



Waiver of BT's price notification requirements for charges in relation to the transfer and migration of legacy Ethernet services to new Ethernet services

Notification of a proposal to give consent to a shorter price notification period in a specific case

Consultation

Publication date: 23 March 2012

Closing Date for Responses: 30 March 2012

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Section 1

Request to waive a notice period

Introduction

- 1.1 This document sets out Ofcom's proposal to waive the price notification requirement in relation to the transfer and migration charges from BT's legacy Ethernet services (specifically Wholesale Extension Services (WES), Wholesale End-to-End Service (WEES) and Backhaul Extension Service (BES)) to BT's new Ethernet services (specifically Ethernet Access Direct (EAD)), which will allow BT (i.e. Openreach) to introduce this offer (as set out in Annex 6) in advance of the normal 90 days' written notice period so that it will become effective on 10 April 2012. We invite comments from interested parties on whether it would be appropriate for Ofcom to accept BT's request and grant the proposed consent set out in Annex 4 of this document. Interested parties have until Friday 30 March 2012 to provide their views.
- 1.2 Significant Market Power (SMP) services condition HH6 - Requirement to notify charges and terms and conditions ('Condition HH6') was imposed on BT by Ofcom's 2008 statement *Business Connectivity Market Review - Review of the retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments markets*¹ (the '2008 Business Connectivity Market Review'). In particular, Condition HH6.2 requires BT to give not less than 90 days' notice of any amendment to the charges, terms and conditions for alternative interface symmetric broadband origination services with a bandwidth capacity up to and including one gigabit per second (referred to in this document as "Ethernet services"), before any such amendment comes into effect.
- 1.3 In the remainder of this document we refer to Openreach instead of BT, as this is the operating division within BT responsible for supplying wholesale Ethernet services.
- 1.4 On 15 March 2012 Openreach requested that Ofcom consent to a waiver of the notification period referred to above to enable it to give effect to a price change earlier than 90 days. Openreach had previously published the document titled "ETH009/12 Technology migration from WES WEES BES to EAD launch pricing"² which sets out details of the offer and Access Charge Change Notice OR269 ('ACCN OR269' – attached as Annex 5).³
- 1.5 The document "ETH009/12 Technology migration from WES WEES BES to EAD launch pricing" sets out the details of Openreach's offer to its wholesale customers. The scheme consists of three elements. Firstly, a reduction in the connection charge ranging from 25% to 50% where customers chose to migrate their legacy Ethernet service to a new Ethernet service. Secondly, as part of migrating their service

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr08/summary/bcmr08.pdf>

² <http://www.openreach.co.uk/orpg/home/updates/briefings/ethernet-services-briefings/ethernet-services-briefings-articles/eth00912.do>

³ <http://www.openreach.co.uk/orpg/home/products/pricing/notificationDetails.do?data=ThQLPOgdo8c%2FpCQINXj7BV0AzMfOC1w%2B7d4ELMHNgDelwvVJorPpbmh0YRgwBhkkImbMkfEWW9Hg%0AS5od5xPk5mMrG2JXeytL6pFJZpTLM42nMTEF%2BKjWmexJt5mYlgMVVCBTHUk%2FAkGGPXhiPyrwQ%3D%3D>

customers would be required to upgrade the bandwidth of the service.⁴ Thirdly, Openreach would not raise early termination charges for cancellation of the legacy Ethernet service, should these be applicable.

1.6 Table 1 shows the products in scope of the offer and the charges that will apply.

Table 1 – WES/WEES/BES to EAD Transfer and Migration Charges

Feature	Note	Operative Date	Connection Charge Per Circuit £Exc VAT
From	To		
WES/WEES 10 Unmanaged	EAD 100	10/05/2012	£1463.00
WES/WEES 10 Unmanaged	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
WES/WEES 10 Managed	EAD 100	10/05/2012	£1463.00
WES/WEES 10 Managed	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
WES/WEES 10 LA	EAD 100 LA	10/05/2012	£1463.00
WES/WEES 10 LA	EAD 1000 LA (standard or 60 month minimum period)	10/05/2012	£1500.00
WES/WEES 10 LR	EAD 100	10/05/2012	£1463.00
WES/WEES 10 LR	EAD 100 LA	10/05/2012	£1463.00
WES/WEES 10 LR	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
WES/WEES 10 LR	EAD 1000 LA (standard or 60 month minimum period)	10/05/2012	£1500.00
WES/WEES 100	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
WES/WEES 100 Resilience Option 1	EAD 1000 Resilience Option 1 (Standard or 60 month minimum period)	10/05/2012	£3750.00
WES/WEES 100 LA	EAD 1000 LA (standard or 60 month minimum period)	10/05/2012	£1500.00
WES/WEES 155	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
WES/WEES 622	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
BES/BES Daisy Chain 10	EAD 100	10/05/2012	£1463.00
BES/BES Daisy Chain 10	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
BES/BES Daisy Chain 100	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
BES/BES Daisy Chain 155	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00
BES/BES Daisy Chain 622	EAD 1000 (standard or 60 month minimum period)	10/05/2012	£1998.00

⁴ For example, a WES10 (a 10Mbt/s service) to an EAD100 (a 100Mbt/s service).

- 1.7 In addition to the above, Openreach has advised us that the proposal to introduce the price reductions earlier was presented at the industry Ethernet Product and Commercial meeting held on 21 February 2012, which is open to any CP to attend. Openreach has advised that it has received support for the proposed price reductions for the transfer and migration of Ethernet services as set out in the document "ETH009/12 Technology migration from WES WEES BES to EAD launch pricing" and ACCN269 from two CPs.
- 1.8 Openreach has advised that it has received no objections from any CPs to its proposed offer.
- 1.9 Openreach considers that the terms of the price change combined with the bandwidth upgrade and waiver of the cancellation charges (where applicable for legacy services), require 90 days' written notice in accordance with SMP services condition HH6.2. However, Openreach wishes to bring forward the date on which the price reductions apply to 10 April 2012. Under SMP condition HH6.1, Ofcom may consent in writing to Openreach publishing charges, terms and conditions in a manner different to that provided for in condition HH6.2 where it considers it appropriate to do so. This would include a consent to waive the requirement to provide 90 days' written notice.

