

**BT'S REPRESENTATIONS IN RESPONSE TO NOTIFICATION OF
CONTRAVENTION OF SMP SERVICES CONDITIONS 13A.8 AND 8A.8 IN
RELATION TO THE PUBLICATION OF RECONCILIATION REPORTS AND
CORRESPONDING AUDIT OPINIONS, ISSUED UNDER SECTION 96A OF THE
COMMUNICATIONS ACT 2003 BY OFCOM TO BT ON 6 NOVEMBER 2015**

A. INTRODUCTION

1. On 6 November 2015, the Office of Communications (**Ofcom**) has given a Notification (**the Notification**) to British Telecommunications plc (**BT**) that it has determined that there are reasonable grounds for believing that BT has contravened, and continues to contravene, SMP conditions 13A.8(vi) set out at Annex 29 of the FAMR Statement, and 8A.8(vi) set out at Annex 2 of the WBA Statement, in that it has failed to publish reconciliation reports and corresponding audit opinions for the Financial Year 2014/15, in accordance with those conditions.¹

2. By its Notification, Ofcom indicated that:
 - a. BT has until 5.00pm on 20 November 2015 to make written representations to Ofcom about the matters set out in the Notification in relation to SMP conditions 13A.8 and 8A.8 (**the Representations**).²

 - b. The steps that Ofcom considers should be taken by BT to comply with the requirements of SMP conditions 13A.8(vi) and 8A.8(vi) and to remedy the consequences of the contravention are to publish the reconciliation reports and corresponding audit opinions forthwith, and in any event no later than 4 December 2015.³

 - c. Under condition 13A.8(v) set out at Annex 29 to the FAMR Statement and condition 8A.8(v) set out at Annex 2 of the WBA Statement, BT is required

¹ Paragraph 9 of the Notification.

² Paragraph 16 of the Notification.

³ Paragraph 13 of the Notification.

to deliver to Ofcom copies of the reconciliation report and corresponding audit opinion, in the form in which they are ultimately to be published, at least two weeks before they are required to be published.⁴

d. If the RFS is restated prior to 4 December 2015, Ofcom expects BT to publish the reconciliation report and corresponding audit opinion referring to the restated RFS.⁵

3. BT's Representations about the matters set out in the Notification in relation to SMP conditions 13A.8 and 8A.8, are set out below.

B. EXECUTIVE SUMMARY

4. SMP conditions 13A.8 and 8A.8 introduced a new requirement on BT to publish a reconciliation report and a corresponding audit opinion for Financial Year 2014/15, on 31 July 2015. Prior to Financial Year 2014/15, a reconciliation report was required to be published on 30 September 2014, and there was no requirement for a corresponding audit opinion.⁶ Financial Year 2014/15 is also the first financial year in which BT used its new regulatory accounting system, REFINE, to prepare the Regulatory Financial Statements (**RFS**).⁷

5. BT faced challenges in meeting the new requirement, and has taken various important steps (including increased internal and external resources), with senior management involvement, and in full cooperation and transparency with Ofcom, to resolve the issues and ensure that publication occurs as quickly as practicable.

6. The draft reconciliation report and corresponding audit opinion together with the draft revised RFS, were sent to (and received by) Ofcom on 13 November 2015,

⁴ Paragraph 14 of the Notification.

⁵ Paragraph 15 of the Notification.

⁶ On 3 October 2013, BT published 'Report requested by Ofcom describing certain changes to the Accounting Documents for the year ended 31 March 2013 and illustrating the resulting differences to the Current Cost Financial Statements had those changes not applied'. That report was published in response to an Ofcom's request and did not include errors.

⁷ Table 2: Timeline for implementing key changes to the reporting framework, p.114, Ofcom May 2014 RFR Statement.

thereby allowing Ofcom the required two weeks ahead of publication, and final publication by BT no later than 4 December 2015, in accordance with the deadline stipulated in the Notification (see 2.b-d above).

7. In Section C below, BT sets out the factual context of the delay in publication of the reconciliation report and corresponding audit opinion.
8. In Section D below, BT sets out additional mitigating factors.

