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Date: 10 July 2009

Dear Nic

Reprioritising BT's remaining Undertakings commitments on information systems separation

We welcome the opportunity to respond to this consultation since, as you may be aware, SSE is a reseller of telephony services in the retail fixed narrowband market using wholesale line rental (WLR).

The Undertakings provided by BT to Ofcom in 2005 in lieu of a reference to the Competition Commission form an important legal document addressing significant competition concerns about the operation of certain fixed line markets within the communications market as a whole. As Ofcom discusses in the consultation, a key feature of the Undertakings is the establishment of "equivalence" between downstream divisions of BT such as BT Retail and other communications providers (CPs) who have to use the wholesale products now provided by Openreach to reach their customers.

We accept that the Undertakings need to be kept under review and updated as necessary to reflect developments in the market. There have been a number of variations to the Undertakings over the years and Ofcom has duly consulted on proposals for material changes. However, we are disappointed at the overall proposition of this consultation that, due to resource pressures within BT and prospective difficulties in achieving a particular form of systems separation, the due dates in the original Undertakings for the achievement of equivalence will be delayed for a number of products.

We believe this sends a very bad signal to BT and the industry that "resource constraints" can be used as a valid reason for reducing the impact of formal Undertakings. We feel that there is much in the consultation about BT's plans for system development (for example, the development of system "stacks") that is irrelevant to BT's fundamental obligation to organise developments within its business so as to achieve the legally binding Undertakings. While we understand that

specific systems solutions set out in the Undertakings may need to be adapted, we consider that it is very important that the key objective of achieving equivalence is addressed within the timescales originally set out in the Undertakings.

If this fundamental objective is allowed to slip then it appears that BT will enjoy a competitive advantage in being able to continue to supply the relevant products to a group of customers on non-equivalent, legacy systems for longer than originally envisaged in the Undertakings. This is the sort of competitive distortion that the Undertakings were designed to address in the first place.

One of the themes of the consultation is that there is a form of “deal” being proposed whereby a “re-prioritisation of BT’s resources” would be balanced in some way by Openreach delivering “additional industry requirements” for features on the wholesale products used by other CPs. While we are opposed in principle to the “re-prioritisation” as discussed above, we have two further comments on the consultation discussion about additional industry requirements.

Additional Industry Requirements from Openreach

1. Our first comment would be that, from the perspective of a WLR user, there is little that this section of the industry is proposing that is additional to achieving parity between the “equivalent” version of WLR (i.e. WLR3) and its predecessor WLR2. As discussed further in our response to question 3, data integrity and adequate documentation should be delivered as a matter of course with the original system development and are thus hardly additional to it.
2. Secondly, we agree with Ofcom that the governance process around Openreach IT development is very important. We have supported the Office of the Telecommunications Ombudsman (OTA) in seeking to establish an agreed “roadmap” between Openreach and its wholesale CP customers covering how different types of product functionality are to be prioritised and developed.

We do believe that there is a need for a formal, transparent and inclusive governance process for product development whereby all Openreach’s CP customers have appropriate visibility and input to the priorities for the available IT resources. We therefore welcome the part of the proposed variation to the Undertakings that formalises the establishment of a “Roadmap”, entailing ongoing OTA facilitation. However, we believe that this would be more effective if it referenced a single “Equivalence Management Commercial Group” covering WLR, LLU and Ethernet-based users of Openreach wholesale products. We discuss this further in our response to question 3 and, in the longer term, believe that such a body could be constituted in a self-governing and co-regulatory manner.

In conclusion, we do not agree with the variation as proposed. However, I hope the comments we have made above and in response to the consultation questions are helpful.

Yours sincerely

Aileen Boyd
Regulation Manager

Consultation Questions

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

We do not object in principle to a modification of the Undertakings to reflect a more pragmatic form and timetable for system separation. However, we do not agree with the proposed knock-on effects on progress towards equivalence of inputs for the products mentioned in the Undertakings. This is an extremely important principle at the heart of the Undertakings. The proposed continuing use of BT legacy systems for existing BT business customers for an open-ended period of time appears to us to extend BT's competitive advantage in retaining these customers (because the products that other CPs can offer these customers are based on non-equivalent systems). This should not be allowed to happen.

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

No. As noted above and in our covering letter, we are opposed to a situation whereby the "tail" of business customers will remain on non-equivalent BT legacy systems for an indefinite period beyond that offered by BT in the original Undertakings. This is what the proposed change of approach in measurement methodology will allow. Any relaxation to the original Undertakings commitment in this respect would send a damaging signal about Ofcom and BT's commitment to equivalence of inputs, in our view. We therefore advocate that other ways – for example, CP access to the legacy systems – should be explored in order that the equivalence objective continues to be met, if the originally envisaged method of separation and migration has to be modified.

