

# Report to OFCOM

Review of Artificial Inflation of Traffic (AIT) process following the 2010 changes to Annex E of the SIA



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**Attachments to the Report:**

1. Consolidated List of Review Issues for the 2011 AIT Contract Review
2. February 2010 draft AIT Operations Guide
3. July 2011 draft AIT Operations Guide
4. Email Notification Trial documentation

## Executive summary

This report was requested by Ofcom following the implementation of a revised Artificial Inflation of Traffic (AIT) process in March 2010. Its purpose is to provide a review of the changes, the impact on certain key areas and the opportunity to reflect on some of the key operational aspects.

There have been some significant changes within the process steps that have placed a greater onus on all participants when dealing with AIT. A more transparent framework now exists and early analysis would suggest there has been no material impact on the level of retentions made, as perhaps was first perceived.

Incidents of confirmed AIT remain high; however, there are indications that the changes to the process (including now a 'greater burden of proof' by all parties) have seen the time taken to close cases reduce.

BT has continued to work with the wider industry over the past eighteen months to ensure that the revised process is fully embedded. Whilst there may still be some concerns by a few CPs, the changes have been well received and supported by the wider industry. There are a number of options available to BT to ensure the momentum is maintained.

The 2009 Determination suggested that in light of the AIT Annex E changes, BT should consider the introduction of an AIT Guide or Operations Manual. A draft was made available for the launch in early 2010 and an updated draft is with the industry AIT group for comment, and it is anticipated that it will be formally launched very soon. In addition from the 2010 contract review following a lengthy period of industry discussion, a trial for the use of e-mail for AIT notification is being introduced on the 1<sup>st</sup> September with 12 CPs currently committed to the trial.

# 1 Introduction

1.1 In March 2010 the AIT process of the Standard Interconnect Agreement was revised (following the Determination by Ofcom in July 2009 affecting a small number of CPs) to introduce the following changes:

- widen the scope of AIT Annex E to include newer types of fraud and artificial traffic stimulation and make the retention and investigations process simpler and clearer;
- greater clarity of the roles and responsibilities of the parties and increase onus on ONOs to provide better supporting information;
- introduce tighter timeframes and make the overall process more structured and expedient;
- introduce standard forms – supplementing the A1 Retention Notice with the A2 Withdrawal Notice, the A3 Rejection Notice and the A4 Dispute Notice;
- provide clearer and more detailed reasons and substantiation for retentions;
- allow BT as a transit operator to make retentions independently in specific circumstances;
- clarify treatment of ported and hosted numbers;
- clarify dispute resolution options;
- introduce an end-date for AIT Disputes if un-progressed by the TNO; and
- provide a process where in a transit situation the ONO and TNO are in direct contact, and a facility where BT as the transit operator can (with the agreement of the other parties) drop out of an AIT Dispute where it is merely the transit operator and cannot contribute to the investigation. However, BT will still help where needed/ requested.

1.2 The purpose of this report is to provide a review of the Artificial Inflation of Traffic (AIT) process, after the introduction of changes made to Annex E of the SIA which came into force on the 1<sup>st</sup> March 2010. This report has been requested by Ofcom as part of their Determination adjudication. The report is intended to address a number of issues referred to in the Ofcom determination dated July 2009, including those set out at paragraph 7.13 thereof which were;

- (i) An assessment of any changes in the overall level of retentions
- (ii) An assessment of the extent of compliance with the procedures (and good faith requirement) as set out in the 'revised Annex E'.
- (iii) An assessment of the extent to which retentions are successfully resolved within the ten month backstop date.
- (iv) An evaluation of the overall quality of evidence provided by CPs
- (v) A consideration of improvements which could reasonably be made to the process and related guidance in light of the above (including concept of a third party holding any retained revenue; the concept of a low cost independent dispute resolution process and whether further exclusions can be specified from the AIT definition and/or AIT indicators), as well as proposals from BT or the industry in the interim to improve or enhance the process.

## 2 Definitions

ADR	Alternative Dispute Resolution
AIT	Artificial Inflation of Traffic
AIT Operations Guide	AIT guide supporting the SIA agreement
Annex E	specific AIT document in the SIA Agreement
CDR	Call Data Records
CP	Communications Provider
CPL	Carrier Price List
IRSF	International Revenue Share
ONO	Originating Network Operator
SIA	Standard Interconnect Agreement
SP	Service Provider
TNO	Terminating Network Operator
TO	Transit Operator

## 3 The AIT Process-review of changes

### 3.1 A1 Notice from ONO to TNO – notification of AIT.

The changes implemented in 2010 to the original A1 notification process are as follows.

- (i) The inclusion by CPs on the A1 notification form of the reasons for suspecting AIT.
- (ii) The inclusion by the TO of ONO name and contact details
- (iii) 1 additional working day has been given to BT Wholesale in Transit cases only, in which BT as Transit Operator has to serve the A1 AIT notice to the TNO.

There had been no previous change to the A1 part of the process since the original Annex E was introduced in 1999. The inclusion of an additional working day addressed BT's concern that it did not have sufficient time to onward serve an A1 notice within the existing deadlines and could be financially disadvantaged in a 'transit situation' e.g. if an ONO served a notice to BT at 4.55pm on the 14<sup>th</sup>, BT would not have sufficient time to onward serve that notice to the TNO before the 5pm deadline had expired, although the ONO has met their obligations. BT therefore, would not have been able to uphold the retention made by the ONO against the TNO.

The second change brought in to this part of the process in 2010 was the requirement for the ONO to provide the reasons for their suspicions of AIT on the A1 notice to the TNO. Under the original Annex E, reasons for suspecting AIT were provided separately, and were not always forthcoming within a reasonable timescale. This change has been adhered to by ONOs but the reasoning and evidence provided has not always been of a quality which justifies the suspicion of wrong doing by the Service Provider or the TNO.

#### 3.1.1 Impact of contractual changes to the A1 notification process

BT has seen no evidence to suggest that the change in allowing BT, as the transit operator, an additional working day in which to onward serve transit A1 notices has caused any difficulties. The change has placed less stress on the BT AIT team and helped reduce the potential for errors when serving notices to TNOs.

The provision of reasons for suspecting AIT on the A1 notice has helped speed up the process for TNOs to understand why a notice has been served. However BT considers that the quality of evidence provided on occasions is not always of a sufficient standard and could be improved.

### 3.2 Provision of Call Data Records (CDRs) by AIT calendar day 26

Under the previous 'Annex E' process Call Data Records, to support a case of AIT, were to be supplied within a "reasonable timescale" by the CP. This lack of a defined deadline could cause problems for TNOs. Delay in receipt of CDRs could make it difficult, in some cases, for TCPs to identify which of their customers could be involved and, therefore, to make the appropriate investigations and retentions against the suspected party in the chain.

