



Response to Consultation on Undertaking

For the attention of

Dougal Scott
6th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London, SE1 9HA

dougal.scott@ofcom.org.uk

Prepared by
Graham Chick
12th August 2005

GemaTech (UK) Ltd
Telford House, Hamilton Close
Houndmills, Basingstoke
Hampshire
RG21 6YT

Contents

Cover Sheet for Response

Basis of Representation

Document 1 GemaTech Background and Rationale

**Document 2 Detailed Response to The BT Undertaking – Section 3,
5 & 6 Refer**

Supporting Documents – All Confidential Documents

**Document 3 Supporting email exchanged with BT Locate and
BTWS**

**Document 4 Supporting email exchanged with BT New Business
Development**

Document 5 NISCC Good Practice Guide – relevant extracts

**Document 6 List of Prospective Clients for GemaTech's
alternative Business Continuity Solutions using
GemaTech's BCM^{LITE} product**

Cover Sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Consultation on undertakings offered by British Telecommunications plc in lieu of a reference under Part 4 of the Enterprise Act 2002

To (Ofcom contact): Dougal Scott

Name of respondent: Mr Graham Chick

Representing (self or organisation/s): GemaTech (UK) Limited

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?

We do not want the supporting documents to be public knowledge ie

Document 3 - 6

Note that Ofcom may still refer to the contents of responses in general terms, without disclosing specific information that is confidential. Ofcom also reserves its powers to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.

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 email 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)

Basis of Representation

Throughout the Ofcom Consultation document dated 30th June 2005 continual references have been made to the fact that BT have, historically, stifled competition by acting unfairly towards its competitors.

GemaTech would argue that they have first hand knowledge of BT's continual procrastation and/or intransigence which has resulted in little or no progress being made to enable GemaTech to secure equal access to the various local serving exchanges (DLE's) in order to deliver, what is in GemaTech's opinion, a far superior Business Continuity solution for an existing BT customers incoming calls – in direct competition with BT CommSure.

The supporting information contained in the Confidential Documents attached to this Representation comprises of a selection of salient emails exchanged with senior BT personnel over the last 18 months which clearly illustrate that BT have no intention of allowing GemaTech to gain access to their exchanges, contrary to the *assurances* given within Section 6 of BT's Undertaking included within Annex E of the Ofcom document.

Representation

That contrary to the *ifs and maybes* and shrouded uncertainty contained within Section 6 of the BT Undertaking, firm proposals need to be agreed between Ofcom and BT, and an unequivocal declaration made which will ensure true and fair competition between BT, BT CommSure and GemaTech in the provision of resilient Business Continuity products, and services to BT existing third party customers.

GemaTech is therefore seeking what is referred to by BT as *Equivalence of Inputs* with existing exchange to ensure

1. GemaTech, and others as may be considered appropriate; are granted access to all local serving BT DLE's, with the provision of at least a half rack cabinet and maximum 1 full rack cabinet, that currently house BT CommSure equipment and services to enable GemaTech to provide a competing product and or service to BT customers.
2. GemaTech, and others as may be considered appropriate as well as BT CommSure are granted access to ALL OTHER local serving DLE's to enable BT's existing customers, both large corporates and smaller SME's - all of which rely heavily on their ability to communicate with their customers, suppliers, staff and the media to deliver a comprehensive Business Continuity solution for their incoming calls.
3. The responsibility for consideration and the granting of access to ANY/ALL local serving DLE's is assigned to the new proposed Access Services Division so that a truly impartial evaluation process can be undertaken and a transparent Appeal process implemented.
4. That given the recent tragic events of 7/7 which have only served to focus the minds of directors of all companies of the need to implement comprehensive Business Continuity plans, with the FT only this week, 10th August 2005 highlighted the fact that less than 50% of businesses within the City have adequate Business Continuity plan in place, that access to ALL local serving BT DLE's should be granted SMP status as the provision and sale of *cost effective* Business Continuity solutions for telecom recovery that are *affordable to all* will result in a very significant number of additional PRI circuits being sold to existing BT customers, all

as highlighted in the supporting emails contained within supporting document.

GemaTech – Background

1. Company Background

Initially formed as an R&D company in 1995, The GemaTech Group is now an established group of companies with a proven track record in designing, developing and distributing, initially in the UK and US with expansion into the EU schedule for Q4 this year, innovative and leading edge technology for emerging markets in the telecommunications industry. Focusing on new and more flexible ways of working for the 21st Century, GemaTech have developed leading edge products facilitating virtual call centres, intelligent hot desking, business continuity and secure voice recording.

In essence GemaTech have developed a very powerful, flexible and extremely cost effective telecommunications platform, which enables any company of any size to adopt new and more flexible ways of working. This will enable each and every company to enhance both their business operations, and profitability in ways that are most appropriate to them.

1.1. Corporate Vision

“Work is a thing you do...not necessarily a place to go...so in the 21st Century why continue to drag the workforce to a centralized place of work when, with technology available today, you can take the work to the workforce...no matter where they are located...on a global basis. So why not think in terms of access to a “global workforce”...with everybody seamlessly linked together with voice and data communications... and managed remotely as though they were in one central place of work.

There are so many competent people available for work, who want to work, but simply cannot go to a place of work who could be gainfully employed using this technology. The disabled, single parents, young mothers, the mature workers who have to care for ageing parents could all become fully integrated members of society by becoming self sufficient wage earners – referred to by the UK Government as “social inclusion”.

1.2 Corporate Philosophy

With customers placing ever-increasing demands on companies for instant access and service on a 24x7 basis, the search for cost effective technological solutions to deliver that range of services is becoming paramount. Every company is looking for that competitive edge, that little bit extra that sets them above their competitors.

GemaTech’s solution to these ever increasing demands is a combination of innovative, leading-edge technology and social engineering, which delivers the vision clearly defined above, by adopting three key deliverables.

Virtual: The ability to work any time, from anywhere, on a global basis with the same functionality and access to centralized databases and IT infrastructure as if you were working in a conventional office.

