

Explanatory Note
Variation of the Undertakings given to Ofcom by BT pursuant to the
Enterprise Act 2002 – Variation number: 12

December 2007

Introduction

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
2. Ofcom and BT have now agreed certain variations to the Undertakings. These variations are explained below and set out in the attached Variation Document. Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. Ofcom has not consulted on this occasion because it considers that the variations have only altered the Undertakings in a minor respect.
3. The minor variations agreed below aim at ensuring that the Undertakings are not undermined by the launch of BT Design and BT Operate in July 2007.

Changes to sections 2.1 (Definitions), 5 (Access Services) and 6 (Management and structure of BT Wholesale)

4. Minor variations have been made to these sections of the Undertakings.
5. The first expressly excludes BT Design and BT Operate from the definitions of Downstream Divisions and Upstream Division(s). Ofcom and BT considered that this variation is necessary to clarify that BT Design and BT Operate are not Upstream or Downstream Divisions as defined.
6. The second and third variations amend sections 5.13.3 and 5.15 to reflect the shift of some of the assets and activities – and accordingly the attached obligations - from BT Wholesale.
7. The fourth and fifth variations amend sections 5.33 and 5.35 to maintain the organisational separation of AS.
8. The remaining variations to sections 5.39, 5.40, 6.10.1 and 6.10.3 ensure that the launch of BT Design and BT Operate does not undermine the restrictions on disclosure of AS and BT Wholesale Customer Confidential Information, on disclosure of BTWS and BTS Commercial Information, and on the influencing of the Commercial Policy of the Downstream or Upstream Divisions of BT by AS.

Effect

9. These variations of the Undertakings take effect on 1 April 2008, with the exception of the variation of section 5.15 which takes effect on 1 February 2008.

¹ http://www.ofcom.org.uk/consult/condocs/statement_tsr/

they appear in this section.

- 2.4 A new section 5.33A is inserted as follows: "For the avoidance of doubt, the AS Headquarter Management Team shall be located in separate accommodation from the headquarters of BT Design and BT Operate".
- 2.5 Section 5.35 is amended by inserting "or BT Design or BT Operate" after "the Downstream Divisions".
- 2.6 Section 5.39 is amended by:
 - a) replacing the introductory paragraph with the words "AS Customer Confidential Information shall not be disclosed to:
 - BT employees working for the Upstream or Downstream Divisions; or
 - BT Operate; or
 - BT employees working for BT Design whose incentive remuneration reflects the objectives of the Upstream or Downstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team,except:";
 - b) changing sub-section b) to read: "to the minimum extent that disclosure to BT employees working for:
 - the Upstream Division(s); or
 - BT Operate; or
 - BT Design whose incentive remuneration reflects the objectives of the Upstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team,is necessary to operationally enable AS to deliver products provided by AS under section 5 of these Undertakings; or"
- 2.7 Section 5.40 is amended by adding the words "directly or indirectly" before the words "influence or attempt to influence".
- 2.8 Section 6.10.1 is amended by replacing the introductory paragraph with the words "BT Wholesale Customer Confidential Information shall not be disclosed to AS or to the Downstream Divisions, or to BT employees working for BT Operate and BT Design whose incentive remuneration reflects the objectives of the Downstream Divisions, except:";
- 2.9 Section 6.10.3 is amended by replacing the introductory paragraph with the words "BTWS and BTS Commercial Information shall not be disclosed to BT employees working for the Downstream Divisions unless:".

3. Effect

- 3.1 These variations of the Undertakings take effect on 1 April 2008, with the exception of paragraph 2.3 which takes effect on 1 February 2008.

Signed for and on behalf of British Telecommunications plc

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