### 3.2.1 Impact of the changes –provision of CDRs

With the introduction of the new Annex, the provision of data has been given a specific contractual deadline for delivery to try and minimise any difficulty in the TNO identifying the suspected Re-seller / SP customer. The deadline date for the provision of AIT call data is AIT day 26 (i.e. 12 days from the issue of the A1 notice by the ONO<sup>1</sup>). Failure by an ONO to provide data by this date should result in the ONO forfeiting the case and the AIT case being withdrawn.

In situations where the delivery of CDR information has been outside the contractual timescale set down, generally ONOs have reluctantly withdrawn the case and released funds. However, there have been a small number of situations where, despite a failure to meet the deadline in the contract, an ONO has continued to maintain the case as AIT and refused to release the funds. The reason given by ONOs in such situations is that they do not wish the perpetrators of AIT to benefit from the funds generated and are prepared to face legal action to defend their position regardless of the provisions of the SIA or Annex E. In transit cases this places BT Wholesale in a difficult position as it owns the contractual relationship with both TNO and ONO. Therefore any legal action taken by either party would naturally involve BT, unless the ONO and TNO agree that the debt may be assigned. This has been proposed by BT in one case and accepted by the TNO and ONO.

### 3.3 Issue of the withdrawal notice (A2) by the ONO

If the ONO fails to provide call data or has insufficient evidence to support a claim of AIT after the A1 notice has been raised, the ONO should issue the new A2 Withdrawal notice and advise the TNO that no retention would be made.

#### 3.3.1 Impact of the changes- usage of A2 notice

This notice has rarely been used by any of the ONOs to date. What has happened in this situation is that the ONO simply releases the retention via their Accounts payable system. Consideration could be given to removing the requirement for this notice from the process. BT suggests that this should be reviewed with industry as part of the 2012 General Contract Review opportunity.

### 3.4 Issue of rejection notice (A3) by TNO

Under the previous Annex E the time for a TNO to raise their reasons for rejecting / disputing an AIT case was not defined. This caused problems in trying to close cases down, and meant that cases could remain open indefinitely. The new Annex E has placed a timescale by which a rejection notice (A3) has to be raised by the TNO if they wish to dispute an AIT case. The contractual deadline is AIT day 34.

The notice must contain details / reasons why the traffic is genuine and not AIT and it is sent directly to the ONO that originated the case. Under the new Annex E failure to raise a timely A3 rejection notice by the TNO will mean that the TNO is deemed to accept the reasons provided by the ONO for suspecting AIT. The TNO is then obliged to raise a credit for the suspected AIT traffic to offset their invoiced amount. In a transit case BT Wholesale would then in turn raise a credit for the value of the A1 notice submitted by the ONO, to offset BT's invoice to the ONO.

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<sup>1</sup> The A1 Retention Notice is due to be served by the 14<sup>th</sup> calendar day commencing from the first day of the calendar month following the month in which the Call traffic occurred.



#### 3.4.1 Impact of the changes –issue of rejection notice A3

The submission of an A1 notice effectively starts the clock, and a process whereby the TNO must respond within set limits or risk losing the claim by default has been seen to drive a more efficient process. The intention of the change is to speed up the issuing of credit notes by the TNO where they do not dispute that AIT has occurred. It should also help to quickly clarify the reasons for a dispute by a TNO if they consider that AIT has not been committed. However, current practice shows that TNOs are still reluctant to issue credit notes even when they have not issued rejection notices. BT, as a consequence, continues to spend just as much time as it did previously chasing TNOs for credits. In addition the quality of information contained on a rejection notice is often limited to complaints about the information provided by the ONO on the original A1 notice, rather than supplying details proving why the traffic is genuine.



Table 2 (and figure 2) below portrays by retention value (£M) a breakdown of specific call type for the past five years. As can be clearly seen, premium rate service AIT repeatedly represents almost 50% of the total retentions made during the period.

**Table 2**

Cases values	Traffic Type	(£M)							Grand Total
FY	DQ	LCFA	MVN	NAT	PNS	PRS	IDD	PAGING2	
2006/7				0.485	2.468	1.958	0.000	0.000	4.911
2007/8	0.020	0.007	0.106	1.394	0.975	2.718	0.000	0.000	5.219
2008/9	0.098	0.318	0.229	0.510	0.700	2.079	0.000	0.023	3.958
2009/10	0.015	0.194	0.209	1.149	0.247	2.616	0.000	0.358	4.789
2010/11	0.165	0.341	0.510	0.248	0.956	2.241	0.001	1.302	5.763
2011/12	0.014	0.072	0.232	0.076	0.233	1.096	0.036	0.026	1.784
Grand Total	0.312	0.932	1.286	3.862	5.579	12.708	0.037	1.708	26.424

**Figure 2**

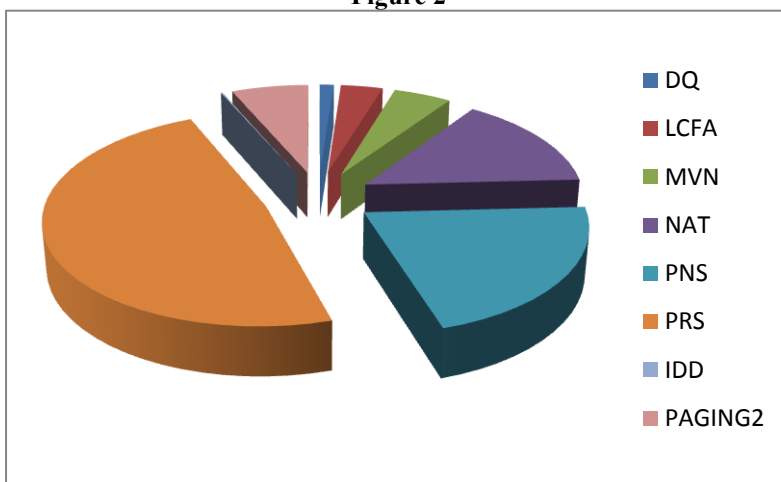
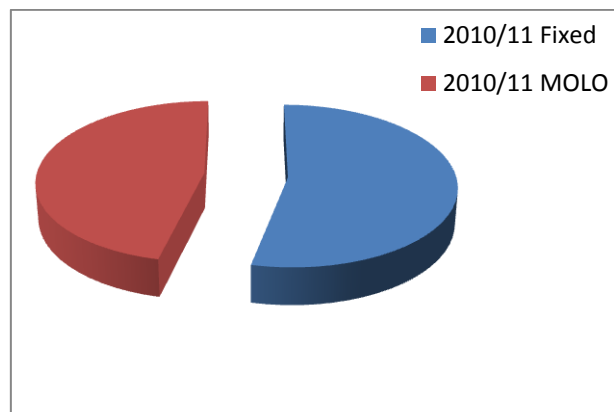


