

Amendments to section 7
(equipment location) of the
Enterprise Act Undertakings given
by BT to Ofcom

Statement

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Section 1

Summary

Background

- 1.1 On 22 September 2005, Ofcom accepted BT's undertakings pursuant to section 154 of the Enterprise Act 2002 ("the Undertakings"). The Undertakings are set out in full in the document entitled *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002*¹.
- 1.2 Section 7 of the Undertakings requires BT to provide other Communications Providers with a facility for them to locate their equipment in a BT exchange, where there is sufficient space and power available.

Consultation

- 1.3 On 3 February 2006, though not obliged to, Ofcom consulted on several non-material amendments to section 7 of the Undertakings. Ofcom received three responses to the consultation and has taken these into account in agreeing the amendments with BT.

Summary of amendments to BT's Undertakings

- 1.4 The following non-material amendments are agreed between BT and Ofcom:
 - removing references to the Communications Providers Property Users Group ("CPPUG") and replacing them with references to 'Communications Providers' where relevant;
 - allowing BT to require comments on its Estimated Space Availability Details ("ESADs") to be submitted in a standard format;
 - allowing BT to ensure that Communications Providers have signed a suitable confidentiality agreement before it provides its ESADs;
 - allowing BT to amend the list of exchanges BT intends to vacate ("vacation list") from time to time as appropriate and at least every six months, if there have been any changes; and
 - requiring the vacation list to be provided to Communications Providers as well as Ofcom.

¹ This document can be found at http://www.ofcom.org.uk/static/telecoms_review/final_statement.htm

Section 2

Amendments to section 7 of BT's Undertakings

Background

2.1 On 22 September 2005, Ofcom accepted BT's Undertakings pursuant to section 154 of the Enterprise Act 2002. The Undertakings are set out in full in the document entitled *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002*.

2.2 Section 7 of the Undertakings requires BT to provide other Communications Providers with a facility for them to locate their equipment in a BT exchange, where there is sufficient space and power available. Section 7 also requires BT to provide ESADs to the CPPUG, as defined below, and provides that BT may invite comments from the CPPUG on the ESADs, including demand forecasts for space. Annex 4 requires that the CPPUG is consulted before any additions to the equipment listed in Annex 4 are agreed between BT and Ofcom.

2.3 Section 7.1.2 states:

"The Estimated Space Availability Details will be provided by BT by the November 1 preceding the next BT financial year for which the BT corporate property strategy applies."

2.4 Section 7.1.3 states:

"BT may invite the Communications Providers Property Users Group to submit by the 1 January preceding the next BT financial year for which the BT corporate property strategy applies, written observations (including demand forecasts for space) to BT concerning the Estimated Space Availability Details."

2.5 Annex 4 f) states:

"Any additional equipment reasonably identified by any other Communications Provider following consultation with the Communications Providers Property Users Group and agreed in writing between BT and Ofcom"

2.6 The definition of ESADs states:

"Estimated Space Availability Details" means details of estimated space availability within the Exchanges annually notified to the Communications Provider Property Users Group in accordance with section 7.1.2."

2.7 The definition of CPPUG states:

"Communications Provider Property Users Group" means a group representing Communications Providers (other than BT) made up of three representatives appointed by them."

Consultation

- 2.8 On 3 February 2006, Ofcom consulted on several non-material amendments to section 7 of the Undertakings. Ofcom received responses from Cable and Wireless (C&W) and Kingston Communications (HULL) plc (Kingston) and one confidential response. Ofcom has taken these responses into account in agreeing the amendments with BT.
- 2.9 One of the respondents to the consultation considered that the proposed variations were material and that the statutory requirement to consult had been triggered. However, as Ofcom stated in the consultation, it does not consider the variations to alter the Undertakings in a material respect, as they only concern a mechanism for BT to communicate with industry for a small part of the Undertakings as well as other minor changes to a minor part of the Undertakings.

