



# Additional Requests from BT for exemptions and variations to its Undertakings under the Enterprise Act 2002

Consultation

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## Section 1

# Summary

- 1.1 This Consultation is seeking views from interested parties on various exemptions from, and a variation of, BT's undertakings under the Enterprise Act 2002.
- 1.2 On 22 September 2005 British Telecommunications plc ("BT") offered, and Ofcom accepted, a set of undertakings ("the Undertakings") pursuant to section 154 of the Enterprise Act 2002 in lieu of a reference of certain markets to the Competition Commission. 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 define all of BT's products to which Equivalence of Inputs (EOI) should apply. In addition, the Undertakings provide that under certain circumstances BT may apply for exemptions from certain provisions.
- 1.3 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. BT needs to seek such requests since, for instance, Openreach cannot supply certain products on a non-EOI basis unless it has the agreement of Ofcom. In June 2006, Ofcom issued a statement relating to the first batch of exemption requests<sup>1</sup>. In October 2006, Ofcom issued a consultation<sup>2</sup> related to thirteen outstanding requests listed in the earlier statement, and in December 2006 issued a statement agreeing to a further nine requests<sup>3</sup>. This left outstanding four requests for fibre-based products. Ofcom issued a statement on 19<sup>th</sup> July 2007 in respect of these. In addition, Ofcom provided temporary exemptions for BT's 21CN Pathfinder trial<sup>4</sup> and for certain planning functions<sup>5</sup>, whilst requirements were discussed between Ofcom and BT.
- 1.4 BT has now provided Ofcom with an updated request for its 21CN Pathfinder trial. It has also raised additional requests. One of these, for Short Haul Data Services, relates to previously granted exemptions. Two others, for Tags Helpdesk and Messaging, are related to exemptions from the strict implementation of User Access Controls for Operation Support Systems, as set out in Ofcom's statement of 21<sup>st</sup> June 2007<sup>6</sup>. These four requests are the subject of this consultation.
- 1.5 This consultation also includes a proposed variation to the Undertakings to allow BT to take reasonable and proportionate steps in response to exceptionally serious incidents (such as a potential terrorist attack or a serious illness of pandemic proportions) which might otherwise be prohibited under BT's Undertakings.
- 1.6 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. However, Ofcom does not consider that the variation proposed herein would alter the Undertakings in a material respect because it concerns a variation which may only take effect in very limited circumstances. Also, Ofcom does not consider the exemptions contained

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<sup>1</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

<sup>2</sup> <http://www.ofcom.org.uk/consult/condocs/btrequests/>

<sup>3</sup> <http://www.ofcom.org.uk/consult/condocs/btrequests/statement/statement.pdf>

<sup>4</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/ofcomresponse117.pdf>

<sup>5</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/ofcom201206.pdf>

<sup>6</sup> [http://www.ofcom.org.uk/consult/condocs/bt\\_oss/statement/](http://www.ofcom.org.uk/consult/condocs/bt_oss/statement/)

herein would alter the Undertakings in a material respect were they to be agreed as they concern the operation of mechanisms envisaged when the Undertakings were offered by BT and accepted by Ofcom. Whilst Ofcom is not obliged to consult on non-material changes to the Undertakings, it decides whether or not to consult on any such changes on a case-by-case basis. Ofcom is of the opinion that the issues under consideration are sufficiently important to stakeholders and the general public that there is value in consulting in order to obtain views and comments that will help Ofcom in reaching its decision as to whether to agree, or not, to the proposed variation and requests.

- 1.7 The Enterprise Act 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”. Ofcom’s competition concerns were set out in its *Strategic Review of Telecommunications Phase 2 Consultation Document*<sup>7</sup>. In considering the case for varying the Undertakings, Ofcom must consider whether this solution is materially and negatively affected by the variation in question.
- 1.8 As stated in paragraph 1.6, Ofcom does not consider the proposed variation and exemptions to be material, and it therefore follows that they can not in anyway materially affect the comprehensive solution that the Undertakings represent. Furthermore Ofcom considers that these exemptions and the variation will not have a negative impact on the comprehensive solution. In reaching this view within this Consultation, Ofcom has considered the following factors where appropriate:
- whether there would be, or would likely be, harm to customers of BT, consumers of BT and other Communications Providers and the wider public in general if the exemptions and variation were accepted or not accepted due to, for instance, a reduction in effective competition or disruption to the services customers receive;
  - whether there would be demand from Communications Providers (other than BT) for an EOI product to which the exemptions and variation relates; and
  - the length of time for which the exemptions and variation will be granted and whether the amount of resource that would be needed to accelerate development of an EOI product is warranted balanced against other resource requirements (i.e. proportionality).
- 1.9 Ofcom is proposing to agree the proposed exemption requests and the variation based on considering each against the three factors stated in paragraph 1.8.
- 1.10 Although Section 155 of the Enterprise Act does not apply in this instance, Ofcom notes that the period stipulated for consultation in the Act is a minimum of 15 days. However, it is Ofcom’s view that in this instance a five week consultation is appropriate given the scope of the issues involved. Ofcom intends to publish a final statement with respect to the exemption requests and variation within this Consultation in October 2007.

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<sup>7</sup> [http://www.ofcom.org.uk/consult/condocs/telecoms\\_p2/](http://www.ofcom.org.uk/consult/condocs/telecoms_p2/)

## Section 2

# Background

- 2.1 On 22 September 2005 British Telecommunications plc ("BT") offered, and Ofcom accepted, a set of undertakings ("the Undertakings") pursuant to section 154 of the Enterprise Act 2002 ("the Enterprise Act"). The Undertakings addressed issues that had been 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 at that time. 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*<sup>8</sup>.
- 2.2 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 of the Undertakings could be felt by consumers as quickly as possible, it would be inappropriate to consider all BT's products in the context of which products to which Equivalence of Inputs (EOI) should apply. In addition, during the course of BT's implementation of the Undertakings a number of processes or services have been identified by BT for which it has requested exemptions from certain sections of the Undertakings.
- 2.3 Also, upon request of BT, Ofcom is considering the question of whether in certain exceptionally serious circumstances the strict application of BT's Undertakings could stop BT acting in a way to prevent harm to the interest of consumers in the UK.
- 2.4 In this consultation, Ofcom is publishing four requests for exemptions and one proposed variation, and is inviting stakeholders' comments. Ofcom intends to publish a statement with respect to these outstanding requests in October 2007.
- 2.5 The four requests and one variation relate to:
- i) an exemption for BT's 21CN Pathfinder trial to replace a temporary exemption provided by Ofcom;
  - ii) an exemption for certain Short Haul Data Services in addition to exemptions previously granted;
  - iii) two requests (one for Tags helpdesk and one for Messaging services) that arise as a consequence of the variation to the Undertakings in regard to Operational Support Systems separation published by Ofcom on 21<sup>st</sup> June<sup>9</sup>; and
  - iv) a variation to the Undertakings to allow BT to take reasonable and proportionate steps in response to exceptionally serious incidents which might otherwise be prohibited under BT's Undertakings.
- 2.6 Ofcom is proposing to agree with BT all these requests for exemptions and the variation.

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<sup>8</sup> [http://www.ofcom.org.uk/consult/condocs/statement\\_tsr/](http://www.ofcom.org.uk/consult/condocs/statement_tsr/)

<sup>9</sup> [http://www.ofcom.org.uk/consult/condocs/bt\\_oss/statement/](http://www.ofcom.org.uk/consult/condocs/bt_oss/statement/)

- 2.7 The envisaged scope of the proposed exemptions and variation are set out in BT's submissions contained in Annex 5 to this document. The proposed wording of the variation is contained in Annex 6 and the proposed wording of the agreement to the exemptions is contained within Annex 7. This document has been drafted to reflect Ofcom's position prior to the consultation and will be updated as necessary for the Statement to reflect any changes made as a result of considering stakeholder comments.

## The exemptions process

- 2.8 The possibility of there being products and/or services about which a decision would need to be made with respect to EOI was recognised and anticipated for in the Undertakings. Section 5.46 of the Undertakings not only sets out the general principle of when EOI will apply (5.46.1) but also sets out a list of products to which EOI will not apply (5.46.1(a) – (i)). In addition Section 5.46.2 envisaged that there were products which would exist at the date the Undertakings came into force (22 September 2005) and which AS<sup>10</sup> (now known as Openreach) would supply, but which Ofcom and BT would have to subsequently agree whether or not EOI should apply, or whether the product should be withdrawn from supply by AS.
- 2.9 Under the terms of the Undertakings (Section 5.46.2) BT and Ofcom are required to agree the action to be taken in respect of products and services which fall under Section 5.46.2. The original Undertakings gave BT and Ofcom until 21 January 2006 to review these products and determine what should happen to them. This period was subsequently extended from four months to eleven months<sup>11</sup> to allow the initial set of requests from BT to be fully considered, extended again to 22 December 2006<sup>12</sup> to allow for consultation on the more complex requests, then to 31 March 2007<sup>13</sup> to allow for further consideration of the outstanding requests and finally to 31 December 2007<sup>14</sup> to allow for consultation on the WaveStream product (which will be a separate consultation) and the resolution of the requests included in this consultation. This latest extension also extends the exemption within Section 5.46.2 in respect of the application of Section 5.46.1 to any products or services falling under Section 5.46.2 to 30 months after the Undertakings come into force.
- 2.10 In addition, Section 11.9 of the Undertakings sets out conditions under which BT may be exempted from providing Network Access on an EOI basis on its Next Generation Network.
- 2.11 Also, section 5.44.3 as agreed in Variation Number 9 published by Ofcom on 21<sup>st</sup> June 2007<sup>15</sup> sets out the scope for an agreement between BT and Ofcom that certain conditions which BT shall meet prior to achieving physical separation of its Operation Support Systems, might not apply in certain circumstances.
- 2.12 Each of the four exemptions included within this document are based on one of the legal bases explained in paragraphs 2.8 – 2.11 above.

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<sup>10</sup> Since the Undertakings came into effect BT has created Openreach to fulfil the duties (as defined in the Undertakings) of Access Services.

<sup>11</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation1.pdf>

<sup>12</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/var3.pdf>

<sup>13</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation6.pdf>

<sup>14</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation8.pdf>

<sup>15</sup> [http://www.ofcom.org.uk/consult/condocs/bt\\_oss/statement/statement.pdf](http://www.ofcom.org.uk/consult/condocs/bt_oss/statement/statement.pdf)

- 2.13 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. However, Ofcom does not consider that the variation contained herein would alter the Undertakings in a material respect as it concerns a variation which may only take effect in very limited circumstances. Whilst Ofcom is not obliged to consult on non-material changes to the Undertakings, it stated in Exemptions Part 1<sup>16</sup> that it would decide whether or not to consult on any such changes in the future on a case-by-case basis. Ofcom remains of the opinion that the issues under consideration are of sufficient interest to stakeholders that there is value in consulting with stakeholders to obtain views and comments that will help Ofcom in reaching its decision as to whether to agree, or not, to each request from BT.
- 2.14 The Enterprise Act 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”. Ofcom's competition concerns were set out in its *Strategic Review of Telecommunications Phase 2 Consultation Document*. In considering the case for varying the Undertakings, Ofcom must consider whether this solution is materially and negatively affected by the variation in question.
- 2.15 Although Section 155 of the Enterprise Act does not apply in this instance, Ofcom notes that the period stipulated for consultation in the Act is a minimum of 15 days. However, it is Ofcom's view that in this instance a five week consultation is appropriate to allow sufficient time for interested parties to consider these requests, given the scope of the issues involved.

