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taking care of the essentials

Next Generation Networks: Further Consultation

A response by Centrica

12 August 2005

Next Generation Networks: Further Consultation

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Introduction

Centrica Telecoms (CT) provides services principally under the Onetel brand and currently provides fixed, mobile and internet services to over 1.7 million residential and business customers in the UK. In 2004, CT acquired Telco Global an indirect fixed line and mobile provider. Later in 2004, Onetel took over the responsibility for providing service to the telephony customers of British Gas. In April 2005 Onetel acquired Rednet, a business-to-business data solutions provider. More recently we have agreed a commercial contract for the purchase of wholesale broadband services from Easynet, utilising their unbundled local loop infrastructure. CT is a key competitor to BT in a number of retail markets and we are hopeful that the move to next generation networks (NGNs), combined with BT's TSR undertakings, will result in more effective competition emerging in voice and data wholesale and retail markets.

We welcome the opportunity to respond to this further Ofcom consultation on NGNs. During the previous consultation we met with the Ofcom Policy Team responsible for this area to discuss our aspirations and concerns regarding the move to NGNs, and in particular BT's 21st Century Network (21CN) plans. It is clear that Ofcom has given careful thought to the key issues raised across the industry with regard to NGNs and we support the policy framework proposed by Ofcom to enable NGN-based competition. We are also pleased that Ofcom has recognised the need for a multi-lateral industry group to co-ordinate and steer key NGN issues, including all aspects of customer migration.

There continues to be great uncertainty regarding key aspects of BT's 21CN and the policy framework and cross-industry working group proposed in this consultation will be crucial in minimising the commercial and regulatory risks. We look forward to further discussions with Ofcom on the some of key aspects detailed in this response and we will provide full support to the NGNCo working group.

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Key Observations

The announcement of BT's 21CN plans has directed industry towards a critical path, where new technical and commercial arrangements will need to be agreed for SMP interconnect products and services which ultimately will be key to securing successful competition. A dramatic strategic and behavioural change of approach will be required within BT to ensure that 21CN delivers the competitive outcomes that all stakeholders require. BT has made a number of specific undertakings in this regard that are to be legally enforceable. It has also recruited a number of key personnel into its wholesale line of business and we trust that there is a commitment behind the rhetoric to deliver successful competitive outcomes. At this stage significant uncertainty remains around BT's activities on 21CN and we urge Ofcom to closely monitor all aspects of the industry discussions around 21CN design and development to ensure equality of access is delivered in the true sense and spirit.

In addition to the lack of detailed technical and commercial information around 21CN, there is also the important and related issue of whether next generation products and services developed as 21CN substitutes by BT will actually fall within the same previously defined markets and be subject to the same SMP obligations. We appreciate that without specific product and market detail it is difficult for Ofcom to provide any statement on this issue at present, other than to indicate that it has a reasonable expectation that there will continue to be SMP in the immediate successors to these markets. We urge Ofcom to undertake timely market analysis and full market reviews where necessary, to ensure there is regulatory certainty for industry around future access and interconnection arrangements. It is vital for Ofcom to ensure there is no potential for market disruption as next generation products and services are launched on 21CN.

We note that the BT TSR undertaking in relation to NGN implementation (section 11.20) involves drafting that is capable of being interpreted to mean the important undertakings given by BT outside of section 11 do not in fact apply in relation to 21CN. Whilst we do not believe this could be BT's intention, we do raise awareness to it for Ofcom's further consideration. We would suggest that for absolute certainty Ofcom clarify this point with BT.

In the overall context of 21CN it is important that BT is not permitted to fall short on a number of key aspects of equivalence, that when combined result in the level of competitive materiality that we have been struggling to address to date. We believe that the undertakings are too high level in some key areas and that more specific commitments are required from BT. We have drawn attention to these shortcomings in the more detailed response we have provided to Ofcom's specific questions in the Strategic Review.

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Executive Summary

- We agree with Ofcom's proposed approach to setting the charges of narrowband voice SMP products provided over next generation interconnects. These charges must be based on a holistic, network – neutral approach to ensure arbitrage opportunities do not arise that would otherwise undermine network infrastructure investment and ultimately effect downstream retail markets.

- It is vital that existing SMP interconnect products continue to be made available by BT following the migration to 21CN and for a period thereafter. BT has the unique opportunity to design and implement its new network around clear equality of access requirements. Before any withdrawal of legacy obligations, BT must provide next generation SMP products that embrace equivalence, are fit-for-purpose and which are based on commercially fair terms and conditions.

