

Explanatory Statement

Consent to defer the 2016 Change Control Notification and the 2015/16 Regulatory Financial Statements

Background and summary

1. BT is required to publish and deliver to Ofcom each year a Change Control Notification containing a list of each and every change to its regulatory accounting methodology used in the preparation of the Regulatory Financial Statements ("RFS"). This information needs to be published and delivered to Ofcom by 31 March of the financial year in which the change to the regulatory accounting methodology is to be made. This obligation was imposed in SMP markets considered in the 2014 Fixed Access and WBA market reviews.
2. In all regulated markets, namely Fixed Access, WBA, Narrowband and Business Connectivity markets, BT is required to publish and deliver to Ofcom the RFS and the corresponding audit opinion by 31 July (i.e. within four months after the end of the financial year to which the RFS relate). In addition, under the SMP conditions which were imposed in SMP markets considered in the 2014 Fixed Access and WBA market reviews and the SMP conditions which will be imposed in SMP markets considered in the 2016 Business Connectivity market review ("2016 BCMR") (subject to comments from the European Commission), BT must publish and deliver to Ofcom a reconciliation report by 31 July.
3. In the 2016 BCMR, including in the draft BCMR statement which was notified to the European Commission on 22 March 2016, Ofcom decided, subject to comments from the European Commission, to require BT to make a number of changes to its regulatory accounting methodology to ensure that the RFS are prepared in a way which is consistent with Ofcom's treatment of certain costs in setting the proposed leased lines charge controls. These new requirements in relation to BT's regulatory accounting methodology will likely be adopted, subject to comments from the European Commission, at the end of April 2016.
4. BT has approached Ofcom to explain¹ that the likely publication of the final 2016 BCMR statement at the end of April makes delivery of the 2016 Change Control Notification impracticable if the notification is to include changes to its regulatory accounting methodology required in the 2016 BCMR. BT has also said that the implementation of the methodology changes will have a significant knock-on effect on the publication of the 2015/16 RFS. BT has explained that in order to allow it to achieve these currently applicable deadlines, the 2016 Change Control Notification and the 2015/16 RFS would need to be prepared without any changes which may be required in the final BCMR statement.
5. In light of this, BT has requested that Ofcom agrees either to defer the implementation of the methodology changes until the 2016/17 RFS, or to allow two months from the publication of the final BCMR statement for publication of the 2016

¹ Please see a letter from Glyn Parry (BT) to David Brown (Ofcom) dated 16 March 2016 which is included in Annex 2 to this statement.

Change Control Notification and four months from publication of the Change Control Notification for publication of the 2015/16 RFS.

6. We consider that prompt publication of the 2016 Change Control Notification and the 2015/16 RFS is important because it provides Ofcom with the information necessary to make informed regulatory decisions. It also provides transparency and reasonable confidence to stakeholders that BT has complied with its SMP obligations. Nevertheless, we also believe that it would be beneficial to stakeholders and Ofcom if the 2016 Change Control Notification and the 2015/16 RFS reflected our decisions in relation to BT's methodology used to prepare the RFS. We recognise that additional time is required to implement the outcome of the 2016 BCMR and to prepare the 2016 Change Control Notification and the 2015/16 RFS if they are to reflect the changes to the regulatory accounting methodology following the 2016 BCMR. We believe that the additional time of two months (for the 2016 Change Control Notification) and four months (for the 2015/16 RFS) is reasonable.
7. We have therefore decided to consent to:
 - a. the 2016 Change Control Notification being published and delivered to Ofcom no later than two months after the publication of the final BCMR statement; and
 - b. the 2015/16 RFS, the 2015/16 reconciliation report and any corresponding audit opinion being published and delivered to Ofcom no later than four months from publication of the 2016 Change Control Notification.
8. This consent relates only the publication deadlines for the 2016 Change Control Notification and the 2015/16 RFS, the 2015/16 reconciliation report and any corresponding audit opinion.