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<sup>16</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>



## Section 3

# Ofcom's reasoning with respect to the proposed variation and exemption requests

## Introduction

- 3.1 In this section Ofcom sets out its position in respect of the exemption requests and proposed variation of BT's Undertakings under the Enterprise Act 2002 and the reasons why it has adopted the position it has. Ofcom, through this consultation, is inviting comments on the described position from interested stakeholders.
- 3.2 The full text of BT's requests for exemptions and a variation is reproduced in Annex 5, the proposed variation wording to be signed by BT and Ofcom is set out in Annex 6, and the proposed exemptions wording is set out in Annex 7. Respondents are strongly recommended to consider the text in Annex 5 before answering the questions which follow. The reasoning Ofcom puts forward in this section in respect of BT's requests is based on the information available to Ofcom at the time of publication and Ofcom reserves the right to change its position with respect to any request as a result of the consultation process or any other information that comes to light during the consultation. Any such change will be fully explained in the subsequent Statement due for publication in October 2007. The wording in Annex 6 and 7 reflects Ofcom's current position in respect of the requests.
- 3.3 The Enterprise Act 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". Ofcom's competition concerns were set out in its *Strategic Review of Telecommunications Phase 2 Consultation Document*<sup>17</sup>. In considering the case for varying the Undertakings, Ofcom must consider whether this solution is materially and negatively affected by the variation in question. Ofcom does not consider that the variation proposed herein would alter the Undertakings in a material respect because it concerns a variation which may only take effect in very limited circumstances. Also, Ofcom does not consider the exemptions contained herein would alter the Undertakings in a material respect were they to be agreed as they concern the operation of mechanisms envisaged when the Undertakings were offered by BT and accepted by Ofcom. Hence, Ofcom does not consider the proposed exemptions and variation to be material and it therefore follows that they can not in any way materially affect the comprehensive solution that the Undertakings represent. Furthermore Ofcom considers that the requested exemptions and variation will not have a negative impact on the comprehensive solution. In reaching this view and in considering the requests within this Consultation Ofcom has considered the following factors where appropriate:
- whether there would be, or would likely be, harm to customers of BT, consumers of BT and other Communications Providers and the wider public in general if the variation was accepted or not accepted due to, for instance, a reduction in effective competition or disruption to the services customers receive;

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<sup>17</sup> [http://www.ofcom.org.uk/consult/condocs/telecoms\\_p2/](http://www.ofcom.org.uk/consult/condocs/telecoms_p2/)

- whether there would be demand from Communications Providers (other than BT) for an EOI product to which the exemption relates; and
  - the length of time for which the exemption and/or agreement will be granted and whether the amount of resource that would be needed to accelerate development of an EOI product is warranted balanced against other resource requirements (i.e. proportionality).
- 3.4 Since the acceptance of the Undertakings, BT has branded its Access Services division, as referred to in the Undertakings, as Openreach. Therefore, this document refers to Openreach throughout.

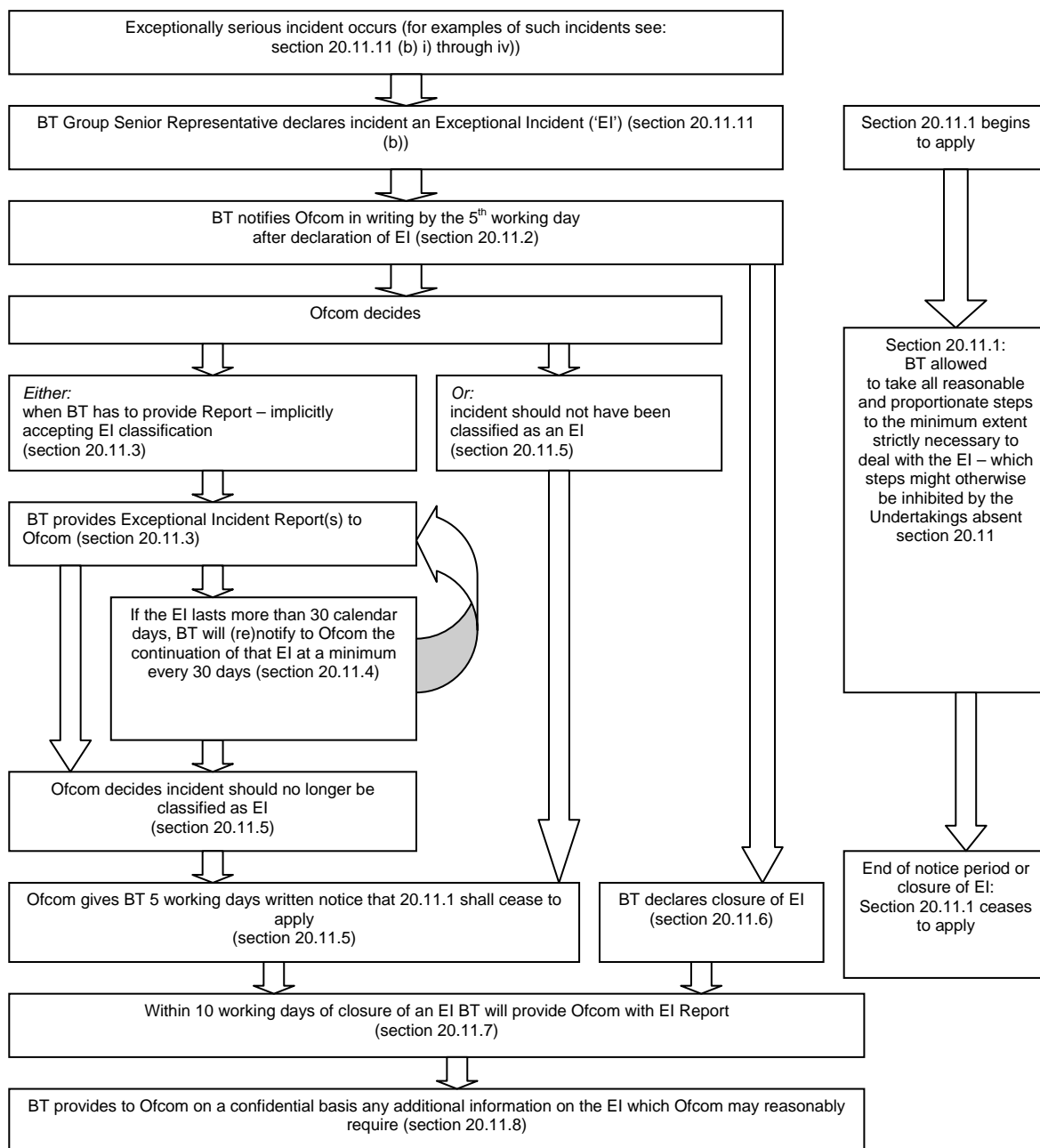
### Exceptional Incidents Management Variation

- 3.5 When originally considering to accept BT's Undertakings Ofcom focused its attention on finding a solution that addresses the competition concerns raised in its *Strategic Review of Telecommunications*.
- 3.6 Since accepting the Undertakings in September 2005 BT and Ofcom have identified certain exceptionally serious circumstances in relation to which the strict application of all obligations set out in the Undertakings may prevent BT from operating safely or in the best interest of its customers or the civilian authorities.
- 3.7 Should such exceptional incidents occur in the future Ofcom believes the Undertakings should allow BT to respond to these incidents with reasonable and proportionate measures even if such action would otherwise be prohibited under the Undertakings.
- 3.8 For this purpose Ofcom proposes to agree with BT a variation to the Undertakings which introduces a new section 20.11. This section is designed to set out a process that allows BT to declare any exceptionally serious incident to be an Exceptional Incident as defined in the proposed variation which would result in BT being able to adopt reasonable and proportionate steps strictly necessary to resolve such an Exceptional Incident even if the measures taken by BT may otherwise be considered to be a breach of the Undertakings.
- 3.9 The scope under section 20.11 for steps taken by BT in response to such Exceptional Incidents shall be limited in terms of duration, geographical scope and sections of the Undertakings which will not be applied to an Exceptional Incident to the extent strictly necessary to respond to such an incident in a reasonable and proportionate manner. The declaration of an Exceptional Incident will be limited to the extent strictly necessary for dealing with such an incident and only to the extent reasonably required in terms of duration and geography to resolve that incident.
- 3.10 Certain procedural safeguards will be put in place in order to allow Ofcom to monitor and review the appropriate application of this new section 20.11.
- 3.11 For example, BT will have to notify Ofcom within five working days of an Exceptional Incident being declared explaining on which basis this decision has been made. It is then for Ofcom to decide whether the classification of the incident as an Exceptional Incident was appropriate or at any point during the period of an Exceptional Incident whether the incident should no longer be classified as such.
- 3.12 Ofcom understands that it is difficult in advance to fully and conclusively define when an incident constitutes an Exceptional Incident and when one does not. Therefore,

whilst setting out in the proposed variation examples which could reasonably be regarded as Exceptional Incidents, Ofcom intends to decide on a case-by-case basis whether BT's classification of an incident as an Exceptional Incident is correct or not. However, the examples set out in section 20.11.11 (b) (i) – (iv) shall give some guidance as to which kind of incidents could reasonably fall in the category of Exceptional Incident. They include:

- i) increased risk of loss of life or significant risk for the health and safety of BT people or others;
- ii) major terrorist or criminal activity or extremely severe weather conditions or other significant unforeseeable events adversely affecting the network and resulting in significant and widespread damage to considerable parts of BT's network;
- iii) the activation of BT's emergency response teams to deal with dangerous chemical, biological, radiological or nuclear substances; or
- iv) serious and widespread illness of pandemic or epidemic proportions affecting a significant proportion of BT's workforce at the same time or imposing movement restrictions on BT's workforce.