- BT must be permitted to withdraw legacy SMP products only in appropriate circumstances. We believe that ultimately BT has control of the timescales for which it will continue to be required to supply legacy SMP products. Once it has delivered next generation SMP products that meet the necessary regulatory and commercial requirements then due consideration can be given to withdrawing its relevant legacy obligations.

- Despite the lack of technical detail currently available we urge Ofcom to ensure equivalence of input is achieved for key aspects of 21CN where BT continues to have SMP. BT's undertakings do not commit to achieving this in situations where it 'would not be reasonably practicable'. Equivalence of input is particularly important in relation to MSAN interconnection to ensure communication providers have access to the same call routing efficiency as BT. It is equally important in relation to accessing network intelligence inputs to ensure that competition is not undermined in future retail markets. We recognise that implementing equivalence of input in these key network areas will be a challenging objective, but we urge Ofcom to push hard for these critical outcomes.

- Despite the undertakings given by BT we would urge Ofcom to seek a more detailed commitment from BT with regards to the activities of its retail business and any future use it may seek to make of the broadband dial-tone functionality. We firmly believe that BT must not use the broadband dial-tone, which is an important enabling technology, if it cannot provide equivalence of input for LLU operators. We do not take comfort from BT's undertaking on this point, which advises that its future use of this technology will not result in a 'material competitive disadvantage' for LLU operators. The concept of materiality as used in this ex post sense is notoriously difficult to prove and we would urge Ofcom to secure a more specific undertaking from BT that it will not use

the functionality at all unless equivalence of input is made available to its competitors.

- We believe that BT's undertaking in relation to its retail activities should go further than currently drafted. It is unclear what BT would deem acceptable under the undertaking to provide network access to its competitors 'sufficiently in advance' of a new product launch? We would prefer in markets where BT has SMP that any new product launch or price reduction should be notified to Ofcom well in advance of any planned market introduction, in order for an 'approval assessment' to be made. Ofcom would have the opportunity to unbundle the key inputs to determine if the product or service is replicable by BT's competitors and to determine if any discrimination has taken place regarding timing or access to key technical and pricing information. Once this assessment is completed Ofcom could give 'in principle' approval to the planned BT retail activity.

- The move to NGNs will necessarily involve a number of cross-industry issues affecting all network providers that will need to be resolved. These issues (e.g. number portability, end-to-end call quality, etc) must be considered and addressed during the important design and implementation stages of NGNs, when solutions are more achievable. These cross-industry issues need to be co-ordinated and steered in a specific forum, and the creation of the proposed multi-lateral industry working group ("NGNCo") is an appropriate way to secure this.

- We fully support the creation of NGNCo and believe it has a vital role to play in a number of key areas relating to NGNs. In addition to the cross-industry issues, it should undertake responsibility for the commercial arrangements relating to NGN interconnection and all aspects of customer migration to NGNs, including BT's 21CN.

- We also fully support the use of an alternative dispute resolution process for dealing with operational disputes relating to NGNs. We believe that an adjudication scheme is the best way to resolve these types of issue and we suggest that the Communication Providers ADR scheme developed by UKCTA might be a very useful tool in this process. We would encourage further dialogue between Ofcom and the Chartered Institute of Arbitrators to determine if the existing adjudication scheme, which utilises a panel of communications experts, can be used in the context of NGNs.

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Response to specific Ofcom questions

Q1: Do you agree with Ofcom's proposed approach for the charges of narrowband voice SMP products provided over next generation interconnects?

We agree with the principle that a charge for narrowband voice SMP products provided over next generation interconnects, and in particular BT's 21CN, should be based on a holistic approach. We recognise that using a network-neutral approach to the setting of voice interconnect charges may involve resolving some particularly vexed questions around the changes in network infrastructure arrangements used for IP-networks and the related implications for any future charging model which may or may not involve time and distance based charging.

For CT, a stable and clearly defined interconnect charging regime is essential for competition to continue to grow, which applies equally to existing markets and those that will emerge following the implementation of NGNs. In addition, the use of an holistic, network-neutral approach to the level of charges for 21CN SMP products must ensure that artificial arbitrage situations do not arise which undermine the stability of the Network Charge Controls and the rollout of 21CN.