Legal tests

9. We have considered our decision to grant the consent against the tests set out in section 49(2) of the Act and have concluded that it is:
 - a. objectively justifiable as it allows BT sufficient time in which to prepare the 2016 Change Control Notification and the 2015/16 RFS reflecting any changes to the regulatory accounting methodology following the 2016 BCMR. As we explained above, we consider that it would be beneficial to stakeholders and Ofcom if the 2016 Change Control Notification and the 2015/16 RFS reflect any such changes.
 - b. not unduly discriminatory because KCOM is the only other SMP provider which has regulatory accounting obligations, but we have decided not to require changes to KCOM's regulatory accounting methodology in the 2016 BCMR and hence KCOM does not require additional time to prepare its 2015/16 RFS. We also note that KCOM is not currently required to publish and deliver to Ofcom a reconciliation report or a change control notification containing a list of its proposed methodology changes.
 - c. proportionate, as it recognises that BT will require additional time to prepare the 2016 Change Control Notification and the 2015/16 RFS reflecting any changes to the regulatory accounting methodology following the 2016 BCMR; and

- d. transparent, in that it is clear that our intention is to ensure that BT has sufficient time in which to prepare the 2016 Change Control Notification and the 2015/16 RFS reflecting any changes to the regulatory accounting methodology following the 2016 BCMR and BT's obligations following this consent are clear.
10. We have also considered our decision to grant the consent in light of the requirements set out in sections 3, 4 and 4A of the Act. Our decision is designed to ensure that the 2015/16 RFS are aligned with Ofcom's regulatory decisions in the 2016 BCMR. This decision therefore seeks to ensure that 2015/16 RFS remain relevant, thereby increasing transparency. Ultimately, this promotes competition.
11. We do not consider that the granting of this consent will have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which we have functions under Chapter I of the Act.² We have therefore decided not to carry out a domestic consultation. We also consider that the granting of this consent is not of EU significance as in Ofcom's opinion it would not affect trade between Member States.³

² As set out in section 49A(1)(b) of the Act.

³ The cumulative criteria that must be satisfied in order for a proposal to be of EU significance include the criterion that the proposal would, in Ofcom's opinion, affect trade between Member States (please see section 150A(2)(d) of the Act).

Annex 1

The Consent

Consent under section 49 of the Communications Act 2003 and SMP services condition OA1 set out at Annex 2 of the 2004 Statement, SMP services condition 13A.3 set out at Annex 29 of the FAMR Statement, SMP services condition 8A3 set out at Annex 2 of the WBA Statement and proposed SMP services condition 11.3 of the draft BCMR Statement

Background

1. On 28 March 2013, Ofcom published a statement entitled “Business Connectivity Market Review: Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments”. At Annex 8 of that statement Ofcom imposed, among others, SMP services conditions with respect to regulatory accounting on BT set out in Schedule 2 of Annex 2 of the statement entitled “The regulatory financial reporting obligations on BT and Kingston Communications – Final statement and notification dated 22 July 2004 (as amended) (the “2004 Statement”)⁴ in respect of the markets in which Ofcom determined BT had SMP.
2. On 26 September 2013, Ofcom published a statement entitled “Review of the fixed narrowband services markets: Statement on the proposed markets, market power determinations and remedies”. At Annex 1 of that statement, Ofcom imposed, among others, SMP services conditions with respect to regulatory accounting on BT set out in Schedule 2 of Annex 2 of the 2004 Statement⁵. These conditions were imposed on BT in relation to the following markets:
 - a. wholesale call origination on a fixed narrowband network in the United Kingdom outside the Hull Area;
 - b. wholesale markets for the termination of voice calls to United Kingdom geographic numbers in the area served by BT; and
 - c. interconnect circuits.
3. On 26 June 2014, Ofcom published a statement entitled “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30” (the “FAMR Statement”). At Annex 29 of the FAMR Statement, Ofcom imposed, among others, SMP services conditions with respect to regulatory accounting on BT (condition 13A) in relation to the following markets:
 - a. the supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area;
 - b. wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area;
 - c. wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area; and
 - d. wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area.

