

OFCOM CONSULTATION ON BT SYSTEM SEPARATION

Cable&Wireless

10 JULY 2009

Cable&Wireless supports the overall approach to adjust the prioritisation of resources within BT to ensure that some much needed product and service enhancement developments are delivered quickly. A delay to full physical system separation is a reasonable compromise.

The details of the implementation are crucial. As they stand the new commitments are yet to be fully defined while the relaxation of commitments, intended purely to allow for delayed system separation, in fact significantly weaken other aspects of BT's EoI commitments. We believe that the prerequisites for success in this respect are that:

- the right list of product and service developments can be agreed;
- they are delivered as committed, requiring a robust change control process; and
- all other aspects of EoI are still delivered by the previously committed dates.

Once these issues are addressed then this proposal will benefit BT, other Communications Providers (CPs) and end users.

The package of development commitments

The crucial elements of the new commitments, the roadmap and the change control process, are not yet properly defined. These are fundamental to stakeholders' ability to provide a clear view as to whether the compromise will actually deliver the benefits that are expected.

It appears that these issues are being left to the OTA to facilitate final agreement. Cable&Wireless is happy with that approach but Ofcom must be clear with stakeholders about the approach being taken. Ofcom asks for stakeholders' views on this package and yet the list of development projects is only provided as an example, it does not represent the final agreed roadmap and so cannot be used to judge the proposals.

The OTA regularly discusses progress on Openreach product developments and its roadmap but it is not clear whether the roadmaps circulated with the OTA minutes are the roadmaps that will form the basis of these commitments. As we stand Openreach has published a roadmap, the OTA regularly provides roadmap updates and Ofcom has published an example list and different stakeholders have different views as to which one will form the commitment. This must be resolved, and everyone must be clear before the proposals can be judged.

For example, at the time of writing there is some disagreement over whether the TDM Access & Backhaul development is included in the Openreach commitment list. The 23rd June high level roadmap includes TDM access and backhaul whereas the Openreach development update which provides a high level overview of each initiative does not mention it. Openreach have confirmed that it is on their roadmap but in the most recent OTA Executive meeting, they stated that it did not form part of their commitment. For Cable&Wireless this is a much needed development that is long overdue and a 'must have' item on the final list. The developments required to allow special directory entries on WLR3 have also been prioritised in OTA discussions but this is apparently not included on the list of Industry Commitments.

In addition the change control process has not been presented in detail or agreed. In the past we have experienced several examples of Openreach product deliverables slipping into later releases without the changes even being brought to the attention of industry stakeholders. We agree with Ofcom that a proper change control process is an essential element of the package.

If Ofcom itself is not going to consult based upon the final product roadmap and the final change control process then it is essential that the OTA is absolutely clear on which documents are proposed to be part of this agreement and that it gives its members adequate time to review before final sign off. Ofcom should take account of the level of agreement to those documents in its final decision on these proposals.

The revised approach to measurement

These proposals include a revised approach to the measurement of progress for products and services being moved on to physically separate Eol systems. BT's proposed approach involves moving products and services to separate systems on a customer by customer basis.

As a result of BT's new approach to system separation it will be business end users that are last to be completed. The customer by customer approach means that in fact the last few customers may in reality account for a significant volume of services and could be high value contracts where competition is at its greatest. Cable&Wireless competes directly with BT for exactly this type of customer.

The revised wording for the Undertakings includes the removal of some existing IBMC dates and replacement with this new approach to measurement whereas it is not clear why the IBMC is necessarily impacted. IBMC should have already been achieved for various other services, including Ethernet which many of those business customers will buy and therefore it is clearly possible for customers using multiple products to have some which are Eol and others that are not. The idea that system separation delays drive the need to fundamentally change measurement of IBMC does not appear to have been robustly tested.

However the most crucial issue is that the IBMC milestone means more than just completion of the physical separation of systems. There is much more to Eol than the system separation and no other aspects should be delayed by this change of approach. We expect that the biggest concerns arising from this fall within the exemptions that we discuss separately. For the WLR products the obligation not to unduly discriminate should mean that product, service and pricing differences do not exist but we note that this obligation should have prevented some of the differences now addressed by the exemptions but it quite clearly failed to do so.

In our view the revised approach to measurement is a sensible one when it comes to measuring progress towards full system separation but it should not change the obligation upon BT to comply with all other aspects of Eol. A change of wording within the proposed variation of the Undertakings should make this clear.

Removal of IBMC dates for the exemptions

The exemptions identified were often examples of a substantially different products being supplied than could be supported using Eol inputs that existed at the time. For example, Media and Broadcast included a capability based on what was essentially dark fibre and Wavestream was based upon DWDM equipment not available on a wholesale basis. We do not have any visibility of the prices charged but it is possible that they could have led to competition concerns too. Overcoming this type of issue was at the heart of Ofcom's decision to agree to the Undertakings in the first place. The IBMC dates provide a backstop after which the non standard solutions (and potentially non standard prices) can no longer exist.

The removal of non standard solutions is important; the IBMC commitments that were agreed meant that it would take nearly 5 years to get to the point where CPs could be confident that these non standard solutions, which make it so difficult for them to compete, no longer exist. Although each of these exemptions now has an Eol input in some cases the wording of the exemption makes it possible for BT to continue to supply itself non Eol solutions where they are part of existing contracts that were signed prior to specified dates. This means that there could be current and historical competition problems that will not be fixed until all services are based upon Eol products. Five years to achieve that is more than long enough.

We know this is the case, for example we still buy Wavestream from downstream BT which is not based upon the Openreach Eol input. BT is making it very difficult for us to move off of those old solutions and buy the Eol product directly from Openreach meaning we are paying more than we should. Eol may have been declared, but the competition problems it seeks to address have not yet been resolved.

The issue with these proposals is that in changing the commitments to allow for the implications of the delay to system separation Ofcom is actually proposing to agree to wording that prolongs the exemptions to a date that is not yet defined. This appears to be an unintended consequence. It arises from the fact that it is the IBMC dates that are being removed and they define the time by which all solutions sold must be based upon the Eol product. This concern is exacerbated by the new approach to measurement as these are not generally mass market issues but likely to be limited to relatively few customers that could legitimately fall in to the final 1% of legal entities under the customer based approach to measurement.

In the debate in the OTA Executive, BT's position was that meeting the requirements of physical system separation would jeopardise delivery of key customer requirements in terms of new product development by Openreach. Cable&Wireless was content to support a delay to the date by which these solutions are supported on physically separate systems as a reasonable compromise in return for earlier delivery of new products that we want. At no stage did Openreach or BT make clear this meant a complete delay in delivery of EOI itself. A delay to the date by which all product, service and price issues relating to Eol are delivered is most definitely not a compromise that Cable&Wireless can support. It must be possible to find a solution that guarantees all other aspects of Eol are delivered by the previously agreed dates while providing a relaxation on the requirement to operate physically separate systems. But if it is not then the proposal would be a fundamental weakening of the Undertakings and Ofcom should not proceed with it.

Answers to Ofcom's Questions

Question 1 Do you agree with our proposed changes to BT's systems separation obligations? If not, why not?

Yes, there are clearly conflicting priorities in our view a net gain can be achieved by delaying some of the system separation milestones in return for clear commitment to deliver key product and service enhancements. However, for this to be the case we require that:

- the right list of product and service developments can be agreed;
- they are delivered as committed, requiring a robust change control process; and
- all other aspects of Eol are still delivered by the previously committed dates.

Question 2 Do you agree with our proposed change of approach to measuring BT's progress on product EOI? If not, why not?

No, we have concerns about the new approach because it has the potential to extend beyond simply the measurement of implementing system separation to actually relaxing the commitment to deliver other, non system related, aspects of Eol. Please see our main response.

Question 3 Do you agree that the package of additional Openreach developments and the new Undertakings commitments that relate to them are appropriate? If not, why not?

No, the consultation document does not identify the detail of the commitments behind the additional Openreach developments. The work on the roadmap the OTA is doing is making good progress but there are various different versions of Openreach product roadmap and a lack of clarity over exactly which one will form the committed list of developments and how it will be finalised.

In particular there remains some uncertainty over the development of TDM access and backhaul products that are already severely delayed, we consider this a 'must have' item on the final list. The developments required to allow special directory entries on WLR3 have also been prioritised in OTA discussions but we are not aware of any firm commitment for these.

In addition, the change control process has not been presented in detail or agreed. In the past we have experienced several examples of Openreach product deliverables slipping into later releases without the changes even being brought to the attention of industry stakeholders. We agree with Ofcom that a proper change control process is an essential element of the package and therefore stakeholders should have the opportunity to review it in detail and ultimately agree it.

Question 4 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to remove the IBMC date of 1 July 2010 for Featureline?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 5 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to remove the IBMC date of 1 July 2010 for Featurenet?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 6 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to remove the IBMC date of 1 July 2010 for Megastream Ethernet using ASDH2 technology?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 7 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to remove the IBMC date of 1 October 2010 for Wavestream Connect and Wavestream Regional?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 8 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to continue to maintain the installed customer base with contracts entered to prior to 31 December 2007 on the non EOI legacy Media & Broadcast products?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 9 Do you agree that, as a consequence of the revised approach to customer migration to EOI products, Ofcom should agree to this request from BT to remove the IBMC date of 1 July 2010 for Redcare CCTV services?

No, we have particular concerns about the removal of the IBMC dates for the various exemptions. Please see main body of our response.

Question 10 Do you agree that Ofcom should agree to an exemption for the cabling of Featurenet connections to existing small customers' sites to allow for Featurenet SRUs to be exempted from equivalence until the SRUs are withdrawn from service or replaced?

Yes, we note this exemption is more about the delays to 21CN than the system separation delays. In general we still have some concerns about the Featurenet product but as long as the service is supplied on an EoI basis in all other respects then we agree with Ofcom's proposal on this issue.

Question 11 Do you agree that Ofcom should agree to this request from BT for an exemption to allow the Messaging & Bill Direct support team to continue to access data from Openreach's OSS until such time as Openreach's OSS physical systems separation is completed? Please also state whether you agree for Director level review of the operation of end user access controls to be revised from a quarterly basis to a six-monthly basis.

Yes. We have no detailed visibility of the level of issues highlighted by the current quarterly reviews but on the basis that Ofcom says they are successful then we support the proposal.

Question 12 Taking into account all of the analysis and considerations in this document, do you agree that we should grant the variation to the Undertakings as set out in Annex 5?

The variation to the Undertakings needs to be modified to ensure that it does not relax the obligations on BT to comply with all other (e.g. product, service and price rather than system separation) aspects of EoI, particularly where it comes to the exemptions. In addition further work is required to ensure finalise the package of additional development commitments in order to ensure that they do deliver the benefits that Openreach's customers and end users require.