Openreach wishes to bring forward the price reduction

- 1.10 Openreach has explained that it wishes to provide an incentive to CPs to migrate from its legacy Ethernet services that were withdrawn from new supply on 1 June 2011 and will no longer be supported after June 2015. Openreach is also keen to bring the benefits of this price reduction to its customers as early as possible given the current economic climate.

Ofcom's view

- 1.11 On 8 December 2008, we published the *2008 Business Connectivity Market Review* ("the BCMR Statement") in which we set out the market definitions, market power findings and remedies in the alternative interface symmetric broadband origination market. We set out in that statement our finding that Openreach retains SMP in the market for alternative interface symmetric broadband origination with a bandwidth capacity up to and including one gigabit per second and set a number of SMP services conditions on Openreach, including Condition HH6.2. Condition HH6.2 requires Openreach to give not less than 90 days' written notice for any amendment to charges, terms and conditions for Ethernet services before any such amendment comes into effect.
- 1.12 As set out in the BCMR Statement⁵, the purpose of the notification requirement contained in HH6.2 is to support the non-discrimination obligation so as to ensure that BT does not use non-price discrimination to restrict competition in downstream markets. The 90 day period contained in HH6.2 is designed to ensure that customers of Ethernet services supplied by BT are able to reflect price changes in respect of their own products at the same time as BT, thus ensuring that BT's downstream operations are not able to obtain a competitive advantage by implementing such changes earlier than its competitors.
- 1.13 However, we consider in this case that the shortening of the notice period from 90 to 60 days is likely to bring forward any benefits to wholesale purchasers of legacy

⁵ at paragraph 8.276

Ethernet services who wish to migrate to new Ethernet services, as they will benefit earlier from the price reduction. We would expect those benefits to be passed on to end-users of Ethernet services and for the proposal to result in increased uptake of new products supplied by BT.

- 1.14 Ofcom's experience in respect of the grant of previous requests to waive the requirement to provide 90 days notice does not show that the grant of such a consent is likely to result in a distortion of competition in any affected market. We do not therefore expect to observe any competitive distortion in granting consent in this case. Furthermore, both BT downstream and CPs have been notified about the details of the offer at the same time and we believe that most CPs will be able to respond to this offer within 60 days. Consequently, we consider it unlikely that any party will gain a competitive advantage by the granting of this consent.
- 1.15 We therefore consider that such a measure would be consistent with our duties under section 3 of the Communications Act 2003 ("the Act"). In particular, the decision to grant a waiver of the 90 day period would be consistent with the duty to further the interests of consumers in communications markets and the requirement to have regard to:
- the desirability of encouraging investment and innovation in relevant markets; and
 - the interests of consumers in respect of choice, price, quality of service and value for money.
- 1.16 We therefore consider that we should proceed to grant consent in this case and enable Openreach to introduce the offer earlier than it would otherwise be able to do.

Statutory requirements to be met before giving a consent

- 1.17 Section 49 of the Act applies where Ofcom proposes to grant a consent which affects the operation of a condition made under section 45 of the Act (including SMP services conditions). In order to give such consent, Ofcom must first satisfy itself that the criteria set out in section 49(2) are satisfied, namely that the giving of a consent:
- i) is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - ii) is not such as to discriminate unduly against particular persons or against a particular description of persons;
 - iii) is proportionate to what it is intended to achieve; and
 - iv) is transparent, in relation to what it is intended to achieve.
- 1.18 Openreach submitted a letter to Ofcom on 15 March 2012 in which Openreach's views on the legal and regulatory basis for the request are set out. The letter can be found in Annex 6.
- 1.19 We consider that the criteria set out in section 49(2) of the Act are satisfied for the following reasons and therefore consider that we should grant the consent to a shorter notice period in this case.

The waiver is objectively justifiable.

- 1.20 Openreach believes that the price reduction combined with the bandwidth upgrade will be beneficial to wholesale purchasers of Ethernet services and that it is also likely to be of benefit to end users. Openreach has stated that the offer is constructed in such a way as to be of benefit to all of its CP customers regardless of their size. Openreach explained that it would like to bring the benefits of the scheme to its customers at the earliest possible opportunity, and considers that a 60 day notification period would enable CPs to benefit earlier from the price reductions.
- 1.21 We consider that granting a consent to a shorter notice period in this case is objectively justifiable since this would enable any benefits, both in terms of price and improved service quality, to be experienced earlier by CPs and also potentially by end-users to the extent that the reduction in charges is passed on to them.

The waiver is not unduly discriminatory

- 1.22 We do not consider that the granting of a consent to a shorter notice period in this case would discriminate unduly against particular persons or against a particular description of persons. Openreach consider that this scheme meets the non-discriminatory SMP condition for its Ethernet services in that:
- It is available to all CPs purchasing Ethernet services.
 - It applies equally and objectively to all CPs – When ordering, CPs simply need to link their order to cease a legacy Ethernet service with their order for provision of a new Ethernet service, to take advantage of the price reduction.
 - It is intended to be beneficial to all CPs, irrespective of size.
- 1.23 Ofcom notes that SMP condition HH2.1 imposes obligations on Openreach not to unduly discriminate in the provision of Ethernet services, and that undue discrimination would exist if Openreach unfairly favoured to a material extent BT's downstream activities so as to place other CPs at a competitive disadvantage. Given that the early introduction of the price reductions will apply to all CPs and that they were advised to CPs and BT downstream at the same time, we do not consider that the grant of consent to waive the 90 day notice period in this case will either favour or disadvantage any CP which purchases Ethernet services from BT. As a result, we do not therefore consider that the grant of consent in this case would be unduly discriminatory against any party.

