



Request from BT for an exemption from the Undertakings for the Microconnect Distributed Antenna service

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Consultation

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About this document

This consultation document sets out BT's request for an exemption from its Undertakings for its Microconnect Distributed Antenna ("MDA") service, together with our views and proposal to agree to the exemption.

The Undertakings are a series of voluntary commitments offered by BT in 2005 to address specific competition concerns. They include, amongst other things, the obligation on Openreach to not supply any product to any other part of BT unless it also offers that product to other Communications Providers on an equivalent basis.

MDA is a fibre based service which provides remote connectivity to small antennas mounted on top of street furniture in the area surrounding Westminster. This service can be used by mobile network operators ("MNOs") to provide mobile telecommunications coverage and capacity to consumers and businesses in that area.

An existing exemption from the Undertakings allows BT to offer the MDA service to one MNO. This new exemption request is to allow BT to offer the MDA service to all MNOs.

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Section 1

Summary

- 1.1 The objective of this consultation is to seek views from interested parties on our proposal to agree to BT's request for an exemption from the Undertakings for its Microconnect Distributed Antenna ("MDA") service.
- 1.2 On 22 September 2005 BT offered, and Ofcom accepted, the Undertakings pursuant to section 154 of the Enterprise Act 2002. These addressed issues raised by Ofcom as it considered whether to refer certain markets to the Competition Commission in relation to the provision of fixed telecommunications. The Undertakings include a requirement on Openreach not to supply any product to any other part of BT unless it also offers that product to other communication providers ("CPs") on an Equivalence of Inputs ("EOI")¹ basis. The Undertakings include mechanisms for BT and Ofcom to agree exemptions from the Undertakings, including to this EOI requirement.
- 1.3 MDA is a fibre based service which provides remote connectivity to 32 small antennas mounted on top of street furniture in the area surrounding Westminster. It can be used by mobile network operators ("MNOs") to provide mobile telecommunications coverage and capacity to consumers and businesses in that area.²
- 1.4 The MDA service has been in use since prior to the Undertakings coming into effect. On 19 July 2007, Ofcom agreed an exemption related to BT's MDA service. The exemption allowed Openreach inputs into the MDA service to continue to be consumed by BT without requiring the same inputs to be offered on an EOI basis to other CPs. However the exemption only allowed the MDA service to be used for contracts that existed at the time the exemption was agreed. At that date only one such a contract was in place between BT downstream and an MNO.
- 1.5 This new request for an exemption is to enable any MNO to use the existing MDA service and for Openreach to be able to continue providing the current fibre inputs without these inputs having to be productised or made available on an EOI basis.
- 1.6 The proposed exemption would allow all MNOs to operate on a similar basis but would not allow for any new inputs from Openreach or allow the existing MDA service to be expanded in geographical reach.
- 1.7 Given the potential significant benefits associated with granting this exemption set against the very limited costs, we consider that it would be reasonable to agree to this exemption to allow all MNOs to use the existing MDA service infrastructure.

¹ EOI, or 'Equivalence of Inputs' means that BT provides, in respect of a particular product or service, the same product or service to all CPs (including BT) on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes.

² The MDA service was deployed in the Westminster area because of high mobile demand combined with challenging planning guidelines to keep clutter off the street.

Section 2

Background

- 2.1 On 22 September 2005 BT offered, and Ofcom accepted, the Undertakings pursuant to section 154 of the Enterprise Act 2002. These addressed issues raised by Ofcom as it considered whether to refer certain markets to the Competition Commission in relation to the provision of fixed telecommunications. The Undertakings were accepted by Ofcom in lieu of making such a reference. Ofcom's reasons for accepting the Undertakings, together with the Undertakings themselves, are set out in full in the document entitled *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002*.^{3,4}
- 2.2 The Undertakings include mechanisms for BT and Ofcom to agree exemptions from the Undertakings. At the time the Undertakings were formulated it was realised that in the interest of reaching a conclusion in a timely manner, to ensure that the benefits could be felt by consumers as quickly as possible, it would be inappropriate to consider all BT's products in the context of to which products EOI should apply. Therefore, a process was included into the Undertakings to allow Ofcom and BT to consider the EOI requirement for certain products at a later stage.
- 2.3 In January 2006, BT provided Ofcom with a proposed list of products (which had not been specifically identified in the original Undertakings) to which EOI should apply and a number of requests for exemptions and requests for agreement from Ofcom.
- 2.4 As part of this process, on 19 July 2007, we agreed to an exemption request regarding the MDA service.⁵ This exemption allowed the MDA service to be used with existing contracts, without making the Openreach inputs available to other CPs on an EOI basis. At the time there was a contract with one MNO. However, BT has now requested a new exemption that allows all MNOs to use the MDA service.
- 2.5 This Consultation seeks views from interested parties on this request for an exemption from the Undertakings to allow all MNOs to use the existing MDA service.