- 3.13 Once BT closes an Exceptional Incident or after five working days of Ofcom deciding that such an incident should not have been or should no longer be classified as an Exceptional Incident the cover of section 20.11.1 for this particular incident shall cease to apply.
- 3.14 As an additional safeguard, Ofcom may at any time review the operation of section 20.11 and if it considers that the cover for Exceptional Incidents should no longer apply it may give BT six months notice that this section 20.11 will cease to apply. Should there be any outstanding Exceptional Incidents ongoing at the end of this six months period, these incidents shall automatically be closed and the cover of section 20.11 will cease to be effective.
- 3.15 Although the number of incidents which might fall under this variation is likely to be small, not agreeing to the proposed variation could potentially result in unnecessary disruption, risk, cost and potential harm to customers of BT, consumers of BT, other Communication Providers (including BT), the customers of such Communications Providers and the wider public in general.
- 3.16 As the actions which can be taken under section 20.11 are limited in scope (in terms of duration, people and system access involved and geography) the potential adverse impact on other CPs by not applying certain provisions of the Undertakings for Exceptional Incidents is likely to be minimal.
- 3.17 For an illustration of the process under section 20.11 of the Undertakings please see the following table 1:



**Table 1: Illustration of the process as proposed under new section 20.11**

3.18 For the reasons set out above in 3.6 – 3.14 Ofcom proposes to vary the Undertakings as set out in Annex [ 6 ]

**Question 1:** Do you agree that Ofcom should agree to this request from BT for a variation of its Undertakings to include a new section 20.11 which shall allow BT to respond to an Exceptional Incident with reasonable and proportionate steps including taking action which otherwise but for the proposed section 20.11 may be considered to be a breach of the Undertakings? If you do not please explain why.

## Exemption Requests

### **Request No. 1: Initial Implementation of Backhaul to Copper-Only MSANs in BT's NGN 21CN ("Pathfinder" 1A and 1B)**

- 3.19 BT is in the process of deploying its Next Generation Network (NGN), which it calls 21CN. The initial stages of this deployment include, amongst other activities, a series of trials. These include the Pathfinder trials in South Wales which will connect end-users to the Multi-Service Access Node (MSAN) technology to be used within 21CN.
- 3.20 On 24 November 2006, Ofcom granted BT a temporary exemption until 31 March 2007 for the implementation of its Pathfinder trial phases 1A and 1B in the exchanges at Wick and Bedlinog<sup>18</sup>. This temporary exemption was subsequently extended; first until 30 June 2007<sup>19</sup> and more recently until 31 October 2007.
- 3.21 The reason for this approach was to provide the opportunity for the trial to be commenced but without setting in place an exemption from the Undertakings which was either too broad in scope or timeframe or which became inappropriate as the trial developed.
- 3.22 BT has now submitted to Ofcom a request to exempt these two sites and, following the recent 21CN re-plan activity, four more exchanges in South Wales: Southerndown, Bonvilston, Peterston and Sully. The request seeks to exempt backhaul connectivity from being supplied on an EOI basis up until 31 December 2007. In all other respects the Pathfinder trial will meet EOI requirements.
- 3.23 In BT's 21CN architecture, the relevant backhaul product that is used to connect CPs' equipment (including BT) in BT local exchanges back to the CPs' own network is the Openreach Network Backhaul Service (ONBS). In order to supply the ONBS service on an EOI basis at any local exchange, it is required that BT installs a fibre MSAN to allow multiple backhaul connections to be supported.
- 3.24 At these six exchanges there is no current demand from CPs other than BT. The total number of customers involved at these exchanges in the Pathfinder trial is below 5000. BT has requested that it be exempted from providing the fibre MSAN and instead to connect the backhaul circuit onto the copper MSAN that will be provided at these exchanges to support end-user services.
- 3.25 This architecture means that should demand arise from another CP, BT would need to install a fibre MSAN to allow the connection of multiple CPs' backhaul circuits. This would result in the CP that triggered this installation having a longer lead-time for the turn-up of service than would be received by BT or by any subsequent CP.
- 3.26 Ofcom proposes to agree to this request from BT. This is based on considering the request against the factors stated in paragraph 3.3. Ofcom does not believe that granting this exemption will cause harm to customers of BT or other CPs given that the request relates to a limited scope trial. Also, there are no CPs other than BT providing service at these exchanges, nor have forecasts to do so been provided to BT, and so it is Ofcom's view that there is no demand from CPs other than BT for an EOI product at these exchanges within the time period that the exemption covers. Finally, the request covers a limited period of the Pathfinder trial up to 31 December 2007.

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<sup>18</sup> [http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/21cn\\_ofcom.pdf](http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/21cn_ofcom.pdf)

<sup>19</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/ofcomresponse117.pdf>

**Question 2:** *Do you agree that Ofcom should agree to this request from BT for an exemption in respect of the provision of backhaul connectivity for the six exchanges for the purposes of the Pathfinder trial? If you do not please explain why.*

## **Request No. 2: Short Haul Data Services (SHDS)**

- 3.27 In June 2006, Ofcom agreed to three exemption requests from BT for the following products in its SHDS portfolio: LES10, LES10 Local Reach, LES100, LES155, LES622, LES1000, LES1000 Extended Reach, CES1000, LES2500, LES10000<sup>20</sup>. These exemptions give BT until the end of December 2006 to move all new provision of these services onto the relevant Openreach EOI input and until 30 September 2007 to migrate the installed base.
- 3.28 The relevant EOI product depends on the use to which the LES circuit is being put. The following scenarios may occur:
- 3.28.1 if the circuit connects two end-user premises, WEES is the appropriate input;
  - 3.28.2 if the circuit connects an end-user site to a CP's network, WES is the appropriate input;
  - 3.28.3 if the circuit connects an end-user site to a CP's equipment co-located in the serving exchange, WES-LA is the appropriate input;
  - 3.28.4 if the circuit connects a CP's equipment in a BT Exchange, using Co-location, Netlocate or BT Locate accommodation to the CP's equipment located in its own accommodation, BES is the appropriate input;
  - 3.28.5 if the circuit connects a CP's equipment in a BT Exchange, using Co-location, Netlocate or BT Locate accommodation to the CP's equipment in another BT Exchange, using Co-location, Netlocate or BT Locate accommodation, the BES Daisy Chain product is the appropriate EOI input; or
  - 3.28.6 BES or BES Daisy Chain may also be the appropriate input for connecting two different CPs' equipment, depending on the location.
- 3.29 BT has informed Ofcom that it has complied with the date within the exemption to move all new supply of SHDS circuits onto the relevant product.
- 3.30 Prior to this, circuits were provided using the legacy products. These legacy products had no limit, other than technical limitations, to the length of the circuit. However, the relevant products within the Openreach product portfolio have length restrictions applied to them. The WES and BES products are limited to a maximum radial distance of 25km by the product descriptions<sup>21,22</sup>. Section 5.5 of the Undertakings sets out the requirement for Openreach to supply the Wholesale End-to-End Ethernet Service (WEES), which is defined in the Undertakings as follows:

<sup>20</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/statement.pdf>

<sup>21</sup> [http://www.openreach.co.uk/orpg/products/wes/downloads/wes\\_product\\_handbook\\_issue7\\_in\\_notification\\_final.pdf](http://www.openreach.co.uk/orpg/products/wes/downloads/wes_product_handbook_issue7_in_notification_final.pdf)

<sup>22</sup> [http://www.openreach.co.uk/orpg/products/bes/downloads/bes\\_product\\_handbook\\_issue6\\_in\\_notification\\_final.pdf](http://www.openreach.co.uk/orpg/products/bes/downloads/bes_product_handbook_issue6_in_notification_final.pdf)

“Wholesale End-to-End Ethernet Service” means a Network Access service providing uncontended Ethernet bandwidth between an End-User premise and another End-User premise up to a maximum straight-line distance of 25km between each premise unless technical feasibility dictates otherwise.

- 3.31 Section 5.5 also sets out the requirement for Openreach to supply a Wholesale Extension Service Backhaul Product where Backhaul Product is defined as follows:

“Backhaul Product” means a Network Access service which runs from a BT Local Access Node to:

- a) another BT Local Access Node; or
- b) a BT Core Node; or
- c) another Communications Provider’s point of handover (but which is not an interconnection circuit or interconnection service provided over that circuit),

provided that the straight line distance to any of the above is no more than the greater of:

- I. 15km (or such other distance as may be mutually agreed between BT and Ofcom); or
- II. the straight line distance from BT’s Local Access Node to the nearest BT Core Node.

For the avoidance of doubt this definition does not include backhaul services to nodes outside the UK.

- 3.32 The BES Daisy Chain product falls within the definition of Backhaul Product as defined above<sup>23</sup>.

- 3.33 Since the original exemptions were granted, BT has reviewed the circuits provided within this product set against the relevant EOI input. This review has shown that, in total, approximately 1% of the installed base of circuits is too long (i.e. longer than 25km or, for circuits that should migrate to BES Daisy Chain, longer than 15km) to migrate onto the relevant EOI input. BT has therefore requested Ofcom to permanently exempt from EOI requirements those circuits that are too long to migrate.

- 3.34 Ofcom believes that refusing the request would mean circuits would have to be ceased and re-provided using new EOI services causing service disruption, and that this would cause harm to customers of BT, to CPs and to customers of CPs. Given the low number of circuits, and that all new supply has been on an EOI basis since the beginning of 2007, Ofcom proposes to agree to the request from BT to exempt these circuits from being provided on an EOI basis.

**Question 3:** *Do you agree that Ofcom should agree to this request from BT to exempt existing LES circuits too long to migrate onto the relevant Openreach EOI input from having to be provided on an EOI basis? If you do not please explain why.*

<sup>23</sup> <http://www.ofcom.org.uk/telecoms/btundertakings/btundertakings.pdf>



### Request No. 3: Tags Helpdesk

- 3.35 BT has requested an exemption for its Tags Helpdesk to allow it to continue to have access to Openreach's Operational Support Systems (OSS) to access information related to WLR and LLU lines. The Tags Helpdesk is a resource within BT Wholesale that provides support to consumers and CPs to resolve issues that may arise during the ordering or provisioning of a broadband service due to a Tag on the line.
- 3.36 A Tag is a marker assigned against a line to stop provisioning of a broadband service. Tags would be placed on lines in circumstances such as when there is a PSTN service incompatible with broadband on the line or when there is already broadband (either via LLU or IPStream or DataStream from BT Wholesale) provided. Whilst the Tag may be there for a legitimate reason and may only be temporary – for example whilst a previous broadband service is still being ceased – it can lead to negative customer perception if service cannot be provided. The Helpdesk works with consumers and CPs to identify the cause of issues with Tags and to help resolve such issues.
- 3.37 In order to operate effectively the Tags Helpdesk requires access to all the systems where a Tag may be applied. For lines with IPStream or DataStream this will reside within BT Wholesale. However, for LLU or WLR lines the data is in Openreach's OSS systems.
- 3.38 Since 30 June 2007, BT must have in place strengthened User Access Controls to restrict access to its OSS, in relation to Equivalence of Inputs products, to the appropriate BT division<sup>24</sup>. As such, this would mean that the Tags Helpdesk would lose access to data that resides in the Openreach systems. BT has requested the exemption to allow this access to continue until industry wide consultation can develop and implement a new solution. This exemption will expire on 30 June 2009 unless the industry-developed solution is in place and operational before this date, in which case the exemption will expire once the new solution is operational. This should allow sufficient time for the industry-wide consultation and the development of the new solution.
- 3.39 In order to allow the Tags Helpdesk to carry on its work whilst Ofcom considers and consults upon this request Ofcom has agreed with BT under section 5.44.3 of the Undertakings a temporary exemption from the application of User Access Controls limited up to and including 31 October 2007.
- 3.40 As stated in paragraph 3.35 above, the Helpdesk sits within BT Wholesale. It is a dedicated resource for resolving Tags issues and does not carry out any other functions within BT Wholesale. In order to allow the Tags Helpdesk team to continue to operate, it needs access to Openreach data within the Customer Support System (CSS). CSS provides provisioning, maintenance and customer relationship management for PSTN lines.
- 3.41 Access to data within CSS is controlled through profiles, which limit the transactions that can be carried out, and the data that can be accessed. Each user is allocated a profile. In addition, in order to meet the User Access Controls introduced since 30<sup>th</sup> June 2007, BT has implemented Access Markers within CSS. Each user is allocated an Access Marker aligned to their Line of Business. The user cannot then access data flagged as belonging to a different LoB than the Access Marker of the user. For example, a BT Retail user is able to invoke a query to retrieve the customer details

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<sup>24</sup> [http://www.ofcom.org.uk/consult/condocs/bt\\_oss/statement/statement.pdf](http://www.ofcom.org.uk/consult/condocs/bt_oss/statement/statement.pdf)



associated with a Directory Number (DN). If the query relates to a DN associated with a legacy PSTN service provided by BT Retail, the customer details would be returned. However, if the DN was associated with a service provided via WLR3, no details would be returned as the WLR3 data is owned by Openreach.

