

**Condition GH5 – Requirement to publish a reference offer**

GH5.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

GH5.2 Subject to paragraph GH5.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

(a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of Network Access);

(b) the locations of the points of Network Access;

(c) the technical standards for Network Access (including any usage restrictions and other security issues);

(d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);

(e) any ordering and provisioning procedures;

(f) relevant charges, terms of payment and billing procedures;

(g) details of interoperability tests;

(h) details of maintenance and quality as follows:

(i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);

(ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;

(iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;

(iv) a definition and limitation of liability and indemnity; and

(v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

(i) details of any relevant intellectual property rights;

(j) a dispute resolution procedure to be used between the parties;

(k) details of duration and renegotiation of agreements;

(l) provisions regarding confidentiality of non-public parts of the agreements;

(m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);

(n) the standard terms and conditions for the provision of Network Access;

(o) the amount applied to:

(i) each Network Component used in providing Network Access with the relevant Usage Factors;

(ii) the Transfer Charge for each Network Component or combination of Network Components described above;

reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

GH5.3 To the extent that the Dominant Provider provides to itself Network Access that:

(i) is the same, similar or equivalent to that provided to any other person; or

(ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs GH5.2(a)-(o).

GH5.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date that this Condition enters into force.

GH5.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date that this Condition enters into force.

GH5.6 Publication referred to above shall be effected by:

(c) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and

(d) sending a copy of the Reference Offer to Ofcom.

GH5.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

GH5.8 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.

GH5.9 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

GH5.10 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition GH6 – Requirement to notify charges and terms and conditions**

GH6.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and act in the manner set out below.

GH6.2 Save where otherwise provided in Condition GH8, the Dominant Provider shall send to Ofcom and to every person with which it has entered into an Access Contract covered by Condition GH1, a written notice of any amendment to the charges, terms and conditions on which it provides Network Access or in relation to any charges for new Network Access (an "Access Charge Change Notice") not less than 90 days before any such amendment comes into effect for existing Network Access, or not less than 28 days before any such amendment comes into effect for new Network Access.

GH6.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that Network Access;
- (c) the date on which or the period for which any amendments to charges, terms and conditions will take effect (the "effective date");
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge; and
- (e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies.

GH6.4 The Dominant Provider shall not apply any new charge, term and condition identified in an Access Charge Change Notice before the effective date.

GH6.5 To the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
- (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in an Access Charge Change Notice in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it sends to Ofcom an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs GH6.3 (a)-(e).

**Condition GH7 – Quality of Service**

GH7.1 The Dominant provider shall publish all such information for the purposes of securing transparency as to the quality of service in relation to Network Access provided by the Dominant Provider in such manner and form as Ofcom may from time to time direct.

GH7.2 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition GH8 – Requirement to notify technical information**

GH8.1 Save where Ofcom consents otherwise, where the Dominant Provider-

(a) proposes to provide Network Access covered by Condition GH1, the terms and conditions for which comprise new-

(i) technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

(ii) locations of the points of Network Access; or

(iii) technical standards (including any usage restrictions and other security issues),  
or

(b) proposes to amend an existing Access Contract covered by Condition GH1 by modifying the terms and conditions listed in paragraph GH8.1 (a)(i) to (iii) on which the Network Access is provided,

the Dominant Provider shall publish a written notice (the "Notice") of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Contract to provide the new Network Access or the amended terms and conditions of the existing Access Contract come into effect.

GH8.2 The Dominant Provider shall ensure that the Notice includes-

(a) a description of the Network Access in question;

(b) a reference to the location in the Dominant Provider's Reference Offer of the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Contract to provide the new Network Access or any amendments to the relevant terms and conditions will take effect (the "effective date").

GH8.3 The Dominant Provider shall not enter into an Access Contract containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

GH8.4 Publication referred to in paragraph GH8.1 shall be effected by:

(a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;

(b) sending a copy of the Notice to Ofcom; and

(c) sending a copy of the Notice to any person at that person's written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person

with which the Dominant Provider has entered into an Access Contract covered by Condition GH1. The provision of such a copy of the Notice may be subject to a reasonable charge.

