

SCHEDULE 3

PART A:

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

Conditions 14, 15 and 18 shall apply to the Licensee only to the extent that it is running a Fixed Public Telephone System by means of which it provides Fixed Publicly Available Telephone Services.

Condition 12

DETERMINATION OF SIGNIFICANT MARKET POWER

12.1 Part A applies to the Licensee where the Director has determined the Licensee to be an Operator having Significant Market Power pursuant to regulation 4(1) of the Interconnection Regulations. Such determination shall be made in accordance with the procedure set out in paragraph 6 of Part 1 of Schedule 1 of this Licence if such determination is made after that paragraph has come into force.

12.2 Where this Part applies, Condition 1 shall no longer apply to the Licensee.

12.3 The Conditions in this Part apply to the Licensee only in respect of the relevant market or markets in which the Director has determined the Licensee to be an Operator having Significant Market Power.

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:

Status: This is the original version (as it was originally made).

- (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;
- (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.

Condition 14

REQUIREMENT TO PUBLISH A REFERENCE INTERCONNECTION OFFER

14.1 Except where the determination referred to in Condition 12.1 has been made only in respect of the networks and services described in Part III (mobile networks and services) of Schedule 1 to the Interconnection Regulations the Licensee shall publish a reference interconnection offer within 3 months of having been determined by the Director as having Significant Market Power, and every 6 months from the date of the previous publication. Publication shall be effected by:

- (a) sending a copy thereof to the Director;
- (b) except to the extent that the Director may consent to an alternative location or to an alternative method of publication, placing as soon as practicable thereafter a copy thereof in a publicly accessible part of every Major Office of the Licensee in such a manner and in such a place that it is readily available for inspection free of charge by members of the general public during such hours as the Secretary of State may by order prescribe that the register of Licences and final and provisional orders is to be open for public inspection under section 19(4) of the Act, or in the absence of any such order having been made by the Secretary of State during normal office hours; and
- (c) sending a copy thereof to any person who may request such a copy.

14.2 The Licensee's reference interconnection offer shall include:

- (a) a full list of the Standard Services to be supplied to Schedule 2 Public Operators in accordance with an agreement or amendment to an agreement required under Condition 13.1 and shall specify:
 - (i) the charges for each Standard Service and the amounts applied to each component within that Service; and
 - (ii) the location in the Licensee's current standard Interconnection agreement of the terms and conditions associated with the provision of each Standard Service; and
- (b) a description of Interconnection services to be supplied in accordance with Condition 16 broken down into components according to market needs and the associated terms and conditions, including charges.

14.3 The Licensee shall secure that all offers made pursuant to Condition 13.1 or Condition 16.1 are at the same charges and associated terms and conditions as set out or referred to in the Licensee's reference interconnection offer referred to in paragraph 14.2 above.

Condition 15

REQUIREMENTS RELATING TO INTERCONNECTION AGREEMENTS WITH SCHEDULE 2 PUBLIC OPERATORS

Status: This is the original version (as it was originally made).

Cost Oriented Charges

15.1 Where the Licensee runs the systems or provides the services described in Parts I and II of Schedule 1 to the Interconnection Regulations (fixed public telephone network and leased lines services), the Licensee shall secure, and shall be able to demonstrate to the satisfaction of the Director at his request, that the charges offered, payable or proposed to be offered or payable by a Schedule 2 Public Operator to the Licensee for each Standard Service, including the amounts applied to each component within that Service, are reasonably derived from the costs of providing the Service based on a forward looking incremental cost approach (except to the extent the Director considers it appropriate that for a transitional period, or in any particular case, the Licensee apply another cost standard). The Licensee shall comply with any adjustment required by the Director in exceptional cases where justified to ensure effective competition or interoperability of services for users or both.

15.2 The Licensee shall ensure that the amount applied and incorporated in the Transfer Charge and other terms and conditions for any service which the Licensee provides to itself or any member of the Licensee's Group which is Schedule 2 Public Operator and which is the same as a Standard Service, are the same as those applied to Schedule 2 Public Operators for such Service.

