
**Ofcom Strategic Review : Transformation of the UK
Telecommunications Market. Centrica's response to
Ofcom's Phase 3 proposals**

12 August 2005

Ofcom Strategic Review: Phase 3 consultation

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Ofcom's Strategic Review : Centrica's Response to Phase 3 proposals

Executive Summary

- Centrica welcomes the proposals and undertakings contained in Ofcom's Phase 3 consultation. We believe the proposed undertakings are largely capable of addressing the competition concerns identified by Ofcom during the consultation process and offer the prospect of a transformation not just of BT, but of the UK telecommunications market.
- We have some observations and suggestions on the detailed undertakings, which are offered as a means to clarify the intent of the proposals and assist in the implementation process.
- Notwithstanding these comments, we are of the view that acceptance of the proposed undertakings as currently drafted would still be preferable to a reference under Part 4 of the Enterprise Act 2002.
- Whilst we maintain the view that a greater degree of separation would have been preferable, overall we believe the proposed reorganisation of BT is capable of delivering a more equitable market than we have today.
- We have some concerns that the proposed Chinese Walls within BTW may not reach high enough to influence the change in behaviour to the degree that is anticipated.
- We are particularly concerned that the proposed undertakings do not address any issues around BT's downstream activities, particularly where these directly affect the robustness of the wholesale solutions.
- The implementation process will inevitably result in disagreements and disputes around the interpretation of the undertakings. For this reason, we believe it is crucial that Ofcom stays closely involved throughout the implementation phase and proactively monitors delivery against pre-agreed targets to ensure the project stays 'on track'.
- A key aspect of the implementation process will be the migration processes, which are fundamental to a positive customer experience and a successful competitive market.
- It is unclear how the undertakings will be monitored and potentially modified over the coming months and years, where this becomes appropriate.

- There is some residual confusion over the intention of clause 11.20, which appears to limit BT's obligations in respect of its 21st Century Network to those requirements set out in clause 11. If this is the case, this has some serious ramifications and we urge Ofcom to clarify this position expediently.
- We remain concerned at the potential competitive advantage that BT Retail may enjoy as a result of its unique access to broadband dial-tone and have suggested an approach to mitigate against this.
- Whilst the application of the proposed undertakings heralds the prospect for increased competition up and down the value chain, Ofcom must resist moving too quickly towards deregulation, until there is clear evidence that such competition has established a sustainable hold.

Introduction

Ofcom's Phase 3 statement and the associated undertakings represent 'the beginning of the end' of almost 18 months of intensive work by Ofcom, BT and the wider telecommunications industry. Over this period, the debate has moved forward dramatically and the undertakings that are now on the table are a positive reflection of the constructive nature of the dialogue over the period.

This project is often seen as a transformation of BT. But of course it is much more than that. We see it as a transformation of the UK telecommunications market. We all – industry, Ofcom, BT and consumers – have a stake in the successful implementation of the undertakings.

We believe that the proposed undertakings are practicable and are largely capable of addressing the competition concerns identified by Ofcom during the consultation process. To make them more workable, we have some thoughts on perceived omissions or issues with the undertakings, comments on possible ambiguity in the legal drafting and one or two general observations, along with suggested remedies. These are detailed in Annex 1 (attached) and have also been shared with BT. We have also indicated a suggested priority against each of our detailed comments. These comments are intended only to offer constructive suggestions to perceived ambiguities or omissions in the undertakings and we hope that many will be taken on board through changes to the words of the undertakings and that our views may also provide a useful sense check against the implementation programme as it progresses.

Notwithstanding these comments, our opinion is that the implementation of the undertakings as they stand would represent a step change in the competitive landscape in the telecommunications market and on balance, acceptance and implementation of the undertakings would be preferable to an Enterprise Act reference. The latter would take a significant amount of time, divert management resources for all involved and would only serve to perpetuate the uncertainty that exists today. It could also undo much of the progress that has been made over the past months, not least of which is the change in attitude that is starting to emerge in our dealings with BT. Having got so far, it would be disappointing to lose the opportunity that we believe now exists through the implementation of the proposed undertakings. Where our suggested amendments can be incorporated, this will, we believe, serve only to enhance the benefits of the proposed new environment.