**GH9 - Requests for new Network Access**

GH9.1 The Dominant Provider shall for the purposes of transparency publish reasonable guidelines, in relation to requests for new Network Access made to it. Such guidelines shall detail:

- (a) the form in which such a request should be made;
- (b) the information that the Dominant Provider requires in order to consider a request for new Network Access; and
- (c) the time scales in which such requests will be handled by the Dominant Provider in accordance with this Condition.

GH9.2 Such guidelines shall be published within two months of the date that this Condition enters into force following a consultation with Ofcom and Third Parties. The Dominant Provider shall keep the guidelines under review and consult with relevant Third Parties and Ofcom before making any amendments to the guidelines.

GH9.3 The Dominant Provider shall, upon a reasonable request from a Third Party considering making a request for new Network Access, provide that Third Party with information so as to enable that Third Party to make a request for new Network Access. Such information shall be provided within a reasonable period.

GH9.4 On receipt of a written request for new Network Access the Dominant Provider shall ensure that the requirements of this Condition are met. A modification of a request for new Network Access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, shall be considered as a new request.

GH9.5 Within five working days of receipt of a request under paragraph GH9.4, the Dominant Provider shall acknowledge that request in writing.

GH9.6 Within fifteen working days of receipt of a request under paragraph GH9.4 the Dominant Provider shall respond in writing to the requesting Third Party in one of the following ways:

- (a) the Dominant Provider shall confirm that the request will be met and shall confirm that the following will be prepared:
  - (i) the timetable for the provision of the new Network Access;
  - (ii) an initial offer of terms and conditions for the provision of the new Network Access; and
  - (iii) the timetable for the agreement of technical issues.
- (b) the Dominant Provider shall confirm that a feasibility study is reasonably required in order to determine whether the request made is reasonable and the Dominant Provider shall set out its objective reasons for the need for such a study;
- (c) the Dominant Provider shall confirm that the request is not sufficiently well formulated and, where it does so, the Dominant Provider shall detail all of the defects in the request which has been made; or

(d) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal.

GH9.7 Where the Dominant Provider responds to a request under paragraph GH9.4 in accordance with paragraph GH9.6(a) it shall, within thirty five working days of receipt of a request under paragraph GH9.4, respond further to the requesting Third Party in writing and:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues.

GH9.8 Where the Dominant Provider responds to a request under paragraph GH9.4 in accordance with paragraph GH9.6(a) and determines, due to a genuine error of fact, that it reasonably needs to complete a feasibility study, it may, as soon as practicable and in any event, within thirty five working days of receipt of a request under paragraph GH9.4, inform the requesting Third Party that a feasibility study is reasonably required and set out its objective reasons for such a study.

GH9.9 Where GH9.8 applies the Dominant Provider shall, within forty five working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required, respond further to the requesting Third party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues; or

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

GH9.10 The time limit set out in paragraph GH9.9 above shall be extended up to seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to paragraph GH9.8, if:

- circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within forty five working days of the date that the requesting Third Party was informed of the need for a feasibility study pursuant to paragraph GH9.8; or

- the Third Party and the Dominant Provider agree to extend the time limit up to seventy working days.

GH9.11 The time limit set out in paragraph GH9.9 above shall be extended beyond seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to paragraph GH9.8, if:

- Ofcom agrees; or

- the Third Party and the Dominant Provider agree to extend the time limit beyond seventy working days.

GH9.12 Where the Dominant Provider responds to a request under paragraph GH9.4 in accordance with paragraph GH9.6(b) the Dominant Provider shall, within sixty working days of receipt of a request under paragraph GH9.4, respond further to the requesting Third Party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues; or

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

GH9.13 The time limit set out in paragraph GH9.12 above shall be extended up to eighty five working days of receipt of a request under paragraph GH9.4, if:

- circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within sixty working days of receipt of a request under paragraph GH9.4; or

- the Third Party and the Dominant Provider agree to extend the time limit up to eighty five working days.