⁴ Ofcom excluded conditions OA29 to OA34 in respect of the wholesale SMP markets and conditions OA26 to OA33 and subparagraphs (b), (d) and (e) of condition OA23 in respect of the retail SMP market.

⁵ Ofcom excluded conditions OA29 to OA31 and OA34.

4. Also on 26 June 2014, Ofcom published a statement entitled “Review of the wholesale broadband access markets: Statement on market definition, market power determinations and remedies” (the “WBA Statement”). At Annex 2 of the WBA Statement, Ofcom imposed, among others, SMP services conditions with respect to regulatory accounting on BT (condition 8A) in relation to the following market:
 - a. wholesale broadband access provided in Market A.
5. On 22 March 2016, Ofcom notified to the European Commission and published a draft statement entitled “Business Connectivity Market Review: Review of competition in the provision of leased lines” (the “draft BCMR Statement”). At Annex 35 of the draft BCMR Statement Ofcom proposed to impose, among others and subject to comments from the European Commission, SMP services conditions with respect to regulatory accounting on BT (condition 11) in relation to the following markets:
 - a. wholesale market for low bandwidth traditional interface symmetric broadband origination in the United Kingdom excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
 - b. wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area; and
 - c. wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
6. Under condition 13A.21 set out at Annex 29 of the FAMR Statement and condition 8A.21 set out at Annex 2 of the WBA Statement, BT is required to publish and deliver to Ofcom a list of each and every change to the Regulatory Accounting Methodology (the “Change Control Notification”), by 31 March of the financial year in which the change to the Regulatory Accounting Methodology is to be made.
7. Under condition OA6 set out at Annex 2 of the 2004 Statement, condition 13A.8(vi) set out at Annex 29 of the FAMR Statement, condition 8A.8(vi) set out at Annex 2 of the WBA Statement, and proposed condition 11.8(vi) set out at Annex 35 of the draft BCMR Statement, BT is required to publish the Regulatory Financial Statements and any corresponding audit opinion, within four months after the end of the financial year to which they relate.
8. In addition, under condition 13A.8(vi) set out at Annex 29 of the FAMR Statement, condition 8A.8(vi) set out at Annex 2 of the WBA Statement and proposed condition 11.8(vi) set out at Annex 35 of the draft BCMR Statement, BT must publish and deliver to Ofcom a reconciliation report within four months after the end of the financial year to which it relates.
9. Under condition OA1 set out at Annex 2 of the 2004 Statement, condition 13A.3 set out at Annex 29 of the FAMR Statement, condition 8A.3 set out at Annex 2 of the WBA Statement and proposed condition 11.3 set out at Annex 35 of the draft BCMR Statement, BT is required to act in the manner set out in conditions OA, 13A, 8A and 11 respectively except in so far as Ofcom may consent otherwise in writing.
10. BT has requested that Ofcom consents to deferment of the 2016 Change Control Notification and the 2015/16 Regulatory Financial Statements, the 2015/16 reconciliation report and any corresponding audit opinion as follows:

- a. the 2016 Change Control Notification to be published and delivered to Ofcom no later than two months after the publication of the final BCMR statement; and
- b. the 2015/16 Regulatory Financial Statement, the 2015/16 reconciliation report and the corresponding audit opinion to be published and delivered to Ofcom no later than four months from publication of the 2016 Change Control Notification.

Decision to grant consent

11. Ofcom has decided to consent to BT's request set out in paragraph 10 above. This consent shall take effect on the day it is published.
12. The effect of and reasons for granting the consent are set out in the accompanying explanatory statement.

Ofcom's duties and legal tests

13. Ofcom considers that the consent referred to in paragraph 11 complies with the requirements of section 49(2) of the Communications Act 2003 ("Act").
14. In granting the consent referred to in paragraph 11, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of all applicable recommendations for harmonisation issued by the European Union in section 4A of the Act.

