

2014 SIA Contracts Review – Third Meeting

Date: 4th March 2015

BT Centre Room C4.82

Start: 14:30

Finish: 16:30

CP Attendees: Sera Wheble (SW) - Resilient Dave Sowerby (DS) – 24 Seven Communications Michelle Coco (MC) - Vodafone Sandra Reid (SR) – Virgin Media Carla Raffinetti (CR) – H3G Peter Farmer (PF) – Gamma Dave Harper (DH) – Telecom 2 Alan Partington (AP) – Telecom 2 Shaun Kennedy (SK) - Telefonica Reka Kuna (RK) - Telefonica Laurent Pariat (LP) - Vodafone	BT Attendees: Neil Handy (NH) Terry McCarthy(TM) Trevor Wiles (TW) Victoria Cox (VC)
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CP ISSUES & DISCUSSIONS:

Issue No: CP1 - EE

Issue Name: Charges for BT services

Para No: para 12 Main Body; Cross Ref: para 13 Main Body; para 26 Main Body

CR advised that H3G cannot accept Para 12 as it is and that BT should not have the right to make unilateral changes. Para 12 was never meant to give BT an unfettered unilateral right to amend charges. The intention was always for BT's charges to apply until set aside by Ofcom. However, the Supreme Court judgment has curtailed Ofcom's powers to determine disputes re unregulated charges, and has placed a far greater emphasis on BT's contractual rights. In the past, it was less problematic for BT to impose unilateral price changes, as most of BT's prices were required to be cost-orientated. This has now changed. Moreover, TCPs can rely on BT to impose their own price changes (OCCNs issued under para 13) on third parties unilaterally under para 12. BT was asked to consider and respond to each of the drafting proposals line by line, and to make substantive counter-proposals.

Tmc advised BT will respond by the next meeting.

SK advised that a bald rejection of the MONS' proposals without reason was insufficient, given the considerable effort expended in producing the draft proposals. BT needs to provide detailed reasons in response to the proposals.

PF expressed the view, for the reasons outlined in his letter to Tim Howson late last year, this proposed variation is wholly unacceptable. He noted that current construction was deemed fair and reasonable by Ofcom. Gamma does not support any variation in the construction of Paragraph 12/13 as proposed by the mobile network operators which would seem to me makes the matter deadlocked.

SR supported the Gamma view. Virgin Media does not support EE's suggested amendments. Virgin Media believe that it would be impracticable to give 200+ CPs the automatic right to reject BT's NCCNs and ACCNs.

CR asked if Gamma/Virgin Media would expand on the reasons behind their views and advise participants.

PF It is unworkable that every CP would have to accept the change for every request received.

Issue No: CP2 - Three

Issue Name: BT's right to vary BT services unilaterally

Para No: Para 12.2, 12.3 Main Body

This issue has been covered in the general proposal/discussion on Issue CP1.

Issue No: CP3 - Gamma

Issue Name: Variations

Para No: Main Body, 30.1.1

This issue has been covered in the general proposal/discussion on Issue CP4.

Issue No: CP4 - Gamma

Issue Name: Variations

Para No: Main Body, 30.1.2

At the initial meeting Gamma had an action point to provide draft text to the main body para 30.1.2. Gamma has submitted their proposal. See below text proposed by Gamma;

30.1 Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless agreed in writing by the Parties as follows:

30.1.1 for BT, by the Managing Director, BT Wholesale Markets (or his successor) or another person nominated in writing by the Managing Director, BT Wholesale Markets (or his successor); and

30.1.2 for the Operator, by a director (as defined in the Companies Act 2006 or equivalent office holder) or another person nominated in writing by such a director of the Operator.

AP 2.3 – Changes accepted, AP Closed

AP 2.4 - Changes accepted, AP Closed

Issue No: CP5 - Gamma

Issue Name: Notices

Para No: Main Body 28.1 / 28.1.2 / 28.1.3 / 28.2.2

At the initial meeting the action point fell to BT to review the wording in the main body para's 28.1 / 28.1.2 / 28.1.3 / 28.2.2 and propose draft text to industry.

BT has proposed revised text for Para 28 and asked Industry to review.