Ofcom's consultation on the proposed undertakings is the central strand of a package of policy initiatives and consultations running in parallel, including (but not limited to) the Next Generation Network (NGN) and non-discrimination guidelines consultations. These each form a vital component of the overall package of measures, the success of which will depend on the strength of each individual component as well as the sum. Centrica will be submitting separate responses to these other consultations.

Centrica has also contributed to and broadly endorses the UKCTA response and those submitted by ACSP and ITSPA.

BT organisation and structure

The organisational restructure of BT to support the principle of Equivalence is one of the key deliverables of the proposed undertakings. Correct organisation and governance will be vital in delivering the new competitive model.

In our submissions to Phase 1 and 2 of the Strategic Review, we advocated a greater degree of separation than is currently proposed through the establishment of the Access Services Division (ASD). Whilst this is still our preferred solution, overall we believe that the proposed structure is capable of delivering a more equitable market than we have today and facilitating greater competition at both the infrastructure and service provider layers.

Whilst the detailed 'rules' concerning the segregation of staff working within the ASD, BTW and BTR are thorough and have addressed many of the potential 'loopholes' that a less careful set of proposals could have missed, there are one or two areas where we feel the undertakings do not go far enough. It is unclear whether these are unintentional gaps, or have been the subject of lengthy debates between BT and Ofcom, but we are concerned that they may have a detrimental effect on the appropriate operation of the relevant divisions. Our specific concerns are detailed in Annex 1.

Chinese Walls

We have already had some discussions with BT about the anticipated positioning of the Chinese Walls, specifically within BTW. Whilst the undertakings propose the ring-fencing of product management activities, they are silent on how far up the product management hierarchy the separation requirements lie and it appears from our discussions with BTW that they stop at a relatively low level. This may negate some of the benefits of the separation proposals and result in dichotomies in the decision-making of more senior staff who have responsibilities across the product management functions.

BT Retail

BT recognises that a key measure of the success of the ASD will be a thriving and competitive fixed line market. Whilst Ofcom's focus has rightly been on addressing the issues associated with the economic bottlenecks that currently exist in the telecoms market, we are concerned that the undertakings do not address any issues around BT's downstream activities. For a large,

residential-focused Service Provider such as Centrica, the actions of BT Retail can have as much of an impact on our success (or otherwise) as our ability to access equitable wholesale inputs.

BT Retail's advertising, marketing and retention activity often sails close to what is permissible. However the sanctions for breaches are extremely limited and preceded by lengthy processes. By the time an advertising complaint (for example) has been upheld, BT may have gained the benefit they had set out to gain and any potential damage to the competitive market will have been done.

By way of illustration, the December 2004 edition of Which? identified that BT had the most upheld ASA complaints of any advertiser, with 34 during the period January 1999 and October 2004. However, the only deterrent the ASA has to prevent future breaches is adverse publicity. The fact that BT advertising continues to breach the ASA guidelines clearly demonstrates that this deterrent doesn't work. Many of these adverts which have been successfully complained against appear explicitly designed to protect BT's retail market share (e.g. implying that all BT's competitors charge for calls to their helplines and making unsubstantiated claims about the number of customers who had returned to them) and the fact that these were done in breach of the British Code of Advertising and Sales Promotion indicates they were misleading. It is important that the regulatory settlement is not undermined by a continuation of this kind of conduct.

BT Retail behaviour is also intrinsically entwined with the delivery of wholesale products and services and, from this perspective, is worthy of inclusion within the undertakings. A current example is where BT Retail fail to close an open order on a customer's account, which prevents the Wholesale Line Rental (WLR) transfer order from progressing. These WLR orders are left 'hanging' until the Service Provider manually escalates a query to establish the current status and the open order is either closed, or the WLR order cancelled. This is obviously manually intensive, time consuming and costly, often resulting in the customer not progressing their line rental order due to the poor customer experience, yet it results not from wholesale actions but those of BT Retail.