GH9.14 The time limit set out in paragraph GH9.12 above shall be extended beyond eighty five working days of receipt of a request under paragraph GH9.4, if:

- Ofcom agrees; or

- the Third Party and the Dominant Provider agree to extend the time limit beyond eighty five working days.

GH9.15 Within two months of the date that this Condition enters into force the Dominant Provider shall provide Ofcom with a description of the processes it has put in place to ensure compliance with this Condition. It shall keep those processes under review to ensure that they remain adequate for that purpose.

GH9.16 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

## Schedule 4

The conditions imposed on British Telecommunications plc under the Communications Act 2003 as a result of the analysis of the market for the provision of alternative interface symmetric broadband origination with a bandwidth capacity up to and including one gigabit per second in which British Telecommunications plc has been found to have significant market power

### Part 1: Definitions and Interpretation of these conditions

1. These conditions shall apply to the market for the provision of alternative interface symmetric broadband origination with a bandwidth capacity up to and including one gigabit per second within the United Kingdom but not including the Hull Area and shall also apply to Interconnection and Accommodation Services.
2. For the purpose of interpreting the conditions imposed on the Dominant Provider following a review of the markets referred to in paragraph 1 the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Access Charge Change Notice**” has the meaning given to it in Condition HH6;

“**Accommodation Services**” mean the provision of space on reasonable terms permitting a Third Party to occupy part of an MDF Site reasonably sufficient to permit the use of one or more disaggregated access and backhaul leased lines products, and in particular to permit the connection of the Dominant Provider’s Electronic Communications Network with that of a Third Party at that location and having the following characteristics:

- (a) the Third Party’s Electronic Communications Network is situated in an area of the MDF Site which:
  - (i) is a single undivided space;
  - (ii) after proper performance by the Dominant Provider of its obligation to provide Network Access pursuant to Condition HH1, would permit the normal operation of the Third Party’s Electronic Communications Network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF Site for such use); and
  - (iii) if so requested by the Third Party, is not unreasonably distant from the Dominant Provider’s Electronic Communications Network within the MDF Site;
- (b) no permanent physical partition is erected in the space between the Third Party’s Electronic Communications Network and the Dominant Provider’s Electronic Communications Network; and
- (c) the Third Party’s Electronic Communications Network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider’s behalf;

“**Dominant Provider**” means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or

holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

**"the Hull Area"** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

**"Interconnection Services"** mean:

- Customer-Sited Handover ("CSH"); and
- In-Building Handover ("IBH").

**"MDF Site"** means the site of an operational building of the Dominant Provider that houses a main distribution frame;

**"Network Component"** means to the extent they are used in the Market, or for Interconnection Services, the network components specified in a direction given by Ofcom from time to time for the purpose of these conditions;

**"Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Contract;

**"The Market"** means the market set out in paragraph 1 above;

**"Third Party"** means a person providing a public Electronic Communications Service or a person providing a public Electronic Communications Network;

**"Transfer Charge"** means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within the Market and the use of Network Components in that Market; and

3. Save for the purposes of paragraph 1, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act.
4. The Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament.
5. Headings and titles shall be disregarded.

## **Part 2: The conditions**

### **Condition HH1 – Requirement to provide network access on reasonable request**

HH1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as Ofcom may from time to time direct.

HH1.2 The provision of Network Access in accordance with paragraph HH1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms and conditions (excluding charges) and on such terms and conditions (excluding charges) as Ofcom may from time to time direct.

HH1.3 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

### **Condition HH2 – Requirement not to unduly discriminate**

HH2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access.

