

### **SCHEDULE 3**

#### **PART A:**

#### **OPERATORS WITH SIGNIFICANT MARKET POWER FOR THE PURPOSES OF THE INTERCONNECTION DIRECTIVE**

##### *Condition 13*

#### **INTERCONNECTION AGREEMENTS WITH SCHEDULE 2 PUBLIC OPERATORS INCLUDING CO-LOCATION AND FACILITY SHARING**

**13.1** Subject to paragraphs 13.6 and 13.7 and any exercise by the Director of his functions under regulation 6(3) or 6(4) of the Interconnection Regulations, the Licensee shall offer to enter into an agreement with an Operator which is a Schedule 2 Public Operator, or offer to amend such an agreement, as the case may be, within a reasonable period, if such Operator requires it:

- (a) to connect, and keep connected, to any of the Applicable Systems, or to permit to be so connected and kept connected, the Operator's telecommunication system and accordingly to establish and maintain such one or more Points of Connection as are reasonably required and are of sufficient capacity and in sufficient number to enable Messages conveyed or to be conveyed by means of any of the Applicable Systems to be conveyed in such a way as conveniently to meet all reasonable demands for the conveyance of Messages between the Operator's system and the Applicable Systems; and
- (b) to provide such other telecommunication services (including the conveyance of Messages which have been, or are to be, transmitted or received at such Points of Connection), information and other services which, to the extent the parties do not agree (or the Licensee is not in any event so required under or by virtue of another Condition), the Director may determine are reasonably required (but no more than reasonably required) to secure that Points of Connection are established and maintained and to enable the Operator effectively to provide the Connection Services which it provides or proposes to provide.

**13.2** The Licensee or the Schedule 2 Public Operator may at any time request the Director to make a direction in order:

- (a) to specify issues which must be covered in an Interconnection agreement;
- (b) to lay down specific conditions to be observed by one or more parties to the agreement; or
- (c) if he thinks fit, to set time limits within which negotiations are to be completed,

and a direction under this paragraph operates as an exercise by the Director of the power of direction conferred by regulation 6(3) or 6(4) of the Interconnection Regulations, as the case may be.

**13.3** The Licensee shall secure that the agreement or amendment referred to in paragraph 13.1 above is offered on terms and conditions which are reasonable.

**13.4** To the extent that the terms and conditions of any agreement or amendment made under paragraph 13.1 cease to be reasonable, the Licensee shall, within a reasonable period, offer to the Schedule 2 Public Operator or agree with such Operator as the case may be, to amend the agreement so that its terms and conditions are reasonable.

**13.5** The Licensee shall:

- (a) comply with the requirements of any directions given to the Licensee under paragraph 13.2 above or under regulation 6(3) or 6(4) of the Interconnection Regulations in relation to any negotiations or agreement to which it is or is intended to be a party;

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- (b) comply with the requirements of any direction given to the Licensee under regulation 6(6) or 6(7) of the Interconnection Regulations in relation to any dispute over the terms of an agreement or amendment made under paragraph 13.1 above;
- (c) where the Director specifies conditions based on essential requirements pursuant to regulation 7(1) of the Interconnection Regulations for inclusion in an Interconnection agreement to which the Licensee is a party, forthwith secure the incorporation of those terms and conditions in such an agreement;
- (d) comply with any requirement made by the Director as a last resort under regulation 6(10) of the Interconnection Regulations to interconnect in order to protect essential public interests, and comply with any terms set by the Director for such purpose;
- (e) comply with any decision by the Director under regulation 10(2) of the Interconnection Regulations; and
- (f) comply with any facility or property sharing arrangements, or both, specified by the Director in accordance with regulation 10(3) of the Interconnection Regulations.

**13.6** So long as section 11 of the Restrictive Trade Practices Act 1976 is still in force, an agreement made pursuant to this Condition shall not contain any restrictive provision, unless, before the agreement is made, the Director has consented to the inclusion of such a provision. For the purposes of this paragraph, a provision in an agreement is a restrictive provision if by virtue of the existence of such a provision (taken alone or with other provisions) the agreement is one to which the Restrictive Trade Practices Act 1976 would apply but for paragraph 1(1) of Schedule 3 to that Act.

**13.7** Paragraph 13.1 above does not apply to the extent that the Director has consented to limiting such obligation on a temporary basis and on the grounds that there are technically and commercially viable alternatives to the Interconnection requested, and that the requested Interconnection is inappropriate in relation to the resources available to meet the request.

**13.8** For the avoidance of doubt:

- (a) any question as to whether any term or condition (including a charge) is reasonable shall be decided by the Director having regard to any guidelines on the application of this Condition issued from time to time by the Director; and
- (b) in considering whether a term or condition (including a charge) is reasonable, the Director may take into account, inter alia, the effective date of the term or condition and the period during which such term or condition may already have been in effect; the Director may conclude that a reasonable charge is one which is offered or agreed, as the case may be, on terms that it take effect in agreements or amendments made under paragraph 13.1 above from the date of a complaint or the date on which the term was first offered by the Licensee or accepted by a Schedule 2 Public Operator or from any other date which is considered by the Director to be appropriate in the circumstances.

**13.9** Where the Director so directs, the Crown shall be treated for the purposes of this Condition as a Schedule 2 Public Operator.