We would strongly encourage Ofcom to reconsider its position on oversight of BT Retail activity in order to address abuses, if not through the undertakings, through another route. It would be of significant concern if the wholesale changes proposed did not materially alter the competitive position in the residential and SME markets due to BT Retail's continued actions.

Implementation

Assuming the undertakings are adopted, it is clear that there is still a significant amount of work to be done in implementing the necessary changes. This must be done in co-operation with all parties to ensure that the

deployment maximises the benefits for all industry players and does not create unnecessary costs, or generate new distortions in the market. As we identified above, this review process has not just been about the transformation of BT, but the transformation of an entire industry. As we move into implementation, the entire industry must play their part.

Through the implementation process, it is inevitable that disagreements will emerge on the interpretation or detail of the legal drafting. Therefore we believe it is vital that Ofcom continues to play a proactive role in managing through the implementation process, to minimise any potential delays or disputes and ensure the changes are delivered in the spirit they were intended, as well as to the letter. This may require Ofcom to arbitrate on the minutiae of delivery – it is here that the undertakings could stand or fall and is, therefore, critical to the overall success of the package. If we are not to see a repeat of the effects of ‘cumulative immateriality’, Ofcom will need to play a significant role throughout the delivery process.

A particular area of concern is the systems changes that are required, both to separate BT’s existing common systems and to deliver Equivalence of Inputs for the relevant products. We understand that Ofcom is proposing to appoint external consultants to help provide confidence in BT’s planning and timescales and to verify that the delivery of EoI is done in the most efficient manner for all stakeholders. This is to be applauded. Whilst EoI is the key to effective and sustainable competition, it must be delivered in a way that maximises the benefits for all users if its full potential is to be realised. There is considerable detail yet to be worked through on the separation of systems and potential establishment of new delivery mechanisms and this must be achieved in the most efficient and effective way for all who are affected.

A significant element of the systems work connected with the implementation process will be the migration processes and we look forward to Ofcom’s forthcoming consultation on this issue. Smooth transfer processes are key to the success of future competition and Ofcom must be vigilant and quick to respond should failures emerge.

Some of the proposed deliverables have elongated end dates and we would suggest that a clear project plan, with milestones for interim objectives, would assist all parties in understanding the progress that is being made and retaining confidence that the final outcome will be achieved on time and to specification. Our recommendation would be for Ofcom to hold and monitor such project plans (even if others were responsible for updating them) to ensure objectivity and transparency.

Centrica has engaged fully with the process to date and is committed to continuing its support through the implementation phase over the coming months.

Evolution

The undertakings as they are drafted represent a set of proposals designed to address the issues in the competitive market that are known today, over and above the existing regulatory framework. What is unclear is how these proposals will be monitored and may be modified over time should new issues emerge that could not have been anticipated. It is inevitable that, as we progress through implementation and as the market develops, both Ofcom and industry will identify areas that, with the benefit of hindsight, should have been included in the undertakings, or where new undertakings are desirable. We therefore believe it is important that there is a regime and process under which the undertakings can be reviewed and updated. We are not advocating a constantly movable feast – clearly this would not provide the certainty that is such a key deliverable of the TSR project and BT would be unlikely to agree to such a position – but some ability to review and modify the undertakings in light of experience or significant changes in market externalities would be welcomed.

NGNs

Centrica has submitted a separate response to Ofcom's consultation on NGNs. However, there are some specific issues relating to NGNs that are also relevant to the undertakings and therefore this response.

We note that the BT undertaking in relation to NGN implementation (section 11.20) involves drafting that is capable of being interpreted to mean that the important undertakings given by BT outside of section 11 do not in fact apply in relation to 21CN. Whilst we do not believe this to be BT's intention, this clearly has significant ramifications should our assumptions prove wrong and we urge Ofcom to clarify this position expediently.

