-51.9					
84	Afghanistan	25.00	-51.1		Afghanistan	Afghanistan	Afghanistan	Afghanistan
85	Virgin Islands (US)	6.00	-48.5			Virgin Islands (US)		Virgin Islands (US)
86	Romania	7.00	-46.4		Romania	Romania		Romania
87	Iraq	20.00	-45.9		Iraq	Iraq	Iraq	Iraq
88	Lebanon	7.00	-44.1		Lebanon	Lebanon		Lebanon
89	Uzbekistan	6.00	-43.6			Uzbekistan		Uzbekistan
90	Lithuania	7.00	-37.6		Lithuania	Lithuania		Lithuania
91	Sudan	10.00	-36.9		Sudan	Sudan		Sudan
92	Rodriguez Islands	86.00	-31.0		Rodriguez Islands	Rodriguez Islands	Rodriguez Islands	Rodriguez Islands
93	Algeria	7.00	-30.7		Algeria	Algeria		Algeria
94	Bosnia	5.00	-27.5		Bosnia	Bosnia		Bosnia
95	Georgia	6.00	-25.9			Georgia		Georgia
96	Rwanda	26.00	-18.9		Rwanda	Rwanda	Rwanda	Rwanda
97	Thuraya	50.00	-8.0		Thuraya	Thuraya	Thuraya	Thuraya
98	Albania	10.00	-8.7		Albania	Albania	Albania	Albania
99	Vatican City	6.00	-4.6		Vatican City	Vatican City	Vatican City	Vatican City
100	Libya	10.00	2.6	Libya				
101	Virgin Islands (UK)	20.00	13.1	Virgin Islands (UK)				
102	Cambodia	50.00	16.8	Cambodia				
103	Liechtenstein	6.00	17.6	Liechtenstein				
104	Sierra Leone	20.00	20.1	Sierra Leone				
105	Honduras	25.00	30.6	Honduras				
106	Suriname	60.00	36.5	Suriname				
107	Reunion	26.00	80.6	Reunion				
108	Martinique	25.00	123.4	Martinique				

Results for Routes Oftel Proposes to Deregulate

	All Routes (70)	Lowest Retail Price	% Discount or Premium to CRS	All Routes Minus Those Priced @ Premium (ie 7)	Routes Failing Test 1 (ie 12)	Routes Failing Test 2 (ie 16)	Routes Failing Test 3 (ie 7)	Routes Failing Test 4 (ie 12)
1	Korea Republic (South)	1.00	-94.13					
2	Argentina	1.00	-91.97					
3	Guyana	5.00	-90.97					
4	Bahamas	3.00	-89.09					
5	Mongolia	2.00	-89.58					
6	Cyprus	1.00	-88.09					
7	Dominica	3.00	-88.00					
8	St Helena	6.00	-88.66					
9	Antigua & Barbuda	3.00	-87.55					
10	Barbados	2.00	-86.01					
11	Belize	6.00	-86.80					
12	Slovak Rep	1.00	-86.75					
13	Chile	5.00	-85.73					
14	Uruguay	4.00	-86.56					
15	Iceland	1.00	-83.86					
16	Czech Rep	1.00	-83.63					
17	Costa Rica	6.00	-83.18					
18	Nicaragua	6.00	-77.46					
19	Maldives	5.00	-76.54					
20	Kenya	6.00	-76.27					
21	Ecuador	5.00	-74.58					
22	Peru	5.00	-73.12					
23	Iran	7.00	-72.68		Iran	Iran		
24	Grenada	6.00	-71.99					
25	Bolivia	5.00	-71.77					
26	St. Lucia	5.00	-71.74					
27	St. Vincent & the Grenadines	5.00	-71.74					
28	Panama	5.00	-71.48					
29	Colombia	5.00	-71.36					
30	Nigeria	6.00	-70.96					
31	Paraguay	6.00	-70.78					
32	Tanzania	5.00	-68.29					
33	Gambia	5.00	-67.60					
34	Taiwan	2.00	-67.59					
35	Belarus	5.00	-66.31					
36	Cayman Islands	5.00	-66.06					
37	Guatemala	6.00	-65.67					
38	Brunei	5.00	-65.18					
39	Kuwait	7.00	-64.82		Kuwait	Kuwait		
40	Macau	6.00	-64.13					
41	Jamaica	6.00	-63.74					
42	Venezuela	5.00	-63.66					
43	Azerbaijan	6.00	-61.74					
44	Neth Antilles	5.00	-61.09					
45	Estonia	2.00	-59.92					
46	Kazakhstan	6.00	-55.08					
47	Zimbabwe	5.00	-53.18					
48	Malta	5.00	-52.06					
49	Bulgaria	4.00	-51.68					
50	Nepal	15.00	-50.98		Nepal	Nepal		
51	United Arab Emirates	9.00	-50.71		United Arab Emirates	United Arab Emirates		
52	Latvia	5.00	-47.64			Latvia		Latvia
53	Russia	4.00	-46.24			Russia		Russia
54	Bermuda	5.00	-46.00			Bermuda		Bermuda
55	Zambia	6.00	-44.61			Zambia		Zambia
56	Tunisia	9.00	-41.52		Tunisia	Tunisia		Tunisia
57	Syria	20.00	-36.79		Syria	Syria	Syria	Syria
58	Falkland Islands	25.00	-34.48		Falkland Islands	Falkland Islands	Falkland Islands	Falkland Islands
59	Yemen	20.00	-26.42		Yemen	Yemen	Yemen	Yemen
60	Saudi Arabia	15.00	-17.13		Saudi Arabia	Saudi Arabia	Saudi Arabia	Saudi Arabia
61	Sri Lanka	15.00	-15.87		Sri Lanka	Sri Lanka	Sri Lanka	Sri Lanka
62	Morocco	15.00	-12.68		Morocco	Morocco	Morocco	Morocco
63	Bangladesh	10.00	-10.47		Bangladesh	Bangladesh	Bangladesh	Bangladesh
64	Botswana	10.00	14.42	Botswana				
65	Jordan	15.00	18.71	Jordan				
66	Qatar	25.00	24.81	Qatar				
67	Oman	25.00	25.63	Oman				
68	Monaco	10.00	56.25	Monaco				
69	Bahrain	20.00	75.13	Bahrain				
70	Slovenia	15.00	82.93	Slovenia				

