



Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002

Part 3

Statement

Publication date:

19th July 2007

Contents

Section		Page
1	Summary	1
2	Introduction	3
3	Ofcom's reasons for agreeing to the exemptions	6
Annex		Page
1	BT's exemption, variation and agreements requests	11
2	Exemptions, agreements and variations wording	20

Section 1

Summary

- 1.1 On 22 September 2005 BT Group 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 consider all BT's products in the context of to which products Equivalence of Inputs (EOI) should apply. Therefore, a process was included into the Undertakings to allow Ofcom and BT to consider the EOI requirement for certain products at a later stage. In addition, the Undertakings provide that under certain circumstances BT may apply for exemptions from certain provisions.
- 1.2 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 agreement since, for instance, Openreach pursuant to the Undertakings cannot supply products on a non-EOI basis unless it has the agreement of Ofcom.
- 1.3 Since receiving the requests from BT, Ofcom and BT have been discussing the substance of the requests and BT has modified the requests in line with those discussions. Ofcom has taken the view that it would only consult with other stakeholders, either formally or informally, once it was satisfied that the substance of the requests is something to which Ofcom would be minded to agree.
- 1.4 Ofcom published a statement on 15 June 2006 in respect of the first batch of exemptions *Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002 – Part 1* ("Exemptions Part 1") and included in this a list of 15 outstanding requests¹. Ofcom is aware that the issue of exemptions leads to some uncertainty within the industry and therefore believes that requests should be dealt with as expeditiously as possible. Thus this first statement covered the less complex requests, the form of which Ofcom and BT were able to quickly agree upon. In recognition of the complex issues surrounding the remaining requests, and the view that receiving comments on them from the wider industry would help inform Ofcom's decision making process, on 18 October 2006 Ofcom published a consultation *Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002 – Part 2* in respect of 13 of these outstanding requests.
- 1.5 Following this consultation, Ofcom published a statement in December 2006 agreeing to 9 of the 13 requests². At that time, Ofcom decided more time was needed to resolve the issues related to the four other requests for fibre-based products (i.e. Redcare CCTV, Media & Broadcast services, managed radio communications services and Wavestream). Each of these products relies on direct access to fibre and so, in their current form, cannot consume the EOI products included in Openreach's product portfolio. Ofcom was concerned that making access to dark fibre available on an EOI basis to provide the input for these products had the

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

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

possibility of undermining investment in infrastructure and so, instead, sought to agree with BT intermediate EOI products that could support these services without reducing the functionality available to the end user. Ofcom was also keen to take into account Openreach's Ethernet portfolio review³, which was being carried out at the time of the statement. In order to allow for this, the existing temporary exemption in respect of these requests was extended up to 31 March 2007⁴. This was further extended to 31 December 2007⁵ to allow a conclusion to be reached on these requests.

- 1.6 This statement includes a decision by Ofcom to agree to three of these four requests. This came into effect on 17 July 2007 when the agreement attached in Annex 2 of this document was signed by both parties.
- 1.7 With regard to the request for an exemption for Wavestream, Ofcom has decided that further consultation is required. This consultation will be carried out separately to this statement. As such, this statement does not include a decision on the Wavestream exemption requested by BT.
- 1.8 Two of the requests identified in Exemptions Part 1 as outstanding (i.e. initial wideband planning and inter-exchange capacity planning) are not covered by this statement and remain under discussion between Ofcom and BT.

³ http://www.openreach.co.uk/orpg/news/productbriefings/wes/downloads/Briefing_WESBES014.pdf

⁴ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation6.pdf>

⁵ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation8.pdf>

Section 2

Introduction

Background

- 2.1 On 22 September 2005 BT Group 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*⁶.
- 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 to which products Equivalence of Inputs (EOI) should apply. Therefore, a process was included into the Undertakings to allow Ofcom and BT to consider the EOI requirement for certain products at a later stage. 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 The process of considering to which products EOI should apply, and the additional exemption requests, has been underway since BT submitted its list of products (which had not been specifically identified in the original Undertakings) in January 2006, for consideration by Ofcom, in the form of a number of requests for exemptions and requests for agreement from Ofcom. BT needs to seek such agreement since, for instance, Openreach pursuant to the Undertakings cannot supply certain products on a non-EOI basis unless it has the agreement of Ofcom.
- 2.4 In line with this process, BT submitted a number of requests for exemptions from its Undertakings. Ofcom published its agreement on the first batch of exemptions and agreements ("Exemptions Part 1")⁷ on 15 June 2006. In Section 4 of Exemptions Part 1 Ofcom listed 15 outstanding requests from BT which were still under consideration. On 18 October 2006 Ofcom published a consultation on 13 of these 15 outstanding requests ("Exemptions Part 2 Consultation")⁸. Following on from this, and after consideration of responses to the consultation received by Ofcom, Ofcom published a statement to that consultation ("Exemptions Part 2")⁹ on 21 December 2006.
- 2.5 When the Exemptions Part 2 statement was published, Ofcom and BT had not yet agreed to the four requests for fibre based products. This was due to the high degree of comment received during the consultation which prompted further analysis to be undertaken by Ofcom and BT. Since the Exemptions Part 2 statement, Ofcom and