There continues to be significant uncertainty regarding key technical and commercial aspects of BT's 21CN, which does not allow all regulatory issues to be identified at this stage and referenced against the BT undertakings. We are responding separately to the related consultation on NGNs and the policy framework proposed by Ofcom to enable NGN-based competition in a 21CN world. This policy framework, together with Ofcom's existing powers and BT's undertakings provide us with a degree of certainty around future access and interconnection arrangements. However, we urge Ofcom to closely monitor all aspects of the industry discussions around 21CN design and development to ensure equality of access is delivered by BT in the true sense and spirit.

In addition to the lack of detailed technical and commercial information regarding 21CN, there is also an important and related issue of whether next generation products and services developed as 21CN substitutes by BT will actually fall within the same previously defined markets and be subject to the same SMP obligations. We appreciate that without specific product and market detail it is difficult for Ofcom to provide any statement on this issue at

present, other than to indicate that it has a reasonable expectation that there will continue to be SMP in the immediate successors to these markets. We urge Ofcom to undertake timely market analysis and full market reviews where necessary, to ensure there is regulatory certainty for industry around future access and interconnection arrangements. It is vital for Ofcom to ensure there is no potential for market disruption as next generation products and services are launched on 21CN.

It is also important to all stakeholders that existing SMP interconnect products used for current retail service provision continue to be made available by BT following the migration to 21CN and during the interim period thereafter. Before any withdrawal of legacy obligations should be considered, BT must provide next generation SMP products that embrace equivalence, are fit-for-purpose and which are based on commercially fair terms and conditions.

Ofcom must ensure that equivalence of input is achieved for key aspects of 21CN where BT continues to have SMP. BT's undertakings do not commit to achieving this in situations where it 'would not be reasonably practicable' which gives us cause for concern. Eol will be important for MSAN interconnection to ensure communication providers have access to the same call routing efficiency as BT and also in relation to accessing key network intelligence inputs to ensure that competition is not undermined in future retail markets. We are aware of comments from BT that these are areas where Eol may not be reasonably practicable. Ways must be found to address the serious undermining of competition which would result if important Eol elements are not achieved.

We firmly believe that BT must not use the broadband dial-tone, which is an important enabling technology, if it cannot provide Eol for LLU operators. We do not take comfort from BT's undertaking on this point, which advises that its future use of this technology will not result in a 'material competitive disadvantage' for LLU operators. The concept of materiality as used in this ex post sense is notoriously difficult to prove and Ofcom must secure a more specific undertaking from BT that it will not use the functionality at all unless Eol is made available to its competitors.

We believe that BT's undertaking in relation to its retail activities in an NGN world should go further than currently drafted. It is totally unclear what BT deems acceptable under the undertaking to provide network access to its competitors 'sufficiently in advance' of a new product launch. We would prefer in markets where BT has SMP that any new product launch or price reduction should be notified to Ofcom well in advance of any planned market introduction, in order for an approval assessment to be made. Ofcom would have the ability to unbundle the key inputs to determine if they were also available to BT's competitors in that form. In addition Ofcom could determine the timing as to when they were made available to BT's competitors to determine if any discrimination has taken place and to determine if the product or service is actually replicable by BT's competitors. Once this assessment is completed then Ofcom could 'in principle' approve the planned

BT retail activity. This type of approach would prevent the reactive situation we are currently faced with regarding BT Retail activities and the potential for damage to retail markets.

The move to NGNs will necessarily involve a number of cross-industry issues affecting all network providers that will need to be resolved. These issues must be considered and addressed during the important design and implementation stages of NGNs, when solutions are more achievable. These cross-industry issues need to be co-ordinated and steered in a specific forum, and the creation of the proposed multi-lateral industry working group (“NGNCo”) is an appropriate way to secure this and BT must be committed to the group and play a supporting role. We fully support the creation of NGNCo and believe it has a vital role to play in a number of key areas relating to NGNs. In addition to the cross-industry issues, it should undertake responsibility for the commercial arrangements relating to NGN interconnection and all aspects of customer migration to NGNs, including BT’s 21CN.

Deregulation

Ultimately, a core benefit to BT in proposing – and subsequently adopting the undertakings – must be the prospect of *less* regulation in key competitive battlegrounds. Deregulation must also be the goal of every regulatory authority as markets become fully competitive.