There continues to be considerable industry uncertainty regarding the effect that BT's 21CN will have on the interconnect charging regime for the range of existing and future SMP interconnect products. An interconnect charging regime which is not network-neutral at the outset poses the risk that call traffic could be routed via MSANs and metro nodes as these come on-line under 21CN rollout, in order to take advantage of potentially lower network charges by tromboning traffic via these sites. The geographic implications of such a situation would introduce significant network inefficiencies if network traffic were routed via Cardiff, for example, to take advantage of any arbitrage opportunity that the Pathfinder rollout may afford. Such a situation would undermine the infrastructure investment decisions of many stakeholders and could artificially reward those communications providers closest to key 21CN rollout sites with a related effect in downstream retail markets.

We agree that 21CN SMP interconnect charges should be calculated so as to include appropriate recovery of BT's costs of migration and stranded assets. However, we would expect that interconnect charges under 21CN would follow a clearly defined glide path in order to achieve the result that interconnect charges more closely reflect the costs of BT's 21CN as a standalone network by an agreed point in time. Additionally, the efficiency gains BT will make by virtue of 21CN must be factored into the cost recovery process and related glide path.

Q2: Do you agree with the overall approach that there needs to be continuity for existing SMP products, but that it would not be appropriate to continue them indefinitely?

A major risk for all of BT's competitors is the continued uncertainty around the interconnect, commercial and consumer aspects of 21CN that exist now and which will continue to do so for many more months to come. These risks are numerous – CT would particularly highlight the new IP interconnect arrangements, the migration arrangements of our customers to 21CN, the related quality of service safeguards we can expect and the status of legacy SMP access and interconnection products that we currently use. For CT it is absolutely vital that existing SMP products will continue to be available following the migration to 21CN and for a reasonable period thereafter.

We take a degree of comfort from the fact that BT cannot unilaterally decide to stop providing legacy SMP products due to the continuance of existing SMP special service obligations and the regulatory due process that would be required to remove those obligations. This will provide stability and certainty for BT's competitors in the short to medium term.

We accept that it would not be appropriate to continue the regulatory obligations on BT to provide legacy SMP products indefinitely. However, rather than Ofcom or industry seeking to propose time limits for the continued supply of legacy obligations, we believe that BT itself has the greatest role in determining how long it would actually be required to provide legacy SMP products. BT has the opportunity to design and implement its new next generation network around equality of access requirements. Intrinsic to this is the clear incentive to develop and provide next generation SMP products that embrace equivalence, are fit for purpose and are commercially attractive to all players. If BT delivers these, this will effectively determine the minimum period of continuity required for providing legacy SMP products.

Q3: Do you agree with the general criteria Ofcom has proposed for the withdrawal of legacy SMP products after an interim period?

In addition to the points made in question 2 above regarding the continued obligation on BT to supply legacy SMP products, we firmly believe that any withdrawal of these products will essentially require a consideration of BT's market power in a particular market, the level of continued industry demand for the legacy product and a consideration of whether it is reasonable for users of the legacy product to have moved to the alternative next generation SMP product.

These latter two aspects of industry demand and the alternative next generation product are intrinsically linked and are important factors in determining if a legacy product should be withdrawn. If high levels of

demand still exist for a legacy SMP product then this is highly likely to indicate that the next generation SMP product is not an adequate replacement for the legacy product. In such a situation BT must be required to continue to provide the legacy product at least until a fit for purpose equivalent has been delivered and adopted by industry.

We very much hope that BT will deliver on its publicly-stated commitment regarding equality of access and to competing on a fair and level playing field. However, if BT's competitors are unable to migrate to and utilise next generation interconnection products in the same way as BT's retail business, then not only must BT be required to continue the supply of the legacy SMP product but Ofcom must also consider the imposition of a financial 'incentive' upon BT to ensure it delivers true equivalence and rectifies any outstanding fit for purpose or commercial issues regarding the next generation SMP equivalent product.

A recent regulatory example that is worthy of comment in this context is the CPS Same and Adjacent Calls product. A key part of this regulatory solution required BT to provide its competitors with a financial rebate until such time as it had completed the upgrade of its digital local exchanges to route local calls end-to-end and thus replicate the network efficiency and lower costs enjoyed by its retail business. This financial incentive ensured the upgrade work was handled in a timely and efficient manner. BT has recently advised that the upgrade of its digital local exchanges will be completed ahead of schedule. It is difficult to envisage that such an outcome would have been achieved without the financial incentive in place.