The waiver is proportionate

- 1.24 Openreach considers that granting the waiver request would be proportionate. Requiring Openreach to meet the requirements of SMP services condition H6.2 in this particular case would delay the introduction of the price reduction and therefore delay any financial benefit to participating CPs. This would, in turn, delay any resulting price benefits to end-users. Openreach believe that the granting of consent in this case will achieve Ofcom's aim of ensuring that price reductions may be passed on to consumers at the earliest opportunity and is considered to be proportionate in this case.
- 1.25 We believe that the shortening of the notice period is proportionate in this case. A reduction in the notice period is the least intrusive means of ensuring that CPs and end-users of Ethernet products achieve the maximum benefits from price reductions

and service innovations and is therefore a proportionate means of achieving those objectives. Further, we do not consider that the reduction in the notice period will cause any material disadvantage to downstream CPs as they have been informed of the intended price changes since 9 February 2012 which should give them sufficient time to prepare their response.

- 1.26 Whilst there may be a small number of CPs that may be unable to amend pricing within such a short period of time, we consider that any disadvantage that would accrue to a CP who is unable to take advantage of the offer within 60 days would be outweighed by the benefits resulting from other CPs being able to take account of the reductions in price and the ability to migrate to newer products at a reduced price more quickly than would otherwise be the case.

The consent to waive the 90 day notice period is transparent in relation to what it is intended to achieve

- 1.27 This consultation sets out why we are intending to grant a consent in this case and the relevant documents pertaining to Openreach's proposal are annexed to this document. We therefore consider that the proposed consent to waive the 90 day notification requirement is transparent in what it is intended to achieve.
- 1.28 Openreach has advised that it has received no objections from any CPs to its proposed offer.
- 1.29 On the basis that this price change is between 25% to 50% we believe that it may have a significant impact on the market. Given that it is Ofcoms custom to consult on such matters we are providing stakeholders with an opportunity to express their views.

Do you believe that this offer will have a significant impact on the market? If so, please explain why.

Consultation details and Notification of a proposal to give consent

- 1.30 Section 49A of the Act obliges Ofcom to publish a notification whenever it proposes to give a consent for the purposes of a SMP condition set under section 45 of the Act where that proposal would, in Ofcom's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which Ofcom has functions under Part 2 Chapter 1 of the Act. In this case, the proposals put forward by Openreach would result in price decreases of between 25% and 50% for the provision of certain Ethernet services and therefore has the potential to have a significant impact on the market. As a result, Ofcom considers it appropriate to issue a notification in accordance with section 49A.
- 1.31 Section 49A(3) of the Act provides that such notification must :
- i) state that there is a proposal to give, modify or withdraw the consent;
 - ii) identify who the responsible person is;
 - iii) set out the direction, approval or consent to which the proposal relates;
 - iv) set out the effect of the direction, approval or consent or of its proposed modification or withdrawal;

- v) give reasons for the making of the proposal; and
 - vi) specify the period within which representations may be made about the proposal.
- 1.32 Section 49A(4) of the Act provides that the period within which representations may be made must be not less than one month after the date of the publication of the notification. However, section 49A(5) provides that where Ofcom are satisfied that there are exceptional circumstances, a shorter period may be specified for making representations, provided that period is reasonable in the circumstances.
- 1.33 Without prejudice to our approach in future cases, we have decided in this case to proceed in accordance with the procedure adopted in previous price notification waiver proposals. That approach is set out in Ofcom's letter to industry of 11 October 2004, which provides as follows:
- “In the circumstances of a proposed consent to a waiver of a 28 day notice period, it would not be appropriate to consult on the proposition for 1 month, and unhelpful even in the context of a 90 day notice period. In such cases Ofcom will take into consideration its duties under Sections 3 and 4 of the Communications Act, in particular the promotion of competition, in deciding whether a case is justified. Ofcom also notes that proposals to implement a price change with shorter than usual notice may not be likely to affect trade between member states. The period for consultation may vary according to the significance of complexity of the proposed price change, but in most of these particular cases, Ofcom will consult for 5 working days only, unless there are particular reasons for allowing a longer period. Ofcom will endeavour to adopt a very concise and standardised format for such consultations, to minimise the time which it will take for interested parties to consider the proposition. Ofcom will also aim to consider responses and publish its consent, or a refusal, within a few days of the consultation period ending unless, the nature of the responses received requires more extended analysis.”
- 1.34 Ofcom is seeking comments on its proposal to grant a consent in this particular case by 30 March 2012. We note that this gives little time for respondents to consider the proposal but in this case we consider that the circumstances justify a shorter consultation period of five working days.
- 1.35 Section 49A(7) provides that where a proposal is not of “EU significance”, Ofcom can, following the notification period, give immediate effect to a proposal, with any modifications as appear to be appropriate. If a proposal is of “EU significance” it is necessary, following the notification period but before the proposal is implemented, to provide a copy to the European Commission, BEREC and other Member States’ regulatory authorities to obtain their views. Under section 150A of the Act a proposal will be of EU significance if, in Ofcom’s opinion, it would affect trade between Member States. As set out in our letter of October 2004, we do not consider that the proposal to shorten the notice period for a price change would affect trade between Member States and therefore, not of EU significance requiring notification to the European Commission, BEREC or the other NRAs prior to implementation.
- 1.36 Ofcom does not consider that a waiver of the price notification period from 90 days to 60 days would affect trade between Member States since its effect would be limited

to a national market for a limited period of time. In those circumstances, Ofcom does not consider that the proposal is one which is of EU significance.

- 1.37 In light of the foregoing considerations, Ofcom considers it is justified and appropriate to reduce the consultation period in this case. The effect of the proposed consent and Ofcom's reasons for making this proposal are as set out herein.

Do respondents agree that Ofcom should proceed to waiver the notification period in this particular case? If not, please explain why.

- 1.38 A copy of the proposed Consent is attached at Annex 4. Respondents have 5 working days to provide comments in accordance with Annex 1.

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 30 March 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form 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 keith.hatfield@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.
- Keith Hatfield
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- 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 direct answers 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 Keith Hatfield on 020 7981 3417.