⁶ http://www.ofcom.org.uk/consult/condocs/statement_tsr/

⁷ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

⁸ <http://www.ofcom.org.uk/consult/condocs/btrequests/>

⁹ <http://www.ofcom.org.uk/consult/condocs/btrequests/statement/>

BT have continued to discuss these requests and BT has revised them. Based on these changes, which are explained in Section 3 of this statement, Ofcom has now decided to agree to the requests for Redcare CCTV, Managed Radio Communications and Media and Broadcast Services. The reasons for agreeing to these requests are included in this statement.

- 2.6 With respect to the exemption request for Wavestream, Ofcom has decided that further consultation is required to determine the correct approach in regard to this product. It is currently the intention to run this consultation in parallel to a consultation in respect of the Leased Line Market Review later this year, to allow any areas of similarity between the two to be considered together in establishing the approach to be taken with Wavestream. Accordingly, this statement does not include a decision on the Wavestream exemption request.
- 2.7 BT's exemption requests are set out in Annex 1 of this statement. The legal document by which BT and Ofcom agree the various proposed exemptions and agreements is contained in Annex 2 of this statement.

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 AS¹⁰ (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 months¹¹ to allow the initial set of requests from BT to be fully considered, extended again to 22 December 2006¹² to allow for consultation on the more complex requests, then to 31 March 2007¹³ to allow for further consideration of the four fibre based requests because of the number and nature of comments to the consultation on these requests, and finally to 31 December 2007¹⁴ to allow this statement to be published and to allow for the Wavestream proposal to be considered in parallel with the Leased Lines Market Review currently being undertaken by Ofcom. 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 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

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

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

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

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

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

not consider that the exemptions, agreements and variation contained herein would alter the Undertakings in a material respect 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 consulted on a number of requests which were, in Ofcom's opinion, sufficiently complex that there was value in consulting with stakeholders to obtain views and comments that would help Ofcom in reaching its decision as to whether to agree, or not, to each request from BT. Based on that consultation, Ofcom agreed to nine requests in its Exemptions Part 2 Statement¹⁵ and decided more time was needed to make decisions on the four requests concerning fibre-based products. It has now decided to agree to three of these requests in line with changes made to the requests by BT based on the responses to consultation.

- 2.11 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.

¹⁵ <http://www.ofcom.org.uk/consult/condocs/btrequests/statement/>

Section 3

Ofcom's reasons for agreeing to the exemptions

Introduction

- 3.1 In this section Ofcom sets out the reasons why it has agreed to the requests from BT for certain exemptions and agreements to its Undertakings under the Enterprise Act 2002.
- 3.2 The full text of BT's requests is reproduced in Annex 1 and the exemptions and agreements wording signed by BT and Ofcom is set out in Annex 2. 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 of the Exemptions Part 2 Consultation, responses received to the consultation from interested stakeholders and subsequent discussions with BT to address the key points raised by the consultation.
- 3.3 In deciding whether or not to agree to the exemptions and agreements Ofcom has considered the following factors where appropriate:
- whether there would be, or would likely be, harm to consumers if the exemption and/or agreement was granted or not granted;
 - 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.
- 3.4 Within this section 'Openreach' is used in place of Access Services (as is used in the Undertakings) as BT has since the acceptance of the Undertakings branded its Access Services division referred to in the Undertakings as Openreach.

The exemption requests

- 3.5 Ofcom outlined the responses to the consultation on the four fibre-based exemptions in its Part 2 Statement to explain why a decision was deferred at that time. Since that time, further discussion has taken place with BT to address the concerns raised by the consultation and to assess the results of the review of the Openreach Ethernet portfolio carried out last year¹⁶. This has resulted in changes to the requests as described below¹⁷.

REDCARE CCTV

Overview

- 3.6 Redcare CCTV provides customers with an uncompressed analogue video service running over fibre. Its primary use is in public surveillance schemes, and the high

¹⁶ http://www.openreach.co.uk/orpg/news/productbriefings/wes/downloads/Briefing_WESBES014.pdf

¹⁷ As explained above, the request in respect of Wavestream is still under discussion between Ofcom and BT.

picture quality of the uncompressed video service is an essential feature. At the time of the Exemptions Part 2 consultation, the products to be offered by Openreach under Annex 1 of the BT Undertakings did not include a product that could support an EOI-based input to Redcare CCTV.