C. SUBMISSIONS ON THE FACTUAL CONTEXT

9. SMP conditions 13A.8 and 8A.8 imposed on BT significant new obligations, both of which took effect for the first time in Financial Year 2014/15. In particular:
 - a. Financial Year 2014/15 is the first year BT was required to publish a reconciliation report (relating to changes and errors) and corresponding audit opinion on 31 July 2015, at the same time as the RFS. Prior to Financial Year 2014/15, BT was required to publish a reconciliation report (relating to changes and errors) on 30 September 2014.⁸ No requirement for a corresponding audit opinion existed prior to Financial Year 2014/15.
 - b. Financial Year 2014/15 is also the first financial year in which BT used its new regulatory accounting system, REFINE, to prepare the RFS.
10. The above two requirements, coming into effect in the same financial year resulted in a significant additional burden on BT. In addition, during the period Ofcom also consulted on Leased Lines Charge Controls (**LLCC**) and the Review of BT's cost attribution methodologies (**CAR**).⁹ Furthermore, additional reporting requirements were imposed on BT for the first time following the Directions for Regulatory Financial Reporting issued on 30 March 2015, including the

⁸ See footnote 6 above.

⁹ Ofcom published its first LLCC and CAR Consultations on 12 June 2015 for response by 7 August 2015, and its second LLCC and CAR Consultations on 13 November 2015 for response by 14 December 2015. As at the date of these Representations, Ofcom issued its 29th LLCC s.135 Notice, and numerous informal and formal information requests relating to CAR.

implementation of accounting on the Regulatory Asset Value basis, the reporting of EOI cost components, the production of non-confidential compliance statements, revisions to the list of reported network components and reporting obligations for VULA and electricity services. The Fixed Access Market Review statement of 26 June 2014 and the Wholesale Broadband Access Market Review statement of the same date, required extensive changes to the form and content, market definitions and cost allocation methodologies used in the RFS, to be implemented for the first time in 2015.

11. A new regulatory accounting system was introduced during the year. The scale of BT's regulatory reporting obligations, which we believe to be unmatched worldwide, necessitated a major IT development programme which, due to its complexity, was not fully implemented within the planned timetable. ✂

[REDACTED]

[REDACTED]

[REDACTED] We endeavoured to overcome these limitations by the use of additional internal and consultancy resource and the RFS was published on 31 July 2015, as required.

12. However, the nature of the system's limitations could not be fully mitigated by additional staff deployment and these delayed the preparation of the reconciliation report. This in turn resulted in a delay in publishing the corresponding audit opinion.

13. BT is making further significant investment to support our compliance obligation to publish the RFS and the reconciliation report by 31 July each year, including investment in people, process, systems and external advice.

14. On 7 August 2015, BT offered Ofcom to publish part of the reconciliation report (in relation to changes) ahead of publishing the second part of the reconciliation report (in relation to errors), to mitigate any potential consequences of a further

delay. However, Ofcom rejected that proposal. BT then informed Ofcom that it expected to publish the full reconciliation report in September.¹⁰

15. The publication of the reconciliation report and corresponding audit opinion was further delayed by the discovery of errors in the RFS, post publication on 31 July 2015. On 30 September 2015, Ofcom informally requested BT to restate the RFS. In light of that, BT informed Ofcom on 14 October 2015¹¹ of its decision to withhold publication of the reconciliation report and corresponding audit opinion, so that these can be issued in relation to the revised RFS. On 21 October 2015, BT (X [REDACTED]), PwC (X [REDACTED]) and Ofcom (X [REDACTED]) had a conference call to discuss BT's proposal for revising the RFS.¹² This allowed BT to focus resources on ensuring the publication of the revised RFS and the reconciliation report referring to the revised RFS, as quickly as practicable, rather than deploying its resources on the preparation of a reconciliation report which was to be replaced soon thereafter.

16. The draft reconciliation report and corresponding audit opinion together with the draft revised RFS, were sent to Ofcom on 13 November 2015, thereby allowing Ofcom the required two weeks ahead of publication, and final publication by BT no later than 4 December 2015. BT would need to continue to have good cooperation from Ofcom over the next few weeks, in order for us to be able to meet the deadline.

