



**OFCOM STRATEGIC REVIEW OF  
TELECOMMUNICATIONS  
PHASE 2 CONSULTATION DOCUMENT  
RESPONSE FROM BLUERIDGE TELECOM**

## Executive Summary

Blueridge Telecom is a long-distance telecommunications service provider; we currently operate in all areas of the UK serviced by BT. In the UK, we operate under the brands of Blueridge Telecom, VoIP Communications and Optic Communications. We offer long-distance fixed line voice telephony services primarily to small and mid-sized businesses via carrier preselection (CPS). We also provide wholesale line rental (WLR) service to our customers, should they choose to bundle their services and receive only one telecommunications bill.

Our experience from around the world leads us to believe very strongly that benefits can only come about if competition thrives. In our view, history shows that reliance on monopolists or centrally planned economies leads to market and society failure.

We would also express a second strongly-held belief, born of our market experience, namely that the primary value of strategy is in execution. Well-crafted principles can only have value when linked to details of execution. We offer our experience of the reality of a small operator dealing with BT in the UK marketplace, as we believe it should give Ofcom further insight into the issues it must resolve if its vision of a dynamic, competitive, valuable telecoms industry in the UK is to be realised.

Our overall view is that we agree with Ofcom that telecoms can underpin exciting changes in society. In particular, we believe that the industry is approaching a fundamental shift in its dynamic, as it seeks to accelerate the change from traditional narrowband networks to broadband IP-based networks, and thus seeks to open a whole new chapter of consumer benefits.

Ofcom's seven principles are clear and simple. However, they are too plain. They require detail to make them meaningful. As innovation in a service-driven market, such as telecoms, often comes from smaller players, it is vital that Ofcom applies its principles in such a way as to support the smaller player.

The smaller player relies on speed of execution. BT's wholesale processes disadvantage the smaller player. In our view, BT's Chinese walls require thicker bricks, and BT is riddled with institutional inertia. Inertia favours the incumbent; momentum favours the market.

Our experience, in particular of BT's WLR processes, provides a wealth of detail to show that BT's allegedly mature wholesale products are not fit-for-purpose in today's wholesale market. This makes us severely doubt BT's ability to create suitable broadband wholesale products for the market of the exciting vision that Ofcom proclaims. Furthermore, BT Retail's misuse of information obtained within wholesale processes – as evidenced by the recent decision by the Competition Appeals Tribunal – gives us serious cause to wonder whether being successful in

the WLR market, never mind innovating in a future broadband market, is feasible for a smaller player.

We would propose that BT should be mandated to adopt an approach of “do the right thing, and be seen to do the right thing” in all activities in markets where it has been deemed to have significant market power. We would suggest that a “be seen to do the right thing” philosophy is sadly lacking. We would conclude that BT has to show that it can behave appropriately in its dealings with all sizes of wholesale player, not just with large infrastructure providers, before any further relaxation of regulatory controls can be considered. We would also conclude that Ofcom should interpret shades of grey in such matters as being prima facie evidence of breach: smaller competitors lose much more than BT when fear, uncertainty and doubt are spread into the marketplace by BT’s behaviours.

We would contend that consumer protection is best provided by the availability of intensive competition for the consumer’s business, such that consumers can make informed and real choices – and choose again if they wish – about where they purchase their services. The examples we give in this response all serve to show that BT’s current behaviour stifles retail competition. We believe that Ofcom must take serious action to address these issues of execution, as they work to impede the practical implementation of regulatory strategies.

In our view, the consultation document sets out well-structured thoughts on future wholesale access products. Competition will come from innovation in retailing, service, product and tariffs. Such innovation requires that processes to provide wholesale access products allow for speedy, flexible purchase and implementation by all sizes of wholesale customer. This is clearly not the case today. We therefore have little confidence that it will be the case tomorrow, without decisive Ofcom action to make the wholesale products truly fit-for-market.

## **Introduction**

### **Introduction to Blueridge Telecom**

Blueridge Telecom is a long-distance telecommunications service provider; we currently operate in all areas of the UK serviced by BT. Together with our affiliates, we have provided commercial telecommunications service to over 300,000 businesses and consumers throughout the world. We were among the first companies to offer small- and mid-size businesses a telecoms service typically reserved for Fortune 500-sized companies. We offer long-distance fixed line voice telephony services primarily to small- and mid-sized businesses via carrier preselection (CPS). CPS is available to our customers in the following options: All Calls, National Calls, International Calls, or National and International calls. We also provide wholesale line rental (WLR) service to our customers, should they choose to bundle their services and receive only one telecommunications bill. We are a member of the Communications and Internet Services Adjudication Scheme (CISAS). For more details on Blueridge Telecom, please see Annex A.