Table 3 below shows the split between fixed line and mobile origination (by number of cases; value of cases and %age number/value) for the past five years. The data shown in Table 3 indicates that 'fixed line' volumes account for the majority of retentions

**Table 3**

<b>FY</b>	<b>Operator Type</b>	<b>Number of cases</b>	<b>Value of cases (£M)</b>	<b>% number</b>	<b>% Value</b>
2006/7	Fixed	453	2.26	63.4	46.0
2006/7	MOLO	261	2.66	36.6	54.0
2007/8	Fixed	398	2.26	51.8	43.4
2007/8	MOLO	370	2.95	48.2	56.6
2008/9	Fixed	350	2.09	47.6	52.9
2008/9	MOLO	385	1.87	52.4	47.1
2009/10	Fixed	468	1.97	53.6	41.2
2009/10	MOLO	405	2.82	46.4	58.8
2010/11	Fixed	533	3.09	55.6	53.6
2010/11	MOLO	425	2.68	44.4	46.4
2011/12	Fixed	106	0.98	66.7	55.1
2011/12	MOLO	53	0.80	33.3	44.9

**Figure 3**



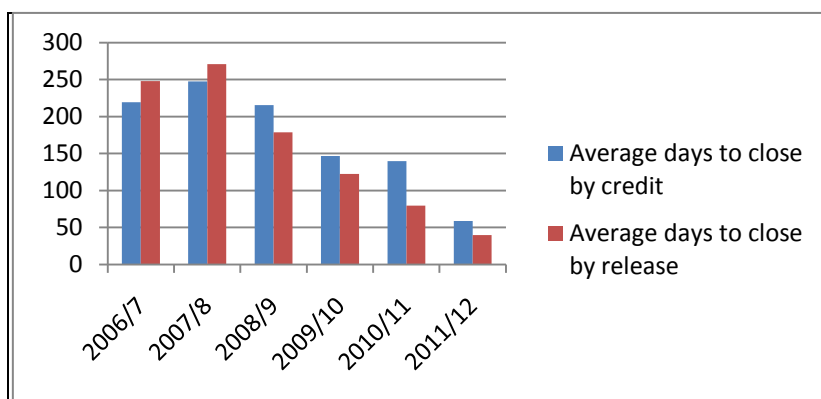
As can be seen in Table 4 the majority of reported retentions are cleared (closed) by the issue of credit notes, in some cases by a ratio of approximately 5:1 over the year, when compared with releases by ONOs. This would suggest that the incidents of 'actual or confirmed AIT' are still very high.

Table and figure 4 indicate a 'year on year' reduction in the time taken to bring cases to resolution.

**Table 4**

FY	Cases raised		Credits (Agreed AIT)		Releases (Agreed not AIT)		Cases still open	
	Number	Value (£m)	Number	Value (£m)	Number	Value (£m)	Number	Value (£m)
2006/7	714	4.913	592	3.544	188	1.367	5	0.001
2007/8	768	5.219	631	4.032	179	1.192	19	0.048
2008/9	735	3.958	574	2.609	139	1.102	71	0.258
2009/10	873	4.789	665	3.007	190	1.533	102	0.256
2010/11	958	5.769	571	2.976	112	1.285	308	1.508
2011/12	159	1.784	23	0.584	15	0.086	122	1.113

**Figure 4**



#### 4.1 Conclusions – AIT process review and impact on level retentions

4.1.1 As can be seen from the above data, there has only been a slight increase in reported cases of AIT. This is contrary to Ofcom's expectations<sup>2</sup> given the changes to the AIT process and the consequent broader scope. Of course, other factors will also influence the level of reported cases, such as the availability of new number ranges.

4.1.2 The number of cases closed by the issue of credit notes (agreed AIT), as opposed to those that are released or withdrawn by the CP (ratio 5:1) would suggest that the incidents of "actual AIT" remain high.

<sup>2</sup> Paragraph 5.64: Ofcom Determination to resolve disputes between BT and various communications providers about changes to AIT terms, published 28<sup>th</sup> July 2009

4.1.3 The average time taken to close cases has fallen for the past two years (figure 4). It is difficult to assess the key reasons for this.

Factors could include;

- the level of awareness on 'AIT triggers' has increased
- increased intervention by BT in order to resolve cases
- clear recognition by TNOs as to actual AIT
- some improvement to quality of evidence by provided by ONO/TNO
- additional supporting evidence in the form of CDR submission
- clarity around deadlines regarding issuing of notices
- increased direct dialogue between ONO and TNO

4.1.4 The ratio of reported cases between mobile and fixed remains consistent and does not appear to have been influenced by any revisions within the AIT process. Equally, retentions for PRS services still make up nearly 50% (by value) of reported cases.

## 5 AIT Review - level of compliance and procedures

5.1 The SIA places a requirement on all parties to detect, identify and prevent incidents of AIT and all are committed to use reasonable endeavours to develop, implement and maintain appropriate procedures to identify and prevent AIT (SIA paragraph 14A).

5.2 The revised process and the clear deadlines in respect of issuing retention/rejection notices and providing supporting data have certainly reduced the number of instances where the serving and/or receiving of appropriate notices happen 'out of time'. In fact, BT is aware of only one case where 'non receipt' of a rejection note has resulted in formal legal proceedings being taken in order to resolve the matter.

5.3 In addition the implementation of the revised process has placed a greater requirement on all parties to provide timely and, where appropriate, more detailed, information to support their claim. Issuing an A1 retention notice based upon "reasonable suspicion" may get the process started but this must now be followed up by the ONO with additional evidence (including CDRs). In respect of either a rejection notice issued by TNO, or a dispute notice served by the ONO, there is now a clear requirement to provide a written explanation as to why the notice has been served. There have been no significant compliance issues in respect of serving a notice, since the introduction of the revised process.

5.4 Despite these implementations, there does appear to be some misinterpretation by some CPs as to what may be expected of them 'in the new regime'. For example, when asked specifically to comment upon "level of compliance with the procedures (and good faith) as set out in the revised Annex E", one response from a TNO was that an ONO had sent them this note;

**"Dear xxx**

**Thank you for your response.**

**It is our current understanding, any discussions we enter into relating to this AIT should be undertaken with the contracted carrier only, in this case BT. We are aware of a recent change to the AIT process, as issued by BT, which now requires we raise AIT's directly with the terminating carrier (xxxx) in addition to the transit carrier - BT, but we are not aware the new process also requires the details of the AIT to be discussed/resolved between us.**

**Once we have spoken with our legal department and BT to clarify these points, we shall be in touch with you very soon"**

Although these situations are very much in isolation, BT is keen to continue working with the wider industry in order address any 'knowledge gaps' that may exist.