HH2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

### **Condition HH3 – Basis of charges**

HH3.1 Unless Ofcom directs otherwise from time to time, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of Ofcom, that each and every charge offered, payable or proposed for Network Access covered by Condition HH1 is reasonably derived from the costs of provision based on a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

HH3.2 For the avoidance of any doubt, where the charge offered, payable or proposed for Network Access covered by Condition HH1 is for a service which is subject to a charge control under Condition HH4, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of Ofcom, that such a charge satisfies the requirement of Condition HH3.1.

HH3.2 The Dominant Provider shall comply with any direction Ofcom may from time to time direct under this Condition.

**[Condition HH4 – Charge Controls: A potential Charge Control SMP Condition is subject of a separate Consultation published 8 December 2008]**

**Condition HH5 – Requirement to publish a reference offer**

HH5.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

HH5.2 Subject to paragraph HH5.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

(a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of Network Access);

(b) the locations of the points of Network Access;

(c) the technical standards for Network Access (including any usage restrictions and other security issues);

(d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);

(e) any ordering and provisioning procedures;

(f) relevant charges, terms of payment and billing procedures;

(g) details of interoperability tests;

(h) details of maintenance and quality as follows:

(i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);

(ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;

(iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;

(iv) a definition and limitation of liability and indemnity; and

(v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

(i) details of any relevant intellectual property rights;

(j) a dispute resolution procedure to be used between the parties;

(k) details of duration and renegotiation of agreements;

(l) provisions regarding confidentiality of non-public parts of the agreements;

(m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);

(n) the standard terms and conditions for the provision of Network Access;

(o) the amount applied to:

(i) each Network Component used in providing Network Access with the relevant Usage Factors;

(ii) the Transfer Charge for each Network Component or combination of Network Components described above;

reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

HH5.3 To the extent that the Dominant Provider provides to itself Network Access that:

(i) is the same, similar or equivalent to that provided to any other person; or

(ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs HH5.2(a)-(o).

HH5.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date that this Condition enters into force.

HH5.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date that this Condition enters into force.

HH5.6 Publication referred to above shall be effected by:

(e) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and

(f) sending a copy of the Reference Offer to Ofcom.

HH5.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

HH5.8 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.

HH5.9 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

HH5.10 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition HH6 – Requirement to notify charges and terms and conditions**

HH6.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and act in the manner set out below.

HH6.2 Save where otherwise provided in Condition HH8, the Dominant Provider shall send to Ofcom and to every person with which it has entered into an Access Contract covered by Condition HH1, a written notice of any amendment to the charges, terms and conditions on which it provides Network Access or in relation to any charges for new Network Access (an “Access Charge Change Notice”) not less than 90 days before any such amendment comes into effect for existing Network Access, or not less than 28 days before any such amendment comes into effect for new Network Access.

HH6.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider’s current Reference Offer of the terms and conditions associated with the provision of that Network Access;
- (c) the date on which or the period for which any amendments to charges, terms and conditions will take effect (the “effective date”);
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge; and
- (e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies.

HH6.4 The Dominant Provider shall not apply any new charge, term and condition identified in an Access Charge Change Notice before the effective date.

HH6.5 To the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
- (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in an Access Charge Change Notice in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it sends to Ofcom an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs HH6.3(a)-(e).

**Condition HH7 – Quality of Service**

HH7.1 The Dominant provider shall publish all such information for the purposes of securing transparency as to the quality of service in relation to Network Access provided by the Dominant Provider in such manner and form as Ofcom may from time to time direct.

HH7.2 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition HH8 – Requirement to notify technical information**

HH8.1 Save where Ofcom consents otherwise, where the Dominant Provider-

(a) proposes to provide Network Access covered by Condition HH1, the terms and conditions for which comprise new-

(i) technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

(ii) locations of the points of Network Access; or

(iii) technical standards (including any usage restrictions and other security issues),  
or

(b) proposes to amend an existing Access Contract covered by Condition HH1 by modifying the terms and conditions listed in paragraph HH8.1(a)(i) to (iii) on which the Network Access is provided,

the Dominant Provider shall publish a written notice (the "Notice") of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Contract to provide the new Network Access or the amended terms and conditions of the existing Access Contract come into effect.

