



Change to BT's regulatory financial reporting obligations 2006/07

Consultation to defer publication date

Consultation

Publication date:

5 June 2007

Closing Date for Responses:

3 July 2007

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Section 1

Executive Summary and Introduction

- 1.1 This consultation concerns a minor one-off (2006/07 only) amendment to British Telecommunications plc's (BT) regulatory accounting obligations concerning the timing of publication.
- 1.2 The current regulatory financial reporting regime for BT requires the regulatory financial statements to be published within four months of BT's financial year end (31 March). BT has asked Ofcom to consider extending this timetable for the reporting year 2006/07 to allow for material changes to the form and content of the statements and important costing methodological changes to be implemented.
- 1.3 Ofcom is proposing in this consultation to extend the period in which BT can publish its 2006/07 financial statements from four months to six. This will mean that BT has until 28 September 2007 to publish the statements although BT has indicated that it will publish earlier if possible.
- 1.4 Ofcom considers this matter to be relatively straightforward and therefore has shortened the normal consultation period to four weeks so that a statement can be issued promptly which will assist BT to plan and comply with its reporting obligations.

Section 2

Proposal for 2006/07

Introduction

- 2.1 BT is obliged to publish a set of regulatory financial statements within four months of its financial year end. This consultation concerns a specific proposal to consent to allow BT to publish these statements at a later date.
- 2.2 Prompt publication of robust regulatory financial information, particularly where the information addresses compliance with cost orientation and non-discrimination obligations, makes an important contribution to the development of effective markets. Information may also lose value and usefulness over time and therefore Ofcom is reluctant to consent to delays in publication.
- 2.3 However, Ofcom recognises that there may be good practical and operational reasons why information cannot be prepared quickly. Ofcom has recently published a Statement (the "Blue Sky" project) on significant changes to the form and content of the published financial statements¹ which will require additional effort from BT to fully implement in the 2006/07 financial statements.

Amendment to the publication date of BT's regulatory financial statements

- 2.4 Condition OA6 (b) requires BT to publish the regulatory financial statements and any corresponding audit opinions within four months after the period to which they relate (BT's reporting period is the 12 months ending 31 March 2007).
- 2.5 BT has approached Ofcom to explain that this timetable is challenging under stable and known reporting requirements however two additional factors means that a small extension to the timetable is required. These additional factors are:
 - a) the implementation of changes set out in the "Blue Sky" Statement issued on 24 May 2007 which includes significant amendments to the form and content of the statements; and
 - b) late finalisation of a change in attribution methodology to the way that core transmission costs are split between Private Circuit wholesale trunk segments (which fall into the Wholesale Trunk Segments Market), and Terminating Segments (which fall into the Traditional Interface Symmetric Broadband Origination (TISBO) Markets).
- 2.6 BT has informed Ofcom that it will aim to publish the regulatory financial statements at the same time as last year (early September) and Ofcom believes this to be a realistic target publication date taking account of the changes proposed in the consultation document referred to in 2.3. Ofcom propose therefore to consent to an amendment to the normal publication obligation to a date no later than six months after the period to which they relate (that is, no later than Friday 28 September 2007 in respect of the

¹ <http://www.ofcom.org.uk/consult/condocs/obligations/>

2006/07 reporting period). This consent will only apply in respect of the 2006/07 reporting period.

- 2.7 This consultation refers to one straightforward issue and therefore Ofcom consider a relatively short consultation period of four weeks as being reasonable. It will also enable a statement to be issued promptly which in turn will enable BT to plan its preparation and audit timetable with more efficiency.

Question: Do you agree with Ofcom's proposals to extend the period in which BT can publish its 2007/08 regulatory financial statements by 2 months?

Legal tests

- 2.8 The section below sets out Ofcom's reasons why it considers that the relevant legal tests under the Act for granting the Consent as proposed in the section are met. This section should be read in the light of relevant considerations and Ofcom's conclusions as set out above in this consultation.

Section 3 and 4 – general duties & the six Community requirements

- 2.9 Section 3 of the Act sets out the duties of Ofcom in carrying out its functions, in particular that it furthers the interests of citizens in relation to communications and furthers the interests of consumers in relevant markets. Section 4 of the Act requires that Ofcom acts in accordance with the six Community requirements concerning: the promotion of competition; the development of the European internal market; the promotion of the interests of all EU citizens; non-discrimination; promoting efficiency and sustainable competition and the maximum benefit for consumers; and facilitating service interoperability and securing freedom of choice for consumers.
- 2.10 This Consent is necessary as it recognises the practical implementation issues faced by BT, taking account of the changes and enhancements proposed and in train.

Section 49(2) tests

Objectively justifiable in relation to the networks, services, facilities, apparatus, or directions to which it relates

- 2.11 Ofcom considers that that granting the Consent as described in paragraph 2.6 is objectively justifiable because it allows BT sufficient time in which to prepare an important set of financial statements for compliance purposes recognising implementation issues caused by changes proposed in the current "Blue Sky" consultation and a significant amendment to a cost attribution method.

Not unduly discriminatory against particular persons or against a particular description of services

- 2.12 Ofcom considers that granting the Consent as described in paragraph 2.6 is not unduly discriminatory because KCL (the only other operator with a similar condition) does not have such extensive or detailed reporting requirements and is not subject to any change proposed in the current "Blue Sky" consultation.

Proportionate to what it is intended to achieve

- 2.13 Ofcom considers that that granting the Consent as described in paragraph 2.6 is proportionate because it recognises the additional resource necessary to fully implement proposed changes to the published statements and new cost attribution methods.

