



Consent under BT SMP Condition OA1

Final Statement and Notification

Issued: 19 August 2005

Explanatory Statement

Proposed Consent under BT SMP Condition OA1

Scope of this document

- 1 Following a consultation in July 2005, this document sets out Ofcom's final decision on BT's request of a deferment in the publication date of its regulatory financial statements for the year ended 31 March 2005, from 31 July to 31 August 2005.

Summary and background

- 2 BT is required to prepare regulatory financial statements on an annual basis to a detailed reporting specification. The purpose of these statements is primarily for BT to demonstrate compliance with cost orientation and non discrimination obligations.
- 3 These new reporting obligations were set out in a Statement and Notification ("The regulatory financial reporting obligations on BT and Kingston Communications") (Regulatory Financial Reporting Statement) published in July 2004 and apply for the first time to the 12 month period ended 31 March 2005. This set out that BT is required to publish these financial statements within four months after the end of the period to which they relate - in this case by 31 July 2005.
- 4 These statements will be significantly different in form and content from previous years and BT explained that the preparation process will take longer, as a result BT requested consent to defer publication until 31 August 2005. Ofcom formally consulted on this matter on 15 July 2005.

Relevant SMP services conditions

- 5 The following SMP service condition was imposed on BT in the Regulatory Financial Reporting Final Statement:
 - the requirement to publish its Regulatory Financial Statements (meaning any financial statement in respect of a Financial Year as defined in the SMP Condition prepared or required to be prepared by BT in accordance with these conditions) and any corresponding audit opinions within four months after the end of the period to which they relate (SMP Condition OA6 (b));
- 6 The requirement is for BT to publish its Regulatory Financial Statements and any corresponding audit opinions within four months after the end of the period to which they relate.

BT's request

- 7 BT has been discussing with Ofcom the detailed implementation of its new regulatory accounting obligations since the publication of the Regulatory Financial Reporting Statement last year. The statements require significant changes to BT's underlying accounting systems and processes.
- 8 In June this year BT formally requested a deferment of its publication date from 31 July to 31 August 2005 in recognition of the difficulties it faced in preparing a new set of financial statements within the four month timescale. Ofcom proposed to give consent to this deferment as Ofcom considered the request to be reasonable in the circumstances.

The proposed Consent

- 9 SMP Condition OA1 allows Ofcom to consent in writing for BT to publish its Regulatory Financial Statements beyond the four month period, after the end of the period to which they relate, as set out in SMP Condition OA6(b).

Legal tests

- 10 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 this Section are met. This Section should be read in the light of relevant considerations and Ofcom's conclusions as set out above in this explanatory statement.

Relevant tests

- 11 Ofcom is required to be satisfied that the granting of consents is in accordance with the requirements of section 49(2) of the Communication Act 2003 (The Act). Ofcom also has to consider and act in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
- 12 The Schedule to Annex 1 sets out the Consent. The effect of, and reasons for making, those proposals are set out in the paragraph headed "BT's Request" above.

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

- 13 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.
- 14 This Consent is necessary as it recognises the initial implementation issues faced by BT in the first year of preparation, in particular the significant changes required to its accounting systems.

Section 49(2) – general tests

15 Section 49(2) of the Act requires that Ofcom must not give a Consent unless it is satisfied that to do so is:

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

16 In respect of the Consent, Ofcom considers that it:

- is objectively justifiable as it allows BT sufficient time in which to prepare an important set of financial statements for compliance purposes;
- does not discriminate unduly even though it only applies to BT as, although similar SMP services conditions have been imposed on Kingston, Kingston does not have such extensive or detailed reporting requirements;
- is proportionate, as it recognises the initial implementation issues faced by BT in the first year of preparation;
- is transparent, in that it is clear on the face of the Consent (as set out in Schedule to Annex 1) what is required from BT in terms of complying.

Representations

17 There were no responses to the consultation.

Conclusions

18 Ofcom gives its Consent that BT can defer its publication of its regulatory financial statements until 7 September 2005, which is one week more than BT's original request to delay publication by one month. This extension is because Ofcom is holding a meeting with BT and its auditors on 2 September, at which the regulatory financial statements will be reviewed. The additional one week delay in publication would allow BT to address any issues arising from that meeting, before publication.

19 Ofcom is satisfied that, in proposing the granting of the Consent it has met all relevant tests.

Annex 1

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 British Telecommunications plc and Kingston Communications* final statement and notification made on 22 July 2004

WHEREAS:

(A) as a result of a market analysis carried out by the Director General of Telecommunications (the 'Director') and OFCOM, in accordance with sections 48(1) and 79 of the Act, BT has been designated as having Significant Market Power ('SMP') in respect of certain identified markets as set out in the Notification and the notification of Annex 2 of the Review of the wholesale local access market, made on 16 December 2004 ;

(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) 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 Condition OA6 (b) relates;

(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 they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

(F) on 15 July 2005, OFCOM published a Notification of the proposed Consent and accompanying explanatory statement in accordance with section 49 of the Act and invited representations about any of the proposals therein by 16 August 2005;

(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 –

(a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and

(b) 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 any international obligation of the United Kingdom for this purpose; and

Therefore, pursuant to section 49 of the Act and SMP Conditions OA1 in Schedule 1 to the Notification, OFCOM give the following Consent:

1. In SMP Condition OA6 (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 7 September 2005 for the reporting period ended 31 March 2005.

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 regulatory financial published reporting obligations on British Telecommunications plc 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.

DAVID K S THOMAS

Director of Regulatory Finance, Ofcom

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

19 August 2005