



Notice under Section 155(1) of the Enterprise Act 2002
Consultation on undertakings offered by British
Telecommunications plc in lieu of a reference under Part 4 of
the Enterprise Act 2002

Issued on 30 June 2005

A response by
The Association of Communication Services Providers

Submitted by: Jacqui Brookes
CEO
Federation of Communication Services
Burnhill Business Centre
Burrell Row
Beckenham
Kent
BR3 1AT
12 August 2005

www.acsp.org.uk

Introduction

The Association of Communication Services Providers, ACSP, represents the interests of companies delivering fixed, mobile, Internet and content services to customers. ACSP is a member group within the Federation of Communication Services, FCS. This response represents the direct interests of over 70 companies in the fixed telephony sector and is supported by other FCS groups, notably the Fixed Service Providers Association, FSPA, which represents businesses delivering Wholesale Line Rental and other fixed line services to customers. A full list of FCS members may be found on the website www.fcs.org.uk.

ACSP is established to secure a fair, open and competitive environment for the delivery of services within the UK communications market, which is supported by an effective regulatory regime. ACSP promotes the value of competition in services, which benefits consumers and contributes towards the establishment of a dynamic communications market in the UK.

ACSP works towards ensuring that all communication services providers are able to access elemental network services at a fair and reasonable cost. We work with consumers and their representatives to enhance quality of service and develop codes of practice.

We welcome the opportunity to respond to the Notice of the Undertakings. Many of our comments reflect and support those of our members, who are submitting their individual company responses.

In this response we will also include comments on another consultation issued on 30 June 2005, "the Next Generation Networks: Further consultation", which is cross referenced in the Ofcom Notice.

The Telecommunications Strategic Review

During the progress of the Telecoms Strategic Review and in our earlier responses we have commented on a number of issues that affect service providers (SPs) and the outcomes that they are seeking to ensure a fair competitive market for the delivery of services in future. In summary these are:

- The need for an improved industry framework to meet the diverse needs of customers and to enable innovation in products and services
- A requirement for fundamental change in the way BT provides wholesale products to its competitors
- The importance of developing competition in the fixed line market; but there is also a need to address services competition in the mobile market
- The importance for consumers and BT's competitors of an acceptable customer switching experience not biased towards the incumbent provider.
- The importance of a fit for purpose WLR product with input equivalence for independent SPs with BT's retail arm
- To achieve these goals BT needs to change its organisation and behaviour towards its competitors; its retail competitors need to have confidence in order to invest.
- BT is the monopoly provider of certain services to SPs such as fault repair- these services need to have neutral branding and provided to all SPs, including BT's retail arm, on an equivalent basis
- Success will be dependent on implementation

Commentary on the proposals for the regulatory settlement

We welcome the overall thrust of the agreement between BT and Ofcom, which is a significant step forward in the communications regulatory framework for the UK. The recognition that achieving sustainable competition will be in the UK's best interests is immensely important.

Ofcom's analysis and argument is clear and takes into account many of the concerns expressed by service providers in earlier responses to the Telecoms Review. We welcome Ofcom's objectivity and understanding particularly the points made in sections 4.19 -4.27. In particular we welcome BT's intention to ensure input equivalence for Communications Providers. We believe that full and effective implementation of the Undertakings is the route to follow rather than a reference under Part 4 of the Enterprise Act 2002, which would be lengthy and continue the uncertainty of outcome. However, we urge Ofcom to maintain continued vigilance that the proposals will deliver the expectations of the industry and not to hesitate to step in if the Undertakings unravel.

Interpretation of the Undertakings

The Notice is necessarily drafted at high level but in many areas it is not entirely precise. We believe that an additional explanatory memorandum or guidance note should be added to the Notice setting out the principles for the way in which the Undertakings should be interpreted. This is working on the assumption that a suitable text could be agreed with BT, Ofcom and industry and that BT would voluntarily agree to follow the principles set out.

We accept that while BT's Undertakings have been made under the Enterprise Act in lieu of a reference to the Competition Commission and are legally binding, a guidance note would not have the same legal effect (i.e. if BT chose to interpret an Undertaking in conflict with the guidance note, this would not be a breach of its Undertakings).

However, while Ofcom and the High Court would not be obliged to follow the interpretation set out in a guidance note, the guidance would be 'very persuasive' in setting out the way that a particular Undertaking should be understood in case of a future dispute. Depending on the text, it may give a right for the matter to be referred to Ofcom for investigation.