15.3 Any offer by the Licensee to a Schedule 2 Public Operator pursuant to Condition 13.1 shall not be conditional on the acceptance by such Operator of any other terms and conditions except for terms and conditions which are necessarily incidental to the provision of the Standard Service in question.

15.4 The Licensee may set different tariffs, terms and conditions for Interconnection for different categories of Schedule 2 Public Operators running telecommunication systems or providing telecommunication services, where such differences can be objectively justified on the basis of the type of Interconnection provided or on the basis of relevant Conditions of the licence.

Network Charge Change Notice

15.5 The Licensee shall give notice in writing of any proposal to change any charge for a Standard Service or to introduce a charge for a proposed New Standard Service which identifies:

- (a) (i) the Standard Service, the current charge for, and the location in the Licensee's current standard Interconnection agreement of the terms and conditions associated with the provision of the Service and the proposed charge; or
- (ii) the proposed charge and associated terms and conditions for the proposed New Standard Service; and
- (b) the date on which or the period for which the proposed new charge will take effect, ("the effective date or period").

The notice above shall be referred to in these Conditions as a "Network Charge Change Notice".

15.6 The Licensee shall send the Network Charge Change Notice to the Director and to all Schedule 2 Public Operators with which it has entered into (or offered to enter into) an agreement pursuant to Condition 13.1:

- (a) in the case of a Competitive Standard Service, a Prospectively Competitive Standard Service, or a New Standard Service, not less than 28 days before the proposed change is to take effect; and
- (b) in the case of all other Standard Services, not less than 90 days before the proposed change is to take effect,

and the Licensee shall not apply any proposed new charge before the effective date or period.

15.7 When the Director decides to investigate a proposed charge for a Standard Service or a charge for a New Standard Service before the period of notice specified in paragraph 15.6 expires, on the basis that:

- (a) it is not independent of the type of application of the Service which Operators implement or may implement;
- (b) except in the case of a Competitive Standard Service, it will not differ by time of day in accordance with the Licensee's retail time of day gradient; or
- (c) the unit of payment or method of charging is to be changed, for example, by the introduction of a minimum fee or a charge comprising a set up charge and an ongoing usage related charge, or to capacity based charging, or as a result of the repackaging of a Service,

the Director may direct that the Licensee:

- (d) change the effective date specified in accordance with paragraph 15.5(b) from which the New Standard Service will be offered, or as the case may be, the proposed charge will take effect, to a date specified in the direction; or
- (e) withdraw the Network Charge Change Notice and that, except to the extent that enforcement action is taken against the proposal, the proposal may not take effect except in accordance with a further Notice under paragraph 15.5 sent after a date specified in the direction.

15.8 Without prejudice to Condition 8, if, in the opinion of the Director, the information provided in a Network Charge Change Notice does not contain all the information specified in paragraph 15.5 or is inaccurate, then the Licensee shall provide to the Director, in the manner and at the times as the Director may request, such information or such further information as the Director may reasonably require to address the deficiency in the Notice. If the Director makes such a request, he may direct that the Licensee:

- (a) change the effective date specified in accordance with paragraph 15.5(b) from which the proposed charge will take effect, to a date specified in the direction; or
- (b) withdraw the Network Charge Change Notice and that, except to the extent that enforcement action is taken against the proposal, the proposal may not take effect except in accordance with a further Notice under paragraph 15.5 sent after a date specified in the direction.

15.9 If, before it comes into effect, the Licensee withdraws a Network Charge Change Notice, or changes the effective date, the Licensee shall send to the Director, to all Schedule 2 Public Operators with which it has entered into (or offered to enter into) an agreement or amendment pursuant to Condition 13.1, and to every person who on or before that date requested a copy of the Network Charge Change Notice which has been withdrawn or changed, written notice of the withdrawal or change forthwith.