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/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom proposes to proceed in the manner set out in this document.
- 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/static/subscribe/select_list.htm

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 www.ofcom.org.uk/consult/.
- 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

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

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

Draft Consent

[Proposed] Consent pursuant to SMP services condition HH6.2 imposed on BT as a result of the analysis of wholesale alternative interface symmetric broadband origination market in which BT has been found to have significant market power

BACKGROUND:

1. As a result of a market analysis carried out by OFCOM, OFCOM issued a Statement on 8 December 2008 in accordance with section 79 of the Act that BT has significant market power in the market for wholesale alternative interface symmetric broadband origination services up to and including one gigabit per second, in the UK except the Hull area and imposed certain SMP services conditions on BT, including Condition HH6.2;
2. this Consent concerns matters to which Condition HH6.2 relates;
3. for the reasons set out in the Explanatory Statement accompanying this Consent, OFCOM is satisfied that, in accordance with Section 49(2) of the Act, this Consent is:
 - (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what it is intended to achieve; and
 - (d) in relation to what it is intended to achieve, transparent.
4. for the reasons set out in the Explanatory Statement accompanying this Consent, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
5. on 23 March 2012, OFCOM published a notification of the proposed Consent in accordance with section 49A of the Act;
6. OFCOM has considered every representation about the proposed Consent duly made to it; and

[PROPOSAL]

NOW, therefore, in accordance with section 49 of the Act and pursuant to Condition HH6.2, OFCOM gives the following Consent:

7. For the purposes of complying with its obligations under Condition HH6.2, OFCOM consents that BT shall not be obliged to give 90 days' notice in respect of the proposed price changes set out in Access Charge Change Notice OR269 issued on 9 February 2012 which relates to the transfer migration charge for Ethernet services.

8. For the purposes of interpreting this Consent, the following definitions shall apply:
 - (a) **"Act"** means the Communications Act 2003
 - (b) **"BT"** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006; and
 - (c) **"OFCOM"** means the Office of Communications.
3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above.
4. For the purpose of interpreting this Consent:
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.
5. This Consent shall take effect on the day it is published.

Marina Gibbs
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

23 March 2012

Annex 5

Access Charge Change Notice OR 269

[Skip to page contents](#)

Openreach ACCN:OR269

Change:
New
Effective Date(s):
10/05/2012
Notification Date:
09/02/2012



OPENREACH ACCESS CHARGE CHANGE NOTICE

ACCN NUMBER: OR269
DESCRIPTION: WES/WES/BES to EAD Transfer Migration Changes
EFFECTIVE DATE(S): 10/05/2012
SUBMITTED TO OROOM ON: 09/02/2012

Price list

Product line:
Ethernet services
Level one product:
Connectivity Services
Level two product:
Ethernet Access Direct (EAD) including EAD Enable
Version:
N/A



Ethernet Access Direct (EAD) including EAD Enable

For terms and conditions applicable to these charges payable to BT, please see the Conditions section of the Connectivity Services Contract.

EAD Details

Feature	Operative Date	Until Date	Connection Charge (Note 10) £Exc. Vat	Annual Rental (Note 1,2 & 12) £Exc. Vat
(Prices are per circuit - Note 2)				
EAD 10	14/07/2009	18/01/2010	1,930.00	4,400.00
EAD 10	19/01/2010	08/04/2010	1,560.00	3,332.64
EAD 10	09/04/2010	29/09/2010	1,404.00	3,332.64
EAD 10	30/09/2010		1,560.00	3,332.64
EAD 100	14/07/2009	18/01/2010	1,930.00	4,400.00
EAD 100	19/01/2010	08/04/2010	1,930.00	4,044.84
EAD 100	09/04/2010	29/09/2010	1,755.00	4,044.84
EAD 100	30/09/2010	30/09/2011	1,930.00	4,044.84
EAD 100	01/10/2011		1,930.00	3,628.80
EAD 1000	22/04/2009		3,995.00	9,300.00
EAD 1000 (60 month minimum period)	15/12/2010		3,995.00	6,300.00
EAD 1000 Extended Reach	22/04/2009		5,000.00	13,000.00
EAD 1000 Extended Reach (60 month minimum period)	15/12/2010		5,000.00	8,621.05
EAD reach distance 0-25 Kilometres				
EAD 1000 Extended Reach reach distance 0-25 Kilometres				

EAD Modify - Upgrade Charges

Feature	Note	Operative Date	Until Date	Connection Charge Per Circuit £Exc. Vat
EAD Access				

Consultation on consent to waive BT's price notification requirements for Ethernet services transfer migration prices

10 to 100	23/09/2010	45.00
*10 to 1000	23/09/2010	30/03/2011 2,255.00
*10 to 1000 or 1000 (60 month minimum period)	31/03/2011	2,255.00
*100 to 1000	23/09/2010	30/03/2011 2,255.00
*100 to 1000 or 1000 (60 month minimum period)	31/03/2011	2,255.00
1000 to 1000 (60 month minimum period)	Note 14 31/03/2011	45.00
EAD Local Access Variants		
10 LA to 100 LA	23/09/2010	45.00
*10 LA to 1000 LA	23/09/2010	30/03/2011 760.00
*10 LA to 1000 LA or 1000 LA (60 month minimum period)	31/03/2011	760.00
*100 LA to 1000 LA	23/09/2010	30/03/2011 760.00
*100 LA to 1000 LA or 1000 LA (60 month minimum period)	31/03/2011	760.00
1000 LA to 1000 LA (60 month minimum period)	Note 15 31/03/2011	45.00

Note: ¹ Price includes a £210 separate charge for engineer visit per circuit.

EAD Enable RO2 Resilience/Main Link Charge

Feature	Operative Date	Connection (Note 10) £Excl Vat	Annual Rental (Note 1 & 2) £Excl Vat
Generic Resilience Facility fee per path	27/10/2011	n/a	800.00
RO2 Resilience Main link per metre or part thereof	27/10/2011	n/a	0.42

EAD Enable RO1 Resilience/Main Link Charge

Feature	Operative Date	Connection (Note 10) £Excl Vat	Annual Rental (Note 1 & 2) £Excl Vat
Generic Resilience Facility fee per path	27/10/2011	n/a	800.00
RO1 Resilience Main link per metre or part thereof	27/10/2011	n/a	0.83

Cancellation Charges : all bandwidths, except 1Gbit/s (60 month minimum period) - before delivery (Note 4)

Feature	Operative Date	Until Date	Working Days before CDD or on completion of following activities	% of Connection Charge
	09/04/2009	30/09/2011	CDD minus 2 days	95
	09/04/2009	30/09/2011	CDD minus 10 days to CDD minus 3 days	75
	09/04/2009	30/09/2011	KCB to CDD minus 11 days*	5
	01/10/2011		KCB*	100

* Note % charge starts 5 working days after the KCB update is issued on the order.