- 3.7 At the time of the consultation, Ofcom sought views on BT's belief that a digital EOI input, along with an IBMC date of 1 July 2010 would provide an appropriate product onto which to migrate, and sufficient time in which to carry out such a migration.
- 3.8 Ofcom asked two questions in relation to Redcare CCTV:

Question 10: *What barriers, if any, do you believe there are to acceptance of digital transmission technology in support of public CCTV systems? Are there any areas now in which analogue services are used in support of CCTV that could not be migrated to digital transmission? What should happen if, by the IBMC date, customers remain reluctant to move to the digital replacement product(s)? Please fully explain your answer.*

Question 11: *Do you believe that Ofcom should agree to this request from BT for an exemption in respect of Redcare CCTV? If you do not please explain why.*

Responses to consultation

- 3.9 BSKyB did not agree that Ofcom should accept the exemption request in respect of Redcare CCTV as specified. Whilst BSKyB felt that the digital EOI product proposed by Openreach was positive, its main concern related to the analogue product which will continue to use dark fibre as its input. BSKyB did not consider it appropriate for BT to have an IBMC date of 1 July 2010 and that instead the analogue product should be moved as far as possible into Openreach, which should sell it on an EOI basis.
- 3.10 C&W agreed that the exemption should be granted on a temporary basis until the development of an EOI digital product, but was concerned that Redcare would be able to sign new contracts up to RFS and could bypass EOI until 2010. Also, similar to BSKyB, it argued that if a significant base of BT's customers still used the analogue product, an EOI version of this should be considered. C&W also noted that the product development process should be transparent to CPs for EOI products.
- 3.11 C&W noted that the main barrier to the acceptance of digital transmission technology in support of CCTV systems was the legal admissibility but that over time this may become less of an issue. BT provided further background on CCTV, stating that image quality was of paramount importance in the usability of the system. For example, the Metropolitan Police stated that current digital CCTV is jittery but that if future developments led to real-time images from a digital service this may be fit for purpose. BT also stated that migrating existing circuits would have cost and resource implications for the customers (who are, in general, local or central Government or other public sector organisations).

Ofcom's Response

- 3.12 Since the consultation, in addition to the commitment to develop a digital single channel service that will provide an EOI digital input to meet new supply of uncompressed video services, Openreach has committed to consult with other

Communications Providers to establish demand for an analogue EOI input for the supply of uncompressed video, and this will be developed unless, by 15 March 2008, Openreach can demonstrate to Ofcom's satisfaction that no reasonable demand exists.

- 3.13 In Ofcom's view, this commitment from Openreach resolves the issue raised in the consultation by BSkyB and C&W with regard to supplying an analogue service.
- 3.14 Ofcom's view in respect of the product development process is that, to ensure the development of fit for purpose EOI products, and notwithstanding the commercial nature of the information involved, the engagement of CPs within the development process is advantageous and such engagement should be sought by Openreach as appropriate.
- 3.15 In terms of C&W's comment with regard to the length of the exemption, Ofcom believes Openreach needs time to develop the new EOI products and to consult on requirements for an analogue product, as well as to have sufficient time to migrate customers onto the EOI basis, including, where appropriate, assessing the suitability of a digital product.
- 3.16 Ofcom has considered the response from BT and the Metropolitan Police, and taken into account Openreach's commitment to consult on requirements for an analogue EOI input. It is Ofcom's view that to refuse this request would cause harm to consumers by restricting their ability to purchase uncompressed analogue video service. Further, refusing the exemption request would force existing customers to migrate to a service that is not fit for purpose and would cause considerable service interruption. Therefore, Ofcom has decided to grant the exemption.

BT MEDIA AND BROADCAST SERVICES

Overview

- 3.17 BT Media and Broadcasting services provide customers with connectivity to support broadcast services. Typically, these services are high bandwidth, unidirectional and the network requirements to support them are bespoke to each contract. The broadcast feed may be analogue or digital. Many of these bespoke solutions pre-date Openreach, and do not fit directly into any of the standard products that Openreach provides. BT requested a temporary exemption to allow it to develop a new Openreach digital EOI product.
- 3.18 Ofcom asked two questions in relation to BT's Media and Broadcast Services:

Question 12: *Are there any existing products available from BT Media and Broadcast that you believe are not substitutable by variants based on BT's proposed EOI product? If so, what are the issues preventing migration? What should happen if, by the IBMC date, customers remain reluctant to move to the digital replacement product(s)? Please fully explain your answer.*

Question 13: *Do you believe that Ofcom should agree to this request from BT for an exemption in respect of Media and Broadcast? If you do not please explain why.*

Responses to consultation

- 3.19 BSkyB did not agree that Ofcom should accept this exemption request. It asserted that it is a significant purchaser of the BT Media and Broadcast services. BSkyB did not consider that Ethernet based products would enable it to run the same applications that were currently run over analogue fibre. Accordingly, it considered that the proposed digital replacement products offered an inferior alternative to the analogue products currently available and would not be prepared to move to digital replacement products if they did not meet requirements.
- 3.20 Given BSkyB's belief that a significant demand for analogue circuits existed, it believed also that an analogue variant of the product should be moved in to Openreach and sold on an EOI basis.
- 3.21 BSkyB also noted that it believed that whilst BT stated in their request that 'Broadcast services in the UK are competitive', this was not necessarily true for the access fibre element of this service and there are large parts of the UK where only BT can provide cost effective connectivity of this type.
- 3.22 Digital 3&4 agreed with Ofcom that this exemption request should be accepted as broadcasters had built their current contractual costs into their business plans and to refuse the exemption could impact their cost base at a time when significant cost was also being incurred in rolling out Digital Terrestrial Television.
- 3.23 C&W believed that contracts should not be renewed, but that instead, at the point of expiry, customers would need to sign for a product supplied on an EOI basis.
- 3.24 BT stated that it believed that the replacement digital service provided on an EOI basis met the needs of customers.