Flexible: The ability to comprehensively monitor, manage and make changes, quickly and easily, real time to the call management plans as circumstances dictate – from anywhere in the world.

Affordable: The ability to provide a solution within the financial constraints of the client i.e. if a client wishes to benefit from GemaTech's technology there will be a way for them to afford it.

1.3 Current Product Range

GemaTech's **business continuity** products (BCM and BCM^{LITE}) deliver arguably the only credible, carrier independent, solutions for both conventional business and call centre switches enabling 100% of the workforce to be fully operational seconds / minutes after disaster strikes!

GemaTech's **secure voice recording** products (SVR and SVR^{LITE}) record all incoming/outgoing calls with recordings being accessible from anywhere with secure web access - providing monitoring, training, and dispute resolution functionality.

GemaTech's **virtual call centre** product (RSM) enables the call centre to effectively travel to the skills base rather than force the skills base to the conventional call centre – whilst providing comprehensive remote monitoring and management capability.

In order to deliver the full flexibility of these products, they have all been designed to be installed, ideally in a Tier 1 carrier's exchange. Unlike conventional IN platforms adopted by the Tier 1 carriers, GemaTech's equipment is, in effect, carrier independent and is a very affordable alternative to the adoption of Network based services.

2. Business Continuity for Telecommunications

Communicate, communicate, communicate: that is the key to effective Business Continuity Management. In an era where the transfer of data around the world takes only seconds, waiting hours to re-establish your telecommunication links will place the reputation of companies under serious threat. Remember....nothing happens in business until the phone rings!

GemaTech have addressed this problem by developing two unique products, BCM and BCM^{LITE} which have been specifically designed to enable any company, large or small, to instantaneously recover 100% of their incoming telephone calls from the outside world in a simple to use, cost effective manner.

The basic BCM^{LITE} is targeted at the business community who are simply looking to divert any number of individual DDIs to any number of individual locations – and capable of being invoked literally seconds after a communications failure has occurred. Any number of individual call plans can be established in advance using simple Excel spreadsheets with supervisors/managers simply selecting the most appropriate plan and literally “dragging and dropping” the selected plan into the appropriate BCM^{LITE} icon located on a laptop/remote PC that has a data connection to the BCM^{LITE}.

Features include the ability to immediately transfer

- An individual number to individual number
- Any consecutive range of DDIs to an alternative consecutive range of DDIs – creating a traditional “hunt group” scenario.
- Any specific DDI to any number of alternative DDIs
- All incoming calls to an individual DDI can be immediately terminated (to reduce the number of Primary Rate ISDN 30 connections required in an

invocation) delivering the caller Number Unobtainable (NU), or Engaged Ring tones.

- Incoming calls to individual DDIs can be played specific announcements per DDI (max. recording time 10 minutes across all recordings).
- Any number of DDIs can be re-directed to a single DDI – with an announcement being played to the caller whilst an announcement to the person being called advises who/which number is being redirected to them.

The full BCM is a very powerful and sophisticated server based remote ACD (Automatic Call Distribution) system, including full skills based routing which can intelligently re-route any number of individual DDIs, or Call Centre service numbers, to any number of alternative locations. It also provides any number of supervisors/managers with the capability of being able to monitor and manage live, what is happening to your incoming calls as the invocation/incident unfolds and, if necessary, make changes to the call plan quickly and easily as circumstances dictate. This very powerful management platform also enables managers to listen in to those incoming calls and possibly make changes to the call plan as a result.

Features include the ability to immediately transfer

- Any number of specific DDIs to any number of alternative locations on an intelligent “follow me” basis using the BCM’s fully fledged ACD functionality including comprehensive skills based routing.
- Any number of individual non-geographic call centre service numbers to any number of individual locations providing Agent independent working.
- Live monitoring of call activity and the ability to make changes “on the fly” as circumstances dictate.
- Detailed call statistics available both during and after the invocation – an invaluable tool for improving your plan for the next time!
- Any number of alternative call plans can be stored and selected by simply “dragging and dropping” with changes being made to individual people plans.
- Activate the system from anywhere in the world via a data connection providing the ability for any person to logon/log off remotely.

Both products can be upgraded to include GemaTech’s Secure Voice Recording modules SVR and SVR^{LITE} – an invaluable resource when it is important to have a record of what may have been said following a stressful invocation.

3. Access to Tier 1 Carriers Exchanges

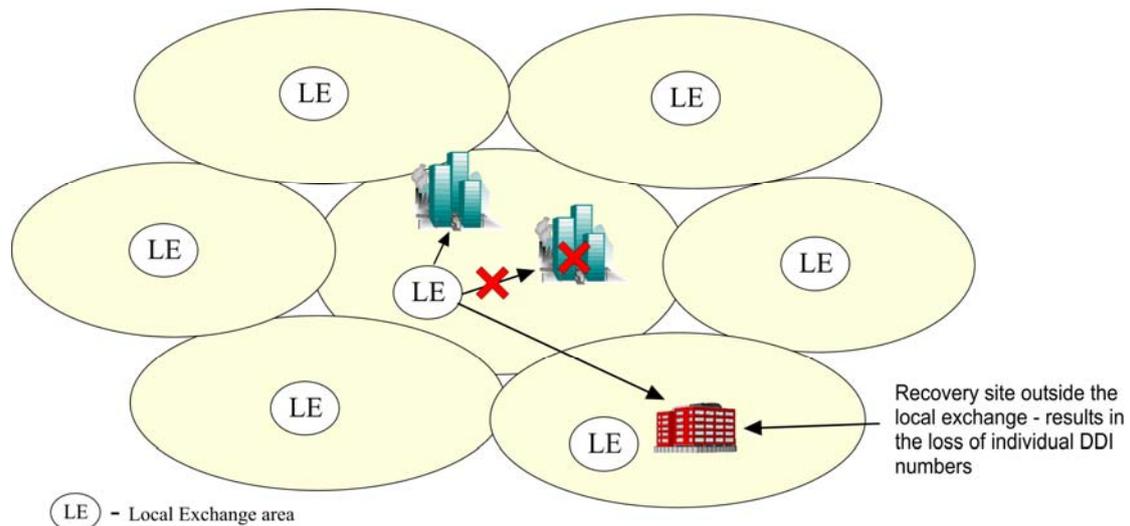
Given the design of most modern Networks (those built by COLT Telecom, Your Communications, Telewest, etc) the routing and subsequent re-routing of incoming calls is a much simpler task than re-routing calls via the incumbent BT Network which is still largely made up of individual “cells” called exchange areas – of which there are believed to be approx 5500 throughout the UK – all linked together to create the PSTN.