Transparent in relation to what it is intended to achieve

- 2.14 Ofcom considers that that granting the Consent as described in paragraph 2.6 is transparent because Ofcom is explaining and consulting on this change and has provided explanatory material.

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 3 July 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/signing/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 cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 Please can you send your response to gavin.greenfield@ofcom.org.uk.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Gavin Greenfield
Floor 4
Competition Finance
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

- A1.4 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.
- A1.5 It would be helpful if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Greenfield on 020 7783 4330.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response

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

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement by end of July 2007.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 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

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, as Ofcom considers this matter to be relatively straightforward, it has shortened the normal consultation period to [four] weeks so that a statement can be issued promptly which will assist BT to plan and comply with its reporting obligations

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

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

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

DECLARATION

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

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

☐

Name

Signed (if hard copy)

Annex 4

Impact Assessment

Introduction

- A4.1 This consultation concerns a minor one-off aspect to BT's regulatory accounting obligations and Ofcom does not believe the proposal to defer publication has any significant impact on businesses or the general public. Therefore no impact assessment, as defined in section 7 of the Communications Act 2003 (the Act), has been carried out.

Annex 5

Notification of Consent

Notification of a proposal under section 49 of the Communications Act 2003

Proposal for granting Consent under section 49 of the Communications Act 2003 and SMP Services Condition OA1, imposed on British Telecommunications plc in Schedule 2, Part 2 to the Notification at Annex 2 of *The regulatory financial reporting obligations on BT and Kingston Communications* final statement and notification made on 22 July 2004, and SMP Services Condition FA10.1, imposed on British Telecommunications plc in Schedule 1 to the Notification at Annex 1 of *Review of the wholesale local access market* explanatory statement and notification made on 16 December 2004.

1. Ofcom hereby makes, in accordance with section 49 of the Communications Act 2003 ("the Act"), the following proposal to consent to BT's request to extend the period within which BT must publish its Regulatory Financial Statements and any corresponding audit opinions after the end of the period to which they relate as set out in SMP Services Condition OA6(b) and SMP Services Condition FA10.6(b), from four months to six months for the reporting period ending 31 March 2007.
2. The draft Consent is set out in the Schedule to this notification.
3. The effect of the draft Consent, and the reasons for making the proposal, are set out in the accompanying explanatory statement.
4. Representation may be made to Ofcom about the proposed draft modification to the Direction by 5 pm on 3 July 2007.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State.

Craig Lonie

Director of Regulatory Finance, Ofcom

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

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SCHEDULE

Consent under section 49 of the Communications Act 2003 and SMP Services Condition OA1, imposed on British Telecommunications plc in Schedule 2, Part 2 to the Notification at Annex 2 of *The regulatory financial reporting obligations on BT and Kingston Communications* final statement and notification made on 22 July 2004, and SMP Services Condition FA10.1, imposed on British Telecommunications plc in Schedule 1 to the Notification at Annex 1 of *Review of the wholesale local access market* explanatory statement and notification made on 16 December 2004.

WHEREAS:

(A) as a result of a market analysis carried out by the Director General of Telecommunications (the "Director") and Ofcom, in accordance 79 of the Act, BT has been designated as having Significant Market Power ('SMP') in respect of certain identified markets.;

(B) as a result of such SMP designations, BT has been subjected to various SMP services conditions in accordance with sections 45 and 86 to 92 of the Act including:

- (a) Services conditions OA1 to OA34 and FA10, imposing obligations on BT in respect of wholesale cost accounting, retail cost accounting and accounting separation in relation to BT's activities in those markets where BT has been designated as having SMP;

(C) this Consent concerns matters to which SMP services conditions OA6(b) and FA10.6(b) relate;

(D) for the reasons set out in the explanatory statement accompanying this Consent, Ofcom are satisfied that in accordance with section 49(2) of the Act, this direction is:

- (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (iii) proportionate to what it is intended to achieve; and
- (iv) in relation to what it is intended to achieve, transparent;

(E) for the reasons set out in the explanatory statement accompanying this Consent, Ofcom are satisfied that in accordance with the relevant duties set out in sections 3 and 4 of the Act;

(F) on 5 June 2007, Ofcom published a Notification of the proposed Consent and accompanying explanatory statement in accordance with section 49 of the Act and invited representation about any of the proposals therein by 3 July 2007;

(G) by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if-

- (i) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
- (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

(H) Ofcom have considered every representation about the proposed Consent duly made to it and the Secretary of State has not notified Ofcom of an international obligation of the United Kingdom for this purpose.

Therefore, pursuant to section 49 of the Act and SMP Conditions OA1 and FA10.1, Ofcom give the following Consent:

1. In SMP services condition OA6(b) and SMP services condition FA10.6(b), the four month period within which BT must publish its Regulatory Financial Statements and any corresponding audit opinions after the end of the period to which they relate shall be extended to six months for the reporting period ending 31 March 2007.

2. For the purpose of interpreting this Direction, the following definitions shall apply:

- (a) **'Act'** means the Communications Act 2003; and
- (b) **'The Notification'** means the notification at Annex 2 of the *The regulatory financial reporting obligations on BT and Kingston Communications* final statement and notification made on 22 July 2004.

3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

4. For the purpose of interpreting this Consent:

- (a) headings and titles shall be disregarded; and
- (b) the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.

5. This Consent shall take effect on the day it is published.

Craig Lonie

Director of Regulatory Finance, Ofcom

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

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