Ofcom's Response

- 3.25 Since the consultation, BSkyB has confirmed to Ofcom that the proposed digital EOI products meet its requirements. In terms of C&W's concern over renewal of contracts, Ofcom believes the IBMC is sufficient to ensure migration off the non-EOI products. As such, Ofcom believes there are no issues outstanding from the consultation.
- 3.26 Ofcom has decided to grant the exemption requested by BT whilst an EOI product is developed. As stated by BSkyB, BT may be the only available supplier of the access fibre for broadcast services in some locations, and so to refuse the request could harm consumers by making service unavailable until BT has developed an EOI product. Ofcom further believes Openreach's date for introducing a new digital EOI product of 31 December 2007 is a reasonable time to allow for such product development.

BT MANAGED RADIO COMMUNICATIONS

Overview

- 3.27 BT Managed Radio Communications services include three separate products. Microconnect Distributed Antenna (MDA) provides Mobile Network Operators (MNOs) with the capability to extend their 2nd and 3rd generation networks in city

centres, by locating antennae in existing BT street furniture. Microconnect In-Building Coverage (IBC) provides micro-antennae within buildings, allowing MNOs to extend their 2nd and 3rd generation networks. Wireless City offers a Wi-Fi capability, by housing the antennae in existing street furniture. A number of alternate suppliers also provide Wi-Fi capabilities, including MNOs.

3.28 Ofcom asked two questions in regards to Managed Radio Communications:

Question 14: *What do you believe are the implications, if any, for users of these managed radio communication services products of a migration to products based on BT's proposed EOI product? Please fully explain your answer.*

Question 15: *Do you believe that Ofcom should agree to this request from BT for an exemption in respect of managed radio communication services? If you do not please explain why.*

Responses to consultation

- 3.29 BSkyB did not agree that Ofcom should accept BT's exemption request for similar reasons to the Media & Broadcast and CCTV requests: that if other operators had access to an Openreach EOI product there would be competition in the supply of these services to end-users.
- 3.30 C&W echoed its comments on the Redcare CCTV and Media & Broadcast Services responses with regard to contract renewal and in terms of the product development process.
- 3.31 BT stated that one of the products in this product set – Wireless City – was a Wi-Fi product, a technology still in an embryonic stage of development, but was confident the dates suggested in the request for RFS could be met.

Ofcom's Response

- 3.32 BT has subsequently confirmed to Ofcom that the Microconnect MDA and IBC services have been withdrawn from new supply. Only existing customers will be supported on this service until the contract expiry date. As such, Ofcom believes it is appropriate to exempt the Microconnect MDA and IBC services.
- 3.33 With regard to the Wireless City product, given the relative immaturity of the Wi-Fi service, the provision of Wi-Fi services by other CPs such as Mobile Network Operators and the commitment to provide an EOI product by 30 September 2007 and to migrate the installed base onto this by 31 March 2008, Ofcom has decided it is appropriate to agree to this exemption request given the timeframe for which it will be in place.

Annex 1

BT's exemption, variation and agreements requests

Request number: 1

Product: REDCARE CCTV

Legal basis: 5.46.2a)

1. Product description and reasons for request

BT Retail's redcare business currently provides a CCTV product, primarily to public agencies for security purposes. This product is delivered on the basis of an internal input provided by Openreach which is not currently productised or externalised. CCTV monitoring is becoming increasingly important to the security agencies in supporting public safety and evidencing criminal acts. This product is delivered on the basis of fibre and civil works provided by Openreach.

BT requests an exemption under section 5.46.2a) to enable Openreach to continue to supply the same inputs into the redcare CCTV product line without those inputs needing to be provided externally. This exemption is for a transitional period pending the development and launch by Openreach of new EOI digital (and, if required, analogue) input products by 31 March 2008, the day after which will serve as an RFS date, although Openreach would aim to launch this product earlier if feasible. From that RFS date New End-Users will purchase redcare CCTV services on the basis of the new EOI Openreach inputs.

After 31 March 2008, the requested exemption will enable Openreach to continue to support the installed base within contractual commitments beyond that date until end of contract or customer migration to the new EOI product or to a 21CN successor by 30 June 2010, the day after which will serve as an IBMC date unless otherwise agreed with Ofcom.