Determination of Competitive Standard Services and Prospectively Competitive Standard Services

- (a) (a) The Director shall, following a representation by the Licensee or by a Schedule 2 Public Operator that the market for a Standard Service is competitive, or prospectively competitive, determine whether or not that market is competitive or prospectively competitive. If the Director determines that the market is competitive or prospectively competitive, then that Standard Service shall be a Competitive Standard Service, or a Prospectively Competitive Standard Service, as the case may be.
- (b) The Director may, following a representation by the Licensee or a Schedule 2 Public Operator that the market for a Competitive Standard Service, a New Standard Service or

Status: This is the original version (as it was originally made).

a Prospectively Competitive Standard Service is not or has ceased to be competitive, or prospectively competitive, make any determination as follows:

- (i) the Director may determine that the market for a Competitive Standard Service is not competitive, and the Standard Service shall, accordingly, cease to be a Competitive Standard Service;
- (ii) the Director may determine that the market for a Prospectively Competitive Standard Service is not prospectively competitive, and the Prospectively Competitive Standard Service shall, accordingly, cease to be a Prospectively Competitive Standard Service; and
- (iii) the Director may determine that the market for a New Standard Service is not competitive or prospectively competitive, and the New Standard Service shall, accordingly, cease to be a New Standard Service.

Other Publication Requirements relating to the Standard List and Network Charge Change Notices

15.11 Except to the extent that the Director may otherwise consent, within 10 working days from the date on which a proposal to change a charge or to offer a New Standard Service comes into effect, the Licensee shall amend the Standard List to take account of the change and shall publish the amendment by sending it to the Director and to all Schedule 2 Public Operators with which it has entered into (or offered to enter into) an agreement pursuant to Condition 13.1.

15.12 Except to the extent that the Director may consent to an alternative location or to an alternative method of publication, the Licensee shall make available in a publicly accessible part of every Major Office, in such manner and in such place that it is readily available for inspection free of charge by members of the public, a notice of the address and telephone number of the person to whom any request may be made for any of the following:

- (a) a copy of the current Standard List, any amendments thereto or the standard Interconnection agreement;
- (b) copies of the Network Charge Change Notices;
- (c) written notice of any withdrawal or change of a Network Charge Change Notice.

15.13 The Licensee shall send a copy of the current Standard List, any amendments not incorporated into the List or the current standard Interconnection agreement offered by the Licensee pursuant to Condition 13.1 to any person who may request such items upon payment of a reasonable charge. The Licensee shall send the copy within 7 working days after receipt of such request.

15.14 The Licensee shall send a copy of any notice to which paragraph 15.12 applies to any person who makes a request for such a notice within a period of a year after it has been sent to the Director. The Licensee shall send such notice to such person within 7 working days of receipt of the request.

Condition 16

REQUIREMENT TO MEET REQUESTS FOR ACCESS OTHER THAN FROM SCHEDULE 2 PUBLIC OPERATORS

16.1 Except in relation to agreements with Schedule 2 Public Operators where Condition 13 applies and subject to paragraph 16.3 below, the Licensee shall offer to provide Interconnection to the Applicable Systems to any person running a telecommunication system under a Licence reasonably requesting it in accordance with an agreement to which this Condition applies.

16.2 An agreement to provide Interconnection to the Applicable Systems shall provide for:

- (a) the connection to the Applicable Systems at such points, including points other than Network Termination Points on Served Premises, of telecommunication systems or telecommunication apparatus run by the person making the request; and
- (b) the provision by means of the connection so made of such telecommunication services (including the conveyance of message which have been or are to be transmitted or received thereby), information and other services,

as may reasonably be requested.

