

# Proposed amendments to section 7 (equipment location) of the Enterprise Act Undertakings given by BT to Ofcom

Consultation document

Consultation

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## Section 1

# Summary

## Background

- 1.1 On 22 September 2005, Ofcom accepted BT's undertakings pursuant to section 154 of the Enterprise Act 2002 ("the Undertakings"). The Undertakings 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>1</sup>.
- 1.2 Section 7 of the Undertakings requires BT to provide other Communications Providers with a facility for them to locate their equipment in a BT exchange, where there is sufficient space and power available.

## Proposals

- 1.3 Ofcom is consulting on the following non-material amendments to section 7 of the Undertakings:
- removing references to the Communications Providers Property Users Group ("CPPUG") and replacing them with references to 'Communications Providers' where relevant;
  - allowing BT to require comments on its Estimated Space Availability Details ("ESADs") to be submitted in a standard format;
  - allowing BT to require Communications Providers to sign a suitable confidentiality agreement before it provides its ESADs;
  - allowing BT to amend the list of exchanges BT intends to vacate ("vacation list") from time to time as appropriate; and
  - requiring the vacation list to be provided to Communications Providers as well as Ofcom.

## Requirements to consult

- 1.4 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. Ofcom does not consider that the proposed amendments alter the Undertakings in a material respect, as they only concern a mechanism for BT to communicate with industry for a small part of the Undertakings as well as other minor changes to a minor part of the Undertakings. Consequently, Ofcom does not consider that there is a legal requirement to consult on this occasion. However, as one of the proposed amendments concerns the way in which alternative operators communicate with BT, Ofcom considers it appropriate to consult. Ofcom does not intend to consult on all non-material amendments to the Undertakings, and will decide whether or not to consult on such amendments on a case by case basis. Additionally, Ofcom notes that although Section 155 of the Enterprise Act does not apply in this instance, the period stipulated for consultation in the Act is a minimum of 15 days.

<sup>1</sup> This document can be found at [http://www.ofcom.org.uk/static/telecoms\\_review/final\\_statement.htm](http://www.ofcom.org.uk/static/telecoms_review/final_statement.htm)

## Section 2

# Proposed amendments to section 7 of BT's Undertakings

## Background

- 2.1 On 22 September 2005, Ofcom accepted BT's undertakings pursuant to section 154 of the Enterprise Act 2002. The Undertakings 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*.
- 2.2 Section 7 of the Undertakings requires BT to provide other Communications Providers with a facility for them to locate their equipment in a BT exchange, where there is sufficient space and power available. Section 7 also requires BT to provide ESADs to the CCPUG, as defined below, and provides that BT may invite comments from the CCPUG on the ESADs, including demand forecasts for space. Annex 4 requires that the CCPUG is consulted before any additions to the equipment listed in Annex 4 are agreed between BT and Ofcom.
- 2.3 Section 7.1.2 states:
- “The Estimated Space Availability Details will be provided by BT by the November 1 preceding the next BT financial year for which the BT corporate property strategy applies.”
- 2.4 Section 7.1.3 states:
- “BT may invite the Communications Providers Property Users Group to submit by the 1 January preceding the next BT financial year for which the BT corporate property strategy applies, written observations (including demand forecasts for space) to BT concerning the Estimated Space Availability Details.”
- 2.5 Annex 4 f) states:
- “Any additional equipment reasonably identified by any other Communications Provider following consultation with the Communications Providers Property Users Group and agreed in writing between BT and Ofcom”
- 2.6 The definition of ESADs states:
- “Estimated Space Availability Details” means details of estimated space availability within the Exchanges annually notified to the Communications Provider Property Users Group in accordance with section 7.1.2.”
- 2.7 The definition of CCPUG states:
- “Communications Provider Property Users Group” means a group representing Communications Providers (other than BT) made up of three representatives appointed by them.”

## Industry concerns with the CCPUG

- 2.8 In the course of discussions with industry about the implementation of section 7, industry has raised concerns that the CCPUG is unlikely to be effective. There are two main reasons for this:
- industry do not consider that it is likely for three nominated Communications Providers to reasonably represent the interests of all interested Communications Providers, as there are likely to be a number of conflicting interests from different operators, who will use the equipment location product for different purposes. Further, individual operators seem unwilling to take on this responsibility; and
  - there are confidentiality issues with industry providing demand forecasts for space to the three nominated Communications Providers, with whom they are likely to be in competition and where confidentiality agreements may not be in place.
- 2.9 Ofcom agrees that the CCPUG is unlikely to be effective and considers that it is appropriate to amend the undertakings to remove the CCPUG and to replace such references with 'Communications Providers' where relevant.

## Other changes

### ESADs

- 2.10 In view of the proposed deletion of the CCPUG, BT would like to make two further changes to Section 7.1.3 and the definition of ESADs.
- 2.11 The removal of the CCPUG means that BT will have to aggregate comments on the ESADs and forecast data from all Communications Providers. BT would like the ability to require this information to be provided in a standard format. Given the possible amount of information that BT might receive, Ofcom considers that this is reasonable.
- 2.12 In addition, BT considers that the information provided in its ESADs is confidential and that Communications Providers must therefore sign confidentiality agreements before this information can be provided. BT would like this to be clarified on the face of the undertakings to make clear that the ESADs will be placed on a password protected website. It is envisaged that those who have signed a confidentiality agreement with BT will be notified by BT each time the ESADs information is changed or updated.
- 2.13 Ofcom does not consider that the requirement for a confidentiality agreement is unreasonable given the nature of the information BT is providing and therefore it is appropriate to reflect this in the Undertakings.

