

## **EXECUTIVE NOTE**

### **THE NON-DOMESTIC RATING (TELECOMMUNICATION & CANALS) (SCOTLAND) ORDER 2008 SSI/2008/84**

1. The above instrument is made in exercise of the powers conferred by section 6A of the Valuation and Rating (Exempted Classes) (Scotland) Act 1956 and by all other enabling powers. This instrument will amend Article 2B of the Non-Domestic Rating (Telecommunications and Canals) (Scotland) Order 1995. The instrument is subject to the negative resolution procedure.

#### **Purpose**

2. This instrument replaces the existing provisions contained in the Non-Domestic Rating (Telecommunications and Canals) Amendment (Scotland) Order 2006 which provides for British Telecommunications plc (“BT”) as being in rateable occupation of the local loop, on a temporary basis, from 1 January 2007 to 31 March 2008. The Non-Domestic Rating (Telecommunication & Canals) (Scotland) Order 2008 provides for BT remaining in rateable occupation of the local loop on an indefinite basis from 31 March 2008 and, in doing so, will ensure the continued harmonisation of the rating liability of local loops in Scotland with local loops in England.

#### **Background**

3. A “local loop” is a single pair of copper wires which connect a customer’s premises to the local telephone exchange and through which telephone and broadband services are supplied. Local loop unbundling (“LLU”) is the process whereby the incumbent operator makes its local loop network available to other operators (“LLU operators”).

4. Since 2004, Scottish Government and UK Government officials have jointly, and separately, held a number of discussions with key stakeholders (including OFCOM, the Scottish Assessors, the Valuation Office Agency, BT and other telecommunications operators) to explore possible ways of overcoming the practical and administrative difficulties in the rating of local loops. The general position in rating would be that the occupier should be liable for rates unless there were very good reason to depart from this. There was a consensus that, in the case of the rating of local loops, a combination of factors meant that the situation of unbundled local loops was exceptional. These factors were: (a) the very real difficulties of establishing who occupies a particular loop; (b) the administrative costs of ensuring the right person is billed for the right amount; and (c) the problems of valuing unbundled local loops. In addition, OFCOM argued that because local loop unbundling was still a relatively new market, any uncertainty regarding the costs of offering services and the resulting revenue streams would be likely to have a major impact on investment plans by LLU operators.

## **Consultation**

5. We consulted one hundred and seven stakeholder organisations, including BT and other telecommunications operators, OFCOM, the Scottish Assessors and Scottish local authorities on two possible options, during the period from 31 January 2008 to 25 February 2008. The UK Government conducted a separate consultation for England in autumn 2007.

6. Under both options, BT would continue to receive a contribution to its rates bill through the charge that broadband providers pay to use each local loop. Views were sought on the two options described below:

6.1 **Option 1:** extend the temporary arrangements, which would therefore provide for the treatment of fully unbundled local loops as being in rateable occupation by BT until 2010;

6.2 **Option 2:** make provision on an indefinite basis for the treatment of fully unbundled local loops as being in rateable occupation by BT.

7. Of the substantive responses received, we noted that OFCOM, the Scottish Assessors Association and a number of telecommunications operators, including Exponential-e, Gamma Telecom, Global Crossing, Kcom, THUS plc, Vtesse Networks and others who requested that their responses remain confidential, had indicated a clear preference for Option 2 (indefinite basis). OFCOM noted that this option would address both the issue of efficient collection of business rates and issues relating to the competitive environment in the provision of broadband services. BT indicated that, although they could support Option 1 (until 2010) as a pragmatic solution, they were of the belief that the right long-term solution would be to end the current arrangement for the rating of local loops. BT also argued for the telecommunications industry in Scotland to be included in the Designated Assessor Regime. Other substantive responses favouring Option 1 were submitted by CBI Scotland and the Rating Surveyors' Association.

## **Financial Implications**

8. There are no significant financial implications resulting from this instrument.

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