Consequently, the recovery and re-routing of calls through the BT Network (which still carried some 65% of business customer’s calls in the UK) requires a more localised solution which, if it is to provide the most comprehensive solution to recover a company’s incoming calls routed through the BT Network, HAS to be implemented from within BT’s serving local DLEs – for all of the reasons described and set out in the Appendix contained with supporting Confidential Document 3 but which can be illustrated within the following diagrams and brief explanations.

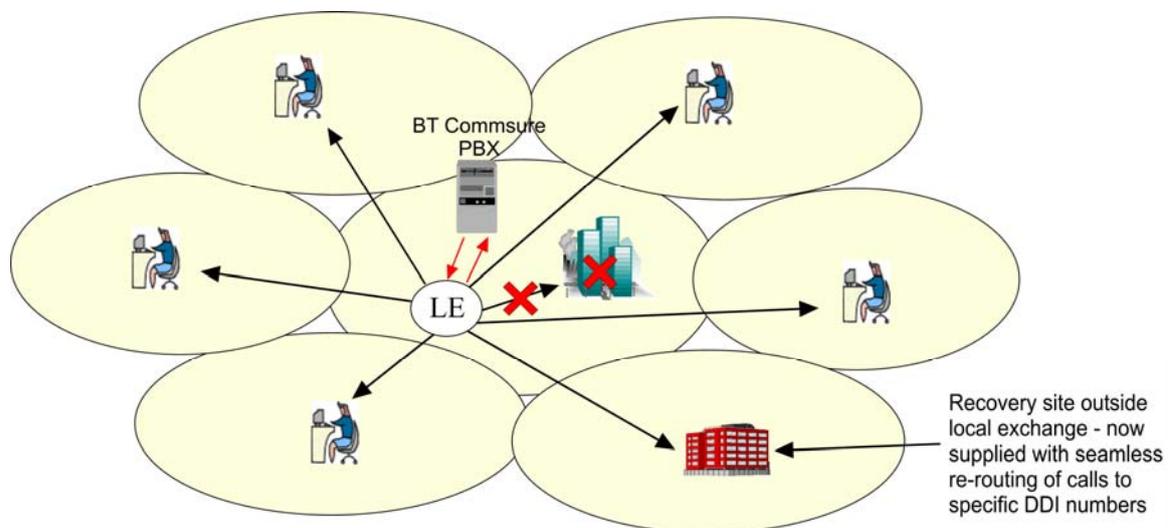
3.1 BT Solutions Currently Available; Exchange Line Site Assurance (ELSA) 1 & 2

BT CommSure's ELSA 1 service offers the re-routing of all incoming calls to one alternative number within the same local exchange area and take the full DDI information with the divert.

Re-routing the inbound calls to an adjacent call under ELSA 1 results in the loss of the last 3-4 digits representing the DDI number – unless the customer agrees to pay a significant additional cost of "out of area" PRIs supplied as part of BT's ELSA 2 service.

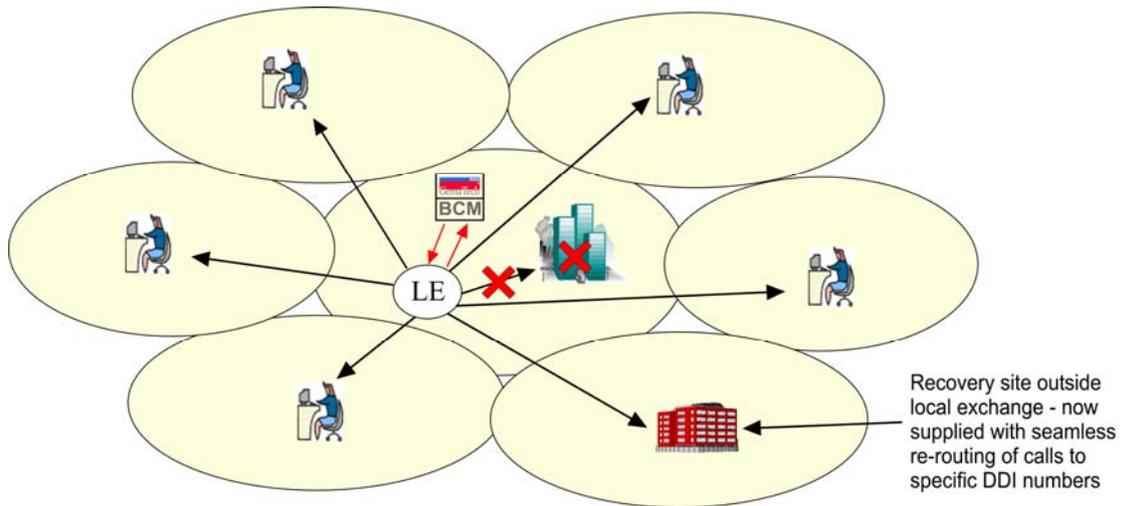


BT CommSure's de-luxe Rapid Divert solution offers the re-routing of all incoming calls to a number of alternative numbers as a fully managed service which re-routes individual DDIs to any other location. However its operation, by BT CommSure's own admission, is at best, not particularly user friendly. **Furthermore it is understood that the physical size of the PBXs used by BT CommSure to deliver this service only enables FOUR units being installed per full rack cabinet.**