Note: Cancellation charges for EAD 1Gbit/s (60 month minimum period) orders placed from 19 January 2012 as per the table above.

Note: Title of table to be updated on 19/01/2012 to reflect the change.

Cancellation Charges : 1Gbit/s (60 month minimum period) - before delivery (Note 4)

Feature	Operative Date	Until Date	Working days before Contractual Delivery Date	% of Connection charge
	15/12/2010	30/09/2011	2 or less	90 %
	01/10/2011	18/01/2012	2 or less	100 %
	15/12/2010	19/03/2011	3 - 19	75 %
	20/03/2011	18/01/2012	3 - 20	75 %
	15/12/2010	19/03/2011	20 - 22	60 %
	20/03/2011	18/01/2012	21 - 29	60 %
	15/12/2010	19/03/2011	23 - 25	30 %
	20/03/2011	18/01/2012	30 - 38	30 %
	15/12/2010	19/03/2011	26 or more	0 %
	20/03/2011	18/01/2012	39 or more	0 %

Note: Cancellation charges for EAD 1Gbit/s (60 month minimum period) orders placed up to and including 18 January 2012 as per the table above.

Termination Charges : 1Gbps (60 month minimum period) - after delivery (Note 11)

Feature	Operative Date	Years after Contractual Delivery Date	% of Standard Annual Rental Charge
	15/12/2010	<1	100
	15/12/2010	<2	90
	15/12/2010	<3	80
	15/12/2010	<4	70
	15/12/2010	<5	60

EAD Modify Circuit Shift Charges

Feature	Charge £Exc. Vat
Shift - Internal. Internal Shift of an EAD local end within the existing building.	Openreach Time Related Charges (TRC) will apply and can be found at link below. (Notes 6, 7 and 13)
Shift - External Re-site. Re-siting of an EAD local end in another building served by the same local serving exchange	Connection charge for one Local End, as applicable. (Notes 6, 7 and 13)
Shift - External Re-arrange. Re-arranging an EAD local end in another building served by a different local serving exchange	Connection charge for one Local End & Re-calculation of new revised Main Link rental charges. (Notes 6, 7 and 13). Also check to ensure main link distance is not beyond the maximum.

WES/WTEES/BES to EAD Transfer Migration Charges

From	To	Note	Operative Date	Connection charge per circuit £Exc. Vat
WES/WTEES 10 Unmanaged	EAD 100		10/03/2012	£1463.00
WES/WTEES 10 Unmanaged	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
WES/WTEES 10 Managed	EAD 100		10/03/2012	£1463.00
WES/WTEES 10 Managed	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
WES/WTEES 10 LA	EAD 100 LA		10/03/2012	£1463.00
WES/WTEES 10 LA	EAD 1000 LA (standard or 60 month minimum period)		10/03/2012	£1300.00
WES/WTEES 10 LR	EAD 100		10/03/2012	£1463.00
WES/WTEES 10 LR	EAD 100 LA		10/03/2012	£1463.00
WES/WTEES 10 LR	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
WES/WTEES 10 LR	EAD 1000 LA (standard or 60 month minimum period)		10/03/2012	£1300.00
WES/WTEES 100	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
WES/WTEES 100 Resilience Option 1	EAD 1000 Resilient Option 1 (Standard or 60 month minimum period)		10/03/2012	£3730.00
WES/WTEES 100 LA	EAD 1000 LA (standard or 60 month minimum period)		10/03/2012	£1300.00
WES/WTEES 155	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
WES/WTEES 622	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
BES/BES Daisy Chain 10	EAD 100		10/03/2012	£1463.00
BES/BES Daisy Chain 10	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
BES/BES Daisy Chain 100	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
BES/BES Daisy Chain 155	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00
BES/BES Daisy Chain 622	EAD 1000 (standard or 60 month minimum period)		10/03/2012	£1998.00

Note:

Note: Any RO2 upgrades as per standard price above

EAD Local Access 10Mbps circuit and above

Feature	Operative Date	Until Date	Connection (Note 10) £Exc. Vat	Annual Rental (Note 1, 2 & 13) £Exc. Vat
(Prices are per circuit & #130; Note 2)				
EAD Local Access 10	22/04/2009	18/01/2010	1,930.00	2,300.00
EAD Local Access 10	19/01/2010	03/03/2010	1,930.00	2,125.00
EAD Local Access 10	04/03/2010	08/04/2010	1,360.00	2,125.00
EAD Local Access 10	09/04/2010	29/09/2010	1,404.00	2,125.00
EAD Local Access 10	30/09/2010		1,360.00	2,125.00

EAD Local Access 100	22/04/2009	18/01/2010	1,930.00	2,300.00
EAD Local Access 100	19/01/2010	08/04/2010	1,930.00	2,375.00
EAD Local Access 100	09/04/2010	29/09/2010	1,755.00	2,375.00
EAD Local Access 100	30/09/2010	30/09/2011	1,930.00	2,375.00
EAD Local Access 100	01/10/2011		1,930.00	2,131.20
EAD Local Access 1000	22/04/2009		2,300.00	4,800.00
EAD Local Access 1000 (60 month minimum period)	15/12/2010		2,300.00	3,600.00

EAD Main Link Charge				
Feature	Operative Date	Until Date	Annual Rental (Note 1 & 2) £Exc Vat	
(Prices are per metre or part thereof £130; Note 2)				
Main link per metre or part thereof	22/04/2009	08/04/2010	0.40	
Main link per metre or part thereof	09/04/2010	30/09/2011	0.36	
Main link per metre or part thereof	01/10/2011		0.37	