The process for considering BT's request for exemption

- 2.6 Section 5.46.1 of the Undertakings sets out the general principle governing EOI by providing that Openreach will not supply any product to any other part of BT unless it also offers that product to other CPs on an EOI basis. Paragraph 5.46.1 goes on to provide for various exceptions to this general principle. BT has requested an exemption under one of these exceptions, paragraph 5.46.1c), which provides that the EOI requirement does not apply to any product where Ofcom agrees EOI is not required for reasons of practicality or otherwise.

³ See *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002*, 22 September 2005,

<http://stakeholders.ofcom.org.uk/binaries/consultations/752417/statement/statement.pdf>

⁴ A consolidated copy of the Undertakings, incorporating variations up to and including 20 June 2014 is available, *Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002*, 19 June 2014,

http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/bt/Consolidated_Undertakings24.pdf

⁵ See request 3, *Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002, Part 3*, 19 July 2007,

<http://stakeholders.ofcom.org.uk/consultations/btrequests/part3/>

- 2.7 When accepting Undertakings, the Enterprise Act 2002 requires that Ofcom should “have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition”. Ofcom’s competition concerns were set out in its Strategic Review of Telecommunications Phase 2 Consultation Document. In considering whether to agree a variation to, or exemption from, the Undertakings, Ofcom considers whether this comprehensive solution is materially and negatively affected by the variation or exemption in question.
- 2.8 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in any material respect. Whilst we do not consider this to be a material change, and are therefore not obliged to consult, we are consulting because we think this request may be of interest to stakeholders.
- 2.9 Having regard to our consultation guidelines and given the scope of this consultation document, we consider that a one month consultation is appropriate. Following on from this consultation and taking account of responses, Ofcom intends to publish a statement before summer 2015.
- 2.10 BT’s request for an exemption and its reasoning for that request are described in Section 3 and BT’s request is reproduced in Annex 4. Our views on the request are explained in Section 4. The proposed wording of the agreement to the exemption is at Annex 5.

Section 3

BT's request

Introduction

3.1 In this section we summarise BT's request for the exemption and its reasoning for requesting the exemption. The full text of BT's exemption request is reproduced in Annex 4.

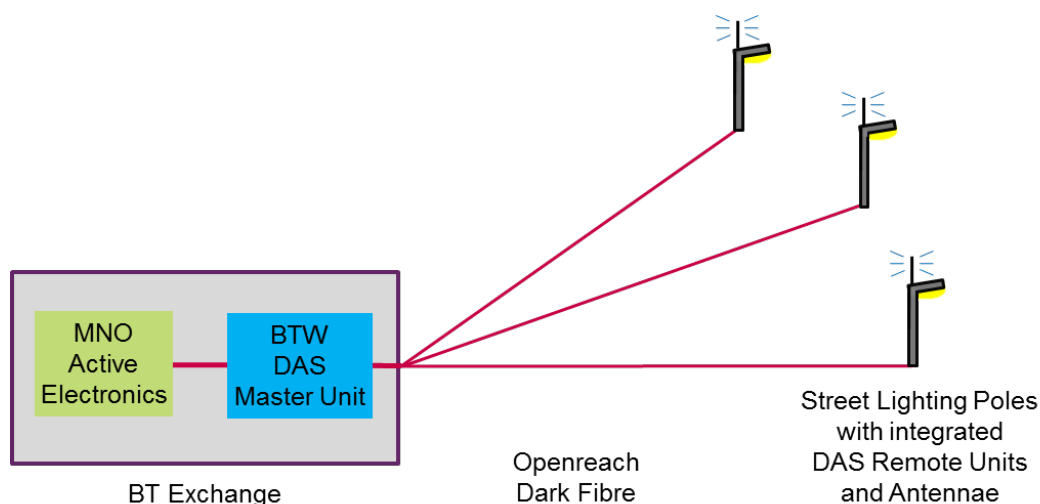
Summary of BT's request

The MDA service offers MNOs a service which provides remote connectivity to small antennas