Removal of the CPPUG

- 2.10 In the course of discussions with industry about the implementation of section 7, industry raised concerns that the CPPUG was unlikely to be effective for the following reasons:
- industry did not consider that it was likely for three nominated Communications Providers to reasonably represent the interests of all interested Communications Providers, due to conflicting interests of different operators, who would use the equipment location product for different purposes. Further, individual operators were unwilling to take on this responsibility; and
 - there were confidentiality issues with industry providing demand forecasts for space to the three nominated Communications Providers, with whom they were likely to be in competition and where confidentiality agreements would not be in place.

Responses to the consultation

- 2.11 C&W and Kingston supported the removal of the CPPUG. One respondent requested that groups of Communications Providers should be allowed to make requests for new types of approved equipment.

Conclusion

- 2.12 Ofcom considers that the CPPUG is unlikely to be effective and considers that it is appropriate to amend the Undertakings to remove the CPPUG and to replace such references with 'Communications Providers' where relevant.
- 2.13 In relation to the request made by one of the respondents, Ofcom considers that groups of Communications Providers are already able to make requests for new types of approved equipment without a specific reference to this in the Undertakings.

Other changes

ESADs

- 2.14 The removal of the CPPUG means that BT has to aggregate comments on the ESADs and forecast data from all Communications Providers. BT requested the ability to require this information to be provided in a standard format.

- 2.15 In addition, BT put forward that the information provided in its ESADs is confidential and that Communications Providers must therefore sign confidentiality agreements before this information can be provided. BT requested that this be clarified on the face of the Undertakings to make clear that the ESADs will be placed on a password protected website.

Responses to the consultation

- 2.16 Kingston and one other respondent wanted clarification that where an appropriate confidentiality agreement already exists, which sufficiently covers the information contained in the ESADs, a new confidentiality agreement will not need to be signed.

Conclusion

- 2.17 Given the possible amount of information that BT might receive, Ofcom considers that it is reasonable to require comments on the ESADs and forecast data to be provided in a standard format.
- 2.18 BT has confirmed that a confidentiality agreement specifically drafted for the purposes of the ESADs information is necessary. While some Communications Providers have already signed an agreement for the purposes of Local Loop Unbundling, BT considers that this is not appropriate for the ESADs because parts of it are not relevant and other parts, for example, duration of obligation, are different. BT is therefore of the view that a separate confidentiality agreement must be signed by Communications Providers before it discloses its ESADs.
- 2.19 Ofcom does not consider that the need for a separate confidentiality agreement to be signed is particularly onerous for Communications Providers and therefore it is appropriate to reflect this in the Undertakings.

Vacation list

- 2.20 BT already provides a vacation list to local loop unbundling operators (“LLUOs”) that is separate to the vacation list required by section 7 of the Undertakings and this list is updated on a three monthly basis. In the context of section 7, Ofcom proposed that it would be of benefit to Communications Providers for the vacation list to be updated in line with the LLU list and on a more frequent basis than every 6 months.
- 2.21 BT has agreed to provide the vacation list to Communications Providers that have signed a confidentiality agreement with BT as well as Ofcom.

Responses to the consultation

- 2.22 C&W was concerned that the proposed wording set out in the consultation relaxed BT’s requirement to publish vacation information when the intention is to allow for more frequent updates.
- 2.23 One respondent considered that six month updates provides important stability for the alternative sector and wanted the list to be restricted to exchanges scheduled for closure within the next 18 months.

Conclusion

- 2.24 Ofcom considers that the Undertakings should be amended to allow BT to update the vacation list as appropriate. Ofcom considers that more frequent updates to the list

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are of benefit to Communications Providers to allow them to plan and make informed decisions about the exchanges in which to locate their equipment. In the context of section 7, there is no benefit in restricting the list to those exchanges scheduled for closure within the next 18 months.

