

BT's response to Ofcom's document
“Notice under Section 155(1) of the Enterprise Act 2002.
Consultation on undertakings offered by British Telecommunications
plc in lieu of a reference under Part 4 of the Enterprise Act 2002”
12th August 2005

BT is pleased that Ofcom considers that the undertakings set out in the Notice offer a reasonable and practical solution to the concerns it has about certain features in the UK fixed telecommunications market which it suspects may restrict competition.

The undertakings deliver a level of transparency and non discrimination unique throughout the European Union and, indeed, provide greater safeguards than are offered by any telecommunications incumbent in any major world economy. They should give rise to an unprecedented level of confidence in the effectiveness of regulation and provide a fresh start for the industry in its dealings with the regulator.

We believe we have demonstrated our resolve to play a part in creating a new regime and a new climate. The undertakings we have volunteered entail significant implementation challenges, and we have accepted the potential for financial consequences in a number of areas if we do not meet demanding timescales. Planning for delivery of the commitments is well advanced, and we have already taken important steps towards implementation.

The reaction to the proposed undertakings from the industry at large has been positive, and we are therefore hopeful that responses from other stakeholders will be supportive. Following the consultation, we may make some changes as a result, however, we do not expect that these will affect the overall intent or purpose of the undertakings as they currently stand. We are therefore hopeful that Ofcom will remain of the view that the proposals fully address its concerns.

Competition Commission reference

Our firm belief is that the undertakings provide a comprehensive remedy to Ofcom's concerns and should be adopted in lieu of a reference. They also provide a foundation upon which the complex and intrusive mesh of regulation can be reduced. We have suggested in the Annex some areas where we believe this should be urgently considered.

If these undertakings are not accepted as providing a full and comprehensive response to the concerns that have been raised during the Strategic Review, then we note that Ofcom has stated its intention to make a reference to the Competition Commission.

We do not consider such a reference either necessary or in the interests of the UK economy, UK consumers, the telecommunications industry or BT's shareholders. Such a reference would be costly and disruptive for all concerned and would, in effect, put the industry on hold for two years or more. This would be very damaging for the UK, coming at the very time when advanced telecommunications services are

increasingly recognised as one of the key facilitators of national prosperity and competitiveness.

The case studies in the Annexes to the Consultation Document, and other comments about BT's conduct and incentives made in the Notice, would clearly be relevant and cited as evidence if any reference to the Competition Commission were to be made. As we believe a reference can be avoided, we are not responding to this material, but we must reserve the right to do so in the future should this be necessary.

Telecommunications has never been more important to the UK economy, and this makes resolution of the issues which have been raised during the Strategic Review vital for us all. We believe that putting these undertakings in place will enable telecommunications providers to focus on the common goals that we all share with Ofcom – being part of an industry which delivers world class communications infrastructure and provides ever better value and choice for consumers and businesses.

Annex: Opportunities for reducing the scope of regulation

As set out by Ofcom in its News Release accompanying the Notice, one of the benefits of undertakings, if agreed, would be to enable a progressive loosening of the current complex and intrusive mesh of regulation which has built up over many years.

This Annex sets out the markets where we believe regulation can be loosened in a way that is consistent both with a commitment to the undertakings and also to the European Directives which continue to apply in the UK. They comprise services which are either technically and economically possible for competitors to replicate or, when competition is dependent on enduring bottlenecks, are covered by the undertakings which guarantee competitors equivalent treatment with BT's downstream businesses.

1. RPI-0 control: BT's SMP conditions include a trigger such that when a 'fit for purpose' Wholesale Line Rental (WLR) product is made available by BT, the existing retail price controls for residential calls and access will transition to a RPI-0 'safeguard' regime.

BT has submitted a request that Ofcom assess the progress we have made in developing WLR and that it trigger the RPI-0 cap on the basis that the necessary conditions have been fulfilled. We understand that Ofcom will issue a Consultation Document in October 2005 and hope that the revised price controls can be implemented in January 2006.

2. Lifting of residential service price controls from 1 July 2006: The residential fixed voice market is one of increasing competition, both from more recent entrants supplying fixed calls and increasingly from mobile operators. Partly as a result of the latter, total fixed voice traffic is declining steadily year on year, as consumers substitute mobile services for fixed voice calls, and the value of the market is declining as suppliers reduce charges. BT's share of total residential voice minutes including mobile was around 48 per cent in 2004/05, and lower still in terms of either the number or the value of calls made.