3.2 The MDA service offers MNOs a service which provides remote connectivity to small antennas mounted on top of street furniture. More specifically, the MDA service is a distributed antenna system ("DAS") service. Such a system enables base transceiver station ("BTS") hoteling, whereby multiple cellular base stations are co-sited and connected to small remote antennas⁶, in this case via optical fibre⁷.

3.3 The MDA service, which is provided to MNOs by BT Wholesale, includes remote antennas and DAS units integrated into bespoke street furniture which are connected to a DAS master unit in a BT exchange. In order to connect the DAS remote units to the BT exchange, Openreach provides dark fibre to BT Wholesale on a non-EOI basis. This architecture is shown in figure 1.

Figure 1 – The high level architecture of the MDA service.



⁶ BTS hoteling removes the requirement for large equipment cabinets to be sited at the same location as the antennas. It is typically used in high traffic dense urban areas to offload traffic from surrounding macro cells.

⁷ The MNO's radio signals are carried over fibre via 'radio over fibre' (RoF) technology.

- 3.4 The MDA service provides connectivity to 32 remote antennas, all of which are within the localised area of Westminster and surrounds^{8,9}.

The MDA service is subject to an existing exemption

- 3.5 The MDA service has been in use since prior to the Undertakings coming into effect. On 19 July 2007, Ofcom agreed to a request made by BT for an exemption related to BT's MDA service.
- 3.6 This exemption allows Openreach inputs into the MDA service to be consumed by BT without requiring the same inputs to be offered on an EOI basis, but only for contracts that existed at the time the exemptions was agreed. At the date of the original exemption, there was only one MNO consuming the MDA service.

BT is now requesting a further exemption to allow all MNOs to use the MDA service

- 3.7 BT would like to allow all MNOs to use the MDA service on a commercial basis and has therefore requested an exemption.¹⁰ Specifically, it requests an exemption from section 5.46.1 of the Undertakings to enable Openreach to continue providing the current inputs to BT Wholesale's MDA service without the relevant Openreach fibre inputs having to be productised or made available on an EOI basis. BT states that as this does not require any new supply of the Openreach inputs, it would be disproportionate to require Openreach to productise such existing inputs and make them available on an EOI basis.
- 3.8 BT considers that the system cannot be easily replicated using EOI inputs (specifically Ethernet) because the active electronics required at the remote antennas would need to be bigger and as such would not physically fit into the existing street furniture solution. It states that no suitable replacements exist due to the developments that would be required.

⁸ The MDA service was deployed in the Westminster area because of high mobile demand combined with challenging planning guidelines to keep clutter off the street. At the time the MDA service was built this area was known to be an MNO 'not spot', or area of weak mobile coverage.

⁹ The 32 remote MDA sites are all situated within the SW1V, SW1X and W2 postal districts.

¹⁰ In 2011 BT allowed another MNO, to use the MDA service on a 'trial basis'. We understand that the Equality of Access Office ("EAO") is investigating whether this is a potential breach of the Undertakings.

Section 4

Ofcom's views on BT's request

Introduction

- 4.1 In this section, we set out our provisional views on BT's exemption request. We are proposing to agree to the request and are seeking the views of stakeholders before reaching a final decision. The legal wording of the proposed exemption is set out in Annex 5.