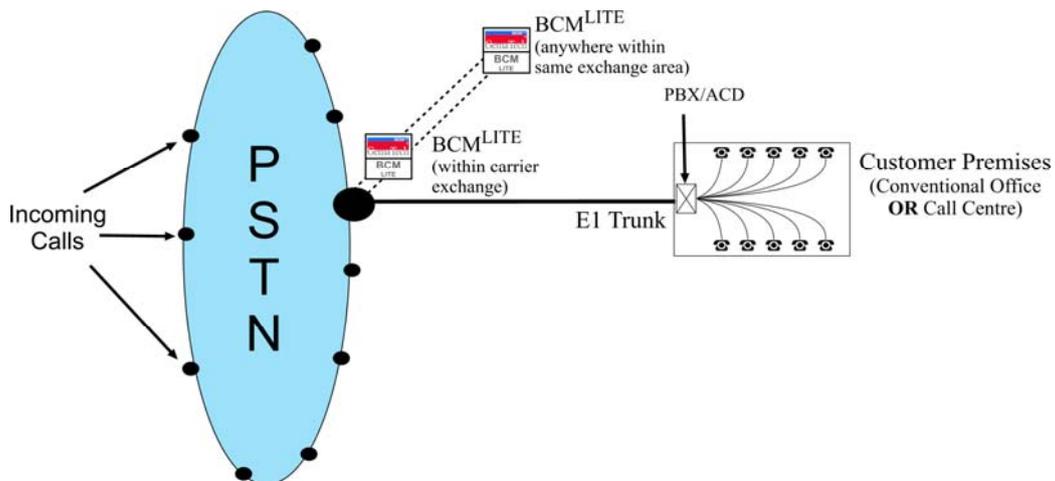


GemaTech's Unique Enhanced Solution

GemaTech's BCM^{LITE} solution adopts a similar principle to that adopted by BT CommSure's Rapid Divert solution however; GemaTech's proprietary hardware solution is physically "tint" in comparison measuring some 150 x 150 x 40 mm per unit – with each unit being capable of re-routing 30 concurrent inbound calls. So whereas BT CommSure can accommodate FOUR customer solutions handling a maximum of 120 concurrent calls per customer, GemaTech can house up to THREE HUNDRED UNITS each capable of re-routing 30 concurrent calls PER FULL RACK.

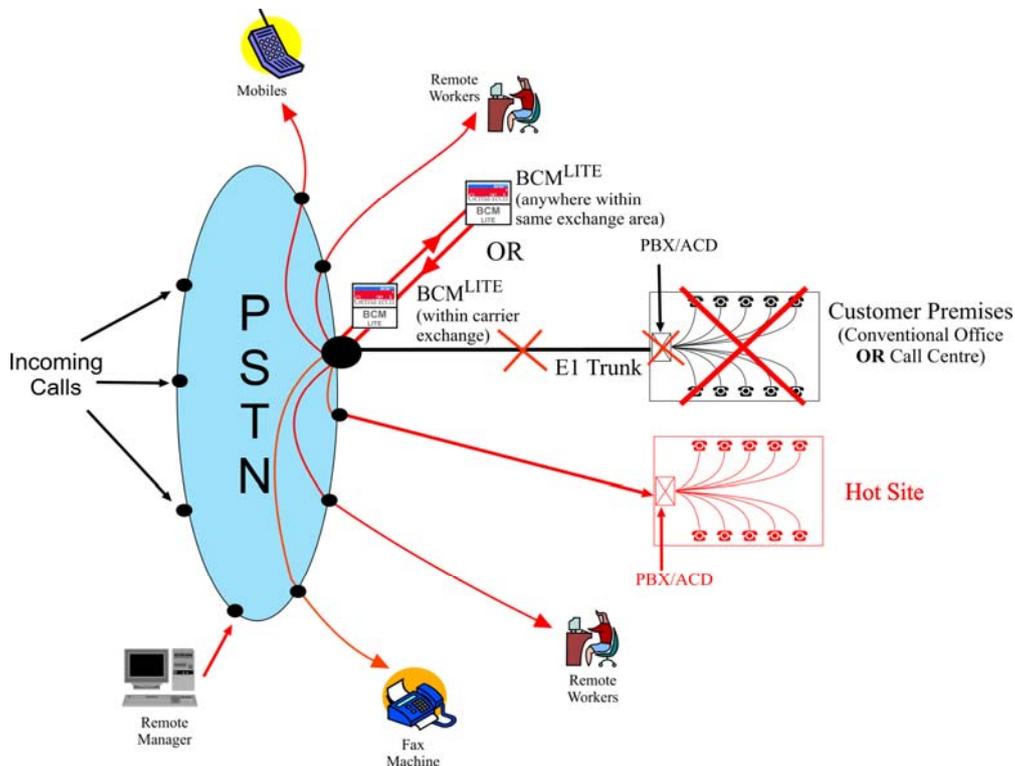


Prior to an incident being declared: BCM^{LITE} OPTION I in "dormant mode" in the serving located within BT's "local" serving DLE or somewhere within the same exchange area



Immediately following an invocation:

100% of all incoming calls originally directed to individual DDIs can be instantaneously and seamlessly re-routed intelligently by the BCM^{LITE} unit with calls being re-routed on an individual DDI basis to any other number – all in accordance with any one of up to 100 different call plans – which can be quickly and easily activated by the end user from a remote PC or PDA.



GemaTech's Detailed Representations on The Undertakings offered by BT as included within Annex E

Black – signifies GemaTech's Comments and Representations

Blue – is a direct extract from Annex E. of The Undertakings offered by BT.

NOTE: GemaTech have bolded and/or underlined and/or italicized certain sections to the BT submission to emphasize a specific requirement or current failing that GemaTech consider should be addressed as part of this representation.