- 3.42 For the Tags Helpdesk, both a new profile and a new Access Marker will be provided. The profile will allow access only to those transactions that the Helpdesk require. For example, this profile will not allow provisioning activity. The Access Marker will allow access to both BT Wholesale and Openreach data when used in conjunction with the new user profile.
- 3.43 BT has informed Ofcom that in order to access the Tags Helpdesk profile, a BT employee must follow the following procedure. They will request CSS access to the Tags profile. This request will be authorised by their line manager. The request is then passed to the BT Wholesale CSS Access Team (a OneIT function) which checks the employee's Operational Unit Code (OUC). The OUC is allocated at BT Group level to uniquely identify each team within BT. Access will only be allowed if the user has the same OUC as the one against which the Tags profile is registered.
- 3.44 An individual cannot change their own OUC to that of the Tags Helpdesk; this requires the agreement of both the donating and receiving line managers and the assignment to the new OUC then follows a group-wide HR process.
- 3.45 BT will implement a regular process to review access to the profile versus employee data so that employees that have moved out of the Tags Helpdesk team do not retain access.
- 3.46 Additionally, Ofcom proposes director level oversight of the process through fortnightly reviews by directors within BT Wholesale and Openreach of those users with access to the Tags Helpdesk profile.
- 3.47 The audit of User Access Controls to be carried out after 30<sup>th</sup> June 2007 by the EAB, and any subsequent audit under Section 5.44.5, should show that Tags Helpdesk staff, who sit within BT Wholesale, have access to some Openreach data. Though this will not constitute a breach of the Undertakings whilst the temporary exemption granted until the end of October 2007 and any potential subsequent exemptions are in effect, the audit should show access to Openreach data by BT Wholesale staff using the Tags Helpdesk User Profile..
- 3.48 As this request relates to BT Wholesale employees accessing Openreach data, Openreach has also authorised this request to agree to such access.
- 3.49 Ofcom believes that refusing this request would restrict the access to Openreach data that is required by the Tags Helpdesk team. This would mean the team would be unable to effectively resolve issues related to Tags on lines with LLU and WLR services. It is Ofcom's view that this would cause serious harm to customers of BT and other CPs. Given the important function carried out by the Tags Helpdesk, the way that access to Openreach data will be managed and that there is a dedicated team that works solely on Tags Helpdesk activities, Ofcom believes sufficient control and audit processes are in place to ensure inappropriate access to Openreach data will not occur. Whilst the exemption is valid until 30 June 2009 unless industry agrees and implements a solution before this date. Ofcom believes such a timeframe is required to allow proper consultation, development and implementation of this solution. Therefore, Ofcom proposes to accept this request.

**Question 4:** *Do you agree that Ofcom should agree to this request from BT for an exemption to allow the Tags Helpdesk to continue to access data from Openreach's OSS until a new solution can be developed or 30 June 2009, whichever is sooner? If you do not please explain why.*

**Question 5:** *Do you agree that the organisational safeguards explained above provide sufficient protection against inappropriate access to Openreach data for BT Wholesale employees? If you do not please explain why.*

## **Request No. 4: Messaging**

3.50 BT Wholesale currently provides the following services:

- 3.50.1 messaging products that are provided to Openreach as part of the WLR3 product (these are Call Mapping and Wholesale 1571);
- 3.50.2 messaging products that BT Wholesale sells to Communications Providers (CPs), including BT Retail (these are BT Answer, BT Call Minder and Fixed Line Text); and
- 3.50.3 the Bill Direct product to BT Retail.

3.51 Orders are placed for these services via the customer management system of the relevant BT Line of Business, or the BT Wholesale order gateway for orders from other Communications Providers. In the majority of cases (95%), these orders flow automatically through to CSS and are provided against the relevant WLR record. For the remaining 5%, manual intervention is required to provide the service against the WLR record on CSS. This record is owned by Openreach. Until physical separation, which needs to be in place by 30 June 2010, messaging service information will continue to be held against the Openreach WLR3 record in CSS.

3.52 The main reason for the 5% of records that cannot be provided automatically is due to the complexity of providing messaging services on a line with pre-existing Featureline services. Other reasons for manual intervention are most generally due to inaccurate data entry. For these orders, BT is requesting an exemption from the User Access Controls to be implemented by 30 June 2007. In order allow the Messaging team to carry on its work whilst Ofcom considers and consults upon this request Ofcom has agreed with BT under section 5.44.3 of the Undertakings a temporary exemption from the application of User Access Controls limited up to and including 31 October 2007.

3.53 BT is proposing that a dedicated support team which provides messaging services will have access to a specific user profile that allows access to the Openreach data needed to provide the messaging service. Through this process, only messaging services could be provided; it could not be used for any other purpose.

3.54 Access to this data would be managed in exactly the same way as described above for the Tags Helpdesk, e.g. a separate profile would be established along with a separate Access Marker to allow the dedicated messaging team access to the relevant Openreach data. Access to the Messaging profile will be managed through the same authorisation process as described for the Tags Helpdesk profile. Also, as proposed above, Ofcom proposes that the same director-level oversight of the process should be implemented.

3.55 The audit of User Access Controls to be carried out after 30 June 2007 by the EAB, and any subsequent audit, should show that the Messaging team, which sits outside of Openreach, has access to some Openreach data through this profile. Though this will not constitute a breach of the Undertakings whilst the temporary exemption granted until the end of October and any potential subsequent exemptions are in effect, this should allow verification that the User Profile is being used correctly and that only staff working in the Messaging team will have access to this user profile on the Openreach systems.

3.56 BT has also considered the following two options to provide these 5% of orders, once User Access Controls are in place:

3.56.1 Openreach carries out the updating of CSS for messaging services.

This option has been discounted because Openreach does not have access to either the switch or the messaging platform, so the provisioning would need to be co-ordinated across Openreach and BT Wholesale, requiring additional processing on the order and so increasing complexity and cost. This would apply not only to the initial provision of service but also into the repair processes, causing potentially extended repair times.

3.56.2 Do not provide orders that failed to complete automatically.

This was ruled out due to the negative customer impact this would have.

3.57 On 21 June 2007 Ofcom published a variation to BT's Undertakings in respect of the separation of OSS<sup>25</sup>. Within this, BT must complete physical separation of its systems by 30 June 2010 and must meet certain deadlines for migration of customers onto separated platforms. Once a customer's record is migrated, there is no longer a requirement for the Messaging team to be able to access Openreach data to provide the Messaging service, as the data will be held in separate systems in the relevant line of business. Therefore, whilst the exemption as requested would last until 30<sup>th</sup> June 2010, the base of customers for which the Messaging team need access to Openreach data will reduce as the migration progresses.

3.58 Ofcom believes that refusing this request and restricting the access required by the Messaging team would mean that in some circumstances Messaging services could not be provided, and that this would cause harm to customers of BT and other CPs. Given the way that access to Openreach data will be managed and that there is a dedicated team that works solely on Messaging activities, Ofcom proposes to accept this request as it believes processes are in place to ensure access to Openreach data will not be inappropriately used and that this access can be monitored via regular systems audits.

**Question 6:** *Do you agree that Ofcom should agree to this request from BT for an exemption to allow the Messaging support team to continue to access data from Openreach's OSS until physical systems separation is completed by 30 June 2010? If you do not please explain why.*

<sup>25</sup> [http://www.ofcom.org.uk/consult/condocs/bt\\_oss/statement/](http://www.ofcom.org.uk/consult/condocs/bt_oss/statement/)

## 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 24 August 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/variations/howtorespond/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 (see Annex 3), to indicate whether or not there are confidentiality issues. This response cover sheet 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 [steve.perry@ofcom.org.uk](mailto:steve.perry@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response cover sheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Steve Perry  
Floor 4  
Ofcom  
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 questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views.

## 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 Martin Hess on 020 7783 4151.

## 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](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response coversheet that this is acceptable).

- A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex so that non-confidential parts may be published along with the respondent's identity.
- A1.10 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use in order to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

### Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement in October 2007.
- A1.13 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](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

### Ofcom's consultation processes

- A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.15 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](mailto: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.
- A1.16 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@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 version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest. However, in the case of the exemptions and the variation included in this consultation, Ofcom believes the issues are limited in scope. In addition, Ofcom believes it is to the benefit of all stakeholders to reach a conclusion on these issues as expediently as possible, and therefore believes that a consultation period of 5 weeks is appropriate.
- A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the 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. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

- A2.8 We will look at each response carefully and with an open mind. 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, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- 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 by allowing you to state very clearly what you don't want to be published. We will keep your completed coversheets confidential.
- 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/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. 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 coversheet 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

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. 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

# Consultation questions

**Question 1** Do you agree that Ofcom should agree to this request from BT for a variation of its Undertakings to include a new section 20.11 which shall allow BT to respond to an Exceptional Incident with reasonable and proportionate steps including taking action which otherwise but for the proposed section 20.11 may be considered to be a breach of the Undertakings? If you do not please explain why.

**Question 2:** Do you agree that Ofcom should agree to this request from BT for an exemption in respect of the provision of backhaul connectivity for the six exchanges for the purposes of the Pathfinder trial? If you do not please explain why.

**Question 3:** Do you agree that Ofcom should agree to this request from BT to exempt LES circuits too long to migrate onto the relevant Openreach EOI input from having to be provided on an EOI basis? If you do not please explain why.