Our views on BT's request

- 4.2 The MDA service covers a small area and consists of 32 remote antennas which can provide MNOs with localised mobile network coverage.
- 4.3 The infrastructure for the MDA service is already in place and an existing exemption from the Undertakings allows it to be used by one MNO.
- 4.4 We understand that there is demand from at least one other MNO to use the MDA service and BT has told us that this demand cannot currently be met by BT given there is no commercial case to productise the existing inputs to the MDA service and make them available on an EOI basis. Therefore, without this exemption, this demand is likely go unsatisfied.
- 4.5 The proposed exemption would enable all MNOs (rather than just one MNO) to use the existing infrastructure that has previously been exempted. Opening up the MDA service to all MNOs in this way would allow all MNOs to operate on a similar basis within the small area covered. Specifically, use of the MDA service may enable MNOs to provide improved mobile coverage, capacity and quality of service within the Westminster area. Therefore, allowing all MNOs to use the MDA service would be beneficial to consumers of mobile telecommunication services in that area. Conversely, by not allowing other MNOs to use the MDA service, the other MNOs would not be able to supply services on the same basis, given the challenges of deploying in this area.
- 4.6 While this exemption would enable BT Wholesale to be the only CP that can use an input of dark fibre from Openreach to provide a DAS to MNOs, we consider that any impact on competition from allowing this exemption would be very limited. This is because agreeing to this exemption would not allow for the new provision of non-EOI inputs into BT Wholesale as only the existing inputs and infrastructure will be used. Consequently, it will not allow BT to add additional antenna locations to the existing 32 site MDA service.
- 4.7 Given the potential significant benefits associated with granting this exemption set against the very limited costs, we consider that it would be reasonable to agree to this exemption to allow all MNOs to use the existing MDA service infrastructure.
- 4.8 We have also considered whether agreeing to this exemption request materially and negatively affects the Undertakings as a comprehensive solution to the adverse effect on competition identified in our Strategic Review of Telecommunications Phase 2 Consultation Document. Given the very limited scope of the exemption, we do not consider that granting this exemption will have any material impact.

Provisional Conclusions

4.9 For the reasons stated above, Ofcom is proposing to agree to BT's request to allow it to offer the existing Microconnect Distributed Antenna (MDA) service to all Mobile Network Operators without being required to make the inputs available on an EOI basis.

4.10 We are inviting comments from stakeholders on our proposal.

Question 1: Do you agree with our proposal to agree to BT's exemption request and with our reasons for proposing to do so? If you do not, please explain why and provide any supporting evidence.

4.11 Following consideration of responses to this Consultation, we expect to publish a Statement outlining our decision before summer 2015.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 23 February 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/BT-undertakings-microconnect-distributed-antenna/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email phil.simpson@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Philip Simpson
Floor 4
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include a direct answer to the question asked in this document. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Philip Simpson on 020 7783 4925.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement before summer 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

BT's exemption request

Product: MICROCONNECT DISTRIBUTED ANTENNA

Legal basis: 5.46.1

1. Product description and reasons for request

This request relates to Openreach's fibre inputs into BT Wholesale's Microconnect Distributed Antenna (MDA) service.

The purpose of the MDA service is to provide shared antenna infrastructure to Mobile Network Operators (MNOs) to enable them to achieve greater mobile coverage and capacity. It also addresses such issues as coverage shadows caused by large buildings and has a low environmental impact.

The MDA service has been deployed at various remote street furniture sites in the Westminster area since before the Undertakings came into effect (22 September 2005). It is capable of supporting multiple MNOs. The MDA service provides mobile coverage in a very localised area of Westminster using 32 sites. The service uses fibre inputs from Openreach that are not made available externally.

In July 2007, BT was granted an exemption to provide the MDA service to MNOs on existing contracts until they expired (excluding any renewal period) without the need for the service to consume an EOI input from Openreach. At the time the exemption was granted, there was only one MNO using the service. Another MNO has since joined the service and found that it has offered significant benefits to its end users. BT would now like to make the MDA service available to any MNO but still limited to the existing sites in the Westminster area. This will not require any new supply of Openreach inputs to BT Wholesale.

BT requests an exemption from section 5.46.1 to enable Openreach to continue providing the current inputs into BT Wholesale's MDA service without the relevant Openreach fibre inputs having to be productised or made available on an EOI basis.