Interpretation

15. Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the SMP services conditions set out in Annex 2 of the 2004 Statement, Annex 29 of the FAMR Statement, Annex 2 of the WBA Statement and Annex 35 of the draft BCMR Statement. Otherwise any word or expression shall have the same meaning as it has in the Act.

David Brown

Director of Regulatory Finance, Ofcom

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

31 March 2016

Annex 2

**Letter from Glyn Parry (BT) to David Brown (Ofcom) dated
16 March 2016**



BT Centre
81 Newgate Street
London
EC1A 7AJ

16 March 2016

David Brown
Director of Competition Finance
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Dear David

DELIVERY OF 2015-16 REGULATORY FINANCIAL STATEMENTS

I am writing to you concerning the requirements for delivery of the 2015-16 regulatory financial statements (RFS) and associated documents, and how this may be affected by the timing in the Leased Line Change Control (LLCC) and Cost Attribution Review (CAR) statements.

Under SMP conditions 13A.21 of Annex 29 of the Fixed Access Market Reviews 2014, we are required to deliver a Change Control Notification (CCN) by 31 March each year, listing changes to accounting methodology adopted in the current year. Under SMP conditions 13A.8 (vi) we are required to deliver the RFS and a Reconciliation Statement within four months of the end of the financial year, that is 31 July.

We understand that you currently intend to notify the draft BCMR statement in week commencing 21 March with the final statement being published 4-6 weeks after that, i.e. at the end of April 2016. We also understand that the LLCC and CAR reviews will also conclude in the same document.

There is a substantial amount of work in putting together the CCN once we have the final statement. Our plan for delivery of the CCN on 31 March and RFS on 31 July was predicated on your publication in mid-February of the changes that we must incorporate into our accounting methodology. I understand, from the proposals set out in the relevant consultation documents, that you expect the methodology changes finalised in the BCMR/LLCC/CAR statement to be included in the CCN and RFS.

The expected delay in the publication of the final statement makes delivery of the CCN by 31 March 2016 impracticable, if it is to include any changes to our methodology that you require us to make as set out in the statement.

Glyn Parry
Director, Group Financial Control
Tel: +44 (0)20 7356 4742
Mob: 07710 104379
Email: glyn.2.parry@bt.com

British Telecommunications plc
Registered office:
81 Newgate Street
London EC1A 7AJ
Registered in England No 1800000
www.bt.com

There will also be a significant knock-on effect on the publication of the RFS. At the meeting of 20 January 2016, my team shared our operational plan for delivery of the RFS, which is a six-month process of finely coordinated activities. Any delay in the publication of a definitive list of methodology changes to be included in the RFS means that there is a direct impact on the processes to publish the RFS by 31 July 2016.


It is our view that, in order to allow us to achieve the stipulated deadlines, the CCN and RFS would need to be prepared without any changes that you might require in the final BCMR/LLCC/CAR statement and that any such changes should be deferred until the 2016-17 RFS.

Alternatively, the deadlines for publication of the CCN, the RFS and all associated reporting documents should be extended to enable the final BCMR/LLCC/CAR methodology changes to be incorporated. Any extension to reporting deadlines should make appropriate allowance for the extra time for the publication of the methodology changes, time to design, implement and test the necessary systems changes and take account of reduced BT and external audit staff availability during the summer holiday period. Such a deadline should also take into account the possibility that there may be a further delay in publication of your statements.

Accordingly, BT requests Ofcom to agree either to defer the implementation of any changes proposed in the final BCMR/LLCC/CAR statement to the 2016-17 RFS, or to allow two months from the publication of the final statement for publication of the CCN and four months from publication of the CCN for publication of the RFS.

When you have had the opportunity to consider this request, I'd be happy for us or our teams to meet to discuss the details around the delivery of the CCN and RFS.

Yours sincerely



Glyn Parry

Director, Group Financial Control
BT Group