As we noted in our response to Phase 2 of the Strategic Review, whilst we support the principle of deregulation, this must not be initiated until there is clear *evidence* of sustainable competition and not just the prospect of it.

Annex 1

Clause (where applicable)	Issue	Effect	Proposed remedy	Priority/ Importance
Implementation	There is still considerable detail to be developed and implementation plans to agree.	Whilst the undertakings provide a clear framework, some ambiguity and omissions within the drafting could result in a sub-optimal outcome.	Ofcom will need to stay closely involved during the implementation process to ensure the undertakings are deployed in spirit as well as to the letter.	VH
Timing of Equivalence of Inputs	It is disappointing that the full IBMC date for WLR extends to mid 2010. This appears to correspond with the dates for deployment of full 21CN supporting systems and suggests that BT is required to do no more than it may otherwise have done without the proposed undertakings.	Until BT Retail is using the same systems as other CPs for the full management of its entire customer base, true Equivalence of Inputs cannot be deemed to have been delivered.	The interim milestones for migration of BT's existing customer base to be accelerated. We would propose that the first 30% should be migrated by mid 2007, 70% by mid 2008 and the balance by the end of 2008.	VH
Charging issues relating to Equivalence of Inputs	A key aspect of the current lack of equivalence for products such as WLR and CPS is the charges that CPs must pay that BT Retail do not face, including transaction charges, charges for rejections and cancellations, forecasting penalties, the additional 39p for WLR development costs, product management fees etc. Neither the undertakings nor the associated statements comment on the proposed treatment of these charges.	These charging issues are a fundamental component of equivalence (whether of Outcomes or Input) and whilst CPs continue to face this additional cost, the competition concerns identified by Ofcom will not be fully addressed.	The existing charges, such as (but not limited to) those identified to cease from the date the undertakings take effect.	VH
Equivalence of Outcomes	The concept of equivalence of outcomes is not featured within the legal undertakings.	Whilst Ofcom has indicated that equivalence of outcomes can be delivered through undue discrimination guidelines, it is unclear	It would be useful to have a fuller understanding of how Ofcom intends to address the issues of non-equivalence detailed by UKCTA for products such as	H

		whether all aspects of non-equivalence (i.e. price and non-price) can be addressed through this route.	CPS.	
Cost recovery	It is unclear how BT's costs for meeting the obligations of the undertakings will be recovered.	Creates uncertainty. Potential for industry to bear the cost of implementing the undertakings, where we have already borne the costs of ineffective and inadequate competition over the past 20 years.	Ofcom has indicated how it anticipates the costs for different components will be recovered, but ideally needs to make a clear public statement on this in the short-term. Centrica would propose that all costs associated with the reorganisation and development of product equivalence should be recovered solely from BT Shareholders.	H
Compensation for delays in delivering Equivalence of Inputs.	Whilst we welcome BT's proposal to compensate SPs for any delay in the delivery of Equivalence of Inputs for WLR after 31/12/06, the lack of equivalence is materially affecting CPs today and we propose that to address this, the proposed compensation should be payable from the date the undertakings take effect.	Effective and sustainable competition in residential WLR will be hindered. BT retains the ability to frustrate competition for a further extended period.	Compensation to be payable from the date the undertakings are accepted.	H
Changes of ownership	The undertakings are drafted to reflect the corporate structure and ownership of BT Group as it exists today. It is uncertain whether the undertakings could continue to apply should BT radically alter its Corporate Governance or ownership.	Risk that BT Group could avoid compliance with the undertakings through restructuring/changes of ownership.	Undertakings to include contingency to ensure they continue to apply irrespective of changes within BT.	L
Timing of IS changes and separation within ASD (e.g. clause 5.39.3, 5.4, 8.4)	Physical separation of OSS and systems which hold Commercial Information and Customer Confidential Information is not required until 30/6/10 and MIS within	Until systems are fully separated, the opportunity for BT's downstream divisions to continue to gain competitive advantage from superior access to information, or	If dates for these key IS changes cannot be brought forward, Ofcom and the EAB must remain vigilant to potential mis-use of information contained in common systems. It would be helpful to understand what	H