Results for Routes Already Deemed Effectively Competitive

	All Routes (46)	Lowest Retail Price	% Discount or Premium to CNS	All Routes Minus Those Priced @ Premium (ie 0)	Routes Failing Test 1 (ie 7)	Routes Failing Test 2 (ie 11)	Routes Failing Test 3 (ie 3)	Routes Failing Test 4 (ie 10)
1	Japan	1.00	-93.8					
2	Malaysia	1.00	-93.7					
3	Laos	5.00	-91.6					
4	Austria	1.00	-87.7					
5	Thailand	2.00	-87.5					
6	South Africa	2.00	-86.7					
7	Brazil	2.00	-85.7					
8	Singapore	2.00	-85.7					
9	Portugal	1.00	-84.6					
10	Italy	1.00	-84.5					
11	China	2.00	-84.3					
12	Luxembourg	1.00	-83.9					
13	Norway	1.00	-83.3					
14	New Zealand	1.00	-82.5					
15	Hong Kong	1.00	-81.5					
16	Finland	1.00	-79.8					
17	Spain	1.00	-76.7					
18	Switzerland	1.00	-76.2					
19	Belgium	1.00	-74.7					
20	Denmark	1.00	-73.7					
21	Mexico	5.00	-73.5					
22	Hungary	2.00	-72.3					
23	Vietnam	15.00	-72.2		Vietnam	Vietnam		
24	El Salvador	5.00	-71.4					
25	Dominican Rep.	5.00	-67.3					
26	France	1.00	-66.1					
27	Canada	1.00	-65.5					
28	Ghana	5.00	-65.0					
29	Australia	2.00	-64.9					
30	Israel	4.00	-63.4					
31	Poland	2.00	-62.7					
32	Sweden	2.00	-60.0					
33	Ireland	1.00	-55.8					
34	Indonesia	5.00	-55.5					
35	Germany	2.00	-54.4					
36	Greece	4.00	-52.7					
37	India	15.00	-48.8		India	India		India
38	Croatia	5.00	-46.8			Croatia		Croatia
39	Philippines	5.00	-44.4			Philippines		Philippines
40	Ukraine	7.00	-35.7		Ukraine	Ukraine		Ukraine
41	Netherlands	2.00	-33.1			Netherlands		Netherlands
42	USA	2.00	-31.0			USA		USA
43	Egypt	15.00	-25.4		Egypt	Egypt		Egypt
44	Yugoslavia	10.00	-25.0		Yugoslavia	Yugoslavia	Yugoslavia	Yugoslavia
45	Pakistan	15.00	-20.6		Pakistan	Pakistan	Pakistan	Pakistan
46	Turkey	10.00	-15.6		Turkey	Turkey	Turkey	Turkey