3. Provision of equivalent products and services

3.1 Equivalence of Inputs for certain products and services

3.1.1 BT shall apply Equivalence of Inputs for the following products and services in accordance with the timetable set out in Annex 1 to these Undertakings, and continue to apply it following the relevant IBMC dates:

- a) Wholesale Analogue Line Rental;
- b) Wholesale ISDN2 Line Rental;

- c) Wholesale ISDN30 Line Rental;
- d) Wholesale Extension Service;
- e) Shared Metallic Path Facility;
- f) Metallic Path Facility;
- g) IPStream; and
- h) Backhaul Extension Service.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted Equivalence of Inputs status for the reasons stated in GemaTech's Basis for Representation

- 3.1.2 When BT provides in the future the following products and services it will do so applying Equivalence of Inputs:
- a) Wholesale Extension Service Access Product;
 - b) Wholesale Extension Service Backhaul Product;
 - c) Wholesale End-to-End Ethernet Service;
 - d) IP based Bitstream Network Access products or services that are the successors to IPStream or DataStream; and
 - e) A successor service to Wholesale Line Rental:
 - i) if such a service is provided using BT's NGN, based on MSAN access; and
 - ii) BT is determined by Ofcom to have SMP in a Network Access market or markets which includes that service.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted Equivalence of Inputs status for the reasons stated in GemaTech's Basis for Representation

- 3.1.3 Nothing in this section 3.1 shall require BT when providing Wholesale Line Rental either to itself or to other Communications Providers to use Metallic Path Facility as an input to that service.
- 3.2 Notwithstanding the dates specified in Annex 1, BT will as a gesture of good faith:
- 3.2.1 if it does not achieve an RFS date for Equivalence of Inputs for Wholesale Analogue Line Rental of 31 December 2006 (other than as a result of matters beyond its reasonable control), provide an allowance to Communications Providers of a monthly amount of 25 pence for each Wholesale Analogue Line Rental line that they respectively rent for each complete month from 1 January 2007 until the date that RFS for Equivalence of Inputs for Wholesale Analogue Line Rental is provided or 30 June 2007 whichever is the earlier. Such monthly allowance will not be made for any such line which the Communications Provider has ceased to rent in the month in question.
- 3.2.2 if it does not achieve an RFS date of 30 June 2006 for Metallic Path Facility and Shared Metallic Path Facility (other than as a result of matters beyond its reasonable control), BT will provide an allowance to Communications Providers of a monthly amount of 25 pence for each Metallic Path Facility and Shared Metallic Path Facility line that they respectively rent for each complete month from 1 July 2006 until the date that RFS for the respective Facility is provided. Such monthly allowance will not be made for any such line which the Communications Provider has ceased to rent in the month in question.

Provided that BT shall not be obliged to pay any allowances under sections 3.1.1 and 3.2.2 if the failure to achieve an RFS Date is the result of matters beyond its reasonable control, provided that if such failure is due in whole or in part to the acts or omissions of any Communications Provider, any dispute over the provision of any such allowances may be referred to Ofcom and BT

agrees to be bound by Ofcom's decision as to what extent, if at all, any such allowance shall be made.

- 3.3 If BT and Ofcom agree an Equivalence of Inputs timetable in respect of any other service that does not use BT's NGN in addition to those in section 3.1 that timetable will apply.

GemaTech Representation

That given the tragic events of 7/7 in London which has focused everybody's minds on the need to develop resilient strategies for the protection of their telecoms infrastructure that consideration of adding Access to ALL serving local BT DLEs be given high priority so that alternative comprehensive, and cost effective business continuity solutions are available to BTs existing Client base – especially within the City of London.

- 3.4 BT shall, in order to reduce address matching failures, make available to Communications Providers by 31 December 2005 access to the postcode address file used by BT.
- 3.5 From 30 June 2006 BT will provide improved access to the engineering appointment books used by BT to enable Communications Providers to provide their End-User customers with a service better and faster than that which they are able to provide currently.
- 3.6 By end December 2006 BT employees and agents will use the Wholesale Line Rental service provider gateway to raise service transfer requests when BT takes over a customer of another Communications Provider, and where that customer is not already a BT customer for any other retail service.

Migration Processes

- 3.7 To the extent that the Migration Processes are either internal to BT or are otherwise within BT's control, BT shall apply Equivalence of Inputs to BT's Migration Processes where such processes involve at least one product or service for which BT must apply Equivalence of Inputs, and, where relevant, at the same time as BT is required to supply RFS for Equivalence of Inputs in accordance with the timetable in Annex 1.
- 3.8 BT shall comply with performance targets for the Migration Processes covered by section 3.7 as required in writing by Ofcom and following any consultation to be undertaken by Ofcom, provided that such targets are reasonable and practicable.

5. Access Services

The establishment of Access Services Division

- 5.1 BT shall establish ASD within four months of these Undertakings taking effect, and shall thereafter operate ASD in accordance with these Undertakings.
- 5.2 BT shall, within five months of these Undertakings taking effect, satisfy Ofcom that it has established ASD in accordance with section 5.1.
- 5.3 ASD shall provide product management, sales (or equivalent internal supply between ASD and other parts of BT) and in-life service management for those SMP Products which are predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or BT's Backhaul Network, as set out in sections 5.4, 5.5 and 5.10. It shall specify the products

and services and their functionality, develop new products and services, set prices, and sell (or internally supply within BT) its products and services to any Communications Provider.

- 5.4 Section 5.3 applies to the following existing SMP Products and enhancements to those SMP Products and their immediate successors:
- a) Wholesale Analogue Line Rental;
 - b) Wholesale ISDN2 Line Rental;
 - c) Wholesale ISDN30 Line Rental;
 - d) Wholesale Extension Service;
 - e) Shared Metallic Path Facility and Associated Services;
 - f) Metallic Path Facility and Associated Services;
 - g) Partial Private Circuits, excluding those Partial Private Circuits containing a trunk segment, as referred to in the relevant market review documentation;
 - h) Backhaul Extension Service; and - 29 -.Consultation on undertakings in lieu of a reference under Part 4 of the Enterprise Act 2002
 - i) RBS Backhaul Service excluding those circuits containing a trunk segment, as referred to in the relevant market review documentation.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted SMP Product status for the reasons stated in GemaTech's Basis for Representation.