The guidance should also clearly set out what process should be followed in the event that a service provider considered that BT was not abiding with the spirit of the guidance. This could involve the EAO in the first instance

Drafting of the Undertakings

We appreciate that the text of Annex E, the Undertakings offered by BT to Ofcom, will be legally binding and as such should be clear and unambiguous. We would like to comment on the following clauses that appear unclear or inconsistent and, with slight changes in drafting, may be improved

Undertaking 3.4: "access to the postcode address file used by BT" might be interpreted as a snapshot of the file. In order to ensure equivalence for CSPs and BT we would recommend inserting "continuing access to the postcode...."

Undertaking 3.5: "improved access to appointment books" is an unclear statement- what is to improve and how will it be measured? A few seconds improvement would satisfy the Undertaking but would have no material impact on the service received by a SP. We recommend that this clause is linked to KPIs (see below).

Undertaking 6.10.2: the use of commas should be the same as in 6.10.1

Undertaking 6.13: the whole clause is unclear and the phrase “as soon as is reasonably practicable” would be best to be linked to KPIs (see below).

Access Services Division

Although we would have been more comfortable with a clear legal and corporate separation of BT’s access provision from retail provision, the principles set out for a new Access Services Division, which includes SMP products such as WLR, appear to be sound. In our experience the proof of success will be the detailed definitions and implementation of the regulatory settlement at this crucial period when Next Generation Networks are to be put in place. So much complexity can often cover mistakes.

We welcome the setting of a timetable for equivalence of input for WLR products, access to the postcode address file used by BT and improved access to the engineering appointment books used by BT. However we recommend that each should be set out in association with KPIs and/or milestones for delivery to give full confidence to SPs. The dates associated with Equivalence of Input for WLR extend to 2010, which is too protracted and corresponds to the dates for deployment of 21CN. We recommend that the stage dates for migration of BT’s customer base are brought forward so that IBMC is completed in entirety by 2008.

The provision of access services to SPs by BT has been under development since 1998. At every stage when the provision has been subject to criticism by SPs or the regulator, BT has responded by carrying out a review and reorganisation, each step causing delays during the settling down process to the detriment of the SPs. We are optimistic that the outcome of this settlement will not follow this well trodden path.

The effort involved in moving 30,000 people into a new organisation will be a formidable organisational challenge. Moving the accompanying IT and other infrastructure will bring its own complexities and risk of delays. Continuity of service for existing customers and service providers will be vital during this period.

The strength of the Chinese Walls within the BT Group has been of constant concern to BT’s competitors and there is little indication in the Undertakings as to how far up the project management hierarchy the separation requirements lie.

There will be a significant cost to the reorganisation including setting up the ASD and developing product equivalence, which should be recovered from the BT shareholders rather than passed down to their customers.

BT behaviour

We applaud the sentiments, forward thinking, flexibility and enthusiasm of the senior staff in BT, who have the role of implementing BT’s proposals, but the success of the venture will lie in a change of culture at the heart of the new organisation, with the BT employees, and a refocus on servicing all customers equally rather than with a BT corporate bias. We see the role of the EAB and EAO as crucial in ensuring that the position of the ASD within the BT group does not hinder this process. We believe that the EAB would need to test this aspect thoroughly.

The telecoms review seeks to create conditions that enable competition to flourish and where BT does not abuse its dominant position. A worrying example is the current BT Privacy campaign on TV and advertising hoardings, with a personality presenter. By locking

customers into BT's retail arm with the Privacy package competitor SPs will not be able to access these customers and sell them services.

Branding

We welcome the intention to develop a separate brand for the ASD and we would expect the brand to be completely neutral. If the endorsement "part of the BT group" is considered essential for ASD branding by Ofcom, which we do not, then any such endorsement must be very small in relation to the font size of the neutral branding to ensure there is no linkage in the customer's mind between the ASD and BT's retail presence, and the ASD is seen as supporting all SPs equally. Our customers currently see a BT branded uniform on the repair man and do not fully understand that he is working for the independent service provider rather than our competitor, BT Retail.

We are concerned that section 5.42 indicates that branding will be complete by 2011 (within 5 years of the establishment date of the ASD). With this timetable SPs would have suffered at least 10 years of inappropriate branding, which is quite unsatisfactory. We look to BT and Ofcom to ensure that the ASD completes its rebranding as quickly as possible, with substantial progress in the coming 2 years and completion in 3 years. For WLR service providers rebranding of the website, e-mail addresses, customer communications and customer facing staff uniforms and vehicles are the immediate priority.