## 6 Assessment of ten month resolution process

6.1 The revised AIT process within Annex E introduced a cut-off for those disputes that had not been formally resolved or taken to court within a 10 month period, (commencing five days after the date of issue of the dispute notice.) The purpose of this change was to ensure that cases that were not really challenged by the TNO did not drag on indefinitely. The introduction of a dispute cut-off timeline provided a sense of urgency to the parties contesting the retention. If no dispute process had been commenced by the TNO (or TO in some cases) within the 10 month timeframe then the case is deemed resolved in favour of the ONO (or TO where relevant).

6.2 Following the implementation of the revised Annex E, this new provision has only recently started to come into play and is still very much in its infancy. The principal issue that CPs are currently facing is the introduction of a 'debit note' capability within their own commercial or finance teams. Although this has long been a feature of the discussions, and was explicitly a part of the 2010 revised process, few CPs appear to have been ready for it. It remains an aspiration that TNOs will recognise the benefits and act in the spirit of these changes at the 10 month expiry date, by providing an appropriate credit note. But it seems likely that ONOs will often have to issue a debit note in order to close the case within their respective accounting processes and permit correct accounting for VAT without risking fines for non compliance with HMCR regulations..

6.3 Whilst feedback from the industry AIT group was limited, when asked to provide "an assessment" of the extent to which retentions are successfully resolved within the ten months backstop date", there was sense of real support for such a cut-off. One direct response was;

***"We may follow a different tack but we have a quarterly review direct with BT and resolve. Nothing has gone beyond ten months and in my view should never go beyond this".***

6.4 BT will continue to monitor the implementation of the '10 month rule', assess its impact on the overall resolution process, assess the conduct of both the ONO and TNO, and proposes that this is reviewed with the industry as part of the 2012 General Contract Review opportunity.



## 7 AIT Review-quality of evidence

7.1 As indicated earlier in this report, the majority of cases are resolved either by the withdrawal of a retention by an ONO, or the issue of a credit note by the TNO. Despite this, however, a significant number of cases remain open.

7.2 ONOs are sometimes unable to provide the full facts of the case up-front. This is because investigations into the traffic are not concluded by the time they need to serve the A1 notice (to meet the contractual deadline). However it may be suspected that the ONO has chosen to withhold certain pieces of information from the TNO because they feel that revealing their hand too early could allow implicated parties to invent plausible stories to explain why certain traffic patterns have been seen.

7.3 The claim by some TNOs that the evidence provided by an ONO is often minimal and does not support a case of AIT, would appear on the surface to be valid if you look just at the information contained on the A1 notice in isolation. However when you look at the TNO's reasoning in conjunction with the call data and start to examine traffic patterns, anomalies which demonstrate that the traffic does not appear to be genuine often become apparent. A problem is that TNOs are often small operations and they simply do not commit the resource or the expertise to carry out proper investigations into the traffic. Nor do they always know their customers and services they offer as well as they should to be able to defend A1 notices.

7.4 One of the key changes in the Annex E was the requirement of both ONO and TNO to provide detailed information when either rejecting an AIT submission (in the case of a TNO) or entering a dispute (instigated by ONO). In addition the relevant notices clearly indicate that "full details are given in the statement accompanying" the notice. Whilst BT makes every effort to take a view on whether adequate reasons are provided, this has become increasingly difficult given the number of retentions being received each month and the time taken to 're-submit' them to the TNO. This is further compounded because many notices are not copied to BT as the TO. It was always envisaged that, up to a point, CPs would self-regulate and avoid bureaucracy. This was a key message from both ONOs and TNOs throughout the AIT process review.

## 8 AIT process – possible improvements

8.1 In the July 2009 determination, Ofcom mandated that in this report BT was to consider the possible process changes which had been suggested by some of the small number of CPs who had been reluctant to join the new process, particularly:

- the concept of a third party holding any retained revenue;
- the concept of low cost independent dispute resolution process;
- ...and whether further exclusions can be specified from the AIT definitions and/or indicators (*i.e. limiting the scope of AIT*).

Since the revised AIT process was introduced there have been two structured opportunities for CPs to raise those areas they wish to challenge or discuss.

8.1.1 On 28 April 2010 (Briefing reference 030-10) BT briefed industry about the window for a General Contract Review. On 5 May (Briefing reference 038-10) BT invited industry to submit review issues by 4 June 2010, and a reminder was sent on 28 May (Briefing reference 042-10). On 23 June (Briefing reference 048-10), BT circulated the contract issues which had been raised for review by industry. The issues listed in paragraph 8.1 above were not raised by any CP; the only issue relating to AIT (raised by a single CP) was the desire to move to email notification – see Section 8.6 in this report

8.1.2 As agreed with industry, the Supplemental Agreement which implemented the revised AIT process specified that there should be an AIT-specific contract review 12 months after its implementation. Therefore on 16 February 2011 (Briefing reference 009-11) BT briefed the industry about the window for the 2011 AIT Contract Review and invited industry to submit review issues by 4 March 2011. On 17 March (Briefing reference 016-11) because of the low response (2 CPs), BT further reminded CPs and extended the deadline to 25 March, which resulted in one further review notice. Then on 14 April (Briefing reference 022-11) BT circulated the contract issues which had been raised for review by the industry.

8.1.3 The issues listed in the 2009 determination (paragraph 8.1 above refers) were not raised by any CP. Issues relating to AIT raised by the three CPs and BT for the 2011 AIT Review were;

- review the AIT Operations Guide
- again the desire to move to email notification;
- problems with the Debit Note process
- the desire to expand the scope of AIT to IDD and hacked PBX calls
- process queries re clarifying AIT description, possible impact of PhonepayPlus new Code of Practice, Third Party impact, proper use of Rejection Notices.

See Attachment 1 for the consolidated list of review issues.

## 8.2 THE CONCEPT OF A THIRD PARTY HOLDING ANY RETAINED REVENUE

8.2.1 This suggestion is essentially a proposal that monies retained due to AIT would be held by an independent third party until completion of the process. The rationale for the proposal appears to be that it is felt to be unfair that an originator should gain material advantage by retaining monies to the detriment of a terminator. The 2010 process does, however, attempt to ensure that the payment of interest redresses that imbalance if AIT is not found. There is an extension of that rationale, which suggests that ONOs could quite deliberately abuse the process, and temporarily withhold money purely for commercial or cash flow reasons. But here, there are reputational and commercial considerations, plus the possibility of referral to the regulator which should act as a deterrent. It would seem unwise to further complicate an already complex industry process by the introduction of a “third party” (essentially a fourth party in transit cases) unless it is really necessary, especially when there is no industry demand for this.