- 5.5 ASD shall also offer to provide to any Communications Provider within a reasonable time of a request the following:
- a) Partial Private Circuit Access Product;
 - b) Partial Private Circuit Backhaul Product;
 - c) Wholesale Extension Service Access Product;
 - d) Wholesale Extension Service Backhaul Product; and
 - e) Wholesale End-to-End Ethernet Service.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted within a reasonable time of a request to enable Equivalence of Inputs status to be granted for the reasons stated in GemaTech's Basis for Representation.

- 5.6 If a new Network Access product is provided using BT's NGN:
- a) which is based on MSAN access; and
 - b) BT is determined by Ofcom to have SMP in a market containing the new Network Access product; and
 - c) MSANs do not contain any Network Layer functionality; then if so required by Ofcom the new Network Access product will be provided by ASD.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted within a reasonable time of a request to enable Equivalence of Inputs status to be granted for the reasons stated in GemaTech's Basis for Representation.

- 5.7 As part of the establishment of ASD, the people and non-network capabilities used to provide fixed line number portability will be included in ASD.
- 5.8 ASD will develop its Backhaul Products in accordance with sections 5.14-5.16.
- 5.9 Where products and services are requested which are not products and services which BT is obliged to provide as a result of a finding of SMP, ASD will use a Statement of Requirements Process, and will remain subject to EAB oversight in its operation of that process. In these cases, however the

ASD is free to treat those requests as would any other commercial organisation and to accept or reject them on the basis of, among other things:

- a) fit with the assets, skills and resources and terms of reference of ASD;
- b) commercial attractiveness to ASD; and
- c) opportunity cost to ASD.

- 30 - Consultation on undertakings in lieu of a reference under Part 4 of the Enterprise Act 2002.

- 5.10 If so required by Ofcom, ASD shall provide product management, sales (or equivalent internal supply between ASD and other parts of BT) and in life service management for any new form of Network Access which BT is obliged to supply as a result of a market review carried out under the relevant provisions of the Communications Act 2003, if such a product or service would be predominantly provided using the Physical Layer or Transmission Layer of BT's Access Network or the Physical Layer or Transmission Layer of BT's Backhaul Network.

GemaTech Representation

That access to ALL serving local BT DLEs be also granted within a reasonable time of a request to enable Equivalence of Inputs status to be granted for the reasons stated in GemaTech's Basis for Representation.

- 5.11 ASD shall control and operate the assets contained within the Physical Layer of BT's Access Network and the Physical Layer of BT's Backhaul Network including such items needed to support this, such as line testing and remote diagnostics. It shall determine which products and services these assets must support, and also determine any appropriate enhancements in the functionality of these assets, having full responsibility for any investment decisions relating to these assets and made within the annual operating plan to be created in accordance with section 5.25. It shall have full responsibility for building, maintaining and repairing these assets.
- 5.12 The ASD shall not control or operate the assets contained within the Transmission Layer of BT's Access Network and the Transmission Layer of BT's Backhaul Network, but it shall have influence over the way in which these assets are managed sufficient for it to be able adequately to discharge its responsibilities under section 5.3. This influence shall be provided using mechanisms including the following:
- 5.12.1 The ASD requirements for new SMP Products which determine platform requirements shall be set out in product roadmaps and volume forecasts which shall be agreed with relevant platform managers. This includes new ASD SMP Products delivered over BT's NGN, as well as new SMP Products delivered over the current network. Where backhaul platforms support products and services supplied by ASD and other products and services supplied elsewhere in BT, ASD will have the principal role in determining delivery requirements where it is the predominant user of the platform or where ASD provides the only SMP Product using that platform;
- 5.12.2 Any investment decisions required in consequence of the product roadmaps and volume forecasts referred to in section 5.12.1 shall be considered solely on their own merits, and shall not take into consideration the potential impact on other products or services offered by BT's downstream businesses other than in as much as they affect aggregate demand forecasts;
- 5.12.3 When ASD makes use of assets from BT Wholesale it shall set standards for in-life service management, covering such matters as provisioning times, provisioning effectiveness, fault rates, repair times and repeat fault rates. The standards will be based upon its judgement of the needs of the customer

base it serves, and will not simply replicate the standards prevailing for BT's downstream services. The - 31 -. Consultation on undertakings in lieu of a reference under Part 4 of the Enterprise Act 2002 required standards shall be reasonably practicable and set out in SLAs between ASD and BT Wholesale; and

5.12.4 New requirements for SMP Products to be provided by ASD will be addressed by an ASD owned Statement of Requirements process.

5.13 ASD shall comprise:

5.13.1 all field engineers, (excluding some of the network planning, design and management engineers for BT's Backhaul Network) including their line management up to and including the ASD CEO, associated with the provision, installation, maintenance and repair of the Physical Layer of BT's Access Network and of the Physical Layer of BT's Backhaul Network;

5.13.2 those people involved in the design, planning, implementation and in-life service management of products and services based upon the Physical Layer and/or Transmission Layer of BT's Access Network or the Physical Layer and/or Transmission Layer of BT's Backhaul Network, including their line management up to and including the ASD CEO;

5.13.3 people who carry out activities which are ancillary to those described in section 5.13.1 and section 5.13.2 and those who support and manage them. Backhaul principles

5.14 When ASD makes available Backhaul Products it shall do so in the following manner:

5.14.1 ASD shall ensure that the provision of Backhaul Products which are SMP Products is not conditional on the provision of another form of Network Access or another product or service unless agreed by Ofcom;

5.14.2 ASD shall ensure that Communications Providers can purchase Backhaul Products which are SMP Products in such a way that they can join together ("daisy-chain") multiple network nodes;

5.14.3 ASD shall develop solutions that provide the ability to pick-up aggregated traffic from smaller sites to a common handover point, including a managed transmission service. This section 5.14.3 shall apply to transmission services using either or both SDH and Ethernet technology in markets in which BT is determined by Ofcom to have SMP and any future technologies which enhance or replace these in Network Access Markets;

5.14.4 ASD shall provide space in accordance with sections 6.16- 6.23 at BT's Local Access Node sites for other Communications Providers to locate their own equipment which can be used to aggregate traffic from multiple services which originates or terminates on BT's Access Network, as well as traffic which originates or terminates on Communications Providers' own access networks. ASD shall provide Backhaul Products which are SMP Products which carry this aggregated traffic to a point of handover within the Communications Providers' own networks. Such Backhaul Products shall include products and services based on SDH technology and products and services based on Ethernet technology, and any future technologies which enhance or replace these;

GemaTech Representation

That access to ALL serving local BT DLEs be also granted within a reasonable time of a request to enable Equivalence of Inputs status to be granted for the reasons stated in GemaTech's Basis for Representation.