### **Overall view from Blueridge Telecom**

We would begin by passing our thanks to Ofcom for the chance to contribute to such a crucial debate as the Telecoms Strategy Review (TSR). We fully support an open and transparent approach to the creation of regulatory strategy for a market as important as telecommunications. We trust that Ofcom finds our comments both informative and practical. We also confirm that we would respond positively to any request from Ofcom policy makers to meet to discuss our points in more detail.

Our overall view is that we agree with Ofcom that telecoms can underpin exciting changes in society. In particular, we believe that the industry is approaching a fundamental shift in its dynamic, as it seeks to accelerate the change from traditional narrowband networks to broadband IP-based networks, and thus seeks to open a whole new chapter for consumer benefits.

Our experience from around the world leads us to believe very strongly that benefits can only come about if competition thrives. In our view, history shows that reliance on monopolists or centrally planned economies leads to market and society failure. This central belief has guided our own successful strategy. We enter markets where we believe competition can provide opportunities to deliver great value in telecoms services to consumers.

We would also express a second strongly-held belief, born of our market experience, namely that the primary value of strategy is in execution. Well-crafted principles can only have value when linked to details of execution.

We have seen from consultation and responses in Phase 1 of Ofcom's TSR that much is written and passionately argued about guiding strategic principles. We are following the strategic debate very closely, as it informs our future plans for the UK. However, we believe that our contribution to the TSR can add more value if we highlight how some of the bold strategic concepts can be strangled at birth by poor implementation processes, leaky Chinese walls and questionable behaviour by a dominant incumbent. In particular, we have entered the UK market at a time when the wholesale products we require are supposed to be slick and fit-for-purpose and a time when BT is apparently surrounded by non-discrimination rules. Our expectations for market entry, not unreasonably, were therefore that we would have few issues in dealing with BT Wholesale as a supplier and with BT Retail as a competitor.

In this paper we offer our experience of the reality of a small operator dealing with BT in the UK marketplace, as we believe it should give Ofcom further insight into the issues it must resolve if its vision of a dynamic, competitive, valuable telecoms industry in the UK is to be realised. We would suggest that such details can offer as deep an insight into likely future market behaviours as any amount of theoretical market analysis. Our dealings with BT relate most directly to a subset of Ofcom's 20 questions. Accordingly, we are restricting our comments to questions 1,5,6,7,9 and 14.

## **Q1 Do you agree with Ofcom's proposed principles for regulation of telecoms markets?**

Ofcom's seven principles are clear and simple. However, they are too plain. To disagree with them would be akin to disagreeing with principles like *"truth"* and *"justice"*. What matters to the industry and its stakeholders is the meaning behind phrases such as *"equality of access"*, *"as soon as competitive conditions allow"*, and *"remove economic bottlenecks"*. As innovation in a service-driven market, such as telecoms, often comes from smaller players, it is vital that Ofcom applies its principles in such a way as to support the smaller player.

We have absolutely no doubt that BT Wholesale espouses many of the right intentions towards its wholesale customers, and we would applaud many of the efforts of some individuals we deal with in that organisation. We recognise that it must be frustrating for these people, as well as for ourselves, when the institutional inertia of BT constantly obstructs rapid and error-free action.

The reality we face is that too often wholesale information leaks into BT Retail, and Retail priorities influence Wholesale behaviours (see Q6 below). This leakage has the direct effect of restricting retail competitor activity, and therefore the competitiveness of the UK telecoms market. Take as an example a customer who is already using our CPS service. If that customer chooses to upgrade to our WLR service too, then BT Wholesale passes that information to BT Retail,

ostensibly for BT Retail to conduct validation of customer intention, eg to avoid sales “slamming”. In effect, BT Retail should simply be fulfilling, as an agency service, the part of the BT Wholesale WLR product process called “validation of customer intent.” There should be no possibility of a BT Retail unit attempting customer winback as a result of receiving this information from BT Wholesale. The recent UK Competition Appeals Tribunal (CAT)<sup>1</sup> decision shows this not to be the case. We recognise that BT may appeal this decision. However, the mere fact that the issue went to the CAT shows that BT’s behaviour is, at minimum, casting doubt on the efficiency of its own processes. Such doubt has given us serious cause to wonder whether being successful in the WLR market, never mind the future broadband market, is feasible for a smaller player.