We recognise that there may be situations where no next generation SMP product is planned to replace a previous legacy product. In such situations we would expect full consultation between BT and the affected parties in order to agree and implement alternative arrangements. In the absence of agreement then the matter would require dispute resolution involving Ofcom.

Q4: Which network intelligence capabilities are likely to be associated with the underlying network where BT has SMP and cannot be independently provided by alternative providers, and why?

At this stage in the development of NGNs, and particularly in relation to BT's 21CN, it is difficult to be specific about network intelligence capabilities when so little is known about the actual level of intelligence that will be available and at which layer. We recognise that access to these capabilities will be important in areas where BT continues to be dominant at the network level and in situations where communication providers may need network intelligence information in order to comply with regulatory obligations. However, the key issue for CT is how access to network intelligence will be treated from a regulatory perspective.

We believe that in the context of 21CN, BT must be obliged to provide access to network intelligence capabilities where these relate to or support SMP in a related market in order to ensure that any launch of products and services by BT Retail are replicable by competitors. For example, access to network intelligence information relating to user presence, authentication and location would be extremely important in the development of future 'personalised' retail services and the efficient use of network capacity to deliver those services. BT could secure a critical advantage over other players if it is able to use intelligent data from the access network that is not available to others. Whilst we recognise the regulatory desire to encourage innovation, this must be balanced against the need to ensure that equivalent access is made available to network intelligence capabilities that reside in the network and relate to areas of SMP. We very much support the adoption of a common approach to such capabilities and the use of open standards by all players to support network functionality.

In addition to the regulatory requirement to provide access to network intelligence, there is also the related issue of how access would actually be provided. This involves a consideration of the appropriate depth of network hooks and the related problem concerning quality of service. At this stage we are unable to make any specific comments as it is unclear to us what BT plans to make available under 21CN. However, the example used by Ofcom in Annex G of the consultation in relation to broadband streaming video is extremely thought provoking. It is clear to us from that example that a deep network hook is preferable so that the network requesting the service from BT has direct access to the network elements on which the content is housed. Such an approach offers a greater ability to secure service provision and less susceptibility to the quality of service issues that might arise if service provision was to be requested at the application level.

We understand that any requirement to provide deep network hooks carries a number of practical difficulties, particularly around complexity, cost and network integrity. However, we would urge that a deep level of access must be mandated where to do otherwise would result in BT Retail gaining an unfair advantage in downstream retail markets and not facing the same quality of service issues as its competitors. We recognise that Ofcom has given considerable thought to this issue and that within Consult 21 a Network Hooks and Common Capabilities working group is also considering these same issues. We would suggest that as this is a very important area it might be sensible for Ofcom and /or industry to further engage BT to better understand what is planned and to consider some hypothetical situations, such as those discussed in Annex G of this consultation. It will be particularly important that BT does not make important network design decisions with regards to network intelligence and access to these capabilities now, before broader and more detailed discussion has taken place.

Q5: What are your views of the practical implications of applying Equivalence of Input to NGNs (e.g. in relation to MSAN interconnection, end-to-end quality of service and depth of network hooks)?

As stated in response to question 4 above we fully recognise that there are practical implications of applying equivalence of input to NGNs. These necessarily involve vexed questions regarding how and where to provide access to network intelligence capabilities, how to resolve the quality of service issues that arise between NGNs and how to determine the appropriate depth of network hooks. Equivalence of input in these areas is important to prevent anti-competitive effects in downstream markets. However, a number of practical difficulties must be addressed that arise in relation to the complexity of the necessary network arrangements that will be required, the cost implications and the network integrity concerns. At this stage CT is not in a position to advance potential solutions to these equivalence of input issues, but we do reiterate the importance of securing equivalence at the lowest network level to ensure a level playing field and fair competition in downstream markets.

We also believe there are significant concerns in relation to MSAN interconnection. BT's dominance in the access market means that most traffic originates and terminates on its network. The concern is that if BT's competitors were required to interconnect at the metro node level then they would not be able to replicate the call routing efficiency of BT with regard to calls that originate and terminate end-to-end on BT's MSANs. MSAN interconnection will secure this routing efficiency for BT's competitors. Ofcom have advised that the practicality of providing interconnection at the MSAN level could require additional functionality to be implemented which would increase the costs, and which could push the cost of MSAN interconnection higher than that for metro nodes.