The requested exemption also enables continued access to Openreach systems until 30 June 2010 for a dedicated ring-fenced team within the redcare CCTV business in relation to redcare CCTV provision, testing, maintenance, systems design, and progress-chasing on fault resolution. This would be for a dedicated ring-fenced redcare team and appropriate behavioural controls/training and audit trails will be put in place to support these arrangements.

2. Legal basis, scope and duration

- Legal basis: section 5.46.2a)
- Scope: exemption from section 5.46.1
- Duration:
 - exemption (including for continued access to Openreach systems) up to and including 31 March 2008, the day after which will serve as an RFS date, unless otherwise agreed with Ofcom, and thereafter only for the installed base up to and

including 30 June 2010, the day after which will serve as an IBMC date, unless otherwise agreed with Ofcom.

- Ofcom may waive the requirement to launch an EOI analogue product variant if Openreach can demonstrate to Ofcom's satisfaction that there is insufficient demand from other CPs for such a product, such request to be submitted to Ofcom by Openreach no later than 15 March 2008.

3. Identification of the products involved

The relevant product is the Openreach inputs into the redcare CCTV business. This business consists of providing specialist point-to-point telecommunications links to connect public-space CCTV camera installations to customers' video monitoring centres. Currently this is on the basis of analogue video delivered over un-switched fibre links and is available as single or multi-channel circuits.

The principal demand for CCTV circuits is from local authorities, police and government security agencies. The product is used for public surveillance schemes to reduce crime, combat terrorism, reduce public disorder and improve police efficiency. It is also used for traffic monitoring and management systems e.g. the 'ring-of-steel', London Congestion Charging Scheme, etc. A high percentage of redcare's CCTV customers fall into the local or national government sector (including police and security agencies).

Uncompressed analogue video has been the solution of choice for government customers because of very high picture quality from such circuits and the fact that there was major growth in the requirements for CCTV at a time when video compression techniques were less developed. There is and will be an increasing move to digital but the speed of this will be largely dependent on funds being available to users to upgrade or change out existing systems many of which have been installed within the last 10 years.

Point-to-point circuits give immunity from deterioration at times of national emergency.

Further details of the redcare CCTV products can be found at:

<http://www.btreddcarevision.com/>

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

To create the CCTV product, redcare uses end-to end fibre circuits and civil works from Openreach under an internal trading agreement. This is not delivered as a product or made available externally.

Openreach then connect redcare's electronics to these fibres on redcare's behalf to create redcare's external product (RS1000 & RS1000D).

The requested exemption is to enable Openreach to continue to supply the existing inputs into new supply to the redcare CCTV business without having to make these inputs available externally until after 31 March 2008, and thereafter for the installed base only until the IBMC date.

The redcare CCTV team also requires continued access to Openreach systems in relation to redcare CCTV provision and systems design and progress-chasing on fault resolution. This is because the majority of CCTV circuits terminate in the street and the redcare CCTV team therefore need access to certain Openreach systems to locate circuits and minimise civil works and street disruption.

5. Description of the solution proposed

As current proposals for WES/BES/LES based products do not offer the ability for customers to transmit video signals, it is proposed that Openreach develops a single channel video WES/BES/LES product allowing point-to-point video transmission at a fixed data rate. Initial consideration has taken place as to how this could be developed although full feasibility and associated activities have yet to take place.

An exemption is therefore sought for a period that enables:

- a) Openreach to fully evaluate, develop and launch an EOI WES/BES/LES digital product variant for carrying video traffic – Openreach commits to launch this by 31 March 2008 although it will aim to do this earlier if feasible;
- b) Openreach's product evaluation and development to include industry consultation and briefings on both the digital and analogue product variants, including to assess the extent to which there is industry demand from other CPs for an analogue product variant;
- c) Openreach to fully evaluate, develop and launch an EOI WES/BES/LES analogue product variant for carrying video traffic – Openreach commits to launch this by 31 March 2008 unless otherwise agreed with Ofcom – specifically, Ofcom may waive the requirement to launch an analogue product variant if Openreach can demonstrate to Ofcom's satisfaction that there is insufficient demand from other CPs for such a product, such request to be submitted to Ofcom by Openreach no later than 15 March 2008;
- d) Openreach to continue to provide the existing inputs into the redcare CCTV business until the new EOI WES/BES/LES video variant is available, after which date New End-Users will purchase a redcare CCTV service based on the new EOI input;
- e) Openreach to continue to provide the existing inputs into the redcare CCTV business until the new EOI WES/BES/LES video variant is available, six months after which new orders from existing customers will be met by a redcare CCTV service based on the new EOI input;
- f) Openreach to maintain the installed customer base on the existing RS1000 redcare CCTV system until redcare customers decide to migrate to a redcare CCTV service based on the new EOI video input or to a 21CN successor. This includes the right to expand existing redcare CCTV services for the installed customer base during the remaining term of customers' existing contracts.

6. Justification for the exemption and impact on CPs

This exemption will enable Openreach to develop and launch a new EOI input and will enable redcare to meet ongoing contractual commitments of existing customers without raising potential security concerns. Withdrawal of redcare's CCTV services would require significant renegotiation of contracts with end-users, including public bodies and authorities.