16.3 The Licensee shall provide such Interconnection on charges, terms and conditions set out in the reference interconnection offer and referred to in Condition 14.2(b), and in setting the charges, terms and conditions shall secure that

- (a) charges shall be transparent and cost oriented;
- (b) different charges, terms and conditions for different circumstances shall be objectively justified on the basis of the services or service elements provided to the person concerned; and
- (c) charges shall be sufficiently unbundled to ensure that there is no requirement to pay for anything not strictly related to the services requested,

and shall ensure that it is able to demonstrate the same to the Director at his request.

16.4 Where the Licensee or a member of the Licensee's Group which is not a Schedule 2 Public Operator uses services or facilities equivalent to services provided by means of the Applicable Systems and to which paragraph 16.2 above applies, it shall ensure that the quality of and the terms and conditions applying to services provided to others in accordance with that paragraph shall be the same as for those provided to or used by the Licensee or a member of the Licensee's Group.

16.5 The Licensee or the person requesting Interconnection may at any time request the Director to make a direction in order:

- (a) to specify the issues which must be covered in the Interconnection agreement; or
- (b) to lay down specific conditions to be observed by one or more parties to the agreement,

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

16.6 The Licensee shall:

- (a) comply with the requirements of any direction given to the Licensee under paragraph 16.5 above or under regulation 6(3) or 6(4) of the Interconnection Regulations in relation to any agreement to which it is or is intended to be a party;
- (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 any agreement made under paragraph 16.2 above;
- (c) where the Director specifies a condition 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

Status: This is the original version (as it was originally made).

- (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.

Condition 17

REQUIREMENT TO SEND INDIVIDUAL AGREEMENTS TO THE DIRECTOR AND TO PUBLISH THEM

17.1 On entering into an Interconnection agreement (including amendments), pursuant to Condition 13 or 16, the Licensee shall send a copy of such agreement (including amendments), to the Director.

17.2 Either party to an agreement or amendment referred to in Condition 13.1 or 16.1 above may, within 14 days of entering into such agreement or amendment make a representation to the Director that any part of such agreement or amendment deals with its commercial strategy and require the Director to make a determination to that effect.

17.3 A determination made in response to a requirement under paragraph 17.2 above shall specify any exclusions to be made from the agreement or amendment before it is published under paragraph 17.4 below. However, details of Interconnection charges, terms and conditions and any contributions to a universal service fund cannot be excluded from publication of the agreement or amendment.

17.4 The Licensee shall:

- (a) where no request has been made under paragraph 17.2 above, as soon as reasonably practicable and in any event not earlier than 14 days and not later than 28 days after entering into an agreement or amendment pursuant to Condition 13.1 or 16.1; or
- (b) where a request has been made under paragraph 17.2 above, as soon as reasonably practicable and in any event not before receipt of a determination and not later than 14 days thereafter;

publish the agreement or amendment in the following manner. Except to the extent that the Director may consent to an alternative location or method of publication, the Licensee shall make available in a publicly accessible part of every Major Office, in such manner and in such place that it is readily available for inspection free of charge by members of the general public during such hours as the Secretary of State may by order prescribe that the register of Licences and final and provisional orders is to be open for public inspection under section 19(4) of the Act, or in the absence of any such order having been made by the Secretary of State during normal office hours, a list of all such agreements and amendments together with a notice of the address and telephone number of the person to whom any request for a copy of any or all of such list, agreements or amendments, or any part of them, may be made.

17.5 The Licensee shall send a copy of the list referred to in paragraph 17.4 above, or (following publication) any agreement or amendment or part of them to any person who may request it within 7 working days of receipt of the request.

17.6 The Licensee shall, within a reasonable period following a request, send to any person requesting Interconnection all necessary information and specifications, in order to facilitate the conclusion of an agreement, including, to the extent that the Director may otherwise consent, information on changes planned for implementation within the next six months.

17.7 Any information received by a Licensee from any person for the purposes of any provision in Part A shall be used only for the purpose for which it was supplied. The Licensee shall not pass such information on to other departments within the Licensee's organisation, subsidiaries or partners for which such information could provide a competitive advantage.

