

Representation In Response to the Ofcom Consultation: BT's Pricing of Services for Business Customers – 15 October 2003

BACKGROUND

TechCaliber LLC (“TC2”) appreciates this opportunity to share with Ofcom its views on “BT’s Pricing of Services for Business Customers – 15 October 2003” (the “Consultation”). TC2 is a specialised international consultancy that advises private sector companies in their procurement and use of a wide array of telecommunications products and services. We work exclusively for corporate consumers of telecommunications; we do not provide consultancy services to carriers or systems integrators except and to the extent that such entities are acting as purchasers of telecommunications. We regularly prepare tender processes for our customers and participate in both the evaluation of vendor responses to such tenders and the subsequent negotiation of an agreement (including prices) with the selected vendor.

Our clients, many of which are large, multi-national corporations,¹ require efficient and reliable telecommunications services to conduct and support their core business activities. Our clients’ expenditures for telecommunications services in the UK typically exceed £1 million per year. Their expenditures on telecommunications services worldwide commonly exceed £5 million per year.

As a leading consultancy for corporate telecommunications purchasers, TC2 is keenly interested in promoting and protecting a robustly competitive market for all types of telecommunications services. Ideally, in such a market, customers would have a choice of providers, any one of which could provide a bundle of telecommunications services that are technically and commercially similar to one another. Customers would be able to negotiate the rates, terms and conditions pursuant to which such services or bundle of services are provided, and the carrier that is most able to satisfy the individual customer’s commercial and technical requirements would be selected to provide the services. Our clients have a particular interest in ensuring that telecoms services in the UK are available from a multitude of reliable suppliers, including BT, and that all such suppliers are able to compete on an even footing without threatening effective competition in the marketplace for telecoms services.

¹ A representative list of TC2’s clients is available at www.techcaliber.com.

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To that end, TC2 generally supports the changes Ofcom proposes in the Consultation and believes that such changes will enhance the competitive offerings available to business customers. We believe that, properly regulated, BT's ability to provide bundled offerings will enhance the service choices available to business customers and increase competition in the marketplace for such services. In this Representation, we share our thoughts — based on our experience representing business customers — on how best to grant BT additional pricing flexibility with respect to bundled offerings, particularly in the context of competitive tenders.

SUMMARY OF RECOMMENDATIONS/POSITIONS

- In Section 1, we describe our proposed criteria for what constitutes a competitive **TENDER**, in response to Question 18 of the Consultation. In summary, TC2 believes that a tender process should be defined to include any customer-initiated request for written information and pricing for one or more telecoms services, having an aggregate expected level of expenditure for services within the UK of at least £1 million per year. To qualify as a tender, the request must be submitted to two or more potential service providers, and the customer must engage in some form of negotiation with at least one of the service providers following receipt of a written response from at least two of the service providers.
- In Section 2, we support Ofcom's proposal to insist that any bundled service offered by BT pass appropriate tests to ensure that (i) BT's competitors are technically and commercially able to REPLICATE each element of BT's bundled offering in markets where BT has SMP; (ii) BT's IMPLICIT COSTS are not greater than the price at which BT is offering the individual elements as part of the bundle; and (iii) the profitability of the bundled offering is established by application of the NET REVENUE test.
- In Section 3, we set forth the circumstances under which Ofcom should require PUBLICATION of BT's bundle and associated pricing and the extent to which such services must be made GENERALLY AVAILABLE to avoid discrimination in the marketplace. TC2 believes that if the bundled offering is not made pursuant to a bona fide tender offer, BT should be required to publish the rates and service terms, and make the bundle generally available to any customer requesting it and meeting a limited set of conditions set forth in the publication. Alternatively, in instances where BT offers a bundled service pursuant to a bona fide tender process (meeting the criteria set forth above), we do not believe that Ofcom should require BT to publish the rates and service terms, nor do we believe it would be appropriate for Ofcom to require BT to make such a bundled offering generally available because the bundle is created as part of a competitive tender process. Instead, we suggest that Ofcom require BT to file with Ofcom a description of the pricing and discounts included in any bundled offering that BT makes in response to a bona fide tender process. To preserve transparency in BT's pricing, Ofcom should make the BT filing available for review by any BT competitor interested in it, conditioned upon the competitor agreeing to preserve the confidentiality

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of the information contained in the filing. In the event that a BT competitor believes that BT has engaged in anti-competitive behaviour based upon a review of the pricing contained in BT's filing, the competitor could then request that Ofcom investigate further the terms of the BT bundle and determine whether the offer complies with the tests for replicability, implicit price-cost, and net revenue, as described in Section 2.

INTRODUCTION

TC2 strongly agree with the Director's view, stated in Paragraph 1.8, that BT should have the flexibility to competitively price bundles of services and to offer discount schemes based on expenditures across a range of services, including some services in which BT has SMP. We also agree with the Director's view that this flexibility should only be permitted if BT's competitors are able to replicate (both commercially and technically) the services included in the bundle and the prices offered by BT pass appropriate tests, as further described in Paragraph 2.7, to ensure BT's offerings are not anti-competitive.

TC2's clients — particularly those managing large commercial enterprises — want BT to participate more fully in their competitive tender processes, as such process is defined below in Section 1. The current regulatory environment, however, does not always permit BT to compete with other telecoms providers serving the business community and typically results in BT bids being significantly above the pricing available at the leading edge of the market for telecoms services. Thus, we support Ofcom's efforts to permit BT's bundling of services as a competitive alternative to those offered by other providers insofar as BT's bundled offerings encourage and stimulate competition among providers and are subject to appropriate regulations that ensure such offerings do not harm competition.