Request number: 2

Product: BT MEDIA & BROADCASTING

Legal basis: 5.46.2a)

1. Product description and reasons for request

This exemption request concerns the Openreach inputs into BT Global Services' BT Media & Broadcasting business ("BT M&B"). These inputs are not currently productised or externalised.

BT M&B provides connectivity for the transmission of broadcast traffic. The relevant media and broadcast services are provided over relatively new infrastructure, much of which has been built in response to customer specific demand, often in areas where there is competition from other network operators. These are generally high bandwidth services, of up to 1.5Gbit/sec. Transmissions are mainly unidirectional. Solutions are to a large extent bespoke to each customer, and the resulting networks are highly complex.

The Openreach input access services supplied to BT M&B to support those broadcast services are supplied over analogue and digital feeds. BT M&B then adds value to provide broadcast services to its customers.

BT requests an exemption under section 5.46.2a) to enable Openreach to continue to supply existing inputs into the BT M&B business subject to the current terms and processes, without Openreach having to productise or make such inputs available externally. This exemption would be for a transitional period in accordance with the solution described below in section 5.

This exemption will enable BT M&B to meet ongoing contractual commitments with existing customers which, among other services, include the distribution of some of the Digital Terrestrial TV muxes to facilitate timely geographical and service expansion associated with the Government TV Digital Switch Over date.

2. Legal basis, scope and duration

- Legal basis: section 5.46.2a)
- Scope: exemption from section 5.46.1
- Duration:
 - exemption (including for intermittent and occasional access) up to and including 31 December 2007, the day after which will serve as an RFS date, and thereafter only for the installed base until Existing Contracts expire or are terminated, but at the latest up to and including 30 June 2010, the day after which will serve as an IBMC date, unless otherwise agreed with Ofcom.

3. Identification of the products involved

This request for an exemption relates to the supply and support of a variety of Openreach access services which underpin the BT M&B portfolio.

Further information on the BT M&B products can be found at:

<http://www.broadcast.bt.com/home/>

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

BT M&B products use fibre-based or SDH connectivity from Openreach (previously from BT Wholesale). These inputs are supplied to BT M&B for use with non-standard terminating equipment. Openreach supply and maintenance of these inputs are not productised or available externally.

5. Description of the solution proposed

Openreach will develop and launch by 31 December 2007 a WES broadcasting variant. This service will be provided on an EOI basis. New BT M&B contracts entered into after 31 December 2007 will use this new WES service as the Openreach input.

Openreach will maintain the installed customer base on the existing BT M&B services until the existing contracts end or are terminated by the customers or by BT, up to but not beyond 30 June 2010. This includes, where the contract so provides (either under an umbrella contract or through a change control mechanism in the contract), expansion of existing services.

"Existing Contracts" means relevant BT contracts which are in effect prior to the date on which the new WES broadcasting service is available.

Broadcast networks can be very complex, and customers can be wary of and resistant to change. BT and Ofcom may in exceptional circumstances agree customer specific exemption(s) beyond 30 June 2010.

BT retains the right to construct customer solutions, including Media and Broadcast services, using non-BT fibre.

Intermittent and occasional access

BT M&B also uses dedicated assets at specific locations exclusively to provide *intermittent and occasional* access for broadcast to a terrestrial network from locations such as football grounds, conference centres, exhibition venues and other outside broadcast sites. There is no current Openreach service which provides for the productised supply of intermittent access services of this sort. For new contracts after 31 December 2007 it will be for BT M&B to use the Openreach and BT Wholesale services then available to support its intermittent access services. Openreach will continue to support existing contracts on the current basis until those contracts expire or are terminated, up to but not beyond 30 June 2010.

6. Justification for the exemption and impact on CPs

This exemption will enable Openreach to develop and launch a new EOI input and will enable BT M&B to meet ongoing contractual commitments from existing customers. Broadcast services in the UK are competitive. There are a number of competing networks and providers, including C&W/Energis, KPN, Arqiva, Global Crossing, Colt and NTL (including Telewest).

BT M&B's portfolio has been developed to support a competitive industry in which there has been no finding of Significant Market Power. It pre-dates the creation of Openreach and there are no defined products and services produced by Openreach available for BT M&B to buy on EOI terms. An EOI product will need to be created and the systems and processes for its supply developed. The priorities for Openreach delivery of equivalence were identified during the Telecommunications Strategic Review and the creation of a broadcast WES service has to be achieved without compromise to the delivery of those priorities. Openreach has received a Statement of Requirements for the service in question and the exemption covers the period of time that Openreach will need in order to agree, define and deliver the broadcast WES product.

Request number: 3

Product: MANAGED RADIO COMMUNICATIONS SERVICES

Legal basis: 5.46.2a)

1. Product description and reasons for request

This request relates to Openreach's inputs into BT Wholesale's managed radio communications services. BT Wholesale offers a portfolio of managed radio communication services to Mobile Network Operators (MNOs) and other wholesale customers. Radio communications services include providing MNOs with 2nd and 3rd Generation radio coverage and capacity, covering GSM 900, DCS 1800 and UMTS technologies and providing MNOs and other wholesale customers with other radio based services such as Wi-Fi.

