

**Confirmation Decision in respect of Contravention of SMP Services Conditions  
13A.8 and 8A.8 in relation to the publication of reconciliation reports and  
corresponding audit opinions, issued under section 96C of the  
Communications Act 2003**

**Notification issued by the Office of Communications (“Ofcom”) to  
British Telecommunications plc (“BT”), a company registered in the UK whose  
registered company number is 1800000**

1. Under section 96C of the Communications Act 2003 (the “Act”), Ofcom may issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where that person has been given a Notification under section 96A of the Act; Ofcom have allowed that person an opportunity to make representations about the matters notified; and the period allowed for the making of representations has expired. Ofcom may give a Confirmation Decision to a person if, having considered any representations, we are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the Notification under section 96A.
2. Section 45(1) of the Act gives Ofcom power to set conditions, including SMP conditions, which are binding on the person to whom they are applied.
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:
  - 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;
  - Wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area;
  - Wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area; and
  - Wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area.
4. 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:
  - Wholesale broadband access provided in Market A.
5. Under conditions 13A.8 and 13A.23 set out at Annex 29 of the FAMR Statement and conditions 8A.8 and 8A.23 set out at Annex 2 of the WBA Statement, BT is required to prepare and publish a reconciliation report as directed by Ofcom from time to time. The

reconciliation report must set out changes to the Regulatory Accounting Methodology and the impact of such changes on the Regulatory Financial Statements (“RFS”), and Material Errors corrected in the Regulatory Financial Statements and the impact of such Material Errors on the Regulatory Financial Statements.

6. Under conditions 13A.8 and 13A.24 set out at Annex 29 of the FAMR Statement and conditions 8A.8 and 8A.24 set out at Annex 2 of the WBA Statement, BT is required to obtain an audit opinion on the reconciliation report as directed by Ofcom from time to time.
7. On 30 March 2015, Ofcom gave BT a Direction under condition 13A.4 set out at Annex 29 of the FAMR Statement and condition 8A.4 set out at Annex 2 of the WBA Statement specifying the requirements in relation to the content of the reconciliation report and the content of the accompanying audit opinion.
8. Under condition 13A.8(vi) set out at Annex 29 of the FAMR Statement and condition 8A.8(vi) set out at Annex 2 of the WBA Statement, BT is required to publish the reconciliation report and any corresponding audit opinion, within four months after the end of the Financial Year to which they relate.

#### **Notification given by Ofcom to BT under section 96A of the Act**

9. On 6 November 2015, Ofcom issued a Notification under section 96A of the Act (“the Notification”) to BT, stating that Ofcom had reasonable grounds for believing that BT had contravened, and continued to contravene, SMP conditions 13A.8(vi) and 8A.8(vi) in that it had failed to publish reconciliation reports and corresponding audit opinions for the Financial Year 2014/15, in accordance with those conditions.
10. The Notification set out the steps that BT should take in order to comply with the requirements of SMP conditions 13A.8(vi) and 8A.8(vi) and to remedy the consequences of the contravention, namely to publish the reconciliation reports and corresponding audit opinions forthwith, and in any event no later than 4 December 2015.
11. We reminded BT that, under condition 13A.8(v) set out at Annex 29 to the FAMR Statement and condition 8A.8(v) set out at Annex 2 of the WBA Statement, it is required to deliver to Ofcom copies of the reconciliation report and corresponding audit opinion, in the form in which they are ultimately to be published, at least two weeks before they are required to be published.
12. We noted that BT had told us it was restating the 2014/15 RFS and said that if the RFS was restated prior to 4 December 2015, we expected BT to publish the reconciliation report and corresponding audit opinion referring to the restated RFS.
13. BT was given until 5.00pm on 20 November 2015 to make written representations to Ofcom about the matters set out in the Notification. A copy of the Notification is attached at Annex 1.

## **BT's representations in response to the Notification**

14. BT provided Ofcom with written representations on 20 November 2015. In its representations BT set out its reasons for delay in preparing the reconciliation report and corresponding audit opinion; mitigating factors; and its intention to comply with the Notification. A copy of BT's representations is attached at Annex 2.
15. In summary, BT stated that SMP conditions 13A.8(vi) and 8A.8(vi) imposed on BT significant new obligations in Financial Year 2014/15. The delay should be put in the context of the significant amount of additional work the same team had to carry out during the period to date (in particular in relation to publication of the RFS, the development of BT's new regulatory accounting system REFINE, and Ofcom's consultations on the Leased Lines Charge Controls and Review of BT's cost attribution methodologies<sup>1</sup>).
16. The scale of BT's regulatory reporting obligations necessitated a major IT development which, due to its complexity, was not fully implemented on time. This could not be fully mitigated by additional staffing, resulting in delay in preparation of the reconciliation report. The discovery, post publication, of errors in the RFS resulted in further delay. BT informed Ofcom that it would withhold publication of the reconciliation report and corresponding audit opinion so that these could be issued in relation to the revised RFS.
17. BT represented that no consumer harm had been caused by the delay in publication and BT had made no gain. It had endeavoured (with senior management involvement) to remedy the contravention since it became aware that the deadline of 31 July 2015 would not be met, adding internal and external resource. It had kept Ofcom updated on progress (including, in August, offering to publish one of the two parts of the reconciliation report).
18. BT stated that it expected the reconciliation report and corresponding audit opinion to be published no later than 4 December 2015, the deadline stipulated in the Notification. It noted that the draft reconciliation report and corresponding audit opinion, together with the draft revised RFS, were sent to Ofcom on 13 November 2015, thereby allowing Ofcom the required two weeks before publication.

## **Confirmation Decision given by Ofcom to BT under section 96C of the Act**

19. Ofcom notes BT's reasons for delay in preparing the reconciliation report and corresponding audit opinion, and its intention to publish both by 4 December 2015. We also note the various arguments BT put forward in mitigation. Having considered BT's

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<sup>1</sup> Ofcom's first Leased Lines Charge Controls consultation "*Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing*" and its first consultation on BT's cost attribution methodologies "*Review of BT's cost attribution methodologies*" were issued on 12 June 2015 for response by 7 August 2015. The second Leased Lines Charge Controls consultation "*Business Connectivity Market Review: Update on the proposed leased lines charge controls*" and the second consultation on BT's cost attribution methodology "*Review of BT's cost attribution methodologies. Second consultation*" were issued on 13 November 2015 for response by 14 December 2015.

representations, however, we take the view that BT was required to publish those documents on 31 July 2015. On this basis, we are satisfied that BT has contravened, and is continuing to contravene, SMP conditions 13A.8(vi) and 8A.8(vi).

20. For the reasons set out above, Ofcom confirms the imposition of requirements on BT in accordance with the Notification. This means that, in order to comply with the requirements of SMP conditions 13A.8(vi) and 8A.8(vi) and to remedy the consequences of the contravention, BT must publish the reconciliation reports and corresponding audit opinions forthwith, and in any event no later than 4 December 2015.
21. The duty to comply with any requirement imposed by a Confirmation Decision is enforceable in civil proceedings by Ofcom for an injunction, for specific performance or for any other appropriate remedy or relief.

### **Next Steps**

22. BT has until **5.00pm on 4 December 2015** to comply with the requirements imposed by this Confirmation Decision.

### **Interpretation**

23. Words or expressions used in this Confirmation Decision have the same meaning as in the SMP conditions or the Act, except as otherwise stated in this Confirmation Decision.

Neil Buckley  
Director of Investigations

30 November 2015

### List of Annexes

Annex 1	BT s96A Notification
Annex 2	BT's Representations in response to s96A Notification (201115)