

**Explanatory Note**  
**Variation of the Undertakings given to Ofcom by BT pursuant to the**  
**Enterprise Act 2002 – Variation number: 6**

**December 2006**

***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.<sup>1</sup>
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.

***Products and services supplied by Access Services ("Openreach") – changes to section 5.46.2***

3. Two minor variations have been made to this section of the Undertakings.
4. The first, which follows from Variation Number 3 of 17 August 2006,<sup>2</sup> further extends the time (from "22 December 2006" to "31 March 2007") for Ofcom and BT to agree whether or not Equivalence of Inputs should apply to products existing on 22 September 2005 and supplied by Openreach and not listed in Annex 1 of the Undertakings, or whether they should be withdrawn from supply. Ofcom and BT considered that this variation was necessary to give the parties more time to consider some of the issues, relating to four of the exemptions requested by BT (i.e. Redcare CCTV, BT Media & Broadcasting, managed radio communication services and WaveStream) which have been highlighted by respondents to Ofcom's consultation of 18 October 2006.
5. The second variation concerns the length of time for which the exemption in section 5.46.2 should last, as set out in the last paragraph of the section. Given that the time for BT and Ofcom to agree under section 5.46.2 has been extended, the "18 months" in this paragraph also needs to be extended by three months to reflect the fact that the Undertakings originally envisaged the exemption expiring eight months after agreement pursuant to 5.46.2 and the extra time the process is taking.

***Effect***

6. The variations of the Undertakings took effect on 21 December 2006.

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<sup>1</sup> [http://www.ofcom.org.uk/consult/condocs/statement\\_tsr/](http://www.ofcom.org.uk/consult/condocs/statement_tsr/)

<sup>2</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/var3.pdf>

## Variation Document

### **Variation of the Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002 – Variation number: 6**

#### **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; and
- (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 hereinafter to section numbers are references to section numbers in the Undertakings.

#### **2. Products and services supplied by Access Services**

Section 5.46.2 is amended by:-

a) replacing the second sentence with "BT will by 31 March 2007 review such products with Ofcom and agree either that:

- a) section 5.46.1c) shall apply; or
- b) the product will be withdrawn from sale or supply by AS; or
- c) Equivalence of Inputs will be required."

b) replacing the last sentence with "Twenty-one months after these Undertakings come into force, the exemption from section 5.46.1 above shall lapse in relation to products to which this section 5.46.2 applies, unless BT and Ofcom agree otherwise."

#### **3. Effect**

This variation of the Undertakings takes 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 \_\_\_\_\_