**Question 4:** Do you agree that Ofcom should agree to this request from BT for an exemption to allow the Tags Helpdesk to continue to access data from Openreach's OSS until a new solution can be developed or 30 June 2009, whichever is sooner? If you do not please explain why.

**Question 5:** Do you agree that the organisational safeguards explained above provide sufficient protection against inappropriate access to Openreach data for BT Wholesale employees? If you do not please explain why.

**Question 6:** Do you agree that Ofcom should agree to this request from BT for an exemption to allow the Messaging support team to continue to access data from Openreach's OSS until physical systems separation is completed by 30 June 2010? If you do not please explain why.

## Annex 5

# BT's variation and exemption requests

## Request Number 1

### **Request for a variation under section 18.1 to insert a new section 20.11 in the Undertakings which deals with BT's Incident Management Process for Exceptional Incidents**

#### **1. Description of issue and reason for request**

Many thousands of incidents affect BT and BT's networks each year; to ensure that such incidents cause minimal disruption to BT, BT people, customers and other stakeholders, BT has robust incident management processes, designed to identify the extent and nature of any incident, establish control over that incident and recover and return BT's operations to "business as usual" status as quickly and safely as possible.

BT is concerned that for a small number of serious incidents the Undertakings may prevent or hamper BT from operating safely or in the best interests of BT's CP customers and other stakeholders such as the civilian authorities. Where such incidents occur BT believes that it is in everybody's interest that BT should not be prevented from taking any reasonable and proportionate steps necessary to resolve the incident, which steps might otherwise be inhibited by the Undertakings.

#### **2. Legal basis, scope and duration**

- Legal Basis: section 18.1
- Scope: variation of the Undertakings to include a new section 20.11
- Duration: variation for a permanent period, subject to cessation on 6 months written notice from Ofcom to BT.

#### **3. Description of the process involved**

Each BT operating division (Openreach, BT Wholesale, BT Retail and BT Global Services) has an incident management process, tailored to the specific needs of that operating division, whilst retaining a basic pan BT structure. Each operating division's incident management plan consists of three layers: the Bronze layer (operational response), the Silver layer (tactical response) and the Gold layer (strategic response). In addition, for the most serious types of incidents, BT has a group level strategic and co-ordination layer, the BT Gold Co-Ordination Group (BTGCG). The operating division layers feed into the BTGCG layer, as appropriate.

BT defines an incident as any event or series of events which: jeopardises the health and well being of BT people; stops or hinders BT serving its customers; threatens to damage BT's business or brand; impacts the infrastructure of a country in which BT does business; and/or requires BT to respond as part of civil contingency activity. Incidents occurring within BT are graded into reportable incidents, major incidents or serious incidents.

A reportable incident is an incident that BT's processes require to be formally recorded, usually for statistical and audit purposes. A major incident is a reportable incident which has, or is likely to have, a significant impact on BT. A serious incident is a reportable incident which has or is likely to have a severe impact on BT and/or involves support to civil authorities in their response to an incident.

For certain incidents falling within the category of serious incident, there is a possibility of the Undertakings preventing or hampering BT in the operation of its incident management processes and therefore the safe, efficient and/or timely resolution of that incident. Where such circumstances arise BT believes it is critical that, subject to certain checks and balances, it be temporarily relieved of its obligations under the Undertakings, to the extent reasonably required in terms of duration and geography to resolve that incident. BT would class such incidents as Exceptional Incidents.

It is difficult for BT to define exactly what would constitute an Exceptional Incident however examples of where BT might need to declare an Exceptional Incident are:

- incidents where there is a risk of loss of life or the health and safety of BT people or others are at significant risk;
- serious illness of pandemic or epidemic proportions affecting a significant proportion of BT's workforce and the restrictions on cross-boundary working are required to be relaxed to enable BT to maintain service to all its CP customers and its downstream customers;
- major terrorist or criminal activity or extremely severe unprecedented weather resulting in significant and widespread damage to significant parts of BT's UK network; or
- where BT activates its emergency response team to deal with dangerous chemical, biological, radiological or nuclear substances.

A senior manager within BT, occupying the incident management function of the BT Group Senior Representative (BTGSR) would be responsible for declaring an incident as an Exceptional Incident and thereafter ensuring that BT complies with its reporting and other obligations under the proposed variation.

The declaration of an Exceptional Incident would last for only for the minimum amount of time, cover the minimal geographic area and involve the minimum amount of people and systems access, as is reasonably required to resolve the incident. The BTGSR's decision to declare an incident as an Exceptional Incident would be notified to Ofcom and Ofcom would have the opportunity to notify BT that the incident should not have been declared as an Exceptional Incident, or at any time on five working days notice require BT to cease the classification of the incident as an Exceptional Incident.

Following each Exceptional Incident, BT would be required to report to Ofcom the extent to which relevant processes and actions taken by BT to resolve the incident would fall under or require the application of the proposed section 20.11. Additionally the EAB would be required to include in its annual report to Ofcom under section 10.27 of the Undertakings a review of the operation, if any, of the proposed variation.

Ofcom may at any time, review the operation of this provision and if Ofcom reasonably considers that the variation is no longer necessary, Ofcom may serve 6 months notice on BT to that effect.

#### **4. Impact on Equivalence of Inputs**

To the extent that an Exceptional Incident impacts on a particular product or products, during the period of the Exceptional Incident, such impacted products may be provided on a non-EOI basis; however the exact impact is dependent on the particular facts of a particular incident. BT's report to Ofcom would describe any impact on EOI which a particular incident may have had.

#### **5. Justification and impact on CPs**

In the absence of the proposed variation potentially BT may be unable to resolve serious incidents in a safe, efficient and timely manner causing unnecessary disruption, risk, cost and potentially harm to CPs (including BT), those CPs' end-users and others, including the general public.

Since the Undertakings came into force there have been no incidents within the United Kingdom of sufficient severity to warrant the declaration of an incident as an Exceptional Incident and BT anticipates that the need to declare a serious incident as an Exceptional Incident in the future will be rare. Accordingly, the actions taken to resolve the Exceptional Incident will likely be limited in scope (duration, people, systems access and geography), and consequently any adverse impact on CPs is likely to be minimal.

## **Request Number 2**

### **Product: Initial Implementation of Backhaul to Copper-Only MSANs in BT's NGN 21CN ("Pathfinder")**

### **Legal basis: section 11.9**

#### **1. Introduction**

On 24 November 2006, Ofcom granted BT a temporary exemption up to and including 31 March 2007 such that sections 5.46.1 and/or 11.7 of the Undertakings will not apply to (1) Openreach NGN Backhaul Services provided to BT for use at two 21CN Copper MSAN-only sites (BT's Wick TE and Bedlinog TE sites); and (2) in relation to the initial implementation of BT's NGN, 21CN. This period was to allow Ofcom to consider more fully BT's submissions relating to these matters including any necessary seeking of stakeholders' views whilst enabling BT to proceed with the initial phases of implementation of its NGN on the timeline presented to industry during the Consult21 programme.

BT advised industry through Consult21 on 21 December 2006 that it would be conducting a review of the 21CN implementation plan. On that same date BT advised Ofcom that the two requests submitted on 24 November 2006 would also need to be reviewed in light of this replanning activity. Given ongoing replanning on 30 March 2007 Ofcom granted a further temporary exemption up to and including 30 June 2007 in respect of item 1 above only.

The more detailed replan was presented to industry on 27 April 2007 and includes within the "Pathfinder" phase a further four exchanges in South Wales where migration of PSTN services is planned to be to 21CN Copper MSAN-only sites. This activity is to occur between October and December 2007. The four further sites are Southerndown, Bonvilston, Peterston, and Sully.

#### **2. Product description and reasons for request**

This request is in relation to activities required to enable BT to proceed with the initial phases of implementation of its NGN on the timeline presented to industry during the Consult21 programme.

It is limited to the PSTN migration activities within the initial implementation phase, known as "Pathfinder", of BT's New Generation Network, 21<sup>st</sup> Century Network ('21CN'). The "Pathfinder" phase overall commenced on 27 November 2006 and is currently projected to conclude at the end of October 2008.

Pathfinder stage 1 effects the migration of end-users in the Wick and Bedlinog exchanges to BT's NGN, 21CN, for PSTN service only. Stage 2 effects the migration of end-users in Southerndown, Bonvilston, Peterston, and Sully exchanges to BT's NGN, 21CN, for PSTN service only. The total number of end-users involved is under 5000. Broadband services will not be migrated in either of these 2 stages. The only EOI input products required for Pathfinder stages 1 and 2 are Wholesale Line Rental (WLR) and Openreach Backhaul Network Service (ONBS).

No issues arise with BT's use of WLR. However BT's use of ONBS in these six exchanges is not fully EOI and as a result, and on the basis of the current plan of record, a limited agreement from Ofcom under section 11.9 is needed.

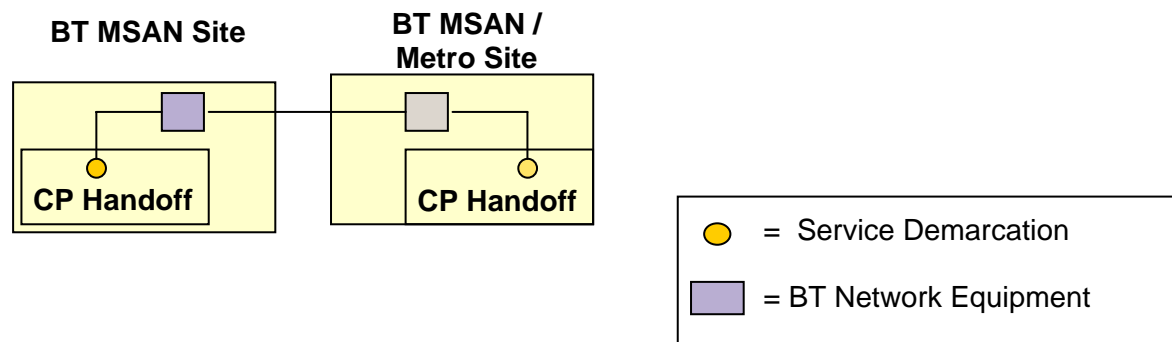
The agreement under section 11.9 that BT is requesting is in relation to how Openreach's NGN backhaul services are consumed during 21CN Pathfinder stages 1 and 2 for the Wick, Bedlinog, Southerndown, Bonvilston, Peterston, and Sully exchange sites.

## Openreach NGN Backhaul Services

Section 2.1 of the Undertakings on Definitions and Interpretation describes "Backhaul Product" as a Network Access service which runs from a BT Local Access Node to a) another BT Local Access Node or b) a BT Core Node (amongst other criteria). Sections 3 and 5 specify that these are products and services to be provided by Openreach on an EOI basis.

In 21CN Openreach Network Backhaul Services provide backhaul for Communications Providers (CPs) between their equipment in BT MSAN sites, or between their equipment in a BT MSAN site and in a BT Metronode site. See figure 1.