2. Legal basis, scope, and duration

- Legal basis: section 5.46.1
- Scope: The scope of the exemption that we are requesting is specifically in relation to the MDA service in the Westminster area limited to existing sites
- Duration: permanent

3. Identification of the products involved

This request seeks an exemption in relation to the Openreach fibre inputs supplied to enable BT Wholesale to provide the MDA service at the existing 32 sites in the Westminster area that use existing street furniture to house distributed antennas and associated termination equipment and provides MNOs with enhanced mobile radio coverage.

BT Wholesale uses the Openreach fibre input to connect the remote street furniture sites to a base station hotel created from operational space within a BT Exchange building at Baynard House. This space provides accommodation and power for the MDA Master Unit,

MNO base station and BT fibre terminating equipment. BT Wholesale also provides a simple service wrap to manage planned/unplanned outages and carry out repairs when required.

4. Description of the way in which the product is provided on terms other than EOI

To create its MDA service, BT Wholesale uses Openreach fibre inputs between BT Wholesale equipment in a BT Exchange and each antenna location. The Openreach input is dedicated to BT Wholesale's managed radio communications services and is not productised or made available externally.

5. Description of the solution proposed

BT is proposing to allow continuation of the use of the existing infrastructure in the Westminster area. As this does not require any new supply of the Openreach inputs, it would be disproportionate to require Openreach to productise such existing inputs and make them available on an EOI basis. An exemption is therefore sought to allow the existing sites in the Westminster area to be used by all MNOs. For the avoidance of doubt, BT confirms that it has no intention to offer this service in any other locations or over any additional fibres in the Westminster area.

6. Justification for the exemption and impact on CPs

If the exemption is granted, the additional MNO's end users will continue to enjoy improved reception, better coverage, reduced dropped calls and better mobile data rates in the Westminster area. Additionally, BT would be in a position to make the MDA service available to other MNOs to enable them to improve service to their end users. Without the exemption, BT would look to terminate the second MNO's use of the MDA service which would potentially have an adverse effect on their end users. Overall, BT believes this exemption will improve end user experience for all MNOs while at the same time having no adverse impact on other CPs.

The MDA service is confined to a very small area, namely Westminster. It is based on de minimis technology, which has low environmental impact. Without access to it, the second MNO and any other MNOs may be compelled to deploy more macro base stations thereby adding to street clutter.

The remote street furniture sites in the Westminster area to which this exemption request relates are within the West, East & Central London Area (WECLA) as defined in Ofcom's Statement dated 28 March 2013 following its Business Connectivity Market Review¹¹. In the WECLA, Ofcom's analysis showed that there has been more infrastructure investment than in the rest of the UK and that the prospects for wholesale competition in fibre-based leased line product markets are more favourable there than elsewhere in the UK. Indeed, Ofcom found the WECLA as being competitive in the supply of certain high bandwidth products. Therefore, BT believes that the MDA service or similar fibre-based services could be competitively supplied in the London area.

The current Openreach products have been examined for their applicability to the MDA service. This examination has confirmed that there are specific developments which would be required to support managed radio communications services. No suitable replacements exist within the timescales required.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>

Annex 5

Proposed exemption

Exemption from the Undertakings given to BT by Ofcom pursuant to the Enterprise Act 2002

Exemption and agreement wording

WHEREAS:

(a) BT has offered and Ofcom have accepted Undertakings pursuant to the Enterprise Act 2002, which took effect on 22 September 2005 (the "Undertakings");

(b) Access Services as referred to in the Undertakings has been established as Openreach since 22 January 2006;

(c) On 19 July 2007 Ofcom granted specified exemptions and agreements which included (inter alia) an exemption in relation to the MDA service on the terms therein set out;

(d) BT has requested a further exemption in relation to the MDA service and having considered BT's proposals Ofcom has decided to agree to its exemption request.

NOW THEREFORE:

1. Exemption

1.1 Ofcom and BT hereby agree pursuant to section 5.46.1c) that section 5.46.1 shall not apply to any AS inputs into any MDA service provided at any Westminster site.

1.2 For the avoidance of doubt, this Agreement shall apply to any MDA service provided as at the date of this Agreement or subsequent to this Agreement at any Westminster site which exists as at the date of this Agreement.