If an upgrade from one of our services to another exposes our customers to a backdoor winback from the incumbent, then such a marketing programme becomes sheer commercial suicide for a small player. Without cast-iron guarantees of rapid and penal regulatory action for such intimidating behaviour, innovative competitors are left with no certainty on plans to attract and develop retail customers. We would therefore conclude that BT has to show that it can behave appropriately in its dealings with all sizes of wholesale player, not just with large infrastructure providers, before any further relaxation of regulatory controls can be considered. We would also conclude that Ofcom should interpret shades of grey in such matters as being prima facie evidence of breach: smaller competitors lose much more than BT when fear, uncertainty and doubt are spread into the marketplace by BT’s behaviours.

## **Q5 How can real equality of access be achieved at the product level?**

Inertia favours the incumbent; momentum favours the market.

As stated above, innovation in services is often driven by smaller players in the marketplace. The dynamics of the telecoms industry, eg through economic “network effects”, in theory allows such players to grow rapidly if they are successful. To become successful, they have to be able to move more rapidly than larger or established players. It is therefore critical to the dynamism of UK telecoms that market entry processes are slick and efficient.

Slick and efficient they are not.

We have found the processes for market entry to be too slow, too cumbersome and too oriented towards larger players. We fully recognise that BT has to

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<sup>1</sup> Case No: 1025/3/3/04 - **BRITISH TELECOMMUNICATIONS PLC (Appellant) -v- OFFICE OF COMMUNICATIONS (formerly the Director General of Telecommunications) (Respondent)** supported by **THUS PLC AND BROADSYSTEM VENTURES LIMITED** and **NJ ASSOCIATES (Interveners)** [2004] CAT 23

protect its network and its commercial structure, but we would point to a number of areas where a philosophy of bureaucracy, overprotection and “if in doubt, don’t act” pervades. For example,

- In the initial WLR contract requirements, we were faced with delays on all fronts: lack of knowledge by BT of legal requirements, unnotified absence of – and lack of cover for – staff, repeated transfer of responsibility for us from one BT Wholesale person to another, incomplete information on the details of the WLR forms and process, late questions, and even temporary loss of our deposit. A so-called “fit for purpose” process for a straightforward market entrant took nearly four months to implement. See Annex B for more details.
- The WLR product has unnecessarily onerous forecasting requirements, which do not recognise the inevitable differences in forecasting error between small and large players. Wholesale customers have to provide rolling forecasts for several months ahead. The limits in variations allowed by BT Wholesale are expressed as a percentage of the actual forecast, and BT imposes delays if the variations stray outside these limits. Such a method ignores simple rules of probability. In simple terms, smaller operators have more volatile order volumes (higher percentage variation) than larger operators. This is for two reasons: (a) probability theory shows that smaller sample sizes have higher volatility than larger sample sizes from the same population; and (b) the forecasts of smaller operators are affected disproportionately when orders for multiple lines arrive as random occurrences within the generality of orders from customers. In addition, BT’s costs and timescales are more driven by large volumes of orders than by small volumes. Therefore, not only is a small operator more likely to contravene BT’s forecasting rules, but that error is having far less of a material impact on BT’s implementation costs and planning than a smaller percentage variation of a larger operator. Smaller operators are sent to the back of the provisioning queue because they have to obey the laws of probability, not because they are poor forecasters.
- Any product involving a BT line requires information from BT. However, because of BT’s poor information systems, we find that we often have to ask customers themselves to provide all the detail of the lines and features that they have purchased – detail that is rarely completely known by the customer. This leads to further delay, plus a presumption by the customer that it is us who have caused the delay. BT Retail faces no such information delays when it wishes to upgrade its customers from one service to another. We would contrast this information vacuum to the process in the USA, in which incumbent operators are, upon customer authorisation, obliged to provide complete Customer Service Records.
- More specifically, we have faced serious difficulties when implementing customers who wish to migrate ISDN2 or ISDN30 lines to us, as BT’s records are often very poor. Again, we would regard the WLR transfer of an ISDN customer as a BT Wholesale service, part of which is delivered,

- on an agency basis, by BT Retail. We can cite several instances where poor information has led to delay or incomplete transfer, which have in turn led the customer to blame us for poor service, when we are the helpless victims of the BT process. Such damage to our reputation, and similar damage to other operators, can only damage the further development of effective retail competition.
- Ofcom has created a number of industry groups to address some of these areas, but BT's advantages of resource and information mean that it can control the speed at which such groups resolve issues. The Telecoms Adjudicator for Local Loop Unbundling (LLU) is a start, but there is a danger that even he will be behind the speed at which proper market competition could develop.