AP 2.5 – Closed

CR advised that whilst the majority of the changes looked acceptable, more certainty was needed in relation to delivery of notices.

AP 3.1 CR to propose revised wording of para 28.

Issue No: CP6 - Gamma

Issue Name: Microduration Calls

Para No: Various

This issue will be covered as part of the Annex E 2014 AIT Review going forward.

Issue No: CP7 - Gamma

Issue Name: Back Billing

Para No: Various, notably Annex B

Gamma has proposed the following text below for industry agreement;

No invoice shall be valid if raised by either Party more than twelve (12) months after the services to which it relates were provided

Industry to review draft text proposed by Gamma for discussion at the next meeting.

AP 2.7 - Industry to review the proposal submitted by Gamma on Back Billing and feedback to BT their agreement / objection or offers an alternative suggestion by next meeting.

SR advised that Virgin Media did not support the Gamma proposal, but would review again internally.

PF insisted there must be a cut off time by which invoices for unbilled items can be raised.

AP 2.8 – BT to provide its response to Gamma's proposed changes on Back Billing in Annex B by next meeting.

TMc/NH will review internally and clarify the BT position.

LP also advised that he will review internally with VF.

Issue No: CP8 - Gamma

Issue Name: Withhold

Para No: Annex B, Para 5

At the initial meeting, Gamma has an action point to provide additional detail on the reasons for the removal of 5% and £250k or if less provide full explanation as to the decision. See below additional information provided by Gamma;

Withhold Amounts

Either party should be entitled to withhold any amount in dispute under Paragraph 6. The current construction affords BT the ability to incorrectly invoice a small operator by £249,999.99 a month in perpetuity until the issue is resolved through negotiation or litigation which is hardly fair or reasonable (and by extension is questionable in relation to BT's Significant Market Power Conditions). It seems that the clause has a genesis in a time before the market was as diverse and vibrant as it is today.

Equally, for a large operator, BT could be 4.95% incorrect in perpetuity, which is equally as intolerable.

The suggestion that this could lead to "cash flow manipulation" is made despite BT having remedies for late payment and various credit vetting procedures.

Therefore 5.2.1 and 5.2.2 should be struck, and 5.2 should be amended accordingly to reflect that any amount in dispute can be withheld.

SR advised that Virgin Media did not support the changes proposed by Gamma.

TMc advised that Telecom 2 have expressed support for maintaining the existing thresholds.

PF suggested that perhaps the threshold could be at contract level rather than invoice level.

AP 2.9 –Industry to review Gamma's proposal regarding "Withhold" and confirm agreement/disagreement to the changes proposed or provide alternative suggestions by 13th February.

AP 2.10 –Industry to offer alternative recommendations for the new thresholds or alternatively state they don't know what the new limits should be by 13th February.

AP 2.11 – BT to provide its views on Gamma's proposal regarding "Withhold" by 13th February.

TMc stated BT is willing to support changes to thresholds, but would like industry achieve consensus on these thresholds.

AP 3.2 Industry to provide consensus based thresholds for consideration by June 2015.

Issue No: CP9 – Telecom 2

Issue Name: Billing Disputes

Para No: Para 6 Annex B; Cross Ref: para 1.1 Annexe E "AIT Call Data"; Para 1.1 Annexe E "A1 Retention Notice" (a)

At the initial meeting Telecom2 had an action point to consider the alternative to CDR's that would provide the relevant information required as a minimum for billing disputes and propose its views to industry prior to the next meeting.

AP 1.8 Telecom2 advised feedback will be circulated to industry week commencing 2nd February.

TMc acknowledges receipt and said BT are reviewing the documentation supplied by Telecom2. BT will respond by the next meeting.

Issue No: CP10 – Telecom 2

Issue Name: Billing Disputes

Para No: Para 6 Annex B; Cross Ref: Para 5 Annex E

AP 1.10 Telecom2 to draft a strawman process for Billing disputes which replicates the Annex E process to circulate to industry for comments prior to the next meeting.