17.8 The Licensee shall comply with any request by the Director under regulation 6(5) of the Interconnection Regulations to inspect in its entirety any Interconnection agreement entered into by the Licensee.

Condition 18

REQUIREMENT TO HAVE COST ACCOUNTING SYSTEMS AND ACCOUNTING SEPARATION FOR INTERCONNECTION PURPOSES

18.1 The Licensee shall maintain a cost accounting system which having regard to the Licensee's obligations under Condition 15.1 above:

- (a) in the opinion of the Director is suitable to demonstrate that its charges for Interconnection have been fairly and properly calculated; and
- (b) provides the information for the time being required to be provided by virtue of Article 7.5 of, and Annex V to, the Interconnection Directive.

18.2 The Licensee shall make available to any person on request a description of its cost accounting system showing the main categories under which costs are grouped and the rules used for the allocation of costs to Interconnection.

18.3 The Licensee shall be deemed to be complying with the requirements of paragraph 18.1 and 18.4A to 18.6 at any time within the period of two years from the designation of the Licensee as an Operator having Significant Market Power if it is at that time complying with directions then in force which have been given to it by the Director for the purpose of ensuring that its cost accounting system enables it to demonstrate that its charges have been fairly and properly calculated.

18.4 Where the annual turnover of the Licensee in telecommunications activities in the United Kingdom is more than 20 million euros the Licensee shall keep separate accounts for, on the one hand, activities related to Interconnection—covering both Interconnection services provided to or used by itself and any organisation within its Group and Interconnection services provided to others—and, on the other hand, other activities so as to identify all elements of costs and revenue, with the basis of their calculation and the detailed attribution methods used, related to its Interconnection activity, including an itemised breakdown of fixed assets.

18.4A The Licensee shall also prepare in respect of each financial year a statement (the “Standard Service Statement”) of costs of and charges for Standard Services, to the extent that disaggregation of such Standard Services is necessary for the purposes of paragraph 18.1.

18.5 For each financial year ending on or after 1 January in the year in which the Licensee is determined by the Director to be an Operator having Significant Market Power pursuant to regulation 4(1)(b)(i) of the Interconnection Regulations, the Licensee shall procure in respect of each of the separate accounts described in paragraph 18.4 above an audit report by the Licensee's Auditor which shall conform to Auditing Standards and in which the Auditor shall state whether in his opinion the accounts fairly present, in accordance with the description of cost accounting systems:

- (a) in the case of the profit and loss account, the results; and
- (b) in the case of the statement of mean capital employed, the mean capital employed.

18.5A The Licensee shall procure in respect of each Standard Service Statement an audit report by the Licensee's Auditor, which shall conform to Auditing Standards in which the Auditor shall state whether in his opinion the costs of and the charges for, the Standard Service are properly prepared in accordance with the description of cost accounting systems, unless the Licensee can demonstrate, to the reasonable satisfaction of the Director, in respect of which the Licensee shall be afforded a reasonable opportunity to present its case, that the requirement to procure an audit opinion on a specific Standard Service Statement is not proportionate.

Status: This is the original version (as it was originally made).

18.6 For each financial year ending on or after 1 January in the year in which the Licensee is determined by the Director to be an Operator having Significant Market Power pursuant to regulation 4(1)(b)(i) of the Interconnection Regulations, the Licensee shall publish

- (a) the separate financial accounts and the report of the Auditor thereon; and
- (b) the Standard Service Statement and the report of the Auditor thereon,

within two months after the date on which the Licensee's annual statutory financial statements are published and, in any event, within four months after the end of the period to which they relate, or such other period as the Director shall determine which is objectively justified.

18.7 Any requirement to which the Licensee would otherwise be subject under paragraph 18.4A shall not apply if, or to the extent that, the Licensee can demonstrate to the reasonable satisfaction of the Director, in respect of which the Licensee shall be afforded a reasonable opportunity to present its case, that the requirement is not proportionate.