EAD Resilience Option 1 (Hot Standby)				
Feature	Operative Date	Until Date	Connection (Note 10) £Exc Vat	Annual Rental (Note 1, 2 & 12) £Exc Vat
(Prices are per circuit £4130; Note 2)				
EAD 10 Local Access Resilient Option 1	22/04/2009	18/01/2010	3,000.00	6,800.00
EAD 10 Local Access Resilient Option 1	19/01/2010	08/03/2010	3,000.00	5,780.00
EAD 10 Local Access Resilient Option 1	04/03/2010	08/04/2010	2,400.00	5,780.00
EAD 10 Local Access Resilient Option 1	09/04/2010	29/09/2010	2,160.00	5,392.64
EAD 10 Local Access Resilient Option 1	30/09/2010		2,400.00	5,392.64
EAD 100 Local Access Resilient Option 1	22/04/2009	18/01/2010	3,000.00	6,800.00
EAD 100 Local Access Resilient Option 1	19/01/2010	08/04/2010	3,000.00	6,460.00
EAD 100 Local Access Resilient Option 1	09/04/2010	29/09/2010	2,700.00	6,324.00
EAD 100 Local Access Resilient Option 1	30/09/2010	30/09/2011	3,000.00	6,324.00
EAD 100 Local Access Resilient Option 1	01/10/2011		3,000.00	5,672.40
EAD 1000 Local Access Resilient Option 1	22/04/2009		7,300.00	14,000.00
EAD 1000 Local Access Resilient Option 1 (60 month minimum period)	15/12/2010		7,300.00	10,300.00
EAD 10 Resilient Option 1	14/07/2009	18/01/2010	3,000.00	6,800.00
EAD 10 Resilient Option 1	19/01/2010	08/03/2010	3,000.00	5,392.64
EAD 10 Resilient Option 1	04/03/2010	08/04/2010	2,400.00	5,392.64
EAD 10 Resilient Option 1	09/04/2010	29/09/2010	2,160.00	5,392.64
EAD 10 Resilient Option 1	30/09/2010		2,400.00	5,392.64
EAD 100 Resilient Option 1	14/07/2009	18/01/2010	3,000.00	6,800.00
EAD 100 Resilient Option 1	19/01/2010	08/04/2010	3,000.00	6,324.84
EAD 100 Resilient Option 1	09/04/2010	29/09/2010	2,700.00	6,324.84
EAD 100 Resilient Option 1	30/09/2010	30/09/2011	3,000.00	6,324.84
EAD 100 Resilient Option 1	01/10/2011		3,000.00	5,672.40
EAD 1000 Resilient Option 1	22/04/2009		7,300.00	14,000.00
EAD 1000 Resilient Option 1 (60 month minimum period)	15/12/2010		7,300.00	9,284.21
EAD 1000 Extended Reach Resilient Option 1	22/04/2009		9,300.00	19,000.00
EAD 1000 Extended Reach Resilient Option 1 (60 month minimum period)	15/12/2010		9,300.00	12,600.00

RO2 Resilience Main Link Charge				
Feature	Operative Date	Until Date	Connection (Note 10) £Exc Vat	Annual Rental (Note 1 & 2) £Exc Vat
Generic Resilience Facility fee per path	22/04/2009		n/a	800.00
RO2 Main link per metre or part thereof	22/04/2009	08/04/2010	n/a	0.45
RO2 Main link per metre or part thereof	09/04/2010	30/09/2011	n/a	0.41
RO2 Main link per metre or part thereof	01/10/2011		n/a	0.42
RO2 Resilience main link per metre or part thereof	22/04/2009	08/04/2010	n/a	0.45

Consultation on consent to waive BT's price notification requirements for Ethernet services transfer migration prices

RO2 Resilience main link per metre or part thereof	09/04/2010	30/09/2011	n/a	0.41
RO2 Resilience main link per metre or part thereof	01/10/2011		n/a	0.42

RO2 charges – Customers will be charged annual rental & connection charges for both the standard circuit and the resilience circuit.

RO1 Resilience Main Link Charge

Feature	Operative Date	Until Date	Connection (Note 10) £Exc. Vat	Annual Rental (Note 1 & 2) £Exc. Vat
Generic Resilience Facility fee per path	22/04/2009		n/a	800.00
RO1 Resilience main link per metre or part thereof	22/04/2009	08/04/2010	n/a	0.90
RO1 Resilience main link per metre or part thereof	09/04/2010	30/09/2011	n/a	0.81
RO1 Resilience main link per metre or part thereof	01/10/2011		n/a	0.83

EAD Enable (see notes 16, 17, 18, 19 & 20)

Feature	Operative Date	Connection (Note 10) £Exc. Vat	Annual Rental (Note 1, 2 & 12) £Exc. Vat
EAD Enable 10	27/10/2011	1,560.00	3,687.90
EAD Enable 10 Resilient Option 1	27/10/2011	2,400.00	5,981.90
EAD Enable 10 Local Access	27/10/2011	1,560.00	2,337.30
EAD Enable 10 Local Access Resilient Option 1	27/10/2011	2,400.00	5,981.90
EAD Enable 100	27/10/2011	1,950.00	4,354.56
EAD Enable 100 Resilient Option 1	27/10/2011	3,000.00	6,806.88
EAD Enable 100 Local Access	27/10/2011	1,950.00	2,537.44
EAD Enable 100 Local Access Resilient Option 1	27/10/2011	3,000.00	6,806.88
EAD Enable 1000	27/10/2011	3,995.00	10,450.00
EAD Enable 1000 Resilient Option 1	27/10/2011	7,300.00	15,400.00
EAD Enable 1000 Local Access	27/10/2011	2,300.00	5,280.00
EAD Enable 1000 Local Access Resilient Option 1	27/10/2011	7,300.00	15,400.00
EAD Enable 1000 Extended Reach	27/10/2011	5,000.00	14,300.00
EAD Enable 1000 Extended Reach Resilient Option 1	27/10/2011	9,300.00	20,900.00
EAD Enable 1000 (60 month term)	27/10/2011	3,995.00	6,990.00
EAD Enable 1000 Resilient Option 1 (60 month term)	27/10/2011	7,300.00	10,212.63
EAD Enable 1000 Local Access Resilient Option 1 (60 month term)	27/10/2011	7,300.00	11,530.00
EAD Enable 1000 Local Access (60 month term)	27/10/2011	2,300.00	3,960.00
EAD Enable 1000 Extended Reach (60 month term)	27/10/2011	5,000.00	9,483.16
EAD Enable 1000 Extended Reach Resilient Option 1 (60 month term)	27/10/2011	9,300.00	13,860.00