BT expects competition from fixed alternative communication providers to intensify further as WLR and Carrier Pre-Selection (CPS) processes are improved and the substantial cut in the monthly rental for WLR encourages take-up (already over 1.5 million lines). We believe that competitive conditions may warrant the removal of all retail controls when the current price cap expires in 2006.

3. Regulation of voice call services for business customers: We believe that deregulation is justified in the business voice market. We anticipate BT's market share of local and national geographic voice calls to be around 38 per cent and 34 per cent respectively by the end of 2005/06. This is without factoring in competitive pressure on fixed line operators from mobile services.

A market review of the business market in early 2006 would be timely and should indicate that BT does not have SMP on the retail business voice market.

4. Bespoke prices for large business: BT understands that Ofcom will soon be publishing a Consultation Document on regulation for large contracts for corporate customers. As is widely appreciated throughout the industry, there is now intense competition in this segment of the business market and the recent entry of mobile operators offering substitute solutions will intensify this position still further.

Again, focussed regulation of economic bottlenecks should ensure the maintenance of competition in this market segment. Competitors will be both those using upstream services from BT, backed by the undertakings as well as using their own access infrastructure. BT's SMP obligations should therefore be withdrawn.

5. Bundling: Ofcom published on 14 July 2005 a Consultation Document on the "replicability" of BT's regulated retail business services. The Consultation proposes that once BT has addressed some identified outstanding issues, BT would be permitted to offer bundles which include business calls, exchange lines and low bandwidth leased lines, subject to certain conditions (including price tests and publication).

BT welcomes the Consultation as a step in the right direction. However, the imposition of new pricing tests are disproportionate and are at odds with Ofcom's strategic aims of reducing the complexity and intrusiveness of regulation. We urge Ofcom to take more account of the effect of undertakings BT has offered to deal with enduring economic bottlenecks, together with a vigorous application of the Competition Act, to ensure the maintenance of competition.

6. Retail Leased lines: The most recent review of regulation of Leased Lines commenced early in 2003 and was completed in 2004. This review found that BT had SMP in the provision of low bandwidth digital Leased Lines (services with bandwidths between 64kbit/s and 2Mbit/s) but recognised that there were increasing competitive pressures and hence that it was appropriate to impose a light set of obligations at the retail level.

We believe that BT's commitments to provide Partial Private Circuit Access and Backhaul Products from the ASD, with the associated obligations, plus the commitment to address any outstanding 'replicability issues' in this area, justify a re-evaluation of the SMP finding at the retail level. We therefore urge Ofcom to commence the review of Leased Lines requirements initially scheduled for July 2005 as soon as possible, and to reconsider the need for regulation at the retail level.

7. Wholesale Leased lines: We believe that Ofcom should consult on the application of remedies in Leased Lines markets in the light of BT's commitments on Partial Private Circuits and other wholesale circuits in the undertakings. In our view, a Review should be commenced at the earliest opportunity as existing market definitions, SMP designations and consequent regulation are looking increasingly out of date in this fast moving area.

8. Wholesale international voice services: Oftel has designated BT as having SMP on 113 international wholesale routes. These routes account for less than 10% of all international minutes.

Given the increasing price competition from indirect access operators who either bypass BT's network or use IP technology to carry their traffic, BT believes that continued SMP obligations on these remaining routes are now disproportionate. BT would welcome a consultation on these still-regulated routes shortly and believes this would show that SMP obligations for wholesale international services are unnecessary. We believe they should be removed early in 2006.

9. Geography: A number of so-called enduring economic bottlenecks are replicated in some parts of the UK but not others. When Ofcom last considered such issues, in spring 2004, it recognised this fact. However, it still favoured imposing regulation "in case" it might be needed within isolated "pockets" within otherwise competitive areas.

We consider that this is an extremely cautious approach and that, in certain areas, regulation at the wholesale level is not warranted. The continuation of SMP regulation inhibits BT from competing fully with other infrastructure providers. We urge Ofcom to consider how to reflect the geographical disparity in competitive conditions at the earliest opportunity and amend regulation accordingly. The geographic study into Leased Lines is therefore welcome as an opportunity to review this principle. Our expectation is that the study will show evidence of different competitive conditions in specific geographic areas.