	12 months of the undertakings. In respect of OSS and systems which hold Customer Confidential and Commercial Information, this date offers no improvement on the anticipated date for the new OSS systems supporting 21CN.	inappropriate BT personnel accessing information, remains high.	common data will still be accessible by the downstream divisions until logical separation has been completed.	
Definitions	We are concerned that the definition of Wholesale Line Rental (and the sub-set of this) includes only 'ordinary maintenance'.	A strict interpretation of this definition does not cover all maintenance options and therefore BT could legitimately exclude WLR with other maintenance options from the requirement for Equivalence of Inputs.	Amend the definition to explicitly include all WLR and maintenance variants.	M
3.4	The undertakings do not specifically require BT to maintain access to the postcode address file, as and when the file is updated, although BT acknowledges that this is the intent. We also understand that there may be more than one postcode database for different products.	If BT only provides a 'snapshot' of the data as at 31/12/05, this data will degrade and devalue over time. Similarly, if different databases are used for different products, this solution will not remedy the problems with postcode rejections that appear across the product portfolio.	It is important that the undertakings are clear that this access is required on an ongoing basis, to avoid degradation of the data to which CPs have access. It must also be clear that this access must cover all potential postcode databases serving all key transferable products. A measure of the success of this proposed undertaking will be the impact on postcode rejections across key products (IPStream, CPS, WLR etc).	H
General	Whilst postcode mis-matching is one of the most significant causes of rejections, particularly in the CPS market, other factors associated with the line also generate rejections and more comprehensive access to line data is the only way in which true equivalence – of inputs or outcomes	No product can be considered equivalent until CPs are able to avoid rejections through pre-order access to the necessary data.	BT to offer access to other relevant data in addition to the postcode address file(s).	H

	– can be achieved.			
3.5	This clause only requires BT to offer <i>improved</i> access to its engineering appointment book. This improved access will not be available until 30 th June 2006.	Improved access will not equate to equivalence with BT Retail in respect of arranging engineering appointments.	The date to be improved and the access provided to be equivalent to that enjoyed by BT Retail.	M
3.6	It is disappointing that BT is only proposing to use the same gateway for WLR transfers where the customer does not have any other products with BT or is not moving house.	This provision eliminates large percentages of existing BT customers and means that true equivalence is not delivered for those customers. In particular, home movers are an area where CPs currently face considerable disadvantage to BTR, which will be maintained until the IBMC date is reached.	We understand that technical constraints have led to this proposal, but would welcome an early date by which this provision expires.	H
5.30	Only the ASD Headquarters Management Team are required to move to separate accommodation from other BT divisions. There are no similar provisions for other ASD staff.	The potential for ‘cross-contamination’ between ASD and non-ASD staff located in the same building is significant and could result in systemic breaches of the undertakings (e.g. BTR staff influencing the scheduling of engineer visits to benefit its own end–users over those of other CPs). Breaches of compliance can be expected to be more likely further down the management chain.	All ASD staff in offices of 10 or more employees to be separated by access control from the staff of other BT divisions.	H
5.30	The ASD Headquarters Management Team includes only those located in London. Many senior ASD-designate staff will currently be located outside of London, or could be moved	The ASD could avoid many of the obligations contained in the undertaking through the relocation of its senior management team to locations just outside of London.	Amend the definition of the ASD Headquarters Management Team to include senior staff located anywhere in the country.	H