HH8.2 The Dominant Provider shall ensure that the Notice includes-

(a) a description of the Network Access in question;

(b) a reference to the location in the Dominant Provider's Reference Offer of the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Contract to provide the new Network Access or any amendments to the relevant terms and conditions will take effect (the "effective date").

HH8.3 The Dominant Provider shall not enter into an Access Contract containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

HH8.4 Publication referred to in paragraph HH8.1 shall be effected by:

- (a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;
- (b) sending a copy of the Notice to Ofcom; and
- (c) sending a copy of the Notice to any person at that person's written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Contract covered by Condition HH1. The provision of such a copy of the Notice may be subject to a reasonable charge.

#### **HH9 - Requests for new Network Access**

HH9.1 The Dominant Provider shall for the purposes of transparency publish reasonable guidelines, in relation to requests for new Network Access made to it. Such guidelines shall detail:

- (a) the form in which such a request should be made;
- (b) the information that the Dominant Provider requires in order to consider a request for new Network Access; and
- (c) the time scales in which such requests will be handled by the Dominant Provider in accordance with this Condition.

HH9.2 Such guidelines shall be published within two months of the date that this Condition enters into force following a consultation with Ofcom and Third Parties. The Dominant Provider shall keep the guidelines under review and consult with relevant Third Parties and Ofcom before making any amendments to the guidelines.

HH9.3 The Dominant Provider shall, upon a reasonable request from a Third Party considering making a request for new Network Access, provide that Third Party with information so as to enable that Third Party to make a request for new Network Access. Such information shall be provided within a reasonable period.

HH9.4 On receipt of a written request for new Network Access the Dominant Provider shall ensure that the requirements of this Condition are met. A modification of a request for new Network Access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, shall be considered as a new request.

HH9.5 Within five working days of receipt of a request under paragraph HH9.4, the Dominant Provider shall acknowledge that request in writing.

HH9.6 Within fifteen working days of receipt of a request under paragraph HH9.4 the Dominant Provider shall respond in writing to the requesting Third Party in one of the following ways:

- (a) the Dominant Provider shall confirm that the request will be met and shall confirm that the following will be prepared:
  - (i) the timetable for the provision of the new Network Access;
  - (ii) an initial offer of terms and conditions for the provision of the new Network Access; and
  - (iii) the timetable for the agreement of technical issues.

(b) the Dominant Provider shall confirm that a feasibility study is reasonably required in order to determine whether the request made is reasonable and the Dominant Provider shall set out its objective reasons for the need for such a study;

(c) the Dominant Provider shall confirm that the request is not sufficiently well formulated and, where it does so, the Dominant Provider shall detail all of the defects in the request which has been made; or

(d) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal.

HH9.7 Where the Dominant Provider responds to a request under paragraph HH9.4 in accordance with paragraph HH9.6(a) it shall, within thirty five working days of receipt of a request under paragraph HH9.4, respond further to the requesting Third Party in writing and:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues.

HH9.8 Where the Dominant Provider responds to a request under paragraph HH9.4 in accordance with paragraph HH9.6(a) and determines, due to a genuine error of fact, that it reasonably needs to complete a feasibility study, it may, as soon as practicable and in any event, within thirty five working days of receipt of a request under paragraph HH9.4, inform the requesting Third Party that a feasibility study is reasonably required and set out its objective reasons for such a study.

HH9.9 Where HH9.8 applies the Dominant Provider shall, within forty five working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required, respond further to the requesting Third party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues; or

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

HH9.10 The time limit set out in paragraph HH9.9 above shall be extended up to seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to paragraph HH9.8, if:

- circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within forty five working days of the date that the requesting Third Party was informed of the need for a feasibility study pursuant to paragraph HH9.8; or

- the Third Party and the Dominant Provider agree to extend the time limit up to seventy working days.