- 2.25 Ofcom agrees with C&W that the wording contained in the consultation document was a little unclear and has amended the drafting to ensure that BT reviews and, if there are changes, amends the vacation list at least every six months.
- 2.26 Ofcom considers that BT should be required to provide the vacation list to Communications Providers that have signed a confidentiality agreement as well as to Ofcom and that this should be reflected in the Undertakings.

Summary of amendments

- 2.27 The following non-material amendments are made to section 7 of the Undertakings:
- removing references to the CPPUG and replacing them with references to 'Communications Providers' where relevant;
 - allowing BT to require comments on its ESADs to be submitted in a standard format;
 - allowing BT to ensure that Communications Providers have signed a suitable confidentiality agreement before it provides its ESADs;
 - allowing BT to amend the list of exchanges BT intends to vacate from time to time as appropriate and at least every six months, if there have been any changes; and
 - requiring the vacation list to be provided to Communications Providers as well as Ofcom.
- 2.28 The variation document is set out at Annex 1. The variations to the Undertakings took effect on 19 April 2006.

Annex 1

Variation Document

Variation of Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002 – Variation Number: 2

WHEREAS:

- (a) British Telecommunications plc ('BT') has given Ofcom certain undertakings ('the Undertakings') which took effect on 22 September 2005, pursuant to the Enterprise Act 2002;
- (b) by virtue of section 18.1 of the Undertakings, BT and Ofcom may from time to time vary and amend the Undertakings by mutual agreement;
- (c) BT and Ofcom have agreed to vary the Undertakings as hereinafter appears.

NOW THEREFORE:

It is hereby agreed between BT and Ofcom pursuant to section 18.1 of the Undertakings that the Undertakings are varied as follows:

- 1. Definitions and interpretation
 - 1.1 Words or expressions hereinafter appearing have the same meanings as in the Undertakings.
 - 1.2 References hereafter to section numbers are references to section numbers in the Undertakings.
- 2. Communications Provider Property Users Group and Estimated Space Availability Details
 - 2.1 In section 2.1 the definition of "Communications Provider Property Users Group" is deleted.
 - 2.2 In section 2.1 the definition of "Estimated Space Availability Details" is deleted and replaced by the following:

"Estimated Space Availability Details" means details of estimated space availability within the Exchanges annually notified (by being placed on a password protected BT website) in accordance with section 7.1.2 to those Communications Providers who have signed an appropriate confidentiality agreement with BT."
 - 2.3 Section 7.1.3 is deleted and replaced by the following:

"BT may invite Communications Providers to submit by 1 January preceding the next BT financial year for which the BT corporate property strategy applies, written observations (including demand forecasts for space) to BT concerning the Estimated Space Availability Details. BT may require these written observations to be submitted in a standard format provided by BT."
 - 2.4 Paragraph (f) in Annex 4 is deleted and replaced by the following:

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“Any additional equipment reasonably identified by any other Communications Provider and agreed in writing between BT and Ofcom.”

3. Exchange vacation list

3.1 Section 7.7 is deleted and replaced by the following:

“Within six months of these Undertakings taking effect, BT will provide (by placing the list on a password protected BT website) to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT a list of Exchanges that it intends to vacate in accordance with its property strategy. BT will inform any Communications Provider requesting to occupy a Vacation Exchange before the Communications Provider deploys its Equipment at the site that it is a Vacation Exchange and the proposed date of vacation. Subject to BT complying with its obligations under this section 7.7, the Communications Provider will vacate that site on or before the proposed vacation date and will not be entitled to any compensation from BT, except where existing SMP Conditions, directions or contractual terms apply. BT will have the right to amend that list from time to time as appropriate, and must do so at least every six months, during the period of these Undertakings, if there have been any changes, and such amended list shall be provided in the same manner as the original list to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT.”

4. These variations of the Undertakings take effect immediately upon signature hereof on behalf of both parties.

Signed for and on behalf of British Telecommunications plc

Signature _____
Name _____
Position _____
Date _____

Signed for and on behalf of Ofcom

Signature _____
Name _____
Position _____
Date _____