

SCHEDULE 2

SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT

PART A:

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

Condition 10

DETERMINATION OF SIGNIFICANT MARKET POWER

10.1 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.

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

10.3 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 11

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

11.1 Subject to paragraphs 11.6 and 11.7 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.

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

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- (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.

11.3 The Licensee shall secure that the agreement or amendment referred to in paragraph 11.1 above is offered on terms and conditions which are reasonable.

11.4 To the extent that the terms and conditions of any agreement or amendment made under paragraph 11.1 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.

11.5 The Licensee shall:

- (a) comply with the requirements of any directions given to the Licensee under paragraph 11.2 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 11.1 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.

11.6 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.

11.7 Paragraph 11.1 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.

11.8 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 11.1 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.

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

Condition 12

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

12.1 Except in relation to agreements with Schedule 2 Public Operators where Condition 11 applies, 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.

12.2 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 Messages which have been or are to be transmitted or received thereby), information and other services,

as may reasonably be requested.

12.3 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 12.2 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.

12.4 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.

12.5 The Licensee shall:

- (a) comply with the requirements of any direction given to the Licensee under paragraph 12.4 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 12.2 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;

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- (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.

Condition 13

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

13.1 On entering into an Interconnection agreement (including amendments), pursuant to Condition 11 or 12, the Licensee shall send a copy of such agreement (including amendments), to the Director.

13.2 Either party to an agreement or amendment referred to in Condition 11.1 or 12.1 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.

13.3 A determination made in response to a requirement under paragraph 13.2 above shall specify any exclusions to be made from the agreement or amendment before it is published under paragraph 13.4 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.

13.4 The Licensee shall:

- (a) where no request has been made under paragraph 13.2 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 11.1 or 12.1; or
- (b) where a request has been made under paragraph 13.2 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 the 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.

13.5 The Licensee shall send a copy of the list referred to in paragraph 13.4 above, or (following publication) any agreement or amendment or part of them to any person who may request it within seven working days of receipt of the request.

13.6 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.

13.7 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.

13.8 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.