D. THE MITIGATING FACTORS

In Section D, BT describes the additional mitigating factors relating to the delay in publication of the reconciliation report and corresponding audit opinion.

¹⁰ Paragraph 12 of the Notification.

¹¹ Meeting on 14 October 2015 between Ofcom (X [REDACTED]) and BT (X [REDACTED]).

The corrected errors are noted in "Section 2 – Basis of Preparation", subsection 2.1.7 "Revision of the 2014/15 RFS including comparative information", of the "Revised Current Cost Financial Statements 2015, including Openreach Undertakings", sent to Ofcom on 13 November 2015.

The delay in publication

17. At present, BT expects that the reconciliation report and corresponding audit opinion publication will occur no later than 4 December 2015, the deadline stipulated in the Notification.

18. The draft reconciliation report and corresponding audit opinion, together with the draft revised RFS, were sent to Ofcom on 13 November 2015, thereby allowing Ofcom the required two weeks ahead of publication, and final publication by BT no later than 4 December 2015, as stipulated in the Notification.

The lack of resulting consumer harm or BT gains

19. The delay in publication of the reconciliation report and corresponding audit opinion has resulted in no consumer harm and no gains to BT.

20. No consumer harm has been caused by the contravention. In particular, no increased cost was incurred by consumers or other market participants. The relevant information consumers and market participants require to understand the impact of material changes and errors would be available to them by 4 December 2015. Moreover, the delay in publication has not prevented BT from responding to LLCC Notices under Section 135 of the Communications Act 2003 (**the Act**). The implementation of the charge control model, has also not been affected.




21. BT has made no gain (financial or otherwise) as a result of the delay in publication of the reconciliation report and corresponding audit opinion.

Appropriate, timely and effective steps taken by BT (including senior management)

22. The potential contravention of SMP conditions 13A.8(vi) and 8A.8(vi) became apparent late in the reporting process. The REFINE implementation was originally specified to allow the reconciliation report to be produced on time. However, issues arising during the REFINE development stage meant that the

reconciliation report could not in practice be produced simultaneously with the RFS in the required timeframe. A system development change request has been prepared for internal approval, to ensure that the technical limitation causing the delay will be removed, so that the report can be prepared in parallel with the RFS in financial year 2015/16.

23. BT has continued to take steps (with senior management's involvement, including Director Group Financial Control and the Operating Committee) to ensure publication by, or as quickly as practicable after, the 31 July deadline and, importantly, BT remained transparent about the difficulties encountered and steps being taken, and co-operated with Ofcom throughout the delay.

24. BT Group Regulatory Finance (**GRF**) team has approximately  people full time who have been working late evenings and weekends ahead of, and since, the 31 July 2015 deadline. 
, it has also brought in additional resource from other parts of BT and external support (including from Ernst & Young) to ensure publication as soon as practicable.

25. BT has been endeavouring to remedy the contravention since it became aware that the deadline of 31 July 2015 would not be met. In particular, the following steps were taken:

- a. Strengthening the team by adding a new Finance Director to the Regulatory Reporting team;
- b. An increase in external support in preparing the RFS and reconciliation report prior to 31 July;
- c. An increase in the external support to other projects led by the same team (e.g. responses to s.135 Notices) to free up more of the team's time to ensure publication; and
- d. The prioritisation of publishing the reconciliation report as the primary deliverable for all the relevant GRF team members and leads (including, the Finance Director).

Full transparency and co-operation with Ofcom

26. As BT's senior management became aware of the potential contravention, BT informed Ofcom of the possibility of BT not meeting the statutory deadline despite our significant efforts and steps. On 7 August 2015, BT offered to publish one of the two parts of the reconciliation report (i.e. relating to changes) to avoid further delay of that part. However, Ofcom rejected that proposal. We have kept Ofcom updated on progress throughout, as is evident from the Notification.¹³

Other mitigating factors

27. The delay in publication of the reconciliation report and corresponding audit opinion should be put in the context of the significant amount of additional work the same team had to carry out during Financial Year 2014/15 to date (in particular in relation to the publication of the RFS, development of REFINE, and the LLCC and CAR Consultations and Notices under Section 135 of the Act).

20 November 2015

¹³ Paragraphs 10-12 of the Notification.