**Figure 1: Openreach Network Backhaul Services (WES-B1/2)**



Deployment of MSANs (Multi Service Access Notes) at all exchanges is a key part of 21CN enabling multiple services to be provided over mixed technologies. BT's 21CN network will have both Copper MSANs and Fibre MSANs. Copper MSANs will be installed by BT in all exchanges, as the Copper MSAN is necessary to carry voice telephony and broadband services; Fibre MSANs will be installed in exchanges where there is demand for services which have to be delivered over fibre.

As ONBS is a fibre-delivered product, to meet the EOI definition of "same" BT would normally be obliged to install a Fibre MSAN in these six exchanges for the conveyance of voice telephony services between those exchanges and their serving BT Metro nodes despite the fact that (i) forecast traffic is low *and* (ii) there is no current received or firm forecast requirement for services which need to be delivered over fibre beyond the backhaul link from BT Wholesale for the conveyance of voice telephony (and/or broadband) services.

BT could, of course, procure and install Fibre MSAN equipment for these six exchanges, but this would entail expenditure that is not required to implement Pathfinder stages 1 and 2 as planned. Alternatively, BT proposes that it connect the Openreach supplied ONBS service to the fibre ports on the Copper MSAN (that would normally be used for it to connect to a Fibre MSAN should it exist) until there is forecasted demand for services which need to be delivered over fibre and thus via a Fibre MSAN or Fibre MSAN-like technology.

BT notes that EOI does not require pre-provisioning of equipment in the absence of forecasts and that BT does, and will continue to, buy the same Openreach ONBS input product and at the same price as it is made available to any other CP. The EOI issue is simply that in these exchanges the standard EOI ONBS product is connected to a fibre port on a Copper MSAN rather than a fibre port on a Fibre MSAN: this form of connection is only available at a 21CN site where there is no demand for services which require delivery over fibre and where only one CP is present. In a practical sense this 'one CP' would be BT. The ONBS product itself is the same.

Were a CP to require fibre-delivered services in any of the six exchanges, BT would need to install a Fibre MSAN at that site. ONBS to a Fibre MSAN will be EOI in all respects.

### **3. Legal basis, scope and duration**

- Legal basis: section 11.9
- Scope: agreement under section 11.9 in respect of BT's Wick, Bedlinog, Southerndown, Bonvilston, Peterston, and Sully exchanges
- Duration: Until 31 December 2007, unless otherwise agreed with Ofcom.

### **4. Justification for the request and impact on CPs**

Given the very limited scope of the request and the fact that it will enable BT to progress the early Pathfinder 21CN implementation and deployment programme as published and discussed under Consult21 with industry, BT does not believe that this request will have any material adverse impact on CPs, end-users or competition generally. The request is reasonably practicable and proportionate given the following:

- The absence of forecast demand from CPs other than BT requesting service at these Copper MSAN-only sites does not justify the proactive installation of Fibre MSANs/Fibre MSAN-like technology, which would trigger a significant avoidable investment by BT, which cost would ultimately have to be borne by the end user.
- The development of an appropriate solution to install Fibre MSANs (or Fibre MSAN-like technology) where such demand from other CPs emerges means that other CPs will not be adversely affected by the absence of a Fibre MSAN at the time they place their forecasts.

## Request Number 3

### **Product: MIGRATION OF INSTALLED RETAIL SHORT HAUL DATA SERVICE CIRCUITS TO OPENREACH EOI BACKHAUL PRODUCTS**

### **Legal basis: Section 5.46.2(a)**

#### **1. Product description and reasons for request**

In accordance with the Undertakings (Annex 1 Section 4), BT's relevant retail Ethernet-based local area network extension service must be migrated to Openreach's Wholesale Extension Service (WES) by 31 March 2007.

However, specific exemptions agreed with Ofcom on 15 June 2006 (see Ofcom Statement, requests #12, 13 and 14)<sup>26</sup> set out a different timescale in relation to specific Short Haul Data Services. Specifically, those exemptions specify that various BT Global Services SHDS circuits<sup>27</sup> (collectively referred to as "SHDS circuits") should be migrated to Wholesale End-to-End Ethernet Service (WEES) by 30 September 2007.

The implementation of these exemptions has however highlighted some issues in relation to the migration of the installed retail SHDS base. These issues were not recognised at the time these exemptions were discussed with Ofcom given that the relevant EOI Openreach WEES portfolio was still under development then.

#### ***Appropriateness of WEES as an EOI input into the relevant retail SHDS circuits***

Ofcom's concern at the time of its consideration of BT's exemption requests was to ensure that the relevant retail SHDS circuits migrated to EOI Openreach input products. At the time of drafting the request, it was assumed that WEES (which was still being developed at the time) would be the correct EOI input for all retail SHDS circuits, whereas more detailed subsequent work as part of the implementation of these exemptions has determined that, in some cases, other EOI Openreach backhaul products may be more appropriate in light of the specific intended usage of the circuit and the contractual restrictions in place in relation to the Openreach EOI products. For example, the Undertakings' definition of WEES is restricted to circuits between End-User premises, whereas retail SHDS circuits did not have such restrictions.

As a result, migration is being assessed at a more granular level to ensure retail SHDS circuits migrate to the most appropriate Openreach EOI backhaul product, which may or may not be WEES as the case may be.

#### ***Extra long installed retail SHDS circuits base***

In some cases the retail SHDS circuits are longer than the current Openreach EOI products as there was no length restriction on retail SHDS circuits (other than technical restrictions), whereas certain Openreach EOI backhaul products do have length restrictions set out in the Undertakings.

<sup>26</sup> See 15 June 2006 Ofcom Statement, requests #12, 13 and 14, at <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

<sup>27</sup> LES 155, LES 622, LES 1000 ER, LES10, LES 10 Local Reach, LES 100, LES 1000, CES 1000, LES 2500 and LES 10000



The Backhaul Product definition applies to Openreach's Backhaul Extension Service Daisychain (BES Daisychain), which has a 15 km radial distance limit (40 km route distance maximum).

The WEES definition reference to 25km distance is interpreted, as is the case for the current Openreach Backhaul Extension Service (BES) and Wholesale Extension Service (WES), to refer to 25km radial distance/40km route distance. Extended Reach versions of WEES, BES and WEES refer to 35km radial distance/max 70km route distance.

Some of the existing retail SHDS circuits are longer than the EOI Openreach products to which they would most appropriately migrate (i.e. longer than 15km for products that would migrate to BES Daisychain, or longer than 25km for products that would migrate to BES, WES or WEES, or longer than 35km for Extended Reach products). As a result, there is currently no corresponding longer length variant of these Openreach EOI backhaul products, and Openreach is not currently intending to offer longer length variants of its backhaul products on an EOI basis.

It is important to note that in all cases, even though circuits may exceed the relevant radial distance limit, they will always be within the relevant route distance limit, which is imposed by technical limitations.

BT requests an exemption from EOI such that it is only required to provide "extra long" variants of Openreach EOI backhaul products solely to support the installed base of retail SHDS circuits migrated to Openreach EOI backhaul products prior to the 30 September 2007 IBMC date set out in accordance with paragraphs 8, 9 and 10 of the Exemptions and Agreements Wording in Ofcom's 15 June 2006 Statement. Openreach would not be required to provide "extra long" variants of WEES, WES and BES (in excess of 25km radial distance), BES Daisy Chain (in excess of 15km radial distance), WES Extended Reach, BES Extended Reach and WEES Extended Reach (in excess of 35km radial distance) for new supply. The duration of this exemption would be permanent vis-à-vis the migrated "grandfathered" installed base of "extra long" circuits, unless (i) otherwise agreed with Ofcom or (ii) Openreach decides to launch such "extra long" variants on an EOI basis, whichever occurs first.

BT's request applies both with respect to the migration of the installed retail SHDS base of circuits of BT Global Services, and to the migration of the installed retail SHDS base of circuits purchased by other CPs wishing to migrate directly to Openreach EOI products.

## **2. Legal basis, scope and duration**

- Legal basis: Section 5.46.2(a)

- Scope: exemption from EOI to enable Openreach to support on a non-EOI basis the installed retail SHDS circuit base migrated to Openreach EOI products where extra long variants of EOI WES, BES, WEES, BES Daisychain, WES Extended Reach, BES Extended Reach, WEES Extended Reach, as appropriate, have been provided, without being required to provide such extra long variants for new supply.

- Duration: permanent for the installed retail SHDS circuit base migrated to extra long variants of EOI WES, BES, WEES, BES Daisychain, WES Extended Reach, BES Extended Reach, WEES Extended Reach, as appropriate, unless otherwise agreed with Ofcom or unless Openreach decides to launch such "extra long" variants on an EOI basis. For the avoidance of doubt, this applies only to these specific individual installed retail SHDS circuits, and does not apply to any subsequent additional circuits provided to the same customers or between the same locations. Openreach will provide to Ofcom within 3 months of this request being agreed a list of the relevant installed circuits which have been migrated.

### **3. Identification of the products involved**

The relevant products are the EOI Openreach backhaul product portfolio, specifically BES Daisychain, BES, WES and WEES.

Further details of BES and BES Daisychain products can be found at:

<http://www.openreach.co.uk/orpg/products/bes/eoibes.do>.

Further details of WES and WEES products can be found at:

<http://www.openreach.co.uk/orpg/products/bes/eoiwes.do>.

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

WES, WEES, BES, BES Daisychain, WEES Extended Reach, WES Extended Reach and BES Extended Reach are provided on an EOI basis.

The existing installed SHDS circuits base is being migrated to the appropriate Openreach backhaul products (WES, WEES, BES, BES Daisychain, WEES Extended Reach, WES Extended Reach or BES Extended Reach, as the case may be), irrespective of the length of the existing circuit.

However, going forward, unless agreed otherwise with Ofcom or unless Openreach decides to launch them on an EOI basis, new supply would continue to be restricted to circuits of 25km radial distance or less (for WES, WEES and BES) or 15km radial distance or less (for WEES) or 35km radial distance or less (for WEES Extended Reach, WES Extended Reach and BES Extended Reach). As a result, depending on whether they are migrating installed retail SHDS circuits or purchasing new Openreach EOI backhaul circuits, CPs will be treated differently.

New supply of EOI BES, BES Daisychain, BES Extended Reach, WES, WES Extended Reach, WEES and WEES Extended Reach to CPs will be unaffected by the requested exemption.

For the avoidance of doubt, it is important to note that BT's request for an exemption from EOI relates solely to the length of the circuits provided; in all other respects, the same assurance process and pricing methodology will apply to the installed base of retail SHDS circuits migrated to Openreach EOI backhaul products, as applies to existing ongoing supply and new supply of "normal length" Openreach EOI backhaul products.

### **5. Justification for the exemption and impact on CPs**

This exemption is intended to enable Openreach to fulfil its obligations under the Undertakings and to minimise customer dissatisfaction and disruption for that very small number of "extra long" retail SHDS circuits which could not be supported by Openreach's existing "normal length" EOI backhaul portfolio.