This issue of routing efficiency for BT's 21CN is a key concern for CT. Industry has long-suffered the routing inefficiency for local calls, known as the 'local call disadvantage'. Despite Ofcom intervention on this issue in the form of the CPS SAD call product, most of BT's competitors continue to be at a disadvantage for local calls as compared with BT Retail, because to date only one communication provider has actually adopted the CPS SAD product. We believe the reason for this is predominantly a timing issue, with many communication providers not having a sufficient level of DLE interconnection to make the solution viable at this stage without further investment in network connectivity at the DLE level. Now that BT has announced a DLE closure programme any further network investment by communications providers is uncertain and unlikely at the present time.

Against this backdrop we are keen to ensure that BT does not gain a call routing efficiency advantage under 21CN. We understand that under Consult 21 an MSAN Interconnect working group is exploring the platform implications of MSAN interconnection with a view to agreeing a statement

of principle to inform other discussions and the overall design. Whilst this is encouraging we are aware that BT doubts whether it will be commercially viable for other communication providers to interconnect at all of the proposed 5500 MSAN sites. We would certainly not expect BT to take any interconnect design decisions that did not provide industry with the same routing efficiency as was used by its retail business and we remain concerned that full MSAN interconnection may not ultimately be viable. This could result in a continuation of the problems of routing inefficiencies that industry has today.

The CPS SAD call product was partially successful in addressing this problem with regards to BT's current DLE infrastructure. However, such a solution may not be possible without full MSAN interconnection under 21CN. If so, Ofcom may wish to consider a solution that would involve all 'local' MSAN calls being carried end-to-end over BT's network. Whilst there will be more industry discussion with BT around the potential for MSAN interconnection, we urge Ofcom not to lose sight of this important issue and its implications for call routing efficiency.

Q6: Do you agree with the issues Ofcom has identified that need to be addressed by all communication providers as they move to NGNs and what others are there?

There are two BT-specific issues that relate to the move to NGNs that require further comment in the context of this question. The first relates to the activities of BT's retail business following the move to 21CN. Ofcom has identified a situation where BT might seek to launch a new retail product without the corresponding upstream SMP product inputs being appropriately available to other providers, with BT thus gaining a first-mover advantage. In addition Ofcom has identified future changes to BT's retail prices, such as the cost of narrowband voice calls, where it is able to reduce its retail prices due to lower end-to-end network costs. We recognise that this latter point is an issue but one that we would hope would be mitigated to a greater extent by the holistic approach to NGN network charges and cost recovery.

We recognise that BT has given assurances in its undertakings to address these types of behaviour with regards to its retail business. However, our concern is that the assurance provided by BT is high level and replicates the existing non-discrimination requirements in the Access Directive[1] and the related transposition into the Access and Interconnection guidelines produced by Oftel. In practice this allows discrimination to take place provided it does not result in a material adverse effect on competition, which short of market exit is very difficult to prove. CT will be responding separately to the related Ofcom consultation on undue discrimination by SMP providers.

[1] Directive 2002/19/EC of 7 March 2002.

There are concerns within the industry that BT's retail business has previously had access to BT wholesale product information that is not in the public domain. This is a major advantage when developing and launching new retail products, where advance access to technical specifications, pricing models and timescales provides a significant competitive advantage. For industry, proving that there has been discrimination of this sort taking place is impossible.

To address this concern with regards to 21CN we believe that there should be more transparency around the product launch / pricing change activities of BT Retail. We believe that BT must be required to commit to providing Ofcom with advance notification of its retail activities, which involves an approval process. For example, if a new product is planned then BT must provide Ofcom with all of the technical and pricing information relating to that product so that it can be unbundled to determine if it is replicable by BT's competitors and to determine if any unfair advantage has been gained during its development, such as access to technical information, pricing, etc. If Ofcom determine that the product could not have been prepared without advance information being made available from elsewhere within BT (irrespective of the structural changes that BT has committed to put in place) then it must be prevented from introducing the retail product / price change so as to prevent an unfair advantage being obtained. CT would prefer this type of proactive approach to be used with regards to BT's retail activities as opposed to reliance on a reactive investigation following a BT Retail product launch and the related marketing fanfare.