HH9.11 The time limit set out in paragraph HH9.9 above shall be extended beyond seventy working days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to paragraph HH9.8, if:

- Ofcom agrees; or

- the Third Party and the Dominant Provider agree to extend the time limit beyond seventy working days.

HH9.12 Where the Dominant Provider responds to a request under paragraph HH9.4 in accordance with paragraph HH9.6(b) the Dominant Provider shall, within sixty working days of receipt of a request under paragraph HH9.4, respond further to the requesting Third Party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

- (i) confirm the timetable for the provision of the new Network Access;
- (ii) provide an initial offer of terms and conditions for the provision of the new Network Access; and
- (iii) confirm the timetable for the agreement of technical issues; or

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

HH9.13 The time limit set out in paragraph HH9.12 above shall be extended up to eighty five working days of receipt of a request under paragraph HH9.4, if:

- circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within sixty working days of receipt of a request under paragraph HH9.4; or

- the Third Party and the Dominant Provider agree to extend the time limit up to eighty five working days.

HH9.14 The time limit set out in paragraph HH9.12 above shall be extended beyond eighty five working days of receipt of a request under paragraph HH9.4, if:

- Ofcom agrees; or

- the Third Party and the Dominant Provider agree to extend the time limit beyond eighty five working days.

HH9.15 Within two months of the date that this Condition enters into force the Dominant Provider shall provide Ofcom with a description of the processes it has put in place to ensure compliance with this Condition. It shall keep those processes under review to ensure that they remain adequate for that purpose.

HH9.16 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

## **Schedule 5**

**The conditions imposed on British Telecommunications plc under the Communications Act 2003 as a result of the analysis of the market for the provision of wholesale trunk segments at all bandwidths in which British Telecommunications plc has been found to have significant market power**

### **Part 1: Definitions and Interpretation of these conditions**

1. These conditions shall apply to the market for the provision of wholesale trunk segments at all bandwidths within the United Kingdom and shall also apply to Interconnection and Accommodation Services.
2. For the purpose of interpreting the conditions imposed on the Dominant Provider following a review of the markets referred to in paragraph 1 the following definitions shall apply:

**"Act"** means the Communications Act 2003;

**"Access Charge Change Notice"** has the meaning given to it in Condition H6;

**"Accommodation Services"** mean the provision of space on reasonable terms permitting a Third Party to occupy part of an MDF Site reasonably sufficient to permit the use of one or more disaggregated access and backhaul leased lines products, and in particular to permit the connection of the Dominant Provider's Electronic Communications Network with that of a Third Party at that location and having the following characteristics:

- (a) the Third Party's Electronic Communications Network is situated in an area of the MDF Site which:
  - (i) is a single undivided space;
  - (ii) after proper performance by the Dominant Provider of its obligation to provide Network Access pursuant to Condition H1, would permit the normal operation of the Third Party's Electronic Communications Network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF Site for such use); and
  - (iii) if so requested by the Third Party, is not unreasonably distant from the Dominant Provider's Electronic Communications Network within the MDF Site;
- (b) no permanent physical partition is erected in the space between the Third Party's Electronic Communications Network and the Dominant Provider's Electronic Communications Network; and
- (c) the Third Party's Electronic Communications Network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider's behalf;

**"Dominant Provider"** means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989;

**"the Hull Area"** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

**"Interconnection Services"** mean:

- In-Span Handover ("ISH");
- Customer-Sited Handover ("CSH"); and
- ISH extension circuits.

**"MDF Site"** means the site of an operational building of the Dominant Provider that houses a main distribution frame;

**"Network Component"** means to the extent they are used in the Market, or for Interconnection Services, the network components specified in a direction given by Ofcom from time to time for the purpose of these conditions;

**"Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Contract;

**"The Market"** means the market set out in paragraph 1 above;

**"Third Party"** means a person providing a public Electronic Communications Service or a person providing a public Electronic Communications Network;

**"Transfer Charge"** means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt such activities or group of activities include, amongst other things, products and services provided from, to or within the Market and the use of Network Components in that Market; and

**"Usage Factor"** means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity.

3. Save for the purposes of paragraph 1, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act.
4. The Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament.
5. Headings and titles shall be disregarded.

