

UK Competitive
Telecommunications
Association

Response to
Ofcom's consultation on re-
prioritising BT's remaining
Undertakings commitments on
information systems separation

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UKCTA was closely involved with the strategic review process conducted by Ofcom prior to the BT undertakings in 2005 and has championed the development of equivalence and functional separation ever since. Ofcom is correct to indicate the fact that these proposals are important because they affect the ability of Openreach to operate separately from the rest of BT. Although various undertakings targets have been met and competition has developed in the years since 2005, the reality of the new regulatory environment is not as positive as was hoped by UKCTA at the conclusion of the strategic review and BT's dominance still affects every aspect of competition in the UK market. For that reason, UKCTA believes very strongly that the principles of equality of access and the spirit of the undertakings must be defended even so long after the commitments of 2005. Openreach is not as separate from the rest of BT as was hoped for in 2005 and as many outside the industry may currently think. Certain key developments in the telecommunications industry, such as the proposed investment in fibre access by BT, now pose specific threats to the wholesale market upon which competitive gains have been based.

The current consultation is concerned with matters of practicality and this is acknowledged by UKCTA, however some key issues arise and they are covered in this brief document in response to the consultation. UKCTA has principled objections to the erosion of the undertakings and regulatory changes that are promised in return for things that are unspecified by the regulated party and may never be delivered anyway.

Ofcom proposes to remove the June 2010 target that has been in the undertakings since the beginning. This is to provide BT with more 'flexibility' in an attempt to be more 'pragmatic'. There will be no target date for physical separation, although it is stated that BT will continue to prioritise it (as long as it is 'reasonably practicable and proportionate'). Ofcom mentions targets for customer records migrations, without fixing a committed separation date. The apparent aim is for any commitments to be driven by pragmatism, allowing for what BT decides to do in terms of hardware replacement and rationalisation. A cynic may identify changes driven by the fact that BT is incapable of meeting the targets set out in the original version of the undertakings.

In return for this relaxation or removal of undertakings commitments, Ofcom proposes to convert new commitments on service and product developments by Openreach into undertakings, although it is not necessarily clear what they are or will be and it is by no means certain that they will not have to be altered at the request of industry or Openreach. Some examples of these developments are covered in the consultation document and they cannot be discussed in any detail in this submission. It must also be noted that there is no definition of the change control process that must be in place to deal with alterations to the deliverables in the future. A change control process should be included within final proposals and be subject to agreement by industry, possibly using facilitation by the OTA. UKCTA cannot easily

give views where there is such an absence of detail. The key point to make is that Ofcom seeks to deliver the benefit to BT, the removal or reduction of undertakings, before improvements in return are actually made. This is an unacceptable erosion of the substance and spirit of the undertakings and what was achieved by the strategic review. If Ofcom needs to make such changes to the content of the undertakings, it should do so only when the new EMP consumption model is specified and in place. Anything short of that removes a substantial element of the regulatory settlement the competitive industry relies on and reduces it to yet more voluntary commitments and secret deals between Ofcom and BT.

It is clearly difficult to define and fix a final version of any developments that must be delivered by Openreach as part of the trading away of undertakings obligations. By their nature, these things must always be capable of change. For that reason, it is very hard to imagine how proposals can be translated into meaningful undertakings. UKCTA has consistently argued that the undertakings should be capable of revision and expansion, but the only changes that have been made over time have been exemptions and variations to the benefit of BT. The current example will be removal of undertakings that have value and replacement with something that is potentially unenforceable. Consideration should perhaps be given to what is correct use of the undertakings and what can be translated into an undertaking. Ofcom says that if Openreach can't deliver what is set out to begin with, then something of equal value to the industry must be delivered. If that is the nature of the commitment, it should be obvious that it can't be made into anything that is written into the BT undertakings.

Ofcom should perform a proper analysis of the effect of the proposed changes on systems separation, however challenging such a task may be. The importance of ultimate systems separation is acknowledged by Ofcom throughout the consultation, even while it proposes to reduce the commitments and targets already set. UKCTA is not able to quantify such effects because to do so would require knowledge of impacts on internal and external customers of Openreach. Ofcom must aim to investigate this and report conclusions prior to making changes.

UKCTA also has concerns to do with the interpretation of changes to equivalence of inputs objectives and the proposed removal of IBMC targets from the undertakings. These would be replaced with a new measure of percentage of customers using Eol products. This measure may be useful and informative and it may constitute part of the plan needed to make the other changes discussed, but the original IBMC targets were not simply to do with what system a customer's records are on. They were also about the other key aspects of equivalence: same price, same product, same service level. If the ability of Openreach customers to buy equivalently is affected by proposals, Ofcom should review the availability of legacy products under Eol in view of changes to BT's self-supply. Ofcom should not remove any relevant undertakings without ensuring that all the principles of equivalence are protected for the future, even if the means of measuring success is changed.

In conclusion, UKCTA believes there are significant problems with the approach that Ofcom is proposing and that there is more work to be done before decisions should be made final. Ofcom should not be planning to deliver an important benefit to BT on the promise of deliverables that are not properly defined and may be subject to significant change. Ofcom should thoroughly review the effects on competition and the wholesale market that may be caused by proposed changes, before they are made. Ofcom should reconsider the approach to IBMC targets and the ability to incorporate certain things into the undertakings at all, especially where there is a threat to the principles of equality of access and the spirit of the undertakings that the competitive market relies upon.

UKCTA would like to request a meeting to discuss these issues with Ofcom as a matter of priority and would suggest the involvement of the OTA to help address specific issues to do with Openreach deliverables and the process of defining them.