EAD radial distance 0-25 Kilometres. EAD 1000 Extended Reach radial distance 0-35 Kilometres

EAD Enable Main Link Charge

Feature	Operative Date	Annual Rental (Note 1 & 2) £Exc. Vat
(Prices are per metre or part thereof - note 2)		
Main link per metre or part thereof	27/10/2011	0.37

Other Charges

Time Related Charges (Notes)

Time Related Charge (applicable to Out of Hours Visits, Abortive Visits, Equipment Testing, etc.) are detailed in the Service Products section of the pricelist that can be found at: <http://www.openreach.co.uk/ora/pricelist/index.aspx#products.do>

Excess Construction Charges (Note 7)

Excess Construction Charges are detailed in the Service Products section of the pricelist that can be found at: <http://www.openreach.co.uk/ora/pricelist/index.aspx#products.do>

Note:

1) These prices will be applied in accordance with the 'Conditions' section of the Connectivity Services Contract.

- 2) A Site is assumed to be served by suitable fibre from the local exchange. All Orders taken for the provision of Ethernet Access Direct are subject to feasibility checks to ensure that service can be technically provided. BT reserves the right to charge Excess Construction Charges where necessary including in situations where suitable fibre from the local exchange does not exist or is deficient.
- 3) Rental is payable in advance. Quarterly billing of this item is offered as standard. Monthly billing is also available upon request. A 28 day out of period is applicable prior to the end of the standard quarterly billing cycle.
- 4) All days will be calculated as Working Days, i.e. ignoring weekends and public holidays. The cancellation date must be given in writing by the Communications Provider. If BT fails to meet the Contractual Delivery Date and the Communications Provider cancels the order, a charge will not be raised. The full cost of any additional work, e.g. duct, which has been specifically incurred for the order by the time of the cancellation, will be recovered in addition to the cancellation charge. Should the Communications Provider request amendments to the Contractual Delivery Date and subsequently cancel the order, the cancellation charge will be calculated on the days between the dates that the Communications Provider notified BT of the first amendment and the original Contractual Delivery Date.
- 5) All services include the one level set out in the Service Level Agreement within tariff.
- 6) Additional charges may be raised where non standard work is required. For work done by Openreach engineers not included in standard price see "Time Related Charge" in the Service Products section of the price list for details:
<http://www.openreach.co.uk/regulating/serviceproducts.do>
- 7) Excess Construction Charges will be raised in addition to normal Connection charges where additional infrastructure is provided to give new or extended service at a Site / Communications Provider's Site or other requested location where BT would otherwise not choose to extend its network on the basis of normal commercial criteria. Excess charges apply to situations including provision to a new location within the Site / Communications Provider's Site but does not apply to situations where existing capacity needs to be increased. There is no within tariff allowance - the full value of any applicable charge is payable. Excess Construction Charges are detailed in the Service Products section of the price list that can be found at:
<http://www.openreach.co.uk/regulating/serviceproducts.do>
- 8) For Ethernet Access Direct, Resilience is available on all bandwidths.
- 9) If a Communications Provider requires a non resilient circuit to be upgraded to Resilience Option 2 that requires routing re-work, there is a cease and re-provision charge to be requested.
- 10) The price applicable to Connection will be the price quoted as part of the Order process which will be that applicable at the date of Order placement. When price change the new price will only apply to new Orders received subsequent to the date that a price change applies from.
- 11) If a Communications Provider ceases an EAD 1Gb circuit with a 60 month Minimum Period within year 1 then the CP will pay a termination charge which shall be the 100% of the annual standard rental charge (not the rental charge for the 1Gb EAD 60 month Minimum Period product). If a Communications Provider ceases an EAD 1Gb circuit with a 60 month Minimum Period within year 2 then the CP will pay a termination charge which shall be the 30% of the annual standard rental charge. If a Communications Provider ceases an EAD 1Gb circuit with a 60 month Minimum Period within year 3 then the CP will pay a termination charge which shall be the 30% of the annual standard rental charge. If a Communications Provider ceases an EAD 1Gb circuit with a 60 month Minimum Period within year 4 then the CP will pay a termination charge which shall be the 70% of the annual standard rental charge. If a Communications Provider ceases an EAD 1Gb circuit with a 60 month Minimum Period within year 5 then the CP will pay a termination charge which shall be the 50% of the annual standard rental charge. The standard rental charge is the rental that applies for the EAD 1Gb product with a 12 month minimum period.
- 12) Once a Communications Provider has committed to procure an EAD 1Gb circuit with a 60 month Minimum Period via the placement of an Order then the rental and connection charge current at the time of that Order placement will apply for the duration of the Minimum Period for that Order unless there are legal or regulatory obligations which require Openreach to vary these charges.
- 13) Where the CP places an order for an EAD Modify Circuit Shift, then Openreach will waive termination costs that may be applicable to the original circuit order.
- 14) Includes Extended Reach and Resilience Option 1.
- 15) Includes Resilience Option 1.
- 16) Supply of EAD Enable will be subject to the agreement of a Security Aspects Letter (SAL).
- 17) The lead time for the product will be 30 working days (subject to the definition of CDD in Schedule 1 of the Connectivity Services Contract).
- 18) By the supply of EAD Enable standard LL3 is not guaranteed by Openreach. Such accreditation is the responsibility of the Communications Provider.
- 19) EAD Enable will not proactively monitor for alarms. Openreach will provide limited outputs from the NTE to enable the Communications Provider to detect alarms.
- 20) Communications provider has the option to select a Optical Power Degradation alarm for EAD Enable.