The second BT-specific issue that gives us considerable cause for concern is broadband dial-tone. We understand that under 21CN BT expects to be able to move customers between products and services in real-time using software-controlled migration. This technology enabler is a significant step forwards, offering the ability to 'plug and play' a broadband device for immediate broadband service delivery. This will have massive appeal to consumers and it is absolutely vital that the same functionality be made available to BT's competitors, such as LLU operators, to ensure a serious competitive advantage is not obtained by BT. Alternative solutions for BT's competitors such as an enhanced manual process or 'active MDF' are not viable alternatives and do not provide true equivalence of input.

We note that BT has included broadband dial-tone in its Undertakings, stating "no Communication Provider……suffers a material competitive disadvantage ….solely as a result of BT's software-controlled migration between products and services made possible by its NGN". Whilst this provides a degree of comfort we do have concerns about the approach BT will take if it cannot subsequently offer equivalence of input for broadband dial-tone and unilaterally decides to offer the functionality whilst its competitors use a 'best efforts' alternative. The key question for CT is at what point would BT have breached the undertaking? The concept of a 'material competitive disadvantage' has proved a difficult test to satisfy in

relation to Competition Law, due to the number of potential variables that can influence market shares, revenues, market exit, etc.

To avoid such a potential situation with regards to broadband dial-tone we strongly suggest that if BT cannot provide equivalence of input then it must not be permitted to use the functionality itself. If equivalence of input is ultimately determined to be impossible, then at the very least the functionality of BT's broadband dial-tone must involve a timing constraint to mirror the alternative that is available to BT's competitors and there must be a clear prohibition on any BT marketing of its more efficient software controlled functionality.

The move to NGNs involves a number of other industry-wide issues that will need to be resolved. This will require the participation and commitment of all communication providers to ensure these issues are addressed during the design and implementation stages of NGNs when solutions are more achievable. It would be a failure if industry continued to use some of the existing inefficient solutions to address issues that persist within NGNs. Number portability will be an important cross-industry area where a central database solution would be a more efficient and effective solution to address ongoing industry issues around portability. We believe it would be sensible for discussions around such a database to take place now when key design decisions are being taken regarding NGNs.

We have particular thoughts on the appropriate cross-industry group required to address these issues, which is considered later in this response under question 16.

Q7: Do you agree with the policy principles Ofcom has identified for consumer protection during the move to NGNs?

We support the policy principles put forward by Ofcom for protecting consumers during the move to NGNs. We believe a successful move to NGNs, including BT's 21CN, will require the close involvement and commitment by <u>all</u> communication providers during the important migration phases to NGNs and the subsequent interim periods. We suggest that a cross-industry approach should ensure that the risks of consumer harm are identified at an early stage and managed accordingly.

The move to BT's 21CN will clearly be the vanguard of NGN migration, involving levels of complexity that have never been experienced by industry before. As an industry we must ensure that the move to BT's 21CN is as seamless as possible for consumers, with an identical experience for customers of BT Retail and other communication providers. All related issues must be managed at a virtual micro level to ensure the potential for harm and disruption is minimal. The creation of a multi-lateral industry working group to manage the consumer 21CN / NGN migration process would be a sensible and pragmatic way forward and one that we

would fully support. This aspect is considered in more detail in relation to question 16 below.

Q8: Do you agree with the overall processes for developing 21CN obligatory products?

Yes – the overall process for developing 21CN obligatory products is currently managed by BT and industry within an appropriate forum. This forum, including the working groups established to support it, is the Consult 21 Programme, which is responsible for creating, managing and owning the framework within which 21CN obligatory products will be developed.

We do not believe that Ofcom should attempt to manage the actual development of 21CN obligatory products, but we firmly believe that Ofcom has a vital role to play in resolving any commercial or policy disputes that arise from the negotiations that take place between BT and industry within the Consult 21 working groups.

We would expect Ofcom to continue to closely monitor the activities of Consult 21 and the issues being discussed. Ofcom's close monitoring activities in this process should ensure that negotiations take place in good faith and that timely and efficient intervention is readily at hand should a dispute arise.

Q9: Do you believe that there is a need to co-ordinate and steer cross industry NGN issues which is not met by existing bodies and processes?

Yes – it is our understanding that the cross industry NGN issues are not being appropriately addressed within any of the existing industry groups. These issues might be touched upon as part of a more specific 21CN discussion, but there is no specific co-ordinated approach to their resolution. We believe it is important that they are managed within an appropriate forum and the opportunity taken during the design and development of NGNs to resolve them. The creation of a multi-lateral industry working group would be a sensible way forward to ensure these cross-industry issues are co-ordinated and steered appropriately. This aspect is considered in more detail in relation to question 16 below.