8.2.2 The accounting overhead of passing on any “retained” sums to a third party would be prohibitive for the ONOs, as well as to BT as the TO, and equally so for any such third party.

8.2.3 Presumably the monies would need to be held in an Escrow account on behalf of the participants in case the “third party” failed, and the participants became unsecured creditors, subject to Insolvency Law on payout. Fund holding is essentially a banking operation and certainly not something which a charity could undertake as a fund-raiser or a management consultancy as a sideline. Further, the third party would have to have substantial financial standing to cope with the cash flow and the volume of cases generated.

8.2.4 The third party would also be required to release the payments to the appropriate body i.e. ONO/TO/TNO, dependant on the basis that the AIT was proven, not proven, or something in between; and this would mean that its role could become even more complicated. It would need to have clear criteria indicating which action to undertake and receive clear instructions to know when to release money. The third party would also have to be instructed whether to release the monies upstream or downstream. Potentially it might also need to take instructions from PhonepayPlus in some circumstances. Effectively, the third party would need to be committed by contract to all SIA contractors with the overheads involved and the governance likely be complex and expensive. The third party would need not only to recover those costs but, presumably, would also expect to make a margin. There would need to be an industry mechanism to fund the additional activities, and when the number of CPs actually involved in AIT Cases are a minority, there will naturally be reluctance among “non-participants” about subsidising the activities of some of their fellows.

8.2.5 Consider the following typical scenario:

In a transit situation, - the ONO retains £4k from BT and BT then retains £4k from the TNO. What sum would be required to be lodged with the third party in this circumstance? Would the ONO deposit its £4k retention from BT with the third party, and then would BT be required to lodge its £4k retention from the TNO with the third party? It would seem odd to collectively lodge £8k with the third party in respect of a £4k flow-through. If, as would seem sensible only the A1 notice originator’s retention had to be deposited, then it would be necessary to work through where and how that would apply to the TO.

8.2.6 If the case was then not proven, there would seem to be no basis on which to fund the charging of interest (4% above LIBOR) on the now ‘no longer retained’ monies. The third party would be unlikely to fund any interest payments

and so e.g. either the TNO would receive no interest for delayed payment if AIT was not proven, or the ONO would be expected to finance the cost of the money when it had not had use of the money.

8.2.7 In simple terms, what exists today works and works relatively well (from a cash flow point of view). Bringing a further party into the equation would increase costs, add uncertainty and probably delay cash settlements. Further it would stimulate an expensive administrative and legal bill, both at the outset and ongoing through each case. BT would not support such a mechanism, nor recommend it to industry. There was no support for the proposal from the industry AIT group in the 2011 AIT Contract Review discussions.

### 8.3 CONCEPT OF AN INDEPENDENT LOW COST RESOLUTION PROCESS

8.3.1 Although the majority of AIT incidents are agreed by the parties, a significant number (approximately a third currently) move to dispute. Obviously those disputed incidents are contentious and problematic.

AIT is a complicated subject area, obviously unique to Telecoms and not suitable for the skills and knowledge of a generalist dispute arbitrator, and certainly not for the minimalist process that low cost ADR involves. Indeed some years ago when considering the compulsory use of expert determination for AIT, the external advice was to consider developing a special expert tribunal to handle AIT cases, each practitioner to be hand-picked, knowledgeable in law and “AIT custom and practice”, and regularly updated and trained. However that particular proposal was found not to be practicable or viable.

8.3.2 Moreover, BT was advised that it was absolutely necessary to keep the court option for the potential complications of AIT cases, and particularly transit cases. Sometimes, of course, these can be multi-million pound situations with a number of parties involved – and time can very much be of the essence with large volumes of traffic and large amounts of money (potentially) flowing.

During the earlier part of the AIT process renegotiation, BT recommended that the originator and terminator should automatically deal direct in transit cases as, usually, BT effectively had no role other than to transfer calls across and then transfer the money. CPs rejected any idea of automatic assignment, and were adamant that if they subsequently decided to agree to leave BT out of a particular transit dispute, the SIA must not dictate the type of ADR that they might choose to use. It was agreed during industry negotiations to include the very general options at paragraph 7.3 of Annex E.

7.3 **Formal Resolution of AIT Dispute:** Without prejudice to paragraph 35 of the main body of the Agreement the following sub-paragraphs set out the different forms of dispute resolution which may be open to the parties to an AIT Dispute depending on the circumstances of the AIT Dispute, however this paragraph 7.3 does not prescribe any particular dispute resolutions process nor is it intended to do so:

- (a) **Non-Transit Situation between ONO and TNO:** Where an AIT Dispute in a non-Transit Situation exists between the Parties to this agreement; they may resolve that AIT Dispute using:
  - i any form of dispute resolution they both agree upon; or
  - ii. court proceedings;

- (b) **Two party Transit Situation significantly between ONO and TNO (not necessarily involving TO):** Where an AIT Dispute in a Transit Situation exists between the Operator and another non-BT party in a situation where the two non-BT parties and the TO have agreed that the TO does not need to be involved in the resolution of that AIT Dispute, the two non-BT parties may resolve that AIT Dispute using:
- i any form of dispute resolution they and the TO agree upon (although the TO may choose not to participate in that dispute resolution); or
  - ii. court proceedings;
- (c) **Two party Transit Situation between TO and TNO (not involving ONO):** Where an AIT Dispute in a Transit Situation exists between the TNO and the TO (where the TO initiated the A1 Retention Notice under paragraph 6.2(b)) in a situation where the two non-BT parties and the TO have agreed that the ONO does not need to be involved in the resolution of that AIT Dispute, the TNO and the TO may resolve that AIT Dispute using:
- i any form of dispute resolution the TNO, ONO and TO agree upon (although the ONO may choose not to participate in that dispute resolution); or
  - ii. court proceedings
- (d) **Three party Transit Situation between ONO, TO and TNO:** Where an AIT Dispute in a Transit Situation exists between the TO, the Operator and the non-BT party to a separate BT Standard Interconnect Agreement, they may resolve that AIT Dispute using:
- i any form of dispute resolution they all agree upon and participate in; or
  - ii. court proceedings

8.3.3 Section 7.3 of Annexe E, SIA allows all possible forms of ADR if the parties agree that ADR is appropriate. However it should be noted that ADR is unlikely to be suitable for transit situations if three parties are to be actively involved and certainly not for any (transit or non-transit) cases where one of the parties is considered not to have taken adequate actions to prevent AIT or where fraud or criminal activities are suspected.