2. Relationship to existing exemption

This Agreement supersedes the exemption agreement between BT and Ofcom dated 19 July 2007 in so far as it relates to the MDA service but in all other respects the exemptions and agreements in that exemption agreement dated 19 July 2007 shall continue in full force and effect.

3. Definitions and interpretation

3.1 In this Agreement:

"MDA service" means BT Wholesale's Microconnect Distributed Antenna service;

"Westminster site" means those sites listed in the Annex to this Agreement.

3.2 Words or expressions in this Agreement have the same meaning as in the Undertakings.

3.3 References in this Agreement to section numbers are references to section numbers in the Undertakings.

3.4 For the avoidance of doubt, where it is herein agreed that section 5.46.1 shall not apply:

3.4.1 information that would otherwise fall within the definition of Commercial Information, shall only do so if it relates to SMP Products; or, in the case of sections 6.10.3, 6.13 and 6.14, to products and services described in section 6.1.2;

3.4.2 the requirement to provide the particular product or service by means of EOI systems and processes will also not apply and existing processes and systems may continue to be used;

3.4.3 the people providing the exempted services whilst working for AS, will not be deemed to work for the Upstream Division(s) or any of the Downstream Divisions, and hence section 5.35 will not apply.

4. Effect

Unless otherwise stated, the provisions of this Agreement shall take effect immediately upon signature hereof on behalf of both parties.

Signed for and on behalf of British Telecommunications plc

Signature _____

Name _____

Position _____

Date _____

Signed for and on behalf of Ofcom

Signature _____

Name _____

Position _____

Date _____

ANNEX

Locations of MDA Sites in Westminster Area

Site	Structure	Height	Address	Postcode	Easting / Northing
1	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
2	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
3	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
4	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
5	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
6	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
7	[REDACTED]	8M	[REDACTED]		[REDACTED]
8	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
9	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
10	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
11	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
12	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
13	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
14	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
15	[REDACTED]	8M	[REDACTED]	SW1V 3[REDACTED]	[REDACTED]
16	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
17	[REDACTED]	8M	[REDACTED]	SW1V 4[REDACTED]	[REDACTED]
18	[REDACTED]	6M	[REDACTED]	SW1X 8[REDACTED]	[REDACTED]
19	[REDACTED]	6M	[REDACTED]	SW1X 8[REDACTED]	[REDACTED]
20	[REDACTED]	6M	[REDACTED]	SW1X 7[REDACTED]	[REDACTED]
21	[REDACTED]	6M	[REDACTED]	SW1X 8[REDACTED]	[REDACTED]
22	[REDACTED]	6M	[REDACTED]	SW1X 7[REDACTED]	[REDACTED]
23	[REDACTED]	6M	[REDACTED]	W2 2[REDACTED]	[REDACTED]
24	[REDACTED]	6M	[REDACTED]	W2 2[REDACTED]	[REDACTED]

25	[X]	8M	[X]	W2 2[X]	[X]
26	[X]	8M	[X]	W2 2[X]	[X]
27	[X]	8M	[X]	W2 2[X]	[X]
28	[X]	8M	[X]	W2 3[X]	[X]
29	[X]	8M	[X]	W2 2[X]	[X]
30	[X]	8M	[X]	W2 2[X]	[X]
31	[X]	8M	[X]	W2 2[X]	[X]
32	[X]	6M	[X]	W2 2[X]	[X]

Annex 6

Impact assessment

Introduction

- A6.1 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- A6.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, "Better policy-making: Ofcom's approach to impact assessment", which are on our website.

Equality Impact Assessment

- A6.3 We are separately required by statute to assess the potential impact of all our functions, policies, projects and practices on race, disability and gender equality. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- A6.4 It is not apparent to us that the proposals that we set out in this document are likely to have any particular impact on race, disability and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor are we envisaging any need to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because we anticipate that our regulatory intervention will not have a differential impact in relation to people of different gender or ethnicity, on consumers in Northern Ireland or on disabled consumers compared to consumers in general. Similarly, we do not consider that our proposals will have a particular impact on consumers in different parts of the United Kingdom or on consumers with low incomes.