Note: Remainder of Section 5 has been removed due to no reference.

Equipment location

6.16 Sections 6.16-6.23 apply to the location of Equipment in Exchanges.

6.16.1 For the purpose of these sections 6.16 – 6.23:

“Alternative Communications Provider Operational Area” means a Communications Provider Operational Area at another Exchange other than that requested by the Communications Provider so that the Communications Provider has the same ability to provide electronic communications services that make use of Network Access at no greater cost to the Communications Provider than that which it would have paid had it occupied a Communications Provider Operational Area at the Exchange named within its request;

GemaTech Representation

This form of access has already been offered by BT Locate representatives during discussions throughout 2004/2005 as evidenced in GemaTech's detailed supporting (Confidential) DOCUMENT 2. However, for reasons clearly identified in GemaTech's supporting (Confidential) DOCUMENT 2 and (Confidential) DOCUMENT 3 this is simply not a feasible Option given the functionality of the BT Network.

“Communications Provider Operational Area” means any part of an Exchange which is:

- (a) **capable** of independent use and occupation by a Communications Provider (including the use of the common areas) but which **will not adversely affect the use** or value of the remaining part of that property;

GemaTech Representation

As will be noted from GemaTech's supporting (Confidential) DOCUMENT 2 and (Confidential) DOCUMENT 3, these **vague and nebulous statements** have, to date, enabled BT to avoid acquiescing to providing GemaTech with access to the **specific** serving local DLEs required to provide a comprehensive business continuity solution for specific existing BT customers located in specific BT Exchanges.

- (b) is not bona fide **reasonably required by BT** at any time for the purposes of BT's business;

Comments under sub clause (a) above equally apply

“Communications Provider Property Users Group” means a group representing Communications Providers made up of 3 representatives appointed by the Communications Providers;

“Equipment” means equipment listed in Annex 4, owned by the Communications Provider (**but not its customers or any other third party**) used to provide Electronic Communications Services that make use of Network Access and which is connected to the BT network;

GemaTech Representation

GemaTech currently offers their prospective customers the ability to either purchase outright GemaTech's products or purchase a fully managed service whereby GemaTech would retain ownership of the hardware and combined software to be located within the "Communications Provider Operational Area". Furthermore where prospective customers for GemaTech's unique business continuity solution also require secure voice recording of all re-routed calls (predominantly the major financial institutions within the City) they are insisting that they retain ownership of the storage servers retaining the call recordings.

Accordingly, GemaTech's representation is that GemaTech be allowed to house GemaTech's re-routing equipment and storage servers that have been purchased by third parties in GemaTech's Rack Cabinet to be supplied by BT within the "Communications Provider Operational Area" – with GemaTech assuming full responsibility for the maintenance and support of these items of equipment therefore not requiring third party access to the "Communications Provider Operational Area".

"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 sections 6.16.3;

"Exchange" means a BT site containing a main distribution frame with access to the metallic path; and

"Vacation Exchanges" means any Exchange identified on the list delivered to Ofcom under section 6.22.

- 6.16.2 The Undertakings in these sections 6.16-6.23 are given on the basis that **BT will be deemed to be acting reasonably if its actions are materially consistent with its corporate property strategy and its objectives for NGN deployment.**

GemaTech Representation

Again these **vague and nebulous statements** have, to date, enabled BT to avoid acquiescing to providing GemaTech with access to the **specific** serving local DLEs required to provide a comprehensive business continuity solution for specific existing BT customers located in specific BT Exchanges – with the statement "subject to site survey".

- 6.16.3 The Estimated Space Availability Details will be provided by BT by the November 1st preceding the next BT financial year for which the BT corporate property strategy applies.

GemaTech Representation

Whilst it is fully appreciated that certain third party vendors seeking access to the various BT DLEs will be requiring large amounts of rack space comprising several rack cabinets GemaTech's 21st century technology would require, for a single customer a "wall shelf" capable of accommodating a unit 150mmx150mmx40mm expanding to a half rack cabinet for some 80 customers to a full rack cabinet for 160 customers – which is far more than one would expect in a single DLE area.

However, despite representations made to date, BT Locate have always insisted on a minimum of a full rack per DLE – then claimed that there was not enough room available within the DLE to accommodate a full rack!!

- 6.16.4 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 to BT concerning the Estimated Space Availability Details.

GemaTech Representation

The whole rationale and ethos surrounding GemaTech's representation under OfCom's consultation process is to gain access to ALL DLEs in order to provide existing BT customers with a comprehensive and significantly more cost effective business continuity solution than currently available from BT's in-house business continuity provider BT CommSure – which is believed to have ready access to ALL BT DLEs. GemaTech are therefore looking for "Equivalence of Inputs" from either the new BT "ASD" or "BTWS" divisions.

- 6.16.5 BT will consider reasonable observations provided under section 6.16.4 as part of the BT corporate property strategy, when planning future use of Exchanges, provided that the effect of the observations would not materially affect BT's right to carry out its bona fide business requirements or its right to reduce its bona fide costs of managing and maintaining the Exchanges.

GemaTech Representation

Comments made under 6.16.4 also apply.

- 6.17 Within six months of these Undertakings taking effect and on an on-going basis thereafter and subject to sections 6.18-6.23 below, BT shall provide other Communications Providers with the facility to occupy **on reasonable commercial terms** a Communications Provider Operational Area **within any Exchange** for the purpose of locating their Equipment, provided that:

GemaTech Representation

Whilst an extremely encouraging clause, this statement appears to be at variance with many of the preceding clauses dealing with access to "Communications Provider Operational Areas". Clarity and transparency of intent is therefore required.