TMc advised this has recently been received from Telecom 2. Whilst BT have not been able to review thoroughly, BT have noted that the aim is to achieve POLO dispute settlement similarly to that of AIT. BT is not minded that this is workable.

PF reminded the meeting that Annex B covers products other than call minutes.

TMc advised that the dispute letters and supporting information was being looked at by BT to see what improvements could be made.

AP 3.3 BT will respond to Telecom 2 proposal by next meeting

Issue No: CP11 - Gamma

Issue Name: Payphones

Para No: Schedule 141, 311, 517

This issue has been Withdraw.

NOTE: CP ISSUES 12, 13 & 14 WERE DISCUSSED TOGETHER.

Issue No: CP12 - Gamma

Issue Name: PRS

Para No: Annex D

The Annex D is being reviewed and updated as part of the NGCS Review.

Issue No: CP13 - Gamma

Issue Name: Range

Para No: Annex D

The Annex D is being reviewed and updated as part of the NGCS Review.

Issue No: CP14 - Gamma

Issue Name: NTS

Para No: Annex D

The Annex D is being reviewed and updated as part of the NGCS Review.

Issue No: CP15 - Gamma

Issue Name: Mobile Call

Para No: Annex D

The current definition for a Mobile Call in Annex D states the following;

- "Mobile Call"** a Call to an Operator Customer using a mobile handset if the Operator Customer using mobile terminal apparatus would receive that Call by means of wireless telegraphy if the handset was switched on and within range of a base transceiver station forming part of the Operator System unless:
- (a) the Operator Customer on a temporary basis has chosen to divert that Call to another number; or
 - (b) the Operator System when the mobile handset is turned off or out of range from a base transceiver station returns a message to that effect to the Calling Party;

Gamma has provided draft text for agreement on the definition of a mobile call. See below proposed text from Gamma;

The wording (noting that Annex D definitions may have to be included) could be simplified as follows;

"A Mobile Call is a Call made to a number designated as a mobile service in the National Telephone Numbering Plan"

BT will review and either agree or provide alternative suggestions in readiness for the next meeting.

AP 2.12 - BT to provide its views on the proposal submitted by Gamma's on the definition of Mobile Calls in Annex D by 13th February.

BT provided proposed changes to Industry.

SK advised that Telefonica disagreed with the proposed changes arguing the definition should remain as is.

AP 3.3 SK to provide reasons why the definition should not be changed.

SK has provided the following reasons;

- From discussion at the review meeting it was clear that there was no intent to change the meaning of the definition. Rather the intent was to simplify the definition.
- The existing definition term 'wireless telegraphy' includes Wi-Fi. This was not contentious.
- The Gamma proposal could be interpreted to allow 07 numbers to be used to front fixed services and so attract an MTR.
- It was accepted that the Numbering Plan with its mobile definition stood in any case.

Issue No: CP16 - Gamma

Issue Name: Associated Company / Subsidiary Company / Holding Company

Para No: Annex D

BT is checking if the text in Annex D referring to Associated Company / Subsidiary Company / Holding Company refers to the latest Companies Act or requires updating to the latest Companies Act. This is an action with BT and a response will respond to industry prior to the next meeting.

AP 2.13 - BT to review part 38 of the 2006 act which relates to holding company and subsidiary and provide an update to industry on Associated Company / Subsidiary Company / Holding Company. BT to provide a response by 13th February.

Change agreed.

Issue No: CP17 - Gamma

Issue Name: Invoice Date

Para No: Annex D

The current definition in the Annex D states the following;

"Invoice Date" the date on which an invoice is despatched;

Gamma has provided draft text for agreement on the definition of Invoice Date. See below proposed text from Gamma;

Invoice Date "the date on which the transaction takes place for the purposes of Value Added Tax"

AP 2.14 - BT to review the definition of Invoice Date in Annex D and provide proposed text to industry by 13th February.

BT has reviewed the definition and suggested replacing 'Dispatched' with 'Issued'

TW believes using 'issued' could lead to conflict if the invoice is not sent on the date of the invoice.

CR suggested that 'sent' be used instead.

Issue No: CP18 - Gamma

Issue Name: BT

Para No: Annex D

Gamma proposed at the initial meeting that definition against BT in Annex D be reviewed and consider if the definition for BT should include company number and registered address and jurisdiction in Annex D.