	outside of London, whereby the obligations contained in the undertakings would not come into effect.			
5.32 (cf 6.7)	There is no provision for 'gardening leave' for staff moving between the ASD and other divisions, or other divisions and the ASD.	Staff within the ASD will have access to sensitive and confidential information about the future plans of the major competitors to other divisions within BT.	Inclusion of a 'quarantine' period for staff moving into or out of the ASD – we would suggest a minimum of 1 month, which mirrors the Competition Commissions requirements following Centrica's purchase of the Rough storage facility.	H
5.33 (cf 6.9)	The linking of incentive remuneration of ASD staff relates solely to bonuses and does not explicitly include pay rises.	ASD staff pay structures may place greater focus on pay increases than on bonus schemes and staff could therefore be incentivised to maximise BT group profits to benefit from greater pay increases.	Undertakings to be amended to link performance of the ASD to pay rises as well as bonus schemes.	L
5.35 and 5.36	It is not clear that excluded ASD staff (including external advisors and sub-contractors) should not have access to the Commercial Policy of the ASD.	Inappropriate access could provide downstream divisions of BT with a material commercial advantage.	Amend undertaking to explicitly deny the relevant non-ASD staff from having any access to the Commercial Policy of the ASD.	H
5.35 and 5.36	The list of functions excluded from the provisions in these clauses is undefined (see separate paper previously provided to Ofcom)	It is conceivable that BT would expand the scope of those group functions that are allowed access and influence over the Commercial Policy of the ASD to include inappropriate activities and personnel.	Define the functions listed in Annex 2, Parts A and B.	H
5.35 and 5.36	Certain functions listed would be better provided as divisional functions, with a separate group function. Specifically we would include Legal and Regulatory in this category.	Legal and Regulatory can have significant influence over commercial and operational policy and may inappropriately influence the same to the benefit of BT Group, not the ASD.	Remove Legal and Regulatory from the list at Annex 2 or ensure strict controls through identification of designated persons.	H
5.42 (Re-	The dates for completion of the re-	The re-branding of the ASD is a vital	Interim milestones for completion of the re-	VH

branding)	branding exercise appear excessive. The requirements do not refer to email addresses, websites or the BT Phonebook.	component of Equivalence of Inputs, which cannot be considered to have been delivered until the re-branding has been substantially completed, which under the current proposals will take until 2011.	branding to ensure it is substantially completed far sooner than currently proposed. We suggest that stationery and buildings to be 90% completed within 6 months, clothing 90% within 18 months and vehicles 90% within 3 years. The obligations to be expanded to include email addresses, websites and the Phonebook and to make clear that BT Retail must also amend its stationery and customer communications to reflect the new brand.	
Inter-divisional transactions	There is insufficient transparency around the financial transactions between the relevant divisions of BT.	Unless internal charging replicates external charging, there will be limited confidence that BT is not discriminating in favour of its internal customers.	Include a requirement for auditable internal charging.	H
Account Management	The impacts of having a single account management structure are unclear.	If a CP chose to use, say, BTW as a single contact point for purchasing all products, would this, for example, require use of a different gateway for the purchase of WLR to the gateway used by CPs purchasing direct from the ASD?	Undertakings to make it clear that gateway access, pricing etc will be identical irrespective of which division a CP chooses to interface with for it's account management.	M
6.7	The linking of incentive remuneration of BTWS staff relates solely to bonuses and does not explicitly include pay rises.	BTWS staff pay structures may place greater focus on pay increases than on bonus schemes and staff could therefore be incentivised to maximise BT group profits to benefit from greater pay increases.	Undertakings to be amended to link performance of the BTWS to pay rises as well as bonus schemes.	L
6.9	There is no provision for 'gardening leave' for staff moving between BTWS and other divisions, or other divisions and BTWS.	Staff within BTWS will have access to sensitive and confidential information about the future plans of the major competitors to other divisions within BT.	Inclusion of a 'quarantine' period for staff moving into or out of BTWS – we would suggest 1 month.	H