Currently, these services include:

- the Microconnect portfolio of services (in-building, urban streets and rail network); and
- the Wireless City service.

The purpose of managed radio communications services is to provide shared infrastructure to MNOs to achieve greater 2nd and 3rd Generation coverage and capacity, and to offer other wholesale customers access to Wi-Fi within densely populated urban areas where there is demand for improved coverage by users of mobile phones and other mobile devices. Managed radio communications services address such issues as coverage shadows caused by large buildings and environmental considerations.

This request for an exemption for a limited period of time relates to the continued supply by Openreach to BT Wholesale of a dedicated fibre link between each antenna and a nearby BT exchange building. BT Wholesale's managed radio communications services use Openreach inputs which are not productised or externally available.

BT requests an exemption under section 5.46.2a) to enable Openreach to continue providing the current inputs into BT Wholesale's Wireless City service without the relevant Openreach inputs having to be productised or made available on an external basis until 30 September 2007 and thereafter only for the installed base until 31 March 2008. The day after each of these dates will serve as, respectively, the RFS and IBMC dates for Openreach inputs to managed radio communications services on an EOI basis.

BT also requests an exemption under section 5.46.2a) to enable Openreach to continue providing the current inputs into BT Wholesale's Microconnect (MDA and IBC) services, which have already been withdrawn from new supply, without the relevant Openreach inputs having to be productised or made available on an external basis until the current contracts expire (excluding any renewal period), as long as these products remain unavailable for new supply from BT.

2. Legal basis, scope, and duration

- Legal basis: section 5.46.2 a)
- Scope: exemption from section 5.46.1
- Duration:

- With respect to Openreach inputs into BT Wholesale's Wireless City service: exemption up to and including 30 September 2007, the day after which will serve as an RFS date, and thereafter only for the installed base up to and including 31 March 2008, the day after which will serve as an IBMC date; and
- With respect to Openreach inputs into BT Wholesale's Microconnect (MDA and IBC) services: exemption until the current contracts expire (excluding any renewal period), as long as these products remain unavailable for new supply from BT.

3. Identification of the products involved

This request seeks an exemption in relation to the Openreach inputs supplied to enable BT Wholesale to provide the following portfolio of managed radio communications services:

- Microconnect Distributed Antenna (MDA) is a service focused on city centres and uses existing street furniture to house micro antennae and provides MNOs with 2nd and 3rd Generation radio coverage.
- Wireless City is a service that extends MDA to offer Wi-Fi based services to customers in addition to MNOs, including BT Retail and BT Global Services. Note that the MNOs also offer Wi-Fi based services using their own physical networks.
- Microconnect In-building Coverage (IBC) is a service focused on providing radio coverage using micro antennae within buildings and provides MNOs with 2nd and 3rd Generation radio coverage.

BT Wholesale uses the Openreach fibre input, combined with BT Wholesale's own radio network design and planning, micro antennae, radio over fibre, equipment, electrical power and operational space (Locate service), and end-to-end management, operations and maintenance to provide its managed radio communications services to MNOs for 2nd and 3rd Generation radio transmission and to other wholesale customers.

Further information about these products is to be found at:

http://www.btwholesale.com/application?origin=prod_az_list.jsp&event=bea.portal.framework.internal.refresh&pageid=product&nodeId=navigation/node/data/Products/Mobility_and_Convergence/Microconnect_Distributed_Antennas/navNode_Microconnect_Distributed_Antennas

http://www.btwholesale.com/application?origin=prod_az_list.jsp&event=bea.portal.framework.internal.refresh&pageid=product&nodeId=navigation/node/data/Products/Mobility_and_Convergence/Microconnect_In_building_Coverage/navNode_Microconnect_In_building_Coverage

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

To create its managed radio communication services portfolio, BT Wholesale uses Openreach inputs between BT Wholesale equipment in a BT Exchange and each antenna location. The Openreach input is dedicated to BT Wholesale's managed radio communications services, and is not productised or externally available.

5. Description of the solution proposed

Given the size of the current downstream business and its consequent lack of material impact it would not be practicable for Openreach to devote resources to prioritising the development of a new input product for use in managed radio communications services at this time ahead of other industry requirements. BT believes that demand for Openreach inputs to be used in managed radio communications services type solutions will emerge.

Accordingly, BT proposes that this exemption continues for a limited time, until Openreach develops and launches an EOI product that will be used as an input into BT Wholesale's Wireless City service, up to and including 30 September 2007, the day after which will serve as an RFS date, and thereafter only for the installed base up to and including 31 March 2008, the day after which will serve as an IBMC date.