The current definition in Annex D states the following;

"BT" British Telecommunications public limited company;

VC advised the full definition is on the front of the Main Agreement which currently includes the registered address brackets thereafter which says " (BT)" and remove the definition in Annex D will be removed to avoid any confusion.

Issue No: CP19 - Gamma
Issue Name: Confidential Information
Para No: Annex D

At the initial meeting BT stated it will review GC1.2 and the definition of Confidential Information in Annex D to see if it requires elaborating and Gamma were going to propose suggested changes for consideration.

The current definition for Confidential Information in the Annex D states the following;

"Confidential Information" any information, in whatever form, which in the case of written or electronic information is clearly designated as confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential and including such Confidential Information already disclosed by either Party to the other prior to the date of this Agreement but excluding any information which:

- (a) is in or comes into the public domain other than by reason of a breach of this Agreement; or
- (b) is previously known on a non-confidential basis to the Receiving Party at the time of its receipt; or
- (c) is independently generated, developed or discovered at any time by or for the Receiving Party; or
- (d) is subsequently received from a Third Party without any restriction on disclosure;

VC advised BT have reviewed and see no need to amend this definition.

AP 3.5 CR to draft clause imposing a general contractual obligation on the parties to comply with applicable law and regulation.

Issue No: CP20 - Gamma
Issue Name: Data Management Amendment
Para No: Annex D

The current definition for Data Management Amendment in the Annex D states the following;

“Data Management Amendment” such reconfiguration of the BT System or the Operator System as is necessary for access, routing and charging of Calls;

BT is reviewing the text and will update Annex D with the common used term DMA.

BT will review the Annex D and take in to account all definitions that need updating and points raised for consideration during the meeting. BT will provide their views by 13th February.

AP 2.16 - BT to review definitions in Annex D and respond to industry by 13th February.

NH advised definition has been amended.

Issue No: CP21 - Gamma
Issue Name: In-span interconnect
Para No: Annex D

This issue has been covered in the general discussion on Issue CP20.

Issue No: CP22 - Gamma
Issue Name: Public Electronic Communications Network
Para No: Annex D

This issue has been covered in the general discussion on Issue CP20.

Issue No: CP23 - Gamma
Issue Name: Technical Master Plan
Para No: Annex D

This issue has been covered in the general discussion on Issue CP20.

NOTE: CP ISSUES 24 & 25 WERE DISCUSSED TOGETHER.

Issue No: CP24 - EE
Issue Name: AIT rejection
Para No: Annex E, Section 7

This issue has been discharged and is being addressed as part of the Annex E Review.

Issue No: CP25 - EE
Issue Name: AIT rejection
Para No: Annex E, Section 7

This issue has been discharged and is being addressed as part of the Annex E Review.

Issue No: CP26 - Vodafone

Issue Name: Review of the CPL notes to verify that Contractual principles set out in the CPL have been incorporated into the SIA and Annexes, Service Schedules or relevant Price letters or Supplemental's. In addition removal of obsolete notes and references

At the initial meeting it was agreed that Vodafone scan through the CPL and feedback their list of issues to BT on what is required and what needs to change.

AP 2.17 - Vodafone to provide their feedback to BT by 13th February with a view for further discussion at the next meeting.

LP advised examples on inconsistencies have been provided, and suggested that a Change Control process is put in place.

TMc agreed that BT will look at the examples provided.

PF proposed that BT suggest principles for review of CPL.

TMc agreed to propose these principles and timescale.

AP 3.6 BT to provide CPL review principles and timescale.

Issue No: CP27 - EE

Issue Name: Notice Periods:

AP 2.18 - BT to include EE's proposed changes on Notice Period as part of the issues list for inclusion in this 2014 SIA Review. This will be Issue No: CP 27.

BT will respond by next meeting.

BT ISSUES & DISCUSSIONS:

Issue No: BT1

Issue Name: Schedule 220

BT circulated the tracked changes version of schedule 220 to industry on 10th December for review and agreement.

No feedback received from industry.