Whilst low cost independent dispute resolution is available to the parties under the contract terms, they are generally unlikely to view it as adequate for a highly contentious case, a highly complex legal situation or for claims involving significant sums of money.

8.3.4 In summary, it would not be reasonable or practicable to rule that low cost independent dispute resolution is mandatory, although this would seem to be the only way of achieving what the tiny minority of CPs in 2009 appeared to want. There was no support for the proposal from the industry AIT group in the 2011 AIT Contract Review discussions. It is possible that this could be considered for lower value cases and if CPs were keen, then this option could be included as part of the 2012 General Contract Review.

## 8.4 LIMITING 'SCOPE OF AIT'

8.4.1 In the Determination, Ofcom mandated that the report should address the possibilities of reducing the scope of AIT, in particular whether there were any further call types that should be excluded.

This option was not raised by any CP as an issue under either the 2010 General Contract Review or the 2011 AIT Contract Review.

8.4.2 However, the matter was discussed during the meetings with the industry AIT group as part of the 2011 AIT Contract Review. It was noted that calls to geographic numbers (01 and 02) were excluded, and CPs were requested to consider other possibilities. 03 was raised as a possibility, as Ofcom had specifically forbidden revenue share for the number range; but it was agreed that it remained possible to abuse it, and therefore that it would be safer to keep it in the scope.

Another possibility raised was to exclude some of the short codes like 116 xxx, but it was agreed that it would be too granular and potentially confusing to try and develop a list of minor exceptions.

## 8.5 REVIEW OF GUIDANCE BY BT (AIT OPERATIONS GUIDE)

8.5.1 In a number of places in the 2009 Determination, Ofcom indicated that BT should organise supporting guidance for the process:

- Paragraph 6.26 stated: "We consider that further guidance is especially important bearing in mind that ONOs will be expected to provide additional information under the revised AIT process. While BT may have a clear idea of what this may entail, TNOs (and ONOs) will not necessarily be aware of exactly what this further information should encapsulate."
- And paragraph 6.25 said: "We would encourage both BT and the other SIA signatories to pursue this idea, perhaps as part of the next industry-wide review of the SIA".

However from the outset, on 2 February 2010 in Interconnect Briefing 008-10, BT circulated a link to a draft AIT Operations Guide "to give guidance to the originating and terminating network operators under the SIA" and also to give detailed guidance about handling claims in the critical February/March 2010 launch period. The briefing asked for industry comments to be submitted to BT. The February 2010 draft guide is at Attachment 2.

On 24 February 2010 in Interconnect Briefing 019-10 BT again circulated the link to the draft AIT Operations Guide, and again asked for industry comments on the text of the draft guide to be submitted to BT.

To date there has been minimal reaction to the draft guide, but in April 2010 BT highlighted this as one of the matters to be dealt with in the 2011 AIT Contract Review.

The industry AIT group and BT were both given actions in the Contract Review discussions to review the draft guide, and suggest possible changes. BT circulated suggested changes to the group on 29 July 2011; CP proposals and reactions are still awaited.

The BT changes looked to

- Clarify the guidance re PBX hacking in the table in paragraph 5.2.2
- Requesting suggestions on how to offer advice on the increase of evidential level from “reasonable suspicion” to “strong and convincing” in paragraph 5.2.3
- Remove the redundant implementation text at paragraph 7
- Add guidance on the AIT Email trial at paragraph 9.2 (see also Section 8.6 below)
- Add guidance re Debit Notices at a new paragraph 10 (see also Section 8.7 below)

8.5.2 The revised process has placed a greater onus on the ONO to justify the basis of retention and to provide evidence that passes a test as “strong and convincing” rather than just “reasonable” suspicion in order to keep the money. Despite this change, there is still a view from some TNOs that this continues to provide an inherent advantage to the ONO, which the revised process does not adequately address. The proposed formal launch of the ‘AIT Operations Guide’ (currently with the industry AIT group for consultation) has set some clear guidelines as to the reporting of the triggers or indicators for AIT.

8.5.3 There is an expectation within the Ofcom determination (paragraph 6.22) that BT would provide a ‘high-level assessment’ of A1 notice receipts and would provide guidance to ONOs, where the level of information fell short. Whilst BT would always endeavour to do this, in reality BT has less information than the relevant TNO that the A1 notice relates to, given that no supporting call data will have been provided (not required until day 26), and the fact that BT is further away in the chain from the terminating service provider. Whilst not seeking to exclude BT from such a role, the formal introduction of the guide should enable ONOs to comply more fully with the expectations, with less scrutiny from BT.

The text of BT’s draft guide dated July 2011 is at Attachment 3.

The intention would be to move the guide to full issue status once agreed with the industry AIT group, and to brief the wider industry accordingly.

8.5.4 However the need for “strong and convincing” evidence remains a topic for debate. Best evidence would be of a direct link between the originators of the traffic and the recipient of any revenue share. In reality this is impractical, not least due to limitations surrounding the Regulatory Investigative Powers Act (RIPA) that would limit what a non-law enforcement organisation could do. Some TNOs refuse to assist with details of Service Providers citing the Data Protection Act, although as the SPs aren’t individuals this may not be appropriate

8.5.5 BT’s current view of the increase of the evidential level remains in line with that of paragraph 5.39 of the Determination, “that given the varying nature and scale of retentions, it would not be appropriate for the process, as set out in the SIA, to be overly prescriptive on what form this engagement should take”. BT is therefore intending to propose to the industry AIT group that a note be added to the text of paragraph 5.2.3 of the guide to state:

*[Note: The necessary strengthened level of suspicion should be such that the ONO would reasonably expect a court or an arbitrator to accept that there was a “strong and convincing suspicion” that AIT had occurred - which could involve, for example, evidence of non-genuine terminating services, of collusion between call originator(s) and terminating service providers, of traffic patterns not compatible with good-faith telecommunications practice.]*

8.5.6 It is recognised that BT has a considerable degree of influence and experience in the running of the AIT process, and BT remains the contractual link between ONO and TNO. BT will continue to support all parties but it is hoped that the update and formal issue of the AIT Operations Guide will enable BT not to become involved in routine situations.

## 8.6 THE USE OF E-MAIL FOR SUBMISSION OF AIT NOTICES

8.6.1 As one of the contract review issues for the 2010 General Contract Review of the SIA, a single CP raised the *“Administrative burden of faxes for submitting AIT claims”* commenting that *“Fax communication is inefficient, outmoded and outdated. BT’s persistence in contractually obliging operators to submit certain notices, including their monthly AIT claims (under Annex E of the SIA), by fax is an unnecessary administrative burden. Certainty of delivery now is as easy, if not more so, to ensure by email rather than fax. In any event, the AIT notice provisions in Annex E to the SIA should be updated to provide operators with an option other than submission by fax.”*

8.6.2 Although a group of CPs had been involved in the development of the revised process before its introduction in March 2010, and wider industry had been consulted, this had not previously been raised as an issue. However, it has become increasingly the case that some CPs are tending to use e-mail rather than fax to exchange notices.