Q10: Do you agree that there is a need to co-ordinate the planning and implementation of NGNs on an industry wide basis?

A not-for-profit organisation (similar to that being used for the digital switchover) could be a sensible way forward on a number of key issues. Its exact composition and responsibilities require further discussion, but it could in theory take responsibility for planning and co-ordinating the

industry transition to NGNs, and more particularly, the impact of BT's 21CN on other communication providers. This would crucially involve the customer migration process for 21CN and would ensure that all communication providers were involved in the forward planning and management of the migration process in order to manage their customer expectations and experience during this process.

Q11: Is there a need for a process to address the wider consumer protection issues arising from the move to NGNs?

Yes – this process should be included within a cross-industry working group.

Q12: Has Ofcom identified all the correct industry processes that will be needed to deal with the move to NGNs?

Yes.

Q13: Do you agree that it is appropriate for Consult 21 to continue to take responsibility for developing detail of SMP product migration and development of new products?

Yes.

Q14: Do you agree that Consult 21 combined with bi-lateral commercial negotiation and backed-up by Ofcom dispute resolution is the best approach to agreeing the commercial aspects of new and migrated products?

Yes - but all aspects of the approach need to be closely monitored by Ofcom on an ongoing basis to ensure that any necessary intervention is timely and effective.

Q15: Do you agree that NICC should continue to be responsible for standardisation of NGN interconnect, but needs to be re-constituted as an independent industry owned body?

Yes – the NICC has a track record on technical standardisation work and this should continue in relation to the development of technical standards for NGN interconnection and interoperability. We understand that the NICC requires an appropriate framework to be put in place to ensure it can scope and prioritise technical studies to support the commercial requirements of industry. It is not clear to us at this stage where the commercial guidance would come from to direct the activities of NICC and this needs further thought to ensure the NICC is not pulled in all directions and that conflicts of interest do not arise between its constituent members. It will also be important to have clear boundaries between the work and responsibilities of the NICC and any new multi-lateral industry group that is formed to consider the commercial arrangements for interconnection.

We do not envisage any dramatic changes being required to the governance arrangements in place for NICC provided that Ofcom continues to attend and provide input at its working meetings and to provide the necessary support services that are required.

Q16: What are your views on the establishment of a new multi-lateral industry group to address NGN issues, its terms of reference and governance arrangements?

We fully support the establishment of a new multi-lateral industry group, which is currently referred to as 'NGNCo'. Its areas of authority proposed by Ofcom are sensible, and most importantly include consumer protection issues and cross-industry NGN issues, which currently are not being appropriately addressed in any other suitable cross-industry forum.

NGNCo may not require any specific funding if it were to comprise communications providers that currently have a Standard Interconnect Agreement in place with BT and who will commit to provide meeting rooms, pre-meeting administration and a chairperson on a rotating basis. Appropriate trade organisations or individuals could represent the service provider community more widely. However, this may not be sufficient to manage the workload and issues involved, and a more formal organisation may be preferable, with a fully funded support office. Such an organisation would need appropriate personnel to be involved in its operation, including a 'leading individual' with the necessary independence. The model used for the Telecoms Adjudicator Scheme may be a useful example in this context. We would suggest that Ofcom might want to consider the use of a consultant to scope NGNCo following bi-laterals with communications providers.

Once the composition of NGNCo was agreed by industry, there would need to be clear boundaries between the consultation, negotiation and discussions taking place in the Consult 21 working groups and the consumer and commercial activities taking place in NGNCo.

Q17: What are your views on the establishment of a NGN operational dispute adjudicator, its terms of reference and governance arrangements?

We would support the establishment of an adjudication scheme for the timely resolution of operational disputes. CT was intrinsically involved in setting up and launching an alternative dispute resolution scheme for UKCTA members in 2005, which involves an adjudication scheme that is open to all communications providers to use. The scheme is operated by the Chartered Institute of Arbitrators (CIArb) and involves a flexible and cost-effective charging structure for adjudications and access to a panel of communications experts. We would suggest that dialogue with the CIArb

would be useful to consider how the current adjudication scheme could be used to provide a binding resolution to operational NGN disputes.

Q18: Would your organisation be prepared to sign-up to such an adjudication scheme and abide by the adjudicator's decisions?

Yes.