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Dg to 09/02/2012
British Telecommunications plc
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London EC1A 7AJ
Registered in England and Wales No. 1800000
www.openreach.co.uk

Annex 6

Openreach's letter to Ofcom



Mr Keith Hatfield
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

15 March 2012

Dear Keith,

Request for waiver of the 90 day notification period for a WES/WEES/BES to EAD Transfer Migration Offer

Further to our conversation earlier today, I am writing to request that Ofcom consent to Openreach introducing an offer covering WES/WEES and BES circuits migrating to EAD without having to comply with the 90 days advance written notification requirement imposed on BT under SMP Condition HH6 to the Business Connectivity Market Review published 8 December 2008. Openreach is seeking to reduce the notice period for the offer from 90 days to 60 days which, if granted, would make the offer effective on 10 April 2012 rather than 10 May 2012. Openreach has given 90 days notice via ACCN OR269 which was submitted on 9 February 2012. We also request that any waiver allows the contractual notification of the offer, also required by SMP condition HH6, to be reduced from 90 days to 60 days. We understand, based on previous discussions, that Ofcom considers that it needs to consult on such a request and this letter has been written on this understanding. We would be grateful for your confirmation that this remains Ofcom's view.

Offer details

Following the withdrawal from new supply of WES/WEES and BES products (with the exception of WES/WEES 2500 & 10000 and BES/BES Daisychain 2500 & 10000) on 1 June 2011, arrangements to migrate existing circuits to EAD will be available from 10 May 2012 (this date being brought forward to 10 April 2012 should this request for a waiver be granted). The details of the offer are:

CPs will attract up to a 50% discount on prevailing EAD connection charges for transfer of existing WES/WEES/BES services (up to 1Gbit/s) to new EAD services via a bandwidth upgrade depending on the upgrade chosen:

- 25% discount on EAD Standard and Local Access 100Mbit/s connection charge for circuits transferring and upgrading from WES/WEES/BES 10Mbit/s Standard and Local Access Services

British Telecommunications plc
Registered office:
81 Newgate Street
London EC1A 7AJ
Registered in England and Wales No. 1800000

- 40% discount on EAD Local Access 1Gbit/s connection charge for circuits transferring and upgrading from WES/WEES/BES 10Mbit/s and 100Mbit/s Local Access Services
- 50% discount on Standard EAD 1Gbit/s connection charge for circuits transferring and upgrading from WES/WEES/BES 10Mbit/s and 100Mbit/s Standard services
- Early termination charges will not be applied on the legacy circuit

Legal and regulatory basis for the request

Openreach notes that there is scope in the relevant SMP Conditions for Ofcom to waive the relevant notification period: *"Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges and act in the manner set out below"*. Furthermore, in paragraph 6.50 of the Wholesale Local Access Market Review statement, published on 7 October 2010, Ofcom indicated that modifications to the notice period could be considered: *"We would, however, note that we are able to consent to modifications to this, on a case-by-case basis."*

As you will be aware, Sections 49 and 49A of the Communications Act 2003 impose obligations on Ofcom when considering whether to give a consent that affects the operation of a condition, including SMP conditions. In particular, Ofcom must publish a notification setting out its proposals to give consent and must provide an opportunity for interested parties to comment on the matter. Whilst section 49A(4) provides that the consultation period must not be less than one month after the day that Ofcom publishes the notification, where Ofcom is satisfied that there are exceptional circumstances justifying the use of a shorter period then the period may be whatever shorter period it considers reasonable in those circumstances (section 49A(5)). Openreach considers that this particular case does warrant a shorter consultation period and would suggest that a 5 day consultation period is sufficient.

The recently added new section 49A of the Communications Act places the obligation on Ofcom to consult, as specified above, if the consent requested has a significant impact on the market. If this is not the case, Ofcom is not required to consult but must still satisfy itself that the requirements of section 49(2) are met, i.e. that the waiver is objectively justifiable, does not discriminate against particular persons or against a particular description of persons, is proportionate and transparent. It is our view that this request is beneficial to the market and that Ofcom should use its power under section 49(2) to not consult as this offer is unlikely to have significant impact on the market.

However, if Ofcom considers that it must consult, a 5 day consultation period is consistent with the Ofcom letter of 11 October 2004 that was sent to BT and other CPs to explain how it intends to apply the provisions of section 49 of the Communications Act relating to consent for shorter notification periods. Ofcom stated:

"In the circumstances of a proposed consent to a waiver of a 28 day notice period, it would not be appropriate to consult on the proposition for 1 month, and unhelpful even in the context of a 90 day notice period. In such cases Ofcom will take into consideration its duties under Sections 3 and 4 of the Communications Act, in particular the promotion of competition, in deciding whether a case is justified. Ofcom also notes that proposals to implement a price change with shorter than usual notice may not be likely to affect trade between member states. The period for consultation may vary according to

the significance of complexity of the proposed price change, but in most of these particular cases, Ofcom will consult for 5 working days only, unless there are particular reasons for allowing a longer period. Ofcom will endeavour to adopt a very concise and standardised format for such consultations, to minimise the time which it will take for interested parties to consider the proposition. Ofcom will also aim to consider responses and publish its consent, or a refusal, within a few days of the consultation period ending unless, the nature of the responses received requires more extended analysis."

Openreach considers that the criteria set out in section 49(2) of the Communications Act are satisfied and Ofcom should consent to this waiver request. Our reasoning is as follows:

Firstly, we consider that granting this waiver is objectively justifiable as this offer is beneficial to industry. Openreach would like to bring the economic benefits of this offer to its customers at the earliest possible opportunity, especially given the current difficult economic climate.

Secondly, granting this waiver would not discriminate unduly against particular persons or against a particular description of persons as the price reductions could benefit all Openreach CPs who purchase Ethernet services. Moreover, the structure of the offer is intended to make it attractive and possible for all CPs (irrespective of size) to benefit.

Finally, the granting of consent will be transparent, as Ofcom will consult on this request for a waiver and will publish its decision for all of industry to see.

Also, we consider that the granting of this waiver request would be consistent with Ofcom's obligations under section 3 and 4 of the Communications Act in that it would further the interests of consumers and encourage retail level price competition on connection prices through the UK by making the pricing offer available at an earlier date.

Assuming Ofcom grants our request for a waiver; Openreach would plan to introduce the offer on 10 April 2012. Should Ofcom consent not be granted by that date, Openreach will introduce the offer on 10 May 2012 as notified

We look forward to Ofcom publishing its consultation document on this waiver request.

Regards

Matt Madden
Head of Operational Regulation
Openreach