Directories, directory entries and phone books

The directory service fulfilled by BT Retail includes:

- Collation of Directories data
- Publication of the Phonebook
- Online access to the DQ data via www.bt.com
- Telephone access via 118500

Currently all end users are entitled to one free entry in the Phonebook, which is also reflected in the listing on bt.com and 118500.

Within the context of BT's Undertakings, SPs would like Ofcom and BT to review where within the BT Group the Directories function is situated and the associated branding to ensure fairness and equivalence.

Whilst SPs do not feel that there are any competitive issues surrounding the collation and distribution of directory data – this is available to anyone who wishes to purchase it – we do feel that competitive issues exist relating to the Phonebook, and the commercial arrangements surrounding special directory entries.

With the directory data being available to all who wish to purchase it, it is theoretically possible that any company can produce a phonebook. However in reality there is only one provider of a phonebook that contains residential listings and that is BT. This situation effectively means that in order to comply with General Condition 8.2 a service provider currently has to provide a BT branded directory to its own end users, as the BT directory is the only one available that allows the SP to comply with GC 8.2. It is this issue of only having the option of supplying a directory branded by a competitor that concerns service providers.

In addition to the one free directory entry per user mentioned earlier, additional and special (e.g. bold type) directory entries are available as a chargeable service. Details for the service available to service providers are given in section 36, part 8, sub part 7 of the BT price list.

An extract from the section referred to above:

"For charge rates see Section Part 19, 'Additional and Special Entries' in 'Telephone Directories' in the BT Price List."

Section 19 of the Retail price list, detailing charges can be found here:

http://www.serviceview.bt.com/list/current/docs/Exch_Lines.boo/00091.htm "

This highlights the situation. Service providers have to pay the BT Retail price for special directory entries despite being a wholesale customer. As the only producer of a phonebook that allows SPs to comply with GC 8.2, BT is the only credible source of special directory entries. Consequently as SPs are paying the BT Retail price it means that any margin available is being retained by BT Retail. Clearly it is unsatisfactory for wholesale customers to be subsidising a competitor – in this case BT Retail. To ensure that equivalence is achieved in this area we recommend that the Phone book, collection, storage and sale of DQ data are all sited within the ASD.

Pricing accuracy

It is easy to overlook some of the fundamental details that will contribute to equivalence when looking at the big picture, but for our members BT's pricing accuracy and an effective Service Level Guarantee (SLG) rebate scheme are essential for equivalence with BT's retail arm.

Currently SPs spend a significant proportion of their time dealing with BT's pricing problems (more so than with any other carrier) and seeking to use the SLG rebate scheme which sets an artificially short time for any claims. This is an example of a small issue contributing disproportionately to the costs of supply for a SP. BT Retail would not have such a problem as they can make a provision in their accounts. We recommend that pricing accuracy is included within the remit of the ASD and is tracked as an issue by the EAB.

EAB/EO

The principle of having an Equivalence of Access Board is welcomed but to be effective and provide confidence to the rest of industry the EAB must be seen to have teeth. In describing the function of the EAB the drafting of Undertaking 10.15 appears weak in places and we would suggest that each of the words "may" in 10.15.1 and 10.15.3 be replaced by "shall".

In consideration of Undertakings 10.22.2 and 10.38 our members would have more confidence that the EAB will be effective if there were to be a formal arrangement whereby ACSP and FSPA members (and other industry groups) could direct relevant concerns about BT processes and behaviour that are identified as inhibiting the level playing field that equivalence seeks to provide. Two possible options could be considered. Either that there are regular and direct bilateral interfaces between each group and with the EAO to exchange reports or, alternatively that an industry forum is set up (although the experience with the previous TIRF forum has illustrated that a BT led "industry body" has failings). Whichever is adopted, we look to see appropriate mechanisms set up by the EAB and EA Office. In addition, as most of our members are smaller providers than the Altnets, we would specify that the evidential thresholds for submitting complaints or concerns to the EAB/O are proportionate to the provider's ability to provide. It would be a detrimental step if smaller providers with legitimate concerns could not make themselves heard because a system is in place that effectively denies them access.

Role of Ofcom

We understand that Ofcom's intention is to set out regulatory principles and leave detailed activity to the market. However, the involvement of the Ofcom TSR team and the WLR team has been significantly beneficial in driving forward each project in the past two years. We believe that Ofcom must maintain close involvement with the regulatory settlement during the transition period, at least until 2010.