AP 2.19 - Industry to review schedule 220 and provide any feedback to BT by next meeting.

AOB

The next meeting is to be scheduled in six weeks' time.

Meeting closed

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ACTION POINTS: Discharged

ACTION POINT REF	CP ISSUE No	ACTION	OWNER	OUTCOME
AP 1.1	Point 2	BT to add the additional Vodafone items to the existing issues list where they best fit.	BT - FD	Discharged
AP 1.2	CP Issue 1	EE and Three to work together and propose draft para 12 text to industry for discussion at the next meeting.	EE – KHC, WG & Three CR, CC	Discharged
AP 1.3	CP Issue 4	Gamma to provide draft text to the main body para 30.1.2	Gamma - PF	Discharged
AP 1.4	CP Issue 5	BT to Review the wording in the main body para's 28.1 / 28.1.2 / 28.1.3 / 28.2.2 and propose draft text to industry at the next meeting. Superseded by AP 2.5	BT - HP, TMc & NH	Discharged
AP 1.5	CP Issue 6	Gamma to provide more detail on Microduration and what is required prior to the next meeting. Superseded by AP 2.6	Gamma - PF	Discharged
AP 1.6	CP Issue 7	Gamma to provide more detail on this back billing point at the next meeting	Gamma - PF	Discharged
AP 1.7	CP Issue 8	Gamma to provide more detail on the reasons for the removal of 5% and £250k or if less provide full explanation as to the decision.	Gamma - PF	Discharged
AP 1.9	CP Issue 9	BT to enquire internally and feedback to industry at the next meeting if a greater level of detail can be provided for billing disputes. Discussed in AIT Review	BT – TMc, NH	Discharged
AP 1.11	CP Issue 16	BT to check if the text in Annex D referring to Associated Company / Subsidiary Company / Holding Company refers to the latest Companies Act or requires updating to the latest Companies Act. Superseded by AP 2.13	BT – TMc, NH	Discharged
AP 1.12	CP Issue 17	Gamma to provide suggested text as to the definition of Invoice Date for Annex D.	Gamma - PF	Discharged
AP 1.13	CP Issue 18	BT to review and consider if the definition for BT should include company number and registered address and jurisdiction in Annex D and will update industry at the next meeting. Superseded by AP 2.16	BT – TMc, NH	Discharged
AP 1.14	CP Issue 19	BT to review GC1.2 and the definition of Confidential Information in Annex D to see if it requires elaborating. Superseded by AP 2.15	BT - HP	Discharged
AP 1.15	CP Issue 19	Gamma to propose suggested changes on the definition of Confidential Information for Review and consideration with industry at the next meeting.	Gamma - PF	Discharged
AP 1.16	CP Issue 20	BT to update Annex D with the common used term DMA. Superseded by AP 2.16	BT – TMc, NH	Discharged
AP 1.17	CP Issue 21	BT to update Annex D with the common used term ISI. Superseded by AP 2.16	BT – TMc, NH	Discharged
AP 1.18	CP Issue 22	BT to update Annex D with the Act or just Public Communications Network or an alternative GC term. Superseded by AP 2.16	BT – TMc, NH	Discharged
AP 1.19	CP Issue 24	BT to send Industry Briefing and organise an initial scoping AIT Review meeting for mid-December.	BT – TMc, NH	Discharged
AP 1.20	CP Issue 25	Vodafone to have an initial trawl through the CPL and feedback their list of issues to BT on what is required and what needs to change. Superseded by AP 2.17	Vodafone - HE, LP	Discharged
AP 1.21	BT Issue 1	BT to circulate tracked changes version of schedule 220 to industry for review and agreement at the next meeting.	BT - NH	Discharged