## **Part 2: The conditions**

### **Condition H1 – Requirement to provide network access on reasonable request**

H1.1 Where a Third Party reasonably requests in writing Network Access, the Dominant Provider shall provide that Network Access. The Dominant Provider shall also provide such Network Access as Ofcom may from time to time direct.

H1.2 The provision of Network Access in accordance with paragraph H1.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms and conditions (excluding charges) and on such terms and conditions (excluding charges) as Ofcom may from time to time direct.

H1.3 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

### **Condition H2 – Requirement not to unduly discriminate**

H2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access.

H2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

### **Condition H3 – Basis of charges**

H3.1 Unless Ofcom directs otherwise from time to time, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of Ofcom, that each and every charge offered, payable or proposed for Network Access covered by Condition H1 is reasonably derived from the costs of provision based on a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs and an appropriate return on capital employed.

H3.2 For the avoidance of any doubt, where the charge offered, payable or proposed for Network Access covered by Condition H1 is for a service which is subject to a charge control under Condition H4, the Dominant Provider shall secure, and shall be able to demonstrate to the satisfaction of Ofcom, that such a charge satisfies the requirement of Condition H3.1.

H3.3 The Dominant Provider shall comply with any direction Ofcom may from time to time direct under this Condition.

**[Condition H4 – Charge Controls: A potential Charge Control SMP Condition is subject of a separate Consultation published 8 December 2008]**

**Condition H5 – Requirement to publish a reference offer**

H5.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

H5.2 Subject to paragraph H5.8 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

(a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of Network Access);

(b) the locations of the points of Network Access;

(c) the technical standards for Network Access (including any usage restrictions and other security issues);

(d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);

(e) any ordering and provisioning procedures;

(f) relevant charges, terms of payment and billing procedures;

(g) details of interoperability tests;

(h) details of maintenance and quality as follows:

(i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);

(ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;

(iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;

(iv) a definition and limitation of liability and indemnity; and

(v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

(i) details of any relevant intellectual property rights;

(j) a dispute resolution procedure to be used between the parties;

(k) details of duration and renegotiation of agreements;

(l) provisions regarding confidentiality of non-public parts of the agreements;

(m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);

- (n) the standard terms and conditions for the provision of Network Access;
- (o) the amount applied to:
  - (i) each Network Component used in providing Network Access with the relevant Usage Factors;
  - (ii) the Transfer Charge for each Network Component or combination of Network Components described above;reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

H5.3 To the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
- (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs H4.2(a)-(o).

H5.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date that this Condition enters into force.

H5.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date that this Condition enters into force.

H5.6 Publication referred to above shall be effected by:

- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the Reference Offer to Ofcom.

H5.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested).

H5.8 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.

H5.9 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.

H5.10 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition H6 – Requirement to notify charges and terms and conditions**

H6.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and act in the manner set out below.

H6.2 Save where otherwise provided in Condition H7, the Dominant Provider shall send to Ofcom and to every person with which it has entered into an Access Contract covered by Condition H1 a written notice of any amendment to the charges, terms and conditions on which it provides Network Access or in relation to any charges for new Network Access (an “Access Charge Change Notice”) not less than 90 days before any such amendment comes into effect for existing Network Access, or not less than 28 days before any such amendment comes into effect for new Network Access.

H6.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that Network Access;
- (c) the date on which or the period for which any amendments to charges, terms and conditions will take effect (the “effective date”);
- (d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge; and
- (e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies.

H6.4 The Dominant Provider shall not apply any new charge, term and condition identified in an Access Charge Change Notice before the effective date.