We welcome the proposal for an operational dispute adjudicator.

Next Generation Networks

Having participated in the March 2005 meeting to consider industry forums for the NGN era we agree that independently chaired industry groups with clear objectives are the most productive. We welcome the recognition by Ofcom that the NICC should continue as the standards body selecting and implementing relevant standards for the UK. It will be for industry players to determine how NICC moves forward, but in recognition of the leverage that the incumbent has on any committee with its competitors, we urge continuing close involvement by Ofcom.

NGNCo, described in the NGN consultation document, has merit. We would argue that SPs should gain full access to the new body in order to participate in the decision making process and input the requirements of their peers and customers.

BT's Consult 21 has put forward a communications group which had its first meeting on 1 August, in which we are participating. A major feature of this and the NGNCo communications programme will be to ensure the involvement of the service providers and those resellers joining the industry as liberalisation takes place, as well as their customers. ACSP/FSPA welcomes the opportunity to help with this crucial role.

Issues for SPs and have they been met by the proposals?

Service providers agree that the undertakings are a good basis on which to build, but in our experience the devil will be in the detail and we look to Ofcom to assist us in sorting out any detailed issues. BTW's commitment to resolving SP's issues has notably improved over the last 2 years and we would expect a further improvement after the establishment of ASD.

One test of equivalence is the concept that SPs should not have to purchase products from BT's Retail arm. An excellent example of this is the Call Minder product on WLR. The only alternative to Call Minder is to purchase Call Mapping and for the SP to provide its own messaging platform, a proposition so unattractive that Call Mapping only has one customer. BT should be demonstrating its commitment to equivalence by developing a wholesale equivalent to Call Minder that allows the SP to retain a margin, rather than the current situation where it is BT Retail that makes the margin.

In terms of the management information systems separation we would recommend that BT's internal phone directory (which currently allows different divisions of BT to find contact details relating to each other's staff) is included in the definition of management information systems so that there is a distinct separation of BT's internal phone directory.

Assessment of whether SPs requirements have been met

On page 2 we set out the requirements that service providers were seeking as a result of Ofcom's Strategic Telecoms Review. Following our analysis of the current consultation we summarise below whether we believe the SPs needs have been met:

- Need for an improved industry framework to meet the diverse needs of customers and to enable innovation in products and services: [Yes, the proposals are certainly an improvement.](#)
- Need for fundamental change in the way BT provides wholesale products to its competitors: [Yes.](#)
- Importance of developing competition in the fixed line market; but there is also a need to address services competition in the mobile market: [Ofcom has not addressed this issue nor the access to services delivered by Kingston in the Hull area.](#)
- The importance for consumers and BT's competitors of an acceptable customer switching experience not biased towards the incumbent provider: [The structural changes, and Ofcom's forthcoming consultation on migration, should remove the bias when they are fully in place. In the transition all parties will have to take care that the customer experience does not deteriorate. We welcome the reduction in rejections that access to the postcode address file used by BT should produce and improved access to BT's engineering appointment books.](#)
- The importance of a fit for purpose WLR product with input equivalence for independent SPs with BT's retail arm: [Yes. Ofcom and BT have accepted the concept of input equivalence. However, the WLR product currently under assessment to identify if it is fit for purpose does not currently fulfil all the requirements of the WLR SPs and the timetable for full input equivalence- where BT Retail is managing all its customers through the same systems and processes as other SPs- seems too long.](#)
- To achieve these goals BT needs to change its organisation and behaviour towards its competitors; its competitors need to have confidence in order to invest: [Yes we welcome the organisational changes and the intention of BT to change its behaviour towards its competitors; over the past two years BTW staff have improved their attitude towards SPs and we expect this to continue with the ASD. Stability and clear communication will encourage investment and development by SPs](#)
- BT is the monopoly provider of certain services to SPs such as fault repair- these services need to have neutral branding and provided to all SPs, including BT, on an equivalent basis: [We welcome the intention to provide neutral branding for these services but the timescale proposed is too long](#)
- Success will be dependent on implementation: [We look forward to playing an active role in this task on behalf of our members.](#)

Conclusion

We have identified some important issues and concerns, which in our view must be addressed if the Undertakings are to be fully effective. However, we believe that, on balance, acceptance of the Undertakings is preferable to an Enterprise Act reference.