

Dear Sirs,

Our attitude to the proposed undertaking is that there are many good features, but there are other aspects on which we have considerable concerns and reservations.

On balance we think it would be better to accept the undertakings, than go into an Enterprise Act enquiry, for the reason that there is no guarantee that the result of such an enquiry would be better, and there would be three years of uncertainty.

Also there is no doubt that implementation of this undertaking will involve a substantial, and serious change in business culture within BT, and that must be the essential first step- that seems to us to be the deciding factor.

The crucial positive fact is that ASD employees will have some of the right motivation, and will therefore start doing some of the right things.

We have argued consistently, in all our submissions in response to the strategic review, that the crucial issue is whether the right business motivations exist. If they do, things will soon correct themselves. If they do not, regulation, as such, can never provide an adequate solution. So on this aspect in particular we are quite enthusiastic about the proposals.

However we have three major reservations as follows:

1. We regard it as a major weakness that CPS, call termination and origination should not be within the full ASD /equivalence regime. In our view these products would be better and more transparently managed if they were put into, and allowed to wither away within, ASD.

2 We think that the ASD assets should include the local exchanges and switches; and that the boundary is therefore arguably in the wrong place.

3 There is concern on the related issues as to how long the existing voice related products have to be offered, and the compensation provision arising in connection with NGN. Unfortunately the proposed undertaking does not resolve this issue. The effect of 11.18 (d) could in fact be to stifle new investment, since parties will be faced with the choice of not investing and being unable to compete; and investing, and getting no compensation. What is required is certainty on these issues: and these undertakings will not create any certainty, rather the opposite in fact. The issue of compensation and protection of existing interconnection infrastructure and rights is vital to us.

Taking into account these three points, some of the immediate concerns that we have, as a substantial CPS operator, will not be addressed at all; and there is a slight feeling that some immediate narrow band problems of today, have been treated as of secondary importance, in the hope and belief that the regime which been created which will make things better in the future, in relation to the organisation of the industry as it effects broad band provision. But the management of the inputs to the CPS product, in a way that is fair and transparent, is the immediate burning issue for us. Whilst the move to the 21st century network dictates a logical split in assets, there is the danger that the control of narrowband products, like CPS, could get overlooked, even though they will continue to be a major source of BT's market power for several years to come.

We also have some more detailed points as follows.

1. In the definition of "Equivalence of Inputs" we are concerned that the items in (c) have been deleted.
2. There is a lot of very subjective material in the collocation material in 6.16. For instance in the definition of "Communication Provider operational Area" the words "...but which will not adversely affect the use or values of the remaining part of the property" and in 6.17.2 (a), the words "including any future plans that BT has for use of the Exchange in connection with its business". Also the wording is not clear on the charging and pricing arrangements applicable to collocation.
3. In 5.41. Delete the word "generally". A lot depends on the effectiveness of this clause, which is the one substantial protection in relation to future product developments.
4. Should not Altnets have some involvement in the appointment of a member, or at least one member of the EAB.
5. In 5.38 replace "a not unduly" by "non"!
6. We think there should be within the undertakings some general generic statements as to what future products will be within the full ASD equivalence regime.

We share with other Altnets general concerns on the issue of enforceability, and also the process by which these undertakings are kept under review by Ofcom, and are modified from time to time as circumstances change. This is really the most important point of all, since it is the nature of something like this that it is not really possible to get it 100% right first time. What matters is that there is a regime and process under which the undertakings can be reviewed and changed, in the last resort by independent third party adjudication, and that changes can be imposed, where that is necessary, even if agreement with BT cannot be reached. We are not confident that there is such a regime. Should not there be some supplementary regime under which a third party has the power ultimately to determine questions as to what changes are needed to reflect current circumstances? If any changes have to be agreed with BT on each occasion, the whole process may just eventually lose all force and momentum. We also share with other Altnets a concern that Ofcom should be careful about withdrawing regulatory control, until it is clear that the objectives of the undertakings have been achieved.

We have no objection to a copy of this response being put on the public consultation web site.

Yours faithfully

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For Gamma Telecom Limited