## Request Number 4

### **Product: Request for an agreement under section 5.44.3 to deal with the activities of BT's Tag Helpdesk team**

#### **1. Description of issue and reason for request**

This request relates to BT Wholesale's Tags helpdesk requirement for ongoing access to Openreach systems and data relating to WLR3 and LLU post 30 June 2007 to allow them to deal with Tags on the line. A Tag on the line is a marker within the BT order handling systems that prevents a provision order for broadband service (IPstream, DataStream) or LLU from being successfully placed.

There are many different circumstances that can result in a Tag on the line condition, the most common being the following categories:

- A PSTN issue e.g. an incompatible PSTN product associated with the line
- An LLU issue e.g. there is already an LLU service on the line
- An ADSL issue e.g. there is already a BT Wholesale broadband service associated with the line

A Tag on the line will in many cases exist legitimately and will only be there for a certain period of time. However the Tag will still prevent the customer ordering broadband for the period it exists. This often occurs where other transactions, such as a cease order, have not yet been completed and the completion of that transaction would allow the Tag to be removed.

Some common examples include, where there is a cease in progress for the LLU or ADSL service associated with the line, or it could be a case that a cease order has not yet been raised by the losing Service Provider.

Whilst a significant proportion of Tags on the line are valid and will time expire, as indicated above, from the customers perspective the existence of Tag does not facilitate a seamless experience. Customers expect that broadband services can be ceased and provided in the same timescales as voice services.

In order to assist with reducing customer dissatisfaction with Tag issues, BTW currently provides a Helpdesk facility that is used by both Communications Providers (CPs) and end-users to establish the cause of a Tag on a line which prevents end-users from successfully ordering a Broadband service.

In order to carry out their tasks the Tags helpdesk need to be able to access any of the records which might be the cause of the Tag. These include PSTN, LLU, IPstream, and DataStream records. Of these records only the IPstream and DataStream records are within BTW's control.

In terms of volumes 47,460 queries were handled in February 2007 of which 37.87% were referred from Ofcom either from Ofcom call centre agents or through Ofcom's IVR (Interactive Voice Response). 57.43% of queries were directly from end-users and 42.57% from CPs.

An analysis of a sample of nearly 15000 of the calls received from CPs demonstrated that 36.92% were due to the existence of IPstream or DataStream on the line, 29.6% were due

to existing LLU and 8.6% were due to other errors within the BTW domain such as incompatible technology.<sup>28</sup>

As at the date of this request section 5.44.3 (a) requires BT to apply user access controls unless otherwise agreed with Ofcom under 5.44.3.

The result of these requirements would be to prevent the Tags helpdesk from accessing the relevant LLU and WLR3 records post 30 June 2007 thereby affecting their ability to assist customers with resolving the Tags issue unless an agreement is reached between BT and Ofcom.

## 2. Legal basis, scope, and duration

- Legal basis: section 5.44.3

- Scope: agreement under 5.44.3 as varied for a limited time for the activities of the Tags helpdesk.

- Duration: agreement until 30 June 2009 unless otherwise agreed with Ofcom.

## 3. Description of the process involved

The Helpdesk consists of a ringfenced team of individuals. All Helpdesk staff are employed full time solely and specifically to carry out the Helpdesk functions and are not employed in any other capacity within BT Wholesale operations. Management of the Helpdesk function is also separate from management of other operational functions. As set out above the Tags helpdesk provides information and assistance to both CPs and end users. Every CP who calls the Helpdesk will have signed the Code of Practice thereby providing explicit customer consent for the support that the Helpdesk provides. In addition the helpdesk does not provide assistance to any CP who has not signed up to the Code of Practice, or to their end-users.

The activities of the Tags helpdesk can be described as providing information and taking action. Where appropriate the Tags helpdesk passes on information to the C P or the end user about the cause of the Tag. In cases where the Tag is caused by an error in BTW records the desk will take action to resolve the Tag.

Where the Tags helpdesk can see that the cause of the Tag is an error with Openreach information the Helpdesk passes the issue to a team within Openreach to resolve and does not take action itself.

As set out above access by the Tags helpdesk would be required to be ceased prior by 30 June 2007 in order to meet the requirements of section 5.44. The table below shows the information which the TAGS helpdesk would continue to require access to post 30 June 2007:

Reason for Tag	Information Required
LLU exists	Current LLU CP details
LLU exists open provision order	CP details & provision order CAD
LLU exists open cease	CP details & cease order CAD

<sup>28</sup> Please note the numbers do not add to 100% as not all calls related to Tags or in some cases the CPs could not be validated and therefore the call could not be progressed.

order	
PSTN or WLR exists	CP details and Telephony Contract start date so ADSL can be validated
PSTN or WLR open provision order	CP details & provision CAD
PSTN or WLR open cease order	CP details & cease CAD
PSTN or WLR Incompatible Products	Details of PSTN product
PSTN or WLR Incompatible Products open provision order	Details of Provision CAD
PSTN or WLR incompatible Products open cease order	Details of cease CAD
PSTN Incompatible Line Technology e.g. TPON DDI etc.	Details of technology associated with the line
Incorrect Records	Need details for ADSL, LLU and PSTN/WLR
ADSL exists	Need SP details
ADSL open provision order	Need SP details & provision CAD
ADSL exists open cease order	Need SP details & cease CAD

#### **4. Description of the solution proposed**

As Ofcom is aware BT has been discussing the strategic solution for Tags within industry. A feasibility has just begun the results of which are expected by October 2007. BT believes it is then likely to take some time for industry to agree to a strategic solution and implement this. Therefore BT is asking for a time limited agreement until 30 June 2009 unless otherwise agreed with Ofcom. The information obtained as a result of this access should only be used by these employees and only for the purposes of providing Tags helpdesk services.

#### **5. Justification for the agreement and impact on CPs**

Reducing the effectiveness of the helpdesk would have serious implications for C Ps and their end-users as it would reduce the effectiveness of the staff's ability to assist in resolving Tag on line issues. This is likely to result in increased dissatisfaction for customers and further damage to the industry's reputation. BT does not believe that continued access to the Openreach information post 30 June 2007 has any material impact on CPs because the Tags desk is a ringfenced team who only use this information for the purpose of resolving the Tags issues. They are subject to continuing behavioural training which reinforces this position.

## Request Number 5

### **Product: MESSAGING SERVICES, AND BILL DIRECT**

### **Legal basis: 5.44.3**

#### **1. Product description and reasons for request**

This request relates to BT Wholesale's provision of messaging services. In order to provide these services, access is required to the Openreach installations on CSS, BT's main Operational Support System (OSS). Installations is the term used to describe how information about a particular PSTN line is stored on CSS. Currently, these services include:

- messaging products that are provided to Openreach as part of the WLR3 product (these are Call Mapping and Wholesale 1571); and
- messaging products that BT Wholesale sells to Communications Providers (CPs), including BT Retail (these include BT Answer, BT Call Minder and Fixed Line Text).

In addition, there are other BT Wholesale components that are supplied to BT Retail that require access to the Openreach installation on CSS. This is in relation to:

- Bill Direct.

Under section 5.44.3(a) of the BT Undertakings (as amended by variation number 9 which came into effect on 19 June 2007 BT is required to implement User Access Controls for OSS capability that supports, amongst other things, the Equivalence of Inputs product of Wholesale Line Rental Analogue (WLR3 Analogue) by 30 June 2007. User Access Controls are defined as the application of user profiles and/or data tagging or authorisation control mechanisms combined with behavioural mechanisms such that users outside Openreach can only have access to systems or applications or data which is consistent with the Undertakings and which does not lead to undue discrimination against other CPs.

In order for BT Wholesale to be able to provide these products, it needs to access the Openreach installations on CSS. Where BT Wholesale is supplying Call Mapping or Wholesale 1571 (i.e. supplying a component of WLR3), it is consistent with the Undertakings for BT Wholesale to access the Openreach installation. However, where BT Wholesale is supplying messaging products to downstream CPs, it is not supplying a WLR3 component to Openreach and so this access is not consistent with the Undertakings.

The outline process for providing these products is as follows: BT Wholesale processes the request for a product from a CP with reference to the WLR3 installation, adds a product code to CSS and then CSS drives the addition of the necessary settings on Switch Manager (the system that configures the local exchanges and the messaging platform). This access occurs through largely automated interfaces. However, where this cannot be done through automated processes, a BT employee needs to manually access the Openreach installation on CSS to make the necessary changes. In practice, the products are provided on a fully automated basis in approximately 95% of cases, with no human intervention.

BT requests Ofcom's agreement under section 5.44.3 to enable continued access to the Openreach WLR3 installations on CSS post 30 June 2007 for the 5% of orders that require manual intervention by BT Wholesale. The level of access will decrease as BT Wholesale

migrates its users off of CSS and onto its physically separate systems, as part of the progress towards physical separating by 30 June 2010. The information obtained as a result of this access should only be used by these employees and only for the purposes of providing these services.

## 2. Legal basis, scope, and duration

- Legal basis: section 5.44.3

- Scope: agreement under section 5.44.3 for the products set out in section 3

- Duration: agreement until 30 June 2010 when Openreach's OSS will be physically separate from the rest of BT

## 3. Identification of the products involved

This request seeks Ofcom's agreement to access the Openreach WLR3 installations on CSS in relation to the following BT Wholesale products or their successors:

- **BT Answer 1571 and its variants** (personal greeting, message alert, text alert). BT Answer 1571 is a BT-branded basic, non-personalised voicemail service. Personal Greeting allows the end user to personalise the mailbox with the customer's own greeting. With Message Alert, if the line is engaged when the message is taken, the platform will make an outcall when the line becomes free. Text Alert allows text messages to be sent when a voicemail is received.
- **BT Call Minder and its variants** (extensions, premier, Call Minder Multi). There are three Call Minder messaging services: call minder (a standard voice message service consisting of one mailbox), Call Minder Extensions (a voice messaging service consisting of nine mailboxes) and Call Minder Premier (a voice and fax messaging service consisting of five mailboxes and offers customers the option to rent additional mailboxes up to a total of nine). Call Minder Multi is a multi-feature, multi-user answering service that takes voicemail messages which can be accessed via a single call to 1571.
- **Fixed line text** (including text to speech opt-out, BT text alerts and curfew options). Fixed line text allows the end user to send and receive text messages from their landline. Curfew options allow the end user to opt out of receiving texts during curfew hours. Text to speech opt out allows the end user to opt out of receiving texts altogether.
- **Bill Direct**. This is a simple billing solution that allows employees to bill any business calls made from home back to their business account.