Notwithstanding, under existing contractual arrangements with BT Locate, access to serving local DLEs is, theoretically available NOW – so why is a delay of six months from these Undertakings taking effect being imposed?

- 6.17.1 The request of the Communications Provider:

- a) is made in proper written form and identifies the relevant Exchange in which the Communications Provider wishes to locate its equipment;

GemaTech Representation

Previous experience in trying to comply with this requirement has proven to be simply impossible given the opaqueness and complexity that is BT – even referred to by BT senior personnel as "wading through treacle" It is currently impossible for third party providers, such as GemaTech, who are, after all, BT Wholesale customers to find out which local DLE(s) serve potential customer sites as conflicting information is often given. What is required is a clearly defined hierarchical structure and identified initial point of contact, perhaps a designated Account Manager (allegedly available to BTWS customers now but which is totally ineffective as has proven to be the case on many occasions) which will provide clear and definitive information which will enable the third party applicants to make proper written submissions.

- b) identifies the Equipment to be located in the Communications Provider Operational Area;
- c) is made on reasonable notice prior to the date of proposed occupation having regard to any work that BT must reasonably carry out to provide the Communications Provider Operational Area; and

GemaTech Representation

Currently, BT are quoting 30 working days to complete a site survey to ascertain if there is space available in the identified exchange and a further 90 working days to provide the said rack space and PRI/data connectivity. For customers looking to implement solutions in a timely manner 120 working days is a considerable delay.

GemaTech would request that this time scale be significantly improved upon to meet other Tier 1 carriers supply times.

6.17.2 there is:-

- a) **sufficient space available** at the relevant Exchange at the date of that request (**including any future plans** that BT has for use of the Exchange in connection with its business);

GemaTech Representation

Once again, these **vague and nebulous statements** have, to date, enabled BT to avoid acquiescing to providing GemaTech with access to the **specific** serving local DLEs required to provide a comprehensive business continuity solution for specific existing BT customers located in specific BT Exchanges.

GemaTech's representation is that OfCom ensure that clearly defined guidelines are issued to the "ASD" to ensure "**Equivalence of Inputs**" is achieved giving equal access to both GemaTech AND BT's inhouse division BT CommSure to offer competing business continuity solutions to all business who rely heavily on their telecommunications infrastructure.

- b) **sufficient electrical power available** at the relevant Exchange at the date of that request (**including any future plans** that BT has for use of the Exchange in connection with its business); and

GemaTech Representation

GemaTech's representation is that OfCom ensure that clearly defined guidelines are issued to the "ASD" to ensure "**Equivalence of inputs**" is achieved giving equal access to both GemaTech AND BT's inhouse division BT CommSure to offer competing business continuity solutions to all business who rely heavily on their telecommunications infrastructure.

In any event BT may provide an Alternative Communications Provider Operational Area to the Communications Provider if it is reasonable to do so.

GemaTech Representation

This form of access has already been offered by BT Locate representatives during discussions throughout 2004/2005 as evidenced in GemaTech's detailed supporting (Confidential) DOCUMENT 2. However, for reasons clearly identified in GemaTech's supporting (Confidential) DOCUMENT 2 and (Confidential) DOCUMENT 3 this is simply not a feasible Option given the functionality of the BT Network.

This section 6.17 does not apply to co-location as defined for the purposes of Metallic Path Facility and Shared Metallic Path Facility.

- 6.18 On receipt of the Communications Provider's request under section 6.17, BT will adopt a process similar to that used for co-location for the purposes of Metallic Path Facility and Shared Metallic Path Facility save that it will carry out a site survey to identify whether or not there is sufficient space at the Exchange including having regard to any future plans that BT has for use of the Exchange in connection with its business.

GemaTech Representation

GemaTech's representation is that OfCom ensure that clearly defined guidelines are issued to the "ASD" to ensure "**Equivalence of inputs**" is achieved giving equal access to both GemaTech AND BT's in-house division BT CommSure to offer competing business continuity solutions to all business's who rely heavily on their telecommunications infrastructure.

- 6.19 BT will seek to enter into an agreement with other Communications Providers on reasonable commercial terms that safeguard the operational integrity of the relevant Exchange including but not limited to obligations to comply with BT's standards on security, health and safety, access to buildings and non interference with either BT's equipment or equipment of other Communications Providers. The agreement may, at BT's discretion, provide for a Communications Provider to acknowledge that its rights to occupy the Communications Provider Operational Area do not amount to a tenancy and that there is no intention to create a lease. **If the Communications Provider does not contract to locate its equipment at the BT site within one month of BT offering reasonable commercial terms under sections 6.19 and 6.23 the Communications Provider's request under section 6.17 will be deemed withdrawn.**

GemaTech Representation

GemaTech believes this facility is supposedly already available from BT Locate in similar form.

- 6.20 BT may at its discretion charge a Communications Provider a sum equivalent to the amount that BT would charge per square metre to another part of BT plus all reasonable costs in creating and in providing the Communications Provider Operational Area.
- 6.21 BT may require that any Equipment must meet appropriate standards including, but not limited to, ETSI and ISO 14001 standards.
- 6.22 Within six months of these Undertakings taking effect, BT will deliver to Ofcom a list of Exchanges that it intends to vacate in accordance with its property strategy (such list will not be published). BT will inform any Communications Provider requesting to occupy a Vacation Site before the Communications Provider deploys its equipment at the site that it is a Vacation Site and the proposed date of vacation. Subject to BT complying with its obligations under this section 6.22, 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 once every six months during the period of these Undertakings and such amended list shall be sent to Ofcom.

6.23 It will be part of the reasonable commercial terms offered by BT under section 6.19 that if any Communications Provider seeks to remain in an Exchange after BT has vacated the Exchange then the Communications Provider will fully indemnify BT against all compensation, damages, actions, costs and claims howsoever arising under the terms of the BT and Telereal property transaction completed on 13th December 2001.