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AP 1.22	AOB	BT to organise the next meeting for mid to late January 2015	BT - FD	Discharged
AP 2.3	CP Issue 4	BT to review the proposed submitted by Gamma and provides its response to industry by 13 th February.	BT	Discharged
AP 2.4	CP Issue 4	Industry to review the proposal submitted by Gamma and feedback to BT their agreement / objection or offers an alternative suggestion by 13 th February.	Industry	Discharged
AP 2.5	CP Issue 5	BT to provide its response to industry on para's 28.1 / 28.1.2 / 28.1.3 / 28.2.2 of the main body by 13 th February.	BT	Discharged
AP 2.6	CP Issue 6	Gamma to provide additional detail on Microduration and what is required prior to the next meeting.	Gamma	Discharged
AP 2.9	CP Issue 8	Industry to review Gamma's proposal regarding "Withhold" and confirm agreement/disagreement to the changes proposed or provide alternative suggestions by 13 th February.	Industry	Discharged
AP 2.10	CP Issue 8	Industry to offer alternative recommendations for the new thresholds or alternatively state they don't know what the new limits should be by 13 th February	Industry	Discharged
AP 2.11	CP Issue 8	BT to provide its views on Gamma's proposal regarding "Withhold" by 13 th February.	BT	Discharged
AP 1.8	CP Issue 9	Telecom2 to consider the alternative to CDR's that would provide the relevant information required as a minimum for billing disputes and propose their views to industry prior to the next meeting.	Telecom2	Discharged
AP 1.10	CP Issue 10	Telecom2 to draft a strawman process for Billing disputes which replicates the Annex E process to circulate to industry for comments prior to the next meeting.	Telecom2	Discharged
AP 2.12	CP Issue 15	BT to provide its views on the proposal submitted by Gamma's on the definition of Mobile Calls in Annex D by 13 th February.	BT	Discharged
AP 2.13	CP Issue 16	BT to review part 38 of the 2006 act which relates to holding company and subsidiary and provide an update to industry on Associated Company / Subsidiary Company / Holding Company. BT to provide a response by 13 th February.	BT	Discharged
AP 2.14	CP Issue 17	BT to review the definition of Invoice Date in Annex D and provide proposed text to industry by 13 th February.	BT	Discharged
AP 2.15	CP Issue 19	BT to respond to industry on the definition of Confidential Information in Annex D by 13 th February.	BT	Discharged
AP 2.16	CP Issue 20	BT to review definitions in Annex D and respond to industry by 13 th February	BT	Discharged
AP 2.17	CP Issue 26	Vodafone to provide their feedback to BT by 13 th February with a view for further discussion at the next meeting.	Vodafone	Discharged

ACTION POINTS: New and Ongoing

ACTION POINT REF	CP ISSUE No	ACTION	OWNER	Status
AP 2.1	CP Issue 1	BT to provide formal response to industry by 13 th February on para's 12 and 13.	BT	Respond next meeting
AP 2.2	CP Issue 1	Industry to provide their responses to BT on para's 12 and 13 by 13 th February.	Industry	Respond next meeting
AP 2.7	CP Issue 7	Industry to review the proposal submitted by Gamma on Back Billing and feedback to BT their agreement / objection or offers an alternative	Industry	Respond by next meeting

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		suggestion by 13 th February.		
AP 2.8	CP Issue 7	BT to provide its response to Gamma's proposed changes on Back Billing in Annex B by 13 th February.	BT	Respond by next meeting
AP 2.18	CP Issue 27	BT to include EE's proposed changes on Notice Period as part of the issues list for inclusion in this 2014 SIA Review. This will be Issue No: CP 27	BT	Respond by next meeting
AP 2.19	BT Issue 1	Industry to review schedule 220 and provide any feedback to BT by 13 th February.	Industry	Respond by next meeting
AP 3.1	CP Issue 5	CR to propose revised wording of para 28.	Industry	New – by next meeting
AP 3.2	CP Issue 8	Industry to provide consensus based thresholds for consideration by June 2015.	Industry	New – by June 2015
AP 3.3	CP Issue 10	BT will respond to Telecom 2 proposal by next meeting	BT	New – by next meeting
AP 3.4	CP Issue 15	SK to provide reasons why the definition should not be changed.	Industry	New – by next meeting
AP 3.5	CP Issue 19	CR to draft clause imposing a general contractual obligation on the parties to comply with applicable law and regulation.	Industry	New – by next meeting
AP 3.6	CP Issue 26	BT to provide CPL review principles and timescale.	BT	New – by next meeting