## **Q6 What behavioural changes by BT do you believe would be necessary to achieve real equality of access?**

As explained in our answer to Q1 above, our experience, supported independently by the recent CAT decision on BT Retail's winback behaviour, is that BT Retail will use any information to hand – regardless of how it is obtained – to try to winback customers. Examples like this reinforce negative attitudes towards BT. We would propose that BT be mandated to adopt a “do the right thing, and be seen to do the right thing” approach in all activities in markets where it has been deemed to have significant market power. We would suggest that a “be seen to do the right thing” philosophy is sadly lacking. BT ought to incur real penalties if it does not change its behaviour. For example, it could be required to agree by the end of March 2005, or have imposed by Ofcom, a generic service level agreement for WLR with its wholesale customers. Material breaches of the agreement could result in penalties in the form of immediate price reductions or compensation payments for the affected parties.

Neither do we believe that BT Wholesale acts wholly independently of BT Retail. We would like to quote a specific example to illustrate the general point.

We trade as Blueridge Telecom, or “BRT” for short. In the autumn of 2004, we received from BT an allegation that we had been passing ourselves off as “BT” when selling to customers. We dealt with the allegation and it was shown to be totally unfounded. We had no objection at all to BT raising this allegation with us. Indeed, we comply rigorously with codes of conduct for good sales practice and we would not wish to be associated with any inappropriate behaviours or to allow such damage to our reputation.

What we found strange was that the details of the allegation came to us from BT Wholesale, not from BT Retail. The matter was purely a retail one – allegations about our behaviour as retail competitors to BT Retail. In our view, not only

should all the communication on the matter have come to us from BT Retail, but also BT Wholesale should have known nothing from BT Retail colleagues about the matter. If there had been any substance in any allegation of this nature, it is for BT Retail to take the matter further with the operator and with the competition authorities. As long as we continued to pay our bills to BT Wholesale and fulfil our wholesale obligations, then BT Wholesale should have had no reason to be involved or informed of any disputes with their BT Retail colleagues. As it was, we were told that BT Wholesale would consider further action if there was any substance to this retail allegation. We understand that BT has a formal compliance training programme. Clearly such training is not yet embedded in objectives, measures or behaviours. We cite the above as an example to us of BT's "revert to type" behaviour: to forget the requirements and implications of the Chinese walls. Again, such failures in standards of behaviour could or should be subject to financial penalties.

Such BT behaviour is not only wrong. It also diverts resource in smaller players. Small players cannot afford the luxury of competing against BT's regulatory armies. BT action like this stifles competition.

**Q7 How should Ofcom reflect the competing considerations of efficient investment and consumer protection in determining the regulated returns that BT may earn from its network?**

and

**Q9 Do you agree with Ofcom's proposed approach to the deregulation of voice services?**

We would contend that consumer protection is best provided by the availability of intensive competition for the consumer's business, such that consumers can make informed and real choices – and choose again if they wish – about where they purchase their services. The examples we have given above all serve to show that BT's current behaviour stifles retail competition. We believe that Ofcom must take serious action to address these issues of execution, as they work to impede the practical implementation of regulatory strategies.

BT cannot be allowed to have more return on its regulated future investments until it shows that it is delivering tangible improvements to the processes that underpin its current wholesale products. Furthermore, Ofcom should act now to ensure that past process failings are not embedded in new voice and data wholesale products.

**Q14 What set of wholesale access services should BT be required to provide in order to promote competition in the business market?**

In our view, the consultation document sets out well-structured thoughts on future wholesale access products. Competition will come from innovation in retailing, service, product and tariffs. Such innovation requires that processes to provide wholesale access products allow for speedy, flexible purchase and implementation by all sizes of wholesale customer. This is clearly not the case today. We therefore have little confidence that it will be the case tomorrow, without decisive Ofcom action to make the wholesale products truly fit-for-market.