8.6.3 An industry AIT group was formed to address the issue and began to research possible alternative means, recognising that standard email add-ons might not be sufficiently robust for AIT. The RPost product was identified, and a number of CPs looked at that and RPost also gave a presentation to the group in November 2010.

8.6.4 In March 2011 an AIT-specific contract review was scheduled, programmed to occur one year after the new process had been implemented. Two CPs plus BT raised the increasing impracticality of fax as an issue. The consolidated summary of the issue was that *“Fax is inefficient and an unnecessary administrative burden. Certainty of delivery is now possible to ensure by email rather than fax. We propose that email ought to be adopted for the submission of AIT claims, as an alternative or substitute to the current fax process. Despite the fact that this issue is already being investigated via the 2010 SIA General Contract Review, we suggest that, for completeness it is included in this review too, given the impact it has on current AIT process.”*

8.6.5 The industry AIT group has continued to progress the issue, and on 25<sup>th</sup> May 2011 it was agreed that the industry should move to a trial of the use of email, a trial which, it was hoped, would gradually roll-over into universal operation. The proposed trial was briefly reviewed at the 7<sup>th</sup> June 2011 Interconnect Product Forum, and then an initial briefing was forwarded to the wider industry on 15 June 2011.

8.6.6 On 14<sup>th</sup> July BT presented draft documentation for the trial to the industry AIT group and a number of CP suggestions were subsequently incorporated. On 27<sup>th</sup> July a second and more comprehensive briefing was circulated to the wider industry to prepare them for the Trial Supplemental Agreement, which was sent to each CP on 2<sup>nd</sup> August 2011.



See Attachment 4 for copies of the documentation for the trial. As at 10<sup>th</sup> August 2011, some 12 CPs had committed to the trial.

8.6.7 It is hoped that the migration to email notification will naturally become universal, as it is effectively logistically inevitable. But if at some stage a remnant of CPs continue to prove reluctant to comply, then potentially that could lead to the formal registering of contract dispute and reference to Ofcom for determination.

## 8.7 DEBIT NOTE PROCESS

8.7.1 In the March 2011 AIT-specific contract review a single CP raised the use of Debit Notes under the process as an issue. Specifically *“that:*

1. *The CPs agree a form of debit note which will be accepted by all parties for the purposes of Annex E; and*
2. *There shall be no obligation on the ONO to contact TNO before issuing a debit note over and above confirming to the TO that it had not received a Rejection Notice by the 34th AIT calendar day. Should the TO not be satisfied, it shall confirm from its own records whether a Rejection Notice was sent to it by TNO in copy.”*

8.7.2 In discussion with the AIT industry group it emerged that the CP had raised a Debit Note in connection with an AIT incident, which had been rejected by BT as not fulfilling all the necessary HMRC requirements. BT had also asked the CP, as the ONO, to check with the TNO that a credit note had not already been issued: BT explained that concurrent Debit and Credit Notes create real operational difficulties and risk violating HMCR regulations with consequent fines..

8.7.3 It became clear that although BT was conversant with Debit Notes, this was generally not the case in the industry. This appears to be the case although the revised contract had provided for the use of debit notes since 1 March 2010, and the process and text had been under industry discussion for a considerable period before that.

BT therefore distributed a sample Debit Note to the AIT industry group on 2 June, and also a briefing of the then minimum requirements under HMRC regulations – see text in Attachment 3. At that time the minimum requirements were:

The note should be headed “Debit note” and include:

- 1) A unique identifying number and date of issue;
- 2) the supplier’s and customer’s names and addresses;
- 3) the supplier’s VAT registration number;
- 4) a description which identifies the goods and services for which the credit is given;
- 5) the quantity and amount credited for each description and a reason for the credit;
- 6) the total amount credited, excluding VAT;
- 7) the rate and amount of VAT credited; and
- 8) the number and date of the original VAT invoice

8.7.4 It was stressed that the information requirements are subject to change and it is the responsibility of CPs to ensure that any Debit Notes they raise comply with the regulations in force at the time; and also that the CP has systems in place to handle them.

Several CPs on the AIT industry group undertook to check their systems/billing engines etc. One CP has now confirmed that they are able to cope with a Debit Note. Several other CPs are still examining the process.

The AIT Operations Guide is being supplemented to give the additional guidance – **see Section 8.5.**

## 8.8 EXTENDING THE SCOPE OF AIT

8.8.1 Under the 2011 AIT Contract Review two CPs made proposals to widen the scope of AIT to include “over sea scenarios” (International PRS) and “PBX hacking”.

8.8.2 International Premium Rate or International Revenue Share (IRSF)

This was reviewed by the industry AIT group, and rapidly agreed that it was simply not practicable to extend the domestic AIT scheme for the Standard Interconnect Agreement to take in outgoing IDD. Obviously this risk extends to all parties dealing with international traffic and so is a national/international problem. There is not, and it seems unlikely that there will ever be, a facility to withhold international payments. However, it was agreed that the “risk” should be included in the AIT Report to Ofcom, as a problem beyond the scope of the AIT scheme.

This is recognised as a growing problem for CPs and an example of where perhaps, fraud and bogus traffic trends are ahead of current legislation. Whilst such services can be (and often are) barred by CPs on international gateways, that requires CPs to recognise the number ranges as revenue share and not straightforward IDD. BT is routinely engaging with other carriers to block certain types of traffic that show the hallmarks of fraud (e.g. by destination; hot number; duration and volume of calls).

8.8.3 PBX hacking or ‘Dial thro’ fraud

This problem has certainly been prevalent for a while but is now on the increase. This type of fraud is, again, an issue that BT frequently encounters, particular at a consumer level. However, there is an increase in the number of smaller CPs who fall victim of such activity (usually by one of their customers) which often results in billing disputes. Whilst the resulting argument is one of a contractual liability between the affected CP and their retail customer, there is no doubt that the risk for AIT is a real one.

This was reviewed by the industry AIT group, and rapidly confirmed that PBX hacking and switch security is essentially a matter for the originating network. It would not be reasonable to add PBX hacking to the list of AIT indicators, so that of itself it was sufficient case for “reasonable suspicion” and therefore for retention. Although PBX hacking would obviously alert the AIT specialist - as with the generality of traffic, the traffic generated by the hack would only become appropriate for AIT retention if it fits the AIT criteria.