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?

We do not believe that the package of "additional Openreach developments" is appropriate in the circumstances, although the "roadmap" aspects of the proposed variation appear positive. Our perspective on this matter is largely from the point of view of a user of the WLR product set for domestic customers. However, we are aware that for CPs using WLR for the business market there are continuing issues about the delivery by Openreach of certain features in the WLR3 product releases that are already available in the earlier "WLR2" version of the product. Against the background that the WLR community is seeking to ensure that the WLR3 product will deliver the same/similar functionality as WLR2 and BT's legacy systems, the majority of the requirements discussed at industry meetings are related to achieving this "parity" rather than being "additional" requirements, in our view.

We are also surprised by some of the examples listed in Figure 3.5 as "additional Openreach developments". Out of the examples specifically listed as benefiting CPs using WLR, we have the following comments:

- **Service harmonisation:** our understanding of this project is that it will reduce Openreach costs overall as service levels are being "harmonised" down to the lower levels provided to the WLR community – so no additional benefits there for any CPs;
- **Data integrity and documentation:** our view is that these items are very much what CPs should be entitled to expect as "business as usual" for the overall equivalence development rather than being seen as additional add-ons.

Turning to the subject of governance of Openreach's IT developments, we agree that this should be strengthened and were involved initially in promoting the "roadmap" concept when the OTA became involved in facilitating discussions between Openreach and its CP customers. We strongly believe that there should be more formally controlled, transparent and inclusive governance around how these IT development resources are used and prioritised for the benefit of all Openreach CP customers: downstream BT businesses; other CPs using LLU; other CPs using Ethernet-based products AND other CPs using WLR-based products. This could build on the role of the industry "Commercial Group" for WLR, which has been intended to act as a formal channel of communication between Openreach and its wholesale customers.

In our view, there should be a forum covering IT resource for the Equivalence Management Platform (EMP) as a whole rather than separate streams of discussion for WLR, LLU and Ethernet, none of which have an overall view, although many of the relevant topics will be of generic interest e.g. repair times and service levels. There also needs to be recognition by Openreach that ongoing resource will be needed once the EMP development has been delivered in order to maintain systems and iron out initial snags. We can think of no commercial IT development situation where IT support is not needed on an ongoing basis after major system delivery. There will thus be a blurring between genuinely new developments and tweaks to make the initial delivered system work better. It is a matter of equivalence and equity that all Openreach customers should have a voice in determining how the relevant IT development resources are to be used across these two types of development.

Thus, while we welcome Ofcom's proposal for a strengthened commitment by Openreach, via the Undertakings, to a roadmap approach; a more robust change control process; and an expectation of a constant "volume" of development resource to be made available, we believe this should be enhanced in order for it to engage the industry effectively. In particular, we believe it would be helpful for an industry Commercial Group (across WLR/LLU/Ethernet) to be constituted and referenced in the Undertakings as the manner in which Openreach will undertake "discussion with its customers" as set out in paragraph 5.51.2 of the proposed Undertakings. Otherwise, it is not clear how inclusive and transparent the envisaged discussion process will be. We also believe that the proposed change control process document set out in paragraph 5.51.1(b) should itself be subject to agreement with industry through this means.

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?

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?

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

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?

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?

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?

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?

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.

Our response to all the above questions covering specific products mentioned in the Undertakings is the same. While we do not use all the products mentioned, we believe that Ofcom should resist any of the proposals that extend any period of use of legacy systems such that BT Retail is given a competitive advantage. We recognise that this will not be relevant in every one of the products mentioned.

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?

No. As discussed in our covering letter and in the responses to the above questions, we do not agree that Ofcom should grant the variation as proposed. We do not object to variations to the Undertakings to reflect practical constraints on physical separation but oppose the further variations affecting the fundamental commitments made by BT in the Undertakings to achieve equivalence of inputs for certain products by certain dates. Instead, we believe Ofcom should engage with BT to establish how equivalence for the relevant products can be achieved by the original due dates (this might be by giving access to BT's legacy systems, for example) and re-consult, if required, on a different proposed Variation.

Separately, we welcome the intention behind the measures that Ofcom has proposed to strengthen the governance process for Openreach product development, although we believe the wording should be amended to secure transparent involvement of all Openreach's wholesale customers through a recognised forum as discussed in response to question 3 above. In the longer term, we believe that such a body could be constituted in a self-governing and co-regulatory manner.