### Vacation list

- 2.14 BT already provides a vacation list to local loop unbundling operators ("LLUOs") that is separate to the vacation list required by section 7 of the Undertakings and this list is updated on a three monthly basis. In the context of section 7, it would be of benefit to communications providers for the vacation list to be updated on a more frequent basis than every 6 months, as is currently stated in the Undertakings. In addition, this information should be provided to LLUOs and other Communications Providers on a consistent basis. Therefore, Ofcom considers that the Undertakings should be amended to allow BT to update the vacation list as appropriate.

- 2.15 The undertakings require BT to provide the vacation list to Ofcom. However, in the course of discussions with industry, BT has agreed to provide the vacation list to Communications Providers that have signed a confidentiality agreement with BT as well as Ofcom. Ofcom considers that this should also be reflected in the Undertakings.

### Summary of proposals

- 2.16 Ofcom proposes the following non-material amendments to the Undertakings:

- removing references to the CPPUG and replacing them with references to 'Communications Providers' where relevant;
- allowing BT to require comments on its ESADs to be submitted in a standard format;
- allowing BT to require Communications Providers to sign a suitable confidentiality agreement before it provides its ESADs;
- allowing BT to amend the vacation list from time to time as appropriate; and
- requiring the vacation list to be provided to Communications Providers as well as Ofcom.

- 2.17 The proposed amendments to the text of the Undertakings are set out in Annex 3.

### Requirements to consult

- 2.18 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. Ofcom does not consider that the proposed amendments alter the Undertakings in a material respect, as they only concern a mechanism for BT to communicate with industry for a small part of the Undertakings as well as other minor changes to a minor part of the Undertakings. Consequently, Ofcom does not consider that there is a legal requirement to consult on this occasion. However, as one of the proposed amendments concerns the way in which alternative operators communicate with BT, Ofcom considers it appropriate to consult. Ofcom does not intend to consult on all non-material amendments to the Undertakings, and will decide whether or not to consult on such amendments on a case by case basis. Additionally, Ofcom notes that although Section 155 of the Enterprise Act does not apply in this instance, the period stipulated for consultation in the Act is a minimum of 15 days.

## Section 2

# Responding to this consultation

## How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 20 February 2006**.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, 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 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to first [selina.chadha@ofcom.org.uk](mailto:selina.chadha@ofcom.org.uk).

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

Selina Chadha  
Floor 4  
Competition and Markets  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7981 3133

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if you could explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Selina Chadha on 020 7783 4147.

## Confidentiality

Ofcom thinks 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 cover sheet that this is acceptable).

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.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

## Next steps

Following the end of the consultation period, Ofcom intends to publish a statement around the end of February.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

This consultation is shorter than Ofcom's standard 10 week period because it covers a non-material, non-controversial variation to the Undertakings.

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, whose views are less likely to be obtained in a formal consultation.

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 (Scotland)  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW  
Tel: 0141 229 7401  
Fax: 0141 229 7433  
E-mail: [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)



## Annex 1

# Ofcom's consultation principles

A1.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A1.2 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

A1.3 We will be clear about who we are consulting, why, on what questions and for how long.

A1.4 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.

A1.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A1.6 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 organisations 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.

A1.7 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

A1.8 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 2

# Consultation response cover sheet

- A2.1 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.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. 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 cover sheets confidential.
- A2.3 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 cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 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 cover sheet only so that we do not 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?

If you want part of your response, your name or your organisation to be confidential, 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. 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 3

## Draft variation document

**DRAFT VARIATION OF UNDERTAKINGS GIVEN TO OFCOM BY BT PURSUANT TO THE ENTERPRISE ACT 2002**

## 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:

It is hereby agreed between BT and Ofcom pursuant to section 18.1 of the Undertakings 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. Communications Provider Property Users Group and Estimated Space Availability Details
  - 2.1 In section 2.1 the definition of "Communications Provider Property Users Group" is deleted.
  - 2.2 In section 2.1 the definition of "Estimated Space Availability Details" is deleted and replaced by the following:

"Estimated Space Availability Details" means details of estimated space availability within the Exchanges annually notified (by being placed on a password protected BT website) in accordance with section 7.1.2 to those Communications Providers who have signed an appropriate confidentiality agreement with BT."
  - 2.3 Section 7.1.3 is deleted and replaced by the following:

"BT may invite Communications Providers to submit by the 1 January preceding the next BT financial year for which the BT corporate property strategy applies, written observations (including demand forecasts for space) to BT concerning the Estimated Space Availability Details. BT may require these written observations to be submitted in a standard format provided by BT."

2.4 Paragraph (f) in Annex 4 is deleted and replaced by the following:

“Any additional equipment reasonably identified by any other Communications Provider and agreed in writing between BT and Ofcom.”

3. Exchange vacation list

3.1 Section 7.7 is deleted and replaced by the following:

“Within six months of these Undertakings taking effect, BT will provide (by placing the list on a password protected BT website) to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT a list of Exchanges that it intends to vacate in accordance with its property strategy. BT will inform any Communications Provider requesting to occupy a Vacation Exchange before the Communications Provider deploys its Equipment at the site that it is a Vacation Exchange and the proposed date of vacation. Subject to BT complying with its obligations under this section 7.7, the Communications Provider will vacate that site on or before the proposed vacation date and will not be entitled to any compensation from BT, except where existing SMP Conditions, directions or contractual terms apply. BT will have the right to amend that list from time to time as appropriate during the period of these Undertakings and such amended list shall be provided in the same manner as the original list to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT.”

4. 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 \_\_\_\_\_