## 8.9 REVIEW OF PROCESS

8.9.1 CLARIFYING AIT

Under the 2011 AIT Contract Review, BT highlighted that several CPs had recently mistakenly claimed that calls to international numbers were within the scope of AIT.

BT therefore proposed, and the industry AIT group accepted the addition of some “For-the-avoidance-of-doubt” text to paragraph 1.2 of Annex E.

BT therefore proposes to amend the text of paragraph 1.2 so that it reads:

1.2 For the purposes of AIT and of this Annex, “Calls” shall mean Calls to number ranges governed by the National Telephone Numbering Plan, but shall exclude Calls to geographic number ranges commencing with the digits 01 or 02.

#### 8.9.2 PHONEPAYPLUS CODE OF PRACTICE

In the March 2011 AIT-specific contract review – BT proposed the need to “Review any possible impact of PhonepayPlus Code of Practice edition 12.

This was reviewed with the AIT Industry group, and it was concluded that there would be no contractual impact for the SIA – contractual impact would be for TNOs and the downstream service providers.

#### 8.9.3 THIRD PARTY SCENARIO

In the March 2011 AIT-specific contract review – A CP raised the Third Party Scenario as an issue – specifically that the parties should “Amend paragraph 5.2 of Annex to provide for extended timescales where the retention results from 3<sup>rd</sup> party notification.”

The CP commented that the process provided an additional working day for BT to serve A1 AIT Retention Notices where this involved transit.

The CP said that BT was not the only party which provided transit services, but other CPs were not allowed any grace period where they were dependent on receiving AIT-type notices from third parties. They requested that the process be adjusted to allow other parties to the SIA an additional day for notification where they were handing over calls to BT which had originated on third parties.

The CP said that it was not practicable for them to demand that the third parties notify them before the 14<sup>th</sup> AIT Calendar Day.

It was noted that current generic deadline was the 14<sup>th</sup> AIT Calendar Day

- with a further working day added where BT was transiting to the Operator,
- with a further two Working Days added where BT or the Operator had ported that number to the other.

In discussion with the industry, it was the general opinion that it was not practicable for TNOs and their services/service providers to cope with further grounds for extension of the serving dates, and particularly as these would compound the existing extensions.

#### 8.9.3 USE OF REJECTION NOTICES

This was a process matter raised by BT which has yet to be discussed in detail with the industry AIT group.

## 9 Conclusions

9.1 The revision of the Annex E AIT process and its subsequent implementation in March 2010 has created a more coherent structure and provided greater transparency in which to operate. In particular, the introduction of clear contractual deadlines (e.g. 14<sup>th</sup> day for A1 retention; 26<sup>th</sup> day for provision of CDR data and day 34 for rejection notice etc) has provided benefits to all parties and resulted in very few (if any) disputes that have arisen as a result of late or 'out of time' submission of notices.

9.2 Whilst the number of reported AIT cases has shown a small increase 'year on year', the time taken to close cases has fallen dramatically. Incidents of 'agreed AIT' remains high, however the reduction in 'average days taken' to close them clearly demonstrates a willingness by all parties to engage and deal with issues 'head on'.

9.3 One of the key changes within the revised process has been the requirement for an ONO to provide more detailed and conclusive evidence that AIT has occurred, or in the case of a TNO information to support that traffic is genuine. Naturally, the retention of any monies can create 'highly charged' situations, particularly where TNOs have released funds to their Service Providers prior to securing payment from the ONO (or from BT in transit situations); but the fact that cases are being closed by credit notes by a ratio of 5:1 when compared with releases, would strongly suggest that sufficient evidence is being provided in order for CPs to make informed decisions.

9.4 As with any change or transition there have been challenges, not least regarding what constitutes "strong and convincing" evidence in respect of retentions, rejections and dispute notices. BT recognised, from an early stage that it had a key role to play and introduced the draft AIT Operations Guide in early 2010, which aimed to provide a general understanding of the 'operational aspects' of AIT and to support the contractual provisions for managing the risk associated with AIT and to promote best practise. The guide has been well received and the latest draft is currently with the industry AIT group for comment, and it is anticipated that it will be formally launched very soon.

9.5 There still appears to be some uncertainty or perhaps misunderstanding by some CPs as to what their responsibilities are, particularly in the event of a dispute. This is evidenced by the comments from an ONO quoted at section 5.4. Whilst the AIT Operations Guide will undoubtedly help, certainly after it is formally launched, BT is committed to trying to ensure that all CPs are fully engaged and is keen to address any 'knowledge gaps' that may exist. Such initiatives may include awareness seminars; webinars and perhaps even a podcast.

9.6 As part of the 2010 Contract Review, an industry AIT group looked at the use of e-mail in preference to fax when issuing or receiving retention notices. Consequently and as agreed with industry the "2011 AIT Contract Review" provided the opportunity to develop this further and include any other topics, specific to AIT. In practise, very few additional issues were raised and those that were (see consolidated issues list at Attachment 1) have been resolved. The use of e-mail has now moved to a trial stage and goes live on the 1<sup>st</sup> September.

9.7 In the Ofcom determination 2009 (section 5.27) BT was asked to investigate the concept of an independent third party holding retentions. Such consideration was given by BT and feedback sought from the industry AIT group. As commented upon in 8.2 of this report, there was no appetite for such a move, citing ***"it would add another layer of bureaucracy" or "this would be impractical, making the process even more complicated and costly"***. In addition

BT investigated and sought feedback regarding the option of an independent third party to adjudicate on AIT disputes. Similarly, as with the holding of retentions by a third party, the industry AIT group was opposed to such a move and generally content with current options for dealing with disputes.

9.8 Irrespective of any dispute process (current or future) and in the light of experience, BT's view is that perhaps too much resource is being applied to non-material AIT claims and therefore suggests that the possibility of a minimum value or threshold for AIT cases should be considered as an issue during the 2012 General Contract Review discussions.

9.9 The scope for AIT (and therefore potential fraud) is ever present, given the ever changing "telecoms landscape". Significant progress has been made in order to ensure there is a process that is workable, commercially viable and in short 'fit for purpose'. Inevitably when money is at stake, there will always be differing opinions as to what constitutes AIT; few would hold that it's an exact science. The purpose of the review was to check that the revised process works adequately, and to see whether changes are necessary/desirable. Clearly the process is working better than before the changes were introduced, but there are still things to be done.

9.10 Ultimately, BT's view is that Ofcom receive very few complaints from TNOs in regard to AIT cases, which suggests that the vast majority of cases (as borne out in the stats) are valid and that the 'burden of proof' has been established. AIT represented a £5M "business" in 2010/11 with over 900 reported cases, yet two thirds were dealt with by way of credits or releases.....and in record time.