With respect to Openreach's current inputs into BT Wholesale's Microconnect (MDA and IBC) services, as these have been withdrawn, it would be disproportionate to require Openreach to productise such inputs and make them available on an external EOI basis. An exemption is therefore sought to maintain the existing contracts until they expire (excluding any renewal period), as long as these products remain unavailable for new supply from BT once they are withdrawn.

6. Justification for the exemption and impact on CPs

The current Openreach products, and in particular the WES family, have been examined for their applicability to managed radio communications services. This examination has confirmed that there are specific developments that will be required to support managed radio communications services.

Accordingly development time for the new EOI services from Openreach is required.

Although the limited requirement for managed radio communications services today minimises any impact on Communications Providers (CPs) there are also other solutions available. Other solutions available to MNOs and other Wi-Fi customers include MNO self-build options and solutions offered by alternative CPs. For example, Arquiva has a greater presence than BT in in-building radio communications services with approximately 70 sites and it has deployed its CityCell service in one city (based on publicly available information). MNOs' own self-built solutions are a significant competitive factor as they allow MNOs to offer Wi-Fi based services using their own physical networks.

With respect specifically to Microconnect, given its withdrawal from new supply, it would be disproportionate to require Openreach to develop a new EOI input product simply to support the existing installed customer base.

Annex 2

Exemptions, agreements and variations wording

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 (or will be modified), and to agree the application of section 5.46.2 to certain products;
- (c) On or before 21 January 2006, BT lodged draft applications with Ofcom in relation to section 5.46.2. In addition, temporary exemptions and agreements up to and including 22 December 2006 have been granted for a number of products in letters exchanged between Ofcom and BT¹⁸;
- (d) On 21 December 2006 and 30 March 2007, Ofcom and BT agreed variations to the Undertakings¹⁹ modifying section 5.46.2 to give further time until 31 December 2007 to formalise Ofcom's decision relating to the three exemptions requested by BT covered by this Agreement and to consider issues relating to another exemption requested by BT²⁰;
- (e) Ofcom published Statements on 15 June 2006 and 21 December 2006 setting out certain exemptions, agreements and variations to the Undertakings, which were agreed between Ofcom and BT;
- (f) This Agreement between Ofcom and BT sets out some further exemptions and agreements (as set out in BT's requests annexed to Ofcom's Statement dated 19th July 2007); and
- (g) 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 5.46.2(a) BT and Ofcom hereby agree that section 5.46.1 shall not apply to any AS inputs into the redcare CCTV product, including continued access to AS systems, up to and including 31 March 2008, the day after which will serve as an RFS date for AS's inputs into such product, and thereafter section 5.46.1 shall not apply in respect of the installed base up to and including 30 June 2010, the day after which will serve as an IBMC date for AS's inputs into such product, unless otherwise agreed with Ofcom.²¹

Ofcom may waive the requirement to launch an EOI analogue product variant if AS can demonstrate to Ofcom's satisfaction that there is insufficient demand from other CPs for

¹⁸ Letters exchanged between Ofcom and BT on 20 January 2006, 19 April 2006 and 17 August 2006.

¹⁹ Variations number 6 and 8 of 21 December 2001 and 30 March 2007, respectively.

²⁰ Redcare CCTV, BT Media and Broadcasting, Managed Radio Communications Services and Wavestream.

²¹ See BT's request number 1 in Annex 1 of this document.

such a product, such request to be submitted to Ofcom by Openreach no later than 15 March 2008.

2. 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 BT's Media & Broadcasting business (including to provide for intermittent and occasional access) up to and including 31 December 2007, the day after which will serve as an RFS date for AS's inputs into such products, and thereafter section 5.46.1 shall not apply in respect of the installed base until Existing Contracts expire or are terminated, but at the latest up to and including 30 June 2010, the day after which will serve as an IBMC date for AS's inputs into such products, unless otherwise agreed with Ofcom.²²

In this paragraph 2 of the Agreement "Existing Contracts" means relevant BT contracts which are in effect prior to the date on which the new WES broadcasting service is available.

3. Pursuant to section 5.46.2(a) BT and Ofcom hereby agree that section 5.46.1 shall not apply to any AS inputs:²³

- a) into BT Wholesale's Wireless City services up to and including 30 September 2007, the day after which will serve as an RFS date for AS's inputs into such product, and thereafter section 5.46.1 shall not apply in respect of the installed base up to and including 31 March 2008, the day after which will serve as an IBMC date for AS's inputs into such product.
- b) Into BT Wholesale's Microconnect (MDA and IBC) services until the Existing Contracts expire or are terminated as long as these products remain unavailable for new supply from BT.

In this paragraph 3 of the Agreement "Existing Contracts" means relevant BT contracts which are in effect at the date of this agreement, excluding any renewal period.

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.

²² See BT's request number 2 in Annex 1 of this document.

²³ See BT's request number 3 in Annex 1 of this document.

(c) the people providing the exempted services whilst working for AS, will not be deemed to work for the Upstream Division(s) or any of the Downstream Divisions, and hence section 5.35 will not apply.

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 _____