BLUERIDGE TELECOM  
FEBRUARY 2005

## **Annex A**

### **Overview of Blueridge Telecom**

Blueridge Telecom is a long-distance telecommunications service provider; we currently operate in all areas of the UK serviced by BT. Together with our affiliates, we have provided commercial telecommunications service to over 300,000 businesses and consumers throughout the world. We were among the first companies to offer small- and mid-size businesses a telecommunications service typically reserved for Fortune 500-sized companies. We offer long-distance fixed line voice telephony services primarily to small and mid-sized businesses via carrier preselection (CPS). CPS is available to our customers in the following options: All Calls, National Calls, International Calls, or National and International calls. We also provide wholesale line rental (WLR) service to our customers, should they choose to bundle their services and receive only one telecommunications bill. We are a member of the Communications and Internet Services Adjudication Scheme (CISAS).

In addition to our 10-year wholesale relationship with MCI WorldCom, we maintain underlying carrier arrangements with Qwest, Global Crossing and Arbinet. We also operate two Alcatel Megahub 600 ES switches. This combination of resources provides us an extraordinarily reliable network, with several layers of redundancy.

Traditional switched telecommunications services, both inbound freefone service and outbound service, form the backbone of our product line. Additionally, we are one of the few telecommunications providers offering point-to-point dedicated voice and data services. We consistently achieve high satisfaction ratings from our customers, including those with larger or more advanced network applications.

Our network service centre, back office support group and state-of-the-art telecentre reside in two facilities aggregating 90,000 square feet of office space. Our experienced personnel in customer care, operations, provisioning and IT provide unequalled service and support to our existing customers, while highly trained network analysts assist potential customers in evaluating their telecommunications needs.

The ability to offer a financially sound organization, excellent carrier management and the highest quality customer care has made us the first choice of hundreds of thousands of customers. Our unique blend of service and value continues to fuel our exponential growth in this competitive and dynamic industry.

## **Annex B**

### **Establishment of WLR - Blueridge's timeline and narrative**

1. We sent the handshake documents to our BT contact on 5<sup>th</sup> May 2004. Even though we stressed that we were an American company doing business in the UK, BT continued to demand a UK registered number and address. Resolution of this matter took approximately four months before BT understood that we are an American company without presence in the UK and therefore, do not need a registered address or number.
2. On 26<sup>th</sup> May, we followed-up with our BT contact. We were informed that our application was in process and that BT would advise us of its progress. We heard nothing, so we contacted BT on 3<sup>rd</sup> June and were told that our designated BT contact was on vacation until 10<sup>th</sup> June. We took this as an early example of BT's failure to communicate and its inability to clearly convey which of its representatives could be expected to assist us. BT continually reassigned its representatives throughout the process. Indeed, the constant rapid shuffling of BT's team was far too quick for us to keep up with, even though we are based in Las Vegas.
3. Related to BT's inability to communicate effectively, we repeatedly scheduled calls and yet had no BT representative present or available. More than once, we emailed the scheduled contact and discovered that he or she was on vacation. Example: Subsequent to our initial contact's return from holiday on 10<sup>th</sup> June, this contact informed us that we would need to work with a different person. Thus, a call with this new rep was scheduled for Monday, 14<sup>th</sup> June. The new rep didn't show up. Upon contacting the BT office, it was discovered that this person was out of the office until Wednesday, 16<sup>th</sup> June.
4. We received many forms from BT which, according to BT, were required as part of the WLR process. It is important to note that with most of these forms we would receive little or no direction as to the information necessary. This delayed the process. At the same time and as noted above, it was difficult to contact a BT Representative for clarification regarding these forms. Example: we filled out a forecast form, without being advised that the details of this form would later affect and determine the deposit required by BT, our status as a WLR, how quickly our orders are done, etc.
5. BT never clearly communicated to us the complete process or requirements related to the WLR process. For example, in the middle of developing internal processes we would be informed of additional BT requirements, for example the need to apply for and receive a Reseller ID.

6. We were told that we would receive return of the Credit Vet back on 4<sup>th</sup> July. However, despite much persistence, we did not receive this until 15<sup>th</sup> July. We immediately wire transferred the amount demanded and still it took BT until 2<sup>nd</sup> August to trace the money. It had been mistakenly sidelined into a “catchall” account by BT. Our BT rep was out of the office for the week and we had been given no substitute contact.
7. As soon as BT acknowledged receipt of our deposit funds, we pushed hard for an effective start date. The result was a massive conference call, for which we had present all the groups that we would need to become an active WLR (training, billing, IT, etc). We immediately booked flights to get people to London to hook up connectivity, training, etc. This was done by 13<sup>th</sup> August. We should have been able to go live shortly thereafter. However, BT raised additional requirements related to VAT exemption not previously raised.
8. We finally became an active WLR service provider on 24<sup>th</sup> August, sixteen weeks after we sent the first documents.