

Ofcom consultation on undertakings offered by British Telecommunications plc in lieu of a reference under Part 4 of the Enterprise Act 2002

Response from Ofcom Consumer Panel

1. The Ofcom Consumer Panel has been established to advise on the consumer interest in the markets regulated by the United Kingdom's communications regulator Ofcom. The Panel's existence is a statutory requirement of Section 16(2) of the Communications Act 2003. The Panel is independent of Ofcom and sets its own agenda. It has a responsibility to understand consumer issues and concerns related to the communications sector (other than those related to the content of programmes and advertising) and to help inform Ofcom's decision-making by raising specific issues relevant to the consumer interest.
2. We have made Ofcom's Telecoms Strategic Review (TSR) a major priority throughout our existence and made submissions to Ofcom in relation to the Review's Stage One and Stage Two consultation documents. Additionally, we have – both in full Panel meetings and in dedicated side meetings – made very clear to relevant Ofcom colleagues our priorities and hopes for the Review.
3. The Panel welcomes the ability of Ofcom and BT to reach agreement on legally binding and enforceable undertakings regarding the provision by the company of genuine equality of access to its network by competitors. Equally we welcome the support given to this agreement by so many important players in the market.
4. The alternative option of a reference to the Competition Commission would have delayed substantially the clear regulatory framework necessary for BT's competitors to invest in new infrastructure and new services and therefore to improve the range and quality of services available to consumers. The binding agreement between Ofcom and BT should provide the basis for early and significant increases in the choice and innovation available to consumers, together with lower prices and better quality of service, in an increasingly competitive marketplace.
5. Clearly all this is predicated on an honouring of the undertakings in both word and spirit on the specified timescales and many parties – notably Ofcom itself and BT's competitors - will be working to ensure that this is the case. As a Consumer Panel, we would make three important points on implementation.

6. First, the new Equality of Access Board should include as a member someone who is able to be seen as a champion of consumer choice. The proposal is that the Board will have five members: a chairman who is a non-executive director of BT (Carl Symon), three independent members appointed in consultation with Ofcom, and a senior BT manager. We would like to see one of the three independent members chosen with a view to his or her knowledge of and commitment to providing the consumer with choice and fairness.
7. Second, there should be an independent adjudicator to resolve quickly and (as far as possible smoothly) any practical 'on the ground' difficulties or differences in the implementation of the agreement. We have been impressed with the work done by Peter Black through the Office of the Telecommunications Adjudicator in respect of local loop unbundling (LLU) and we would like to see use of such a model in the wider context of delivering equality of access.
8. Finally, Ofcom should specify the metrics by which it will judge the success of the agreement in terms of delivery to the consumer and the citizen (not necessarily the same thing). It is vital to set out at the beginning, in terms which are clearly understandable and measurable, how we will know if the policy has delivered for the consumer and the citizen in acceptable terms and timescales.
9. Our next two comments are not so much about the agreement itself as about the capacity of consumers to benefit from it.
10. First, the challenge now is not so much to BT, which knows what it must do and shows encouraging signs of being willing to do it. The real challenge now is to BT's competitors. For years, they have complained that they do not have a 'level playing field' and therefore cannot compete effectively against BT. Now effectively they have a level playing field. Consumers will want to see significant new infrastructure investments and the provision of products and services which are cheaper, faster, more innovative, and quicker to market as a result.
11. Second, as we made very clear in our response to Ofcom's Stage Two consultation on the Telecoms Strategic Review, we believe that the regulator has so far spent much more time and resource on the supply-side of the equation (how to increase choice for the consumer by improving the terms of competition)

than it has on the demand-side of the equation (how to ensure that consumers are empowered to exercise such choice in a meaningful manner).

12. This requires reducing the search and switching costs involved when a consumer wishes to explore the options for changing telecoms supplier. Crucially it also involves providing the consumer with accurate and accessible information that enables an easy and fair comparison to be made between the many options on offer. These needs exist now. If – as we hope – the agreement on equality of access bears fruit, there will be more consumer choice and more rapid change in the marketplace and therefore consumers will have these needs to an even greater extent. Ultimately competition cannot deliver for the consumer without both effective choice of supply and the information and confidence to choose between these suppliers.
13. We will be looking to Ofcom's Telecom Strategic Review Stage Three document to provide innovative and practical thinking in this area and, as has been the case throughout the review, would be pleased to work with Ofcom on developing such proposals.
14. Finally, looking to the future, we are well aware that the agreed arrangements on equality of access to BT's current network is in effect only a temporary arrangement because BT is now planning to introduce, on a short timescale, a fundamentally different next generation network, the 21st Century Network (21CN).
15. It is clear to the Panel that this new network, potentially, has the capacity to create enduring economic bottlenecks as critical as those of the current network. We are aware that BT has offered undertakings specifically in relation to the deployment of its 21CN, but we would want to underline the vital importance of ensuring that the company designs and deploys this network in a manner which truly eliminates economic bottlenecks and offers equivalence of inputs in relation to products where it has significant market power (SMP).
16. Our recommendations in summary:
 - The new Equality of Access Board should include as a member someone who is able to be seen as a champion of consumer choice.

- There should be an independent adjudicator to resolve quickly and smoothly any practical difficulties or differences in the implementation of the agreement.
- Ofcom should specify the metrics by which it will judge the success of the agreement in terms of delivery to the consumer and to the citizen.
- Alternative network providers should now rise to the challenge and make new investments in infrastructure and services that will bring more choice and more innovation to consumers.
- Ofcom should ensure that its Stage Three Telecoms Strategic Review document TSR provides innovative and practical thinking on consumer information and empowerment.
- BT should design and deploy its 21st Century Network to ensure that there are no economic bottlenecks and genuine equivalence of inputs.