H6.5 To the extent that the Dominant Provider provides to itself Network Access that:

- (i) is the same, similar or equivalent to that provided to any other person; or
- (ii) may be used for a purpose that is the same, similar or equivalent to that provided to any other person,

in a manner that differs from that detailed in an Access Charge Change Notice in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it sends to Ofcom an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs H5.3(a)-(e).

**Condition H7 – Quality of Service**

H7.1 The Dominant provider shall publish all such information for the purposes of securing transparency as to the quality of service in relation to Network Access provided by the Dominant Provider in such manner and form as Ofcom may from time to time direct.

H7.2 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition H8 – Requirement to notify technical information**

H8.1 Save where Ofcom consents otherwise, where the Dominant Provider-

(a) proposes to provide Network Access covered by Condition H1, the terms and conditions for which comprise new-

(i) technical characteristics (including information on network configuration where necessary to make effective use of the Network Access);

(iii) locations of the points of Network Access; or

(iii) technical standards (including any usage restrictions and other security issues),  
or

(b) proposes to amend an existing Access Contract covered by Condition H1 by modifying the terms and conditions listed in paragraph H8.1(a)(i) to (iii) on which the Network Access is provided,

the Dominant Provider shall publish a written notice (the "Notice") of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Contract to provide the new Network Access or the amended terms and conditions of the existing Access Contract come into effect.

H8.2 The Dominant Provider shall ensure that the Notice includes-

(a) a description of the Network Access in question;

(b) a reference to the location in the Dominant Provider's Reference Offer of the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Contract to provide the new Network Access or any amendments to the relevant terms and conditions will take effect (the "effective date").

H8.3 The Dominant Provider shall not enter into an Access Contract containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

H8.4 Publication referred to in paragraph H8.1 shall be effected by:

(a) placing a copy of the Notice on any relevant website operated or controlled by the Dominant Provider;

(b) sending a copy of the Notice to Ofcom; and

(c) sending a copy of the Notice to any person at that person's written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Contract covered by Condition H1. The provision of such a copy of the Notice may be subject to a reasonable charge.

**H9 - Requests for new Network Access**

H9.1 The Dominant Provider shall for the purposes of transparency publish reasonable guidelines, in relation to requests for new Network Access made to it. Such guidelines shall detail:

- (a) the form in which such a request should be made;
- (b) the information that the Dominant Provider requires in order to consider a request for new Network Access; and
- (c) the time scales in which such requests will be handled by the Dominant Provider in accordance with this Condition.

H9.2 Such guidelines shall be published within two months of the date that this Condition enters into force following a consultation with Ofcom and Third Parties. The Dominant Provider shall keep the guidelines under review and consult with relevant Third Parties and Ofcom before making any amendments to the guidelines.

H9.3 The Dominant Provider shall, upon a reasonable request from a Third Party considering making a request for new Network Access, provide that Third Party with information so as to enable that Third Party to make a request for new Network Access. Such information shall be provided within a reasonable period.

H9.4 On receipt of a written request for new Network Access the Dominant Provider shall ensure that the requirements of this Condition are met. A modification of a request for new Network Access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, shall be considered as a new request.

H9.5 Within five working days of receipt of a request under paragraph H9.4, the Dominant Provider shall acknowledge that request in writing.

H9.6 Within fifteen working days of receipt of a request under paragraph H9.4 the Dominant Provider shall respond in writing to the requesting Third Party in one of the following ways:

- (a) the Dominant Provider shall confirm that the request will be met and shall confirm that the following will be prepared:
  - (i) the timetable for the provision of the new Network Access;
  - (ii) an initial offer of terms and conditions for the provision of the new Network Access; and
  - (iii) the timetable for the agreement of technical issues.
- (b) the Dominant Provider shall confirm that a feasibility study is reasonably required in order to determine whether the request made is reasonable and the Dominant Provider shall set out its objective reasons for the need for such a study;
- (c) the Dominant Provider shall confirm that the request is not sufficiently well formulated and, where it does so, the Dominant Provider shall detail all of the defects in the request which has been made; or
- (d) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal.