

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

**Consultation title:** Consultation on undertakings offered by British Telecommunications plc in lieu of a reference under Part 4 of the Enterprise Act 2002.

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**Representing (self or organisation/s):** Video Networks Ltd

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Part of the response

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Name John Morgan

Signed (if hard copy)



# **Consultation on undertakings offered by British Telecommunications plc in lieu of a reference under Part 4 of the Enterprise Act 2002**

*Response to the consultation document issued by Ofcom*

Video Networks Limited, 2005

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## 1. Introduction

Video Networks (VNL) welcomes the opportunity to comment on the undertakings offered by BT in lieu of a reference to the Competition Commission.

As described in Section 4 of the consultation BT has the ability to restrict competition and this ability will endure for the foreseeable future. The undertakings could provide an opportunity to change the nature of wholesale telecommunication product delivery in the UK market, and could stimulate investment and innovation in the retail market.

VNL welcomes the opportunity to work with BT ASD and BT Wholesale in order to bring about the changes. As with any commercial arrangement the written contract forms the basis of a commercial collaboration but cannot define all the nuances that exist in the wholesale telecommunications marketplace. Nevertheless VNL consider it important to be unambiguous in the written undertakings. VNL therefore proposes in Section 2 below specific changes to the undertakings. These changes are in the sequence of the paragraphs in the undertakings themselves and not in priority order.

The most critical changes proposed are those concerning the definition of the "Backhaul Product" (change 1), transparency (changes 3 and 4) and the interpretation of resilience (change 8).

## 2. Specific Recommended Changes to the Undertakings

In paragraph 2.1 the "Backhaul Product" definition should not contain a specific distance limitation.

In paragraph 3.1.1 add the words "and Associated Services" to items e) and f) so that this matches the words used in paragraph 5.4.

In section 4 concerning transparency ASD should be required to host and publish a communication plan that clearly identifies the groups of Communications Providers that form industry groups. This communication plan should include terms of reference, minutes of meetings, existing product names and descriptions and BT contacts.

The list of products in paragraph 5.4 should include those SMP products used by BT's downstream and upstream divisions.

The process for Communication Provider group formation should be formalised and transparent.

The statement of requirements process, whether ASD owned in paragraph 5.12.4 or not in paragraph 5.9, should be defined in the undertakings.

Paragraph 5.14.2 states "... join together ... multiple network nodes;". However the term "network node" is not clearly defined. The term "Network Node" should be defined as "any of a Local Access Node, a Core Node or a Communications Providers point of handover".

In paragraph 5.14.5 the ASD must offer transmission layer products that contain sufficient management to provide transmission resilience not only on a point-to-point basis but also on networks built using best practice.

In paragraph 6.22 concerning "Vacation Sites" the term "requesting to occupy" should be clarified to include forecasts.

Paragraph 7.1 is not explicit about what certain types of contractual provision it covers.

In paragraph 8.1 ASD must ensure that confidential information can flow to assist product provision and management.

In Annex 4 the equipment definitions are not definitive. Add a generic equipment definition - (f) Equipment necessary for the efficient delivery of services over the Access Network and/or utilisation of the backhaul network.

### **3. Justification for the Changes**

#### **3.1. Change 1**

In paragraph 2.1 the "Backhaul Product" definition should not contain a specific distance limitation.

The new "Backhaul Product" definition changes the wording of an existing Ofcom Direction. This wording was arrived at when defining markets where BT was judged to have SMP. Changes to market definitions should be done when markets are reviewed and not as part of the consultation about BT's undertakings.

The direction was contained in the Ofcom document "Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets - Final Statement and Notification" Annex E where the distance limit specified in the direction was 25km.

Changing the distance fundamentally changes the nature of the product that would be offered by ASD and leaves the existing regulated backhaul product set in an unclear legal and commercial framework. Existing networks, such as VNL's network, are constructed including components from the regulated BT portfolio. The purpose of ASD is to ensure that BT's SMP product set is delivered in an orderly, transparent and fit-for-purpose manner. The market definitions and directions in place therefore define the products delivered by ASD. Changing these definitions implies a transfer of product to BT Wholesale with an attendant migration process and, most likely, change of pricing. This would disrupt the businesses of LLU operators that used, or were proposing to use, regulated BT products and set the LLU backhaul market back to the conditions that existed in 2002 and gave rise to the existing regulation.

Distance alone is too crude a definition of the market on a national basis as the availability of alternative products from other operators varies significantly with geography. ASD should offer a product set that enables construction of LLU

Backhaul networks in combination with a choice of products from alternative operators including BT Wholesale. Increasing the distance over which ASD can offer products increases the number of potential solutions and therefore increases competition in the LLU Backhaul market.

### 3.2. Change 2

In paragraph 3.1.1 add the words “and Associated Services” to items e) and f) so that this matches the words used in paragraph 5.4.

This is an editorial change only with no change of meaning intended.

### 3.3. Change 3

In section 4 concerning transparency ASD should be required to host and publish a communication plan that clearly identifies the groups of Communications Providers that form industry groups. This communication plan should include terms of reference, minutes of meetings, existing product names and descriptions and BT contacts.

Communications Providers can have difficulty engaging with BT for existing products where industry groups already exist. For new products the engagement process can be extremely difficult. The case studies in Annexes G to K all contain reference to a measure of reluctance by BT to engage. Most Communications Providers will be familiar with the “Catch 22” that there can be no demand for a new product because BT does not sell it.

The undertakings provide for the formation of two groups:

- 1) A PSTN to NGN migration group in paragraph 11.12 and
- 2) A Communications Providers Property Users Group

These should be regarded as specific examples of Communications Providers group formation.

The method through which a group of communications providers is formed should be made more explicit. For example it is not clear from the undertakings whether the LLU Operator Industry Group, the LLU Operator Contract Group, the Backhaul Implementation Group and the BES Product Review Meeting would be recognised by ASD.

A suggested process for Communication Provider group formation would be:

- Three or more communication providers (founders) approach ASD with a request to form a group and draft terms of reference possibly with a Statement of Requirements. ASD can form groups by gaining the interest of three or more communication providers.

- If ASD agree to the formation of a group then the group is added to the publicly available communications plan. If ASD do not agree to the formation of a group then the reasons for refusal by ASD must be in writing and not subject to confidentiality.
- Groups requesting new products would not be added to the communications plan until the product has been notified to Ofcom.
- Disputes relating to group formation would be referred to Ofcom
- Unanimous agreement of the founders of a group or groups and ASD is needed before a group can be dissolved or groups can be merged.

### 3.4. Change 4

The list of products in paragraph 5.4 should include those SMP products used by BT's downstream and upstream divisions.

The definition of the products that the ASD must supply should include:

- The existing products where BT has been judged to have SMP, for example the BES portfolio,
- All products that are offered to BT downstream divisions that include bottleneck resources

This is in line with the principle that no retail service should be launched without associated wholesale inputs. ASD should publish details of all products, which use bottleneck resources, offered to all Communications Providers, including BT downstream divisions. The undertakings appear to want to change the market definitions currently in existence where BT has SMP. For clarity the SMP definitions should be listed as an annex to the undertakings or a web reference should be made to these definitions.

The products ASD makes available that use enduring bottlenecks must be clearly described, have a reference offer and be unambiguously priced.

Interpretation of the undertakings being satisfied should relate to the functionality provided by the product and not the specific product itself. Naming the specific product will allow BT to meet the undertakings by adhering to the letter of the agreement without satisfying the spirit of the agreement.

In VNL's response to TSR2 we termed this a "Requirement to use" and a "Requirement not to circumvent"<sup>1</sup>.

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<sup>1</sup> Annex A contains an extract from VNL's response to Ofcom's Strategic Review of Telecommunications Phase 2 which was written before the ASD proposal was made.

The undertakings in Annex E do go some way to addressing the concern that BT will avoid its obligations but they still follow an over prescriptive approach that would allow BT to avoid meeting the intent of the requirements.

For example:

- 1) The undertakings in Annex E paragraphs 5.14 to 5.19 mention new products but are not explicit in how new products or existing products are made available.
- 2) Paragraph 5.14.3 is limited to products that enhance or replace existing SMP products and therefore only a subset of the ASD products.
- 3) Paragraph 5.14.5 talks about “the option to purchase the same degree of resilience”. This wording seems to indicate that products will exist in the area where there is an enduring bottleneck but these products will not have a wholesale interface within ASD.
- 4) Paragraph 5.6 attempts to avoid ASD using NGN functionality where the MSAN contains Network Layer functionality. This wording is too ambiguous “contains” should be replaced with “uses” and the Network Layer functionality should be more explicitly defined than by reference to the OSI model which lists a number of network layer functions. Would the MSAN need to use all the functions of just some of them?
- 5) In paragraph 11.10 and 11.11 BT is obliged to consult with “other Communications Providers”. This leaves BT able to take a wide interpretation on its obligations.

It is clear from BT’s current consultation process on its “21<sup>st</sup> Century Network” that consultation can be carried out in such a confused manner that the organisations consulted are obliged to devote significant effort to structuring the consultation process. This effort would be unnecessary if BT behaved as a commercial organisation without SMP taking due care of its customers. Even today a year after the consultation process started many operators in Broadband/LLU are unclear about the effect of 21CN on their businesses.<sup>2</sup>

Whilst the scale and complexity of Consult21 is substantial, some delay may be attributable to this, the fact remains that this uncertainty has a material effect on BT’s competitors and works to BT’s advantage.

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<sup>2</sup> The timetable for Consult21 proposed a timetable in August 2004 that would complete a final architecture definition by March 2005. However the Broadband/LLU working group in July 2005 still has a “Red” RAG status “Due to the current lack of technical and commercial detail of the new 21CN products”.



VNL expects that the structure and culture within ASD will be such that such a prescriptive approach will not be used to neutralise the spirit of the intention that has led BT to agree to form the ASD. VNL would expect swift and decisive action to be taken by ASD management if such behaviour was brought to their attention.

### **3.5. Change 5**

The process for Communication Provider group formation should be formalised and transparent.

A suggested process is described above in change 3.

### **3.6. Change 6**

The statement of requirements process, whether ASD owned as in paragraph 5.12.4 or not as in paragraph 5.9, should be defined in the undertakings.

This process including templates, timescales, dispute resolution and escalation process should be laid out with the undertakings. The purpose of the process is not merely to note that requirements have been considered but to produce a fit-for-purpose product that meets industry requirements. The process should therefore cover the complete product creation and activation cycle.

### **3.7. Change 7**

Paragraph 5.14.2 states "... join together ... multiple network nodes;". However the term "network node" is not clearly defined. The term "Network Node" should be defined as "any of a Local Access Node, a Core Node or a Communications Providers point of handover".

This is an editorial change only with no change of meaning intended.

### **3.8. Change 8**

In paragraph 5.14.5 the ASD must offer resilience not only on a point-to-point basis but also on a best practice<sup>3</sup> basis.

Paragraphs 5.14.2 and 5.14.3 are written as if the backhaul products are only capable of point-to-point delivery. Clearly BT will use rings to provide resilience<sup>4</sup> to backhaul products and services, as is best telecommunications practice. The products used by BT's upstream and downstream businesses must be publicised

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<sup>3</sup> A useful guide to the meaning of the terms ring and resilience is published by NISCC "Good Practice Guide on Telecommunications Resilience".

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and made available on fair, reasonable and non-discriminatory terms to other communications providers. The reference in paragraph 5.14.5 to “same degree of resilience” leaves too much leeway for BT to offer inferior products and therefore delays the introduction of suitable products to the marketplace.

Telecommunications network interfaces can be made up of many layers and can be characterised by reference to the OSI 7 layer model. It is possible for BT to pick the interface for a product at any available layer. Generally the higher the layer the more complex, managed and costly a product will be. Communications Operators should be able to request that a product be decomposed to products at its lower layers, where these are standardised, where the higher layer product traverses bottleneck assets. This may be implied by paragraph 5.14.1 but is not explicitly made clear. The ASD must offer transmission layer products that contain sufficient management to provide transmission resilience not only on a point-to-point basis but also on networks built using best practice.

### **3.9. Change 9**

In paragraph 6.22 concerning “Vacation Sites” the term “requesting to occupy” should be clarified to include forecasts.

For the avoidance of doubt it should be made clear that forecasting a site is a “request to occupy”. It follows therefore that the Vacation Sites list must be such that it applies to the forecast period for Communications Providers. Sites added to the list in a six-month period would not therefore be due for vacation within the forecast period.

When notifying sites for vacation BT should make clear the exact terms and amount of compensation due under BT third party agreements, including Telereal, should the operator wish to stay.

### **3.10. Change 10**

Paragraph 7.1 is not explicit about what certain types of contractual provision it covers.

This is an editorial change only with no change of meaning intended.

### **3.11. Change 11**

In paragraph 8.1 ASD must ensure that confidential information can flow to assist product provision and management.

Confidential information can be used by BT’s upstream and downstream businesses to inhibit migration and sales by Communications Providers. In addition to migration process undertakings in paragraphs 3.7 and 3.8 the ASD should ensure that data necessary for the provision of suitably configured products is made available in a timely manner and that the responsibilities of the BT’s upstream divisions, BT’s

downstream divisions, the customer and communications providers are clear to ensure that any confidential data necessary for product provision and management is able to flow between the parties.

### **3.12. Change 12**

In Annex 4 the equipment definitions are not definitive. Add a generic equipment definition - (f) Equipment necessary for the efficient delivery of services over the Access Network and/or utilisation of the backhaul network.

This is an editorial change only with no change of meaning intended.

## **4. Corporate Governance**

VNL notes the undertakings relating to the establishment of the Access Services Division (ASD), Organisational Separation and the Equality of Access Board. These seem sound steps but their effectiveness will only become apparent over a significant period of time and will be visible to a privileged view in BT and Ofcom. A great deal will depend on the individuals assigned to each role and the vigour with which they pursue their remits.

## Annex A. Extract of VNL's Response to the Strategic Review of Telecommunications Phase 2

### 5 a) Do you agree with Ofcom's definitions of the various forms of equivalence?

#### Equivalence of outcome

VNL agrees with Ofcom's definitions and suggests that some of the equivalence of input requirements below should also be considered.

#### Equivalence of input

Equivalence of input is the only mechanism proposed in the consultation that would ensure suitable product delivery by BT. There would need to be additional transparency in the way that BT Retail used the wholesale product portfolio to demonstrate that equivalence of input was operating:

- **Requirement to use.** BT retail must construct volume products using only BT wholesale inputs
- **Requirement to define product characteristics and interfaces.** The wholesale products must be defined unambiguously.
- **Requirement not to circumvent.** An end-to-end service requires the assembly and management of many products. The bundling or layering of products can be the subject of arbitrary decisions. BT Wholesale must construct higher layer or more bundled products using lower layer wholesale products where possible.
- **Requirement to define life cycle.** The life cycle of the product including planning, ordering, provisioning, management, repair, moving, ceasing and billing should be defined.
- **Requirement to define product compatibility and migration.** The ability of a product to co-exist with other products should be defined, as should the expected migration processes. Migration processes must be defined for all products that can act as substitutes in a portfolio.
- **Requirement to define processes.** For each stage of the life cycle a number of processes must be defined. These processes should be listed and their interface requirements defined including input parameters, returned parameters, customer states and reconciliation methods.

- **Requirement to declare process scalability.** Each process should have its operation readiness and volume limitations declared – if necessary with a timetable defined by date or trigger event.
- **Requirement to provide documentation.** For processes including the semantics of the data.
- **Requirement to provide test facilities.** Automated transactional interfaces must be tested on a test platform before release.
- **Requirement to notify interface changes.** Changes will be notified and tested before release.
- **Requirement to maintain backward compatibility.** Transaction interfaces should be version-aware and backward compatible where possible.
- **Requirement to use consistent transaction interfaces.** The transactional interfaces shall use consistent technologies for security, data formatting and transport, polling and data reconciliation. If more than one interface exists for a transaction the underlying processes shall operate in the same way.
- **Requirement not to distribute information between BT Retail and BT Wholesale so that accessibility of data is asymmetrical.** BT's Wholesale clients will require access to certain information to build their OSS and processes