Further information about these products is to be found at:

### BT Answer 1571 and Call Minder

<http://www1.btwebworld.com/sinet/354v4p0.pdf>

### Fixed Line Text

<http://www1c.btwebworld.com/sinet/SPIN080.pdf>

### Bill Direct

[http://www.serviceview.bt.com/list/public/notifs/01-03-2007/Cust\\_Opts\\_Bus boo/NotificationPeriodImpl325203202\\_d0e224.htm](http://www.serviceview.bt.com/list/public/notifs/01-03-2007/Cust_Opts_Bus boo/NotificationPeriodImpl325203202_d0e224.htm)

#### **4. Justification for the request and impact on CPs**

If access to the Openreach installation on CSS was removed from BT Wholesale from 1 July 2007, BT Wholesale would no longer be able to provide these services to CPs. This would cause severe disruption for CPs and a significant deterioration in service for affected end users. In addition, BT Wholesale gets no commercial advantage from this exemption vis-à-vis its competitors as it merely allows it to continue to provide important services to its customers (whether internal BT customers or other CPs). Therefore, there will be no material adverse impacts on the market or other CPs.



## Annex 6

# Proposed wording of new section 20.11

## Variation of Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002

Variation Number: [10]

### WHEREAS:

(a) British Telecommunications plc ('BT') has given Ofcom certain undertakings ('the Undertakings') which took effect on 22 September 2005, pursuant to the Enterprise Act 2002;

(b) by virtue of section 18.1 of the Undertakings, BT and Ofcom may from time to time vary and amend the Undertakings by mutual agreement;

(c) BT and Ofcom have agreed to vary the Undertakings as hereinafter appears.

### NOW THEREFORE:

Pursuant to section 18.1 of the Undertakings Ofcom and BT hereby agree that the Undertakings are varied as follows:

1. Definitions and interpretation

1.1 Words or expressions hereinafter appearing have the same meanings as in the Undertakings.

1.2 References hereafter to section numbers are references to section numbers in the Undertakings.

2. Exceptional Incidents

2.1 Section 20 is amended by adding a new section 20.11 as follows:-

"20.11 ***Exceptional Incidents***

20.11.1 *Nothing in these Undertakings shall prevent BT from taking any reasonable and proportionate steps strictly necessary for dealing with an Exceptional Incident to the extent required in terms of duration and geography to resolve that Exceptional Incident, including taking any action, or otherwise doing or not doing any thing, which, but for this section 20.11.1, may be considered to be a breach of any of these Undertakings.*

20.11.2 *By the fifth working day after an Exceptional Incident has been declared by the BT Group Senior Representative concerned, BT will notify Ofcom in writing of the Exceptional Incident. The notification shall include an*

*explanation of the basis on which the BT Group Senior Representative declared the incident to be an Exceptional Incident.*

- 20.11.3 *Following notification of an Exceptional Incident Ofcom shall notify BT when BT shall be reasonably required to provide Exceptional Incident Report or Reports to Ofcom during the period of the Exceptional Incident. For the avoidance of doubt these reports may be oral or written.*
- 20.11.4 *Where an Exceptional Incident lasts for more than 30 calendar days, BT will notify Ofcom in writing of the continuation of that Exceptional Incident and will renotify Ofcom in writing at a minimum every 30 days throughout the duration of the Exceptional Incident.*
- 20.11.5 *If Ofcom reasonably decides, following notification under section 20.11.2, that an Exceptional Incident should not have been classified as an Exceptional Incident or during the period of an Exceptional Incident that the incident should no longer be classified as an Exceptional Incident Ofcom may give BT 5 working days written notice that section 20.11.1 shall cease to apply to that incident as from the conclusion of the notice period and for the avoidance of doubt any obligation under section 20.11.3 to report to Ofcom shall cease.*
- 20.11.6 *When an Exceptional Incident is closed BT will notify Ofcom in writing of the closure.*
- 20.11.7 *Following closure of an Exceptional Incident, or if pursuant to section 20.11.5 an incident ceases to be classified as an Exceptional Incident, BT will, within 10 working days thereof, deliver to Ofcom a written Exceptional Incident Report.*
- 20.11.8 *Following receipt by Ofcom of a written Exceptional Incident Report under section 20.11.7 BT shall provide to Ofcom on a confidential basis any additional information about the Exceptional Incident which Ofcom may reasonably require of it.*
- 20.11.9 *The EAB will include in its annual report to Ofcom under Section 10.27 of these Undertakings a review of the operation, if any, of this section 20.11 during the year concerned.*
- 20.11.10 *Ofcom may at any time review the operation of this section 20.11 and if Ofcom considers that this section 20.11 should no longer apply Ofcom may give BT six months notice that this section 20.11 will cease to apply. Any Exceptional Incidents which are ongoing at the expiry of the six months notice shall automatically be closed, unless otherwise agreed with Ofcom.*
- 20.11.11 *In this section:*
- ‘Exceptional Incident’ means an incident, whether or not related to BT’s electronic communications network, where:*
- a) in accordance with BT’s normal incident management process, a BT Group Senior Representative is appointed to oversee the management of the incident; and*
  - b) the BT Group Senior Representative reasonably declares the incident to be an Exceptional Incident falling within section 20.11 of these Undertakings.*

*For the avoidance of doubt the BT Group Senior Representative will be regarded as acting reasonably in declaring an Exceptional Incident if the incident involves for example:*

- i) increased risk of loss of life or significant risk for the health and safety of BT people or others;*
- ii) major terrorist or criminal activity or extremely severe weather conditions or other significant unforeseeable events adversely affecting the network and resulting in significant and widespread damage to considerable parts of BT's network;*
- iii) the activation of BT's emergency response teams to deal with dangerous chemical, biological, radiological or nuclear substances; or*
- iv) serious and widespread illness of pandemic or epidemic proportions affecting a significant proportion of BT's workforce at the same time or imposing movement restrictions on BT's workforce.*

*and where the scale or nature of the incident is such that it is likely that exceptional measures will be required in response.*

*'Exceptional Incident Report' means a report concerning the incident that contains the following information:*

- a) a description of any action(s) that BT has taken, or any thing which it has done or not done, which, but for this section 20.11, may be considered to be a breach of any of these Undertakings;*
- b) an explanation of why BT considered it reasonable and proportionate to act in such ways; and*
- c) the period or periods during which BT acted in such ways, the locality of such actions and the approximate number of people involved.*

*'BT Group Senior Representative' means the BT on-call manager, who acts as the senior representative of the BT Crisis Management Team appointed to advise on the assessment of incidents and oversee and arbitrate in respect of the triggering and delivery of BT's response to those incidents."*

2.2 Section 10.27 is amended by adding a new section 10.27.3 as follows, and by renumbering subsequent subparagraphs within section 10.27:-

10.27.3 *Exceptional Incidents which have been formally notified to Ofcom under section 20.11;*

- 3. These variations of the Undertakings 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 7

# Proposed exemptions and agreements wording

## **[Draft]** Exemptions and agreements 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) BT has requested Ofcom to agree that certain sections of the Undertakings shall not apply to certain products, and to agree the application of section 5.46.2 to certain products;
- (c) Before 30 June 2007, BT lodged draft applications with Ofcom in relation to sections 11.9 (a), 5.46.2 and 5.44.3. In addition, temporary exemptions and agreements up to and including 30 October 2007 have been granted for a number of products in letters exchanged between Ofcom and BT<sup>29</sup>;
- (d) This Agreement between Ofcom and BT sets out these exemptions and agreements (as set out in BT's requests annexed to Ofcom's Statement dated **[x]** 2007); and
- (e) Access Services as referred to in the Undertakings has been established as Openreach since 22 January 2006.

### NOW THEREFORE:

### Ofcom and BT hereby agree:

#### 1. Pursuant to section 5.44.3 BT and Ofcom hereby agree that:

- (a) section 5.44.3(a) shall not apply to the Tags Helpdesk up to and including 30 June 2009 or up to and including 3 months after the availability of the new strategic solution whichever is the sooner, unless otherwise agreed with Ofcom.

The information obtained as a result of this access should only be used by BT employees working for the Tags helpdesk and only for the purposes of providing Tags helpdesk services.

"Tags Helpdesk" means the ringfenced team of people whose sole function is to take enquiries from End-Users and Communications Providers relating to Tags on the Line and to the extent possible assist in resolving that Tag on the Line issue.

"Tag on the Line" means a marker within the BT order handling systems that prevents a provision order for a broadband service, Metallic Path Facility or Shared Metallic Path Facility from being successfully placed.<sup>30</sup>

- (b) section 5.44.3(a) shall not apply to BT employees providing BT Answer 1571, BT Call Minder, Fixed Line Text and Bill Direct (and for each product their variants)

<sup>29</sup> Letters exchanged between Ofcom and BT on 24 November 2006, 30 March 2007 and 29 June 2007.

<sup>30</sup> See BT's request number 4 in Annex 5 of this document.

and not working for the Downstream Divisions up to and including 30 June 2010, solely to the extent they are providing these products.<sup>31</sup>

The information obtained as a result of this access should only be used by these employees and only for the purposes of providing these services.

2. Pursuant to section 11.9 (a) BT and Ofcom hereby agree that section 11.7 shall not apply to BT's provision of Network Access during BT's Pathfinder initiative for its Next Generation Network and the associated user of copper MSANs at BT's Wick, Bedlinog, Southerndown, Bonvilston, Peterston and Sully exchanges up to and including 31 December 2007, unless otherwise agreed with Ofcom.<sup>32</sup>
3. (a) Pursuant to section 5.46.2(a) BT and Ofcom hereby agree that section 5.46.1 shall not apply to any AS inputs into the installed retail Short Haul Data Services circuit base migrated to extra long variants of AS Wholesale Extension Service, Backhaul Extension Service or the AS wholesale end-to-end Ethernet service products (as appropriate). This exemption is for a permanent period, as long as these extra long variants of AS products remain unavailable for new supply from BT, unless otherwise agreed with Ofcom.<sup>33</sup>

"Short Haul Data Services" means the LES155, LES622, LES 10, LES 10 Local Reach, LES 100, LES 1000, CES 1000, LES 1000 ER, LES 2500 and LES 10000 services identified in paragraphs 8, 9 and 10 of the Exemptions and Agreements Wording in Ofcom's Statement of 15 June 2006.

(b) AS shall provide to Ofcom a detailed list of the specific individual installed retail SHDS circuits falling under this section 3 within three months of the date this Agreement takes effect.

## Definitions and interpretation

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

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

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

(a) 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.

(b) 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. Such usage of existing processes and systems may continue beyond the dates that trigger systems separation obligations under sections 5.44, 5.45 and 8.5 of the Undertakings. However, this does not affect BT's obligations under sections 5.44, 5.45 and 8.5 of the Undertakings.

<sup>31</sup> See BT's request number 5 in Annex 5 of this document.

<sup>32</sup> See BT's request number 2 in Annex 5 of this document.

<sup>33</sup> See BT's request number 3 in Annex 5 of this document.

## **Notices**

Notices to be given under this Agreement shall be in writing.

## **Effect**

Unless otherwise stated the agreements and exemptions set out in 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 \_\_\_\_\_