

SCHEDULES

SCHEDULE 4

REFERENCES WITH RESPECT TO NETWORKING ARRANGEMENTS

The competition test

- 2 (1) For the purposes of this Schedule arrangements satisfy the competition test if—
- (a) they do not have, and are not intended or likely to have, the effect of restricting, distorting or preventing competition in connection with any business activity in the United Kingdom; or
 - (b) they do have, or are intended or likely to have, such an effect but they would satisfy the criteria set out in paragraph 3 of Article 85 of the E.E.C. Treaty (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress) if that paragraph were to be construed as relating only to the effects within the United Kingdom of agreements between undertakings.
- (2) For the purposes of sub-paragraph (1)(b) any arrangements made by the Commission shall be treated as if they constituted an agreement between undertakings within the meaning of Article 85(3).
- (3) In determining whether any arrangements would satisfy the criteria referred to in that provision, the Director or, as the case may be, the Monopolies and Mergers Commission (“the MMC”) shall have regard to any principles laid down by or decision of the European Court, or any court attached thereto, so far as relevant to the construction of Article 85(3).