6.11	The wording of this clause is ambiguous and may not prohibit BTWS from making changes that may result in significant costs for CPs.	BTWS could make changes that would require CPs to invest in order to avoid 'material competitive disadvantage', which would not fall foul of this provision.	Clause to be amended to prohibit changes that would result in CPs incurring material incremental costs as a result of the changes.	M
6.13	It is unclear both what exactly is meant by this clause and what timings might be considered 'reasonably practical'.	Data held by BTWS and BTS will be as sensitive as data held by the ASD and inappropriate access could provide other divisions of BT (particularly downstream divisions) with a material competitive advantage.	This requirement to replicate the obligations on the ASD for logical separation of MIS. If dates for these key IS changes cannot be brought forward, Ofcom and the EAB must remain vigilant to potential mis-use of information contained in common systems. It would be helpful to understand what common data will still be accessible by the downstream divisions until logical separation has been completed.	H
6.19	It is unclear what rights the CP would have in the case of a genuine dispute over the terms offered by BT.	CPs may lose their right to locate their equipment where they have a dispute over the terms offered by BT.	Provision is needed to waive the 1-month obligation on CPs in the case of a bone fide dispute being raised within that period.	M
6.22	BT is not required to publish the list of Exchanges it intends to vacate.	CPs are placed at a significant disadvantage for planning purposes.	Include a requirement for this list, and subsequent updates, to be made available on reasonable request.	M
7.1	This clause does not explicitly provide for any adjudication process over and above existing dispute and adjudication obligations.	CPs have been in discussions with BT about establishing a Contracts Adjudicator Scheme, which would provide a low-cost and effective mechanism for resolving contractual disputes.	Requirement for an alternative scheme to any currently in existence that will meet the objectives of the propose Contracts Adjudicator Scheme.	H
8.1	The definition of Upstream and Downstream are confusing. Elsewhere in the undertakings, the different divisions are referred to explicitly by their commonly accepted names (ASD, BTW, BTR).	Lack of clarity around what parts of BT are affected by this obligation.	Suggest this clause is amended to refer to existing BT divisions and any successor or similar divisions that may be established.	H

8.1.1, 8.1.2 and 8.1.3	These clauses only apply specifically to the sales functions of the respective divisions and the use of the term 'similar to' in clause 8.1.1 is ambiguous and potentially weak.	Other functions (than sales) within the divisions are not prohibited from influencing the Commercial Policy or gaining Customer Confidential or Commercial Information from other divisions. Competitive advantage may be gained by other functions accessing such information.	Amend the clauses to prohibit any function within any division having the ability to influence Commercial Policy or access Commercial or Customer Confidential Information. Replace 'similar to' in clause 8.1.1 with 'equivalent to'.	H
9	The provisions for a Code of Practice do not apply to BT's downstream division (i.e. BT Retail)	It is vital that BT's downstream division is fully appraised of and compliant with the undertakings.	Amend clauses 9.2, 9.3 and 9.4 to explicitly include BT Retail.	H
10 – responsibilities of EAB/EAO	Generally, the detail of the EAB's and EAO's responsibilities and powers suggests significant weakness and lack of 'teeth'. For example, clause 10.15 refers to the EAB 'suggesting remedial action', 'commenting on action' and 'recording its views'.	Without the authority to proactively monitor compliance and mandate remedial action, the EAB/EAO may offer no comfort to CPs that BT is fully compliant with the undertakings.	The responsibilities and authority of both the EAB and EAO to be enhanced to provide the ability to mandate action to prevent and remedy any breaches, or potential breaches of the undertakings.	VH
Staffing of EAO	The undertakings are silent on how the EAO should be staffed.	The EAO could be purely a re-branding of the existing compliance function.	The undertakings to require that the EAO is not staffed by BT 'lifers' and that it is headed by an external appointee.	H
10.22	The complaints process will need to be developed in conjunction with industry representatives to ensure it meets the requirements of all relevant CPs.	Without appropriate consultation, the complaints process may be weak, overly onerous or ineffective.	Include a requirement within the undertakings for the complaints process to be developed in conjunction with industry representatives.	M
11.9	The requirements for Equivalence of Inputs to be designed into 21CN from the outset is welcomed, but clause 11.9 may provide an unintended 'get-out' provision for BT.	BT may be able to avoid the obligations of clauses 11.7 and 11.8 for relatively minor technical or financial reasons.	This clause to be strengthened to ensure only significant or material reasons are justification for any failure to provide Equivalence of Inputs.	VH
11.19	The terms 'material' is ambiguous.	CPs may suffer significant disadvantage through 'cumulative immateriality'.	Expand this obligation to recognise cumulative materiality and/or define materiality in this context. Alternatively, BT	H

			should not be able to use the 'Broadband Dial-tone' functionality until full EoI is delivered.	
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