We support the "cautious" approach referred to in Paragraph 2.5 and believe that it strikes the appropriate balance between allowing BT to bundle its services while protecting other providers from unfair, anti-competitive practices. Specifically, we agree that the ability of BT's competitors' to replicate each service included in the proposed bundle on which BT wishes to offer a discount, should, itself, be a pre-requisite to permitting BT to offer the bundle pursuant to a discount.

Section 1: Proposed Definition of a Tender

As competition developed in the UK for the majority of business telecoms services, most large business customers devised tender processes to evaluate the service offerings of competing suppliers and to determine which company's offering could best meet, on a commercial and technical basis, their telecoms needs. Today, businesses regularly use these tender processes prior to awarding business to a particular service provider. While the specific tender process used can differ depending on a number of factors, including the type of

telecoms services being procured, the scope of a particular customer's telecoms procurement, or the internal requirements of a customer's organisation, certain common elements are typically found in the majority of tender processes. A competitive tender process need not be as complex or include all of the criteria set forth by the European Commission in the context of the MCI WorldCom/Sprint decision as outlined in Paragraph 5.5 of the Consultation. Therefore, in response to Question 18, TC2 identifies below the minimum criteria that we believe are necessary, based on our experience advising clients during tenders, to ensure the competitiveness of a tender process. We propose that Ofcom adopt these minimum criteria in establishing a definition for tenders.

First, competitive tender processes are almost always initiated by the customer, who provides potential suppliers with some form of written documentation that requests information or proposals for services. Unsolicited proposals provided by a supplier are commonplace sales techniques and rarely are the basis for beginning a competitive tender process. The document issued by the customer will, at a minimum, set forth the type of telecoms services the customer is interested in purchasing. The specific name assigned to this document (whether a Request for Proposal ("RFP") or Request for Information ("RFI") or something else) is immaterial and varies from customer to customer. The length of the document can vary greatly, often depending upon the number and complexity of the services being procured. Rarely, however, would such a document contain more than 100 pages. To constitute a true tender, the document must be provided to at least 2 (although in many cases, only 2) potential suppliers. Thus, Ofcom should simply require that a tender include the issuance of a written document by the customer to at least two suppliers but should not attempt to establish a minimum length or content for such documentation, leaving that determination to each individual business customer based upon its specific requirements and procurement procedures.

Second, each potential supplier interested in providing some or all of the services described in the customer's request must submit a written response in which it identifies what services it can provide² and information about the price at which it intends to provide the services. Before submission of the response, the customer may hold formal or informal meetings with its potential suppliers to clarify technical or commercial aspects of its request and to assist the supplier in

² Often, some providers are not able—for commercial or technical reasons—to provide all the services requested by a customer. Typically, if the customer receives a vendor response that does not offer to provide all the requested services, the customer simply considers this when evaluating the bidders' response against its competitors' bids. It is not uncommon for large business customers to use multiple vendors, each providing different services or each providing redundant services, or a combination of both.

responding to the request. The length and complexity of the supplier's response can vary greatly, again, depending upon the complexity of the customer's request and whether the parties have an existing business relationship obviating the need for the supplier to set forth its capabilities for the customer's review. In many cases, a supplier's response could be rather concise, often times limited to only a few Excel spreadsheets setting forth the proposed pricing for the bundle of services that the particular supplier is seeking to provide. Notably, the length of the response is not necessarily related to the length of the customer's request or to other documentation provided by the customer.

Third, the customer then must evaluate the suppliers' responses and determine with which supplier or suppliers it intends to undertake negotiations. Sometimes, the customer may hold additional meetings with one or more of the suppliers to clarify technical aspects of their responses. Such meetings can last a single day or continue for months, again, depending upon the complexity of the customer's telecoms network, the types of services requested by the customer, and the particular preferences of an individual customer. After evaluation of the responses, the customer then typically decides to engage in further negotiations with 1 or 2 of the suppliers whose responses the customer has evaluated as most favourable. Sometimes, though rarely, a customer will engage in simultaneous negotiations with more than 2 suppliers although such a multi-supplier negotiation requires a significant dedication of resources that most customers are unable or unwilling to commit. At this point, the customer and suppliers engage in detailed negotiations of price, terms and conditions until the customer is prepared to sign a final contract with one or more of the suppliers. Contrary to the summary of the European Commission's description of a competitive tender (as set forth in Paragraph 5.5 of the Consultation), these negotiations often produce significant changes to the contract terms and conditions and prices from the time the parties commenced the negotiations.

The customer then evaluates the entire final package negotiated and signs with one or more of the potential suppliers.³ For a tender that includes multiple telecommunications services, the customer may end up signing contracts with 1, 2 or even more suppliers if certain suppliers have competitive advantages for particular services. Note, however, that many customers face unwanted

³ Based on TC2's experience, it is unusual for large business customers to purchase all of their telecoms services from a single supplier on a bundled basis, as suggested in Paragraph 4.10 of the Consultation. Instead, many choose to split their networks for redundancy and resiliency among providers, as well as to achieve better pricing on elements of the bundle when purchased from different suppliers. Nevertheless, the fact that a customer purchases services from only one supplier does not mean that the decision to award the customer's business to such supplier was not fully competitive. In such a case, BT should be permitted pricing flexibility in the event that it is the sole supplier selected provided that the process itself involved multiple suppliers.

challenges in managing multiple suppliers and may elect, at the end of the tender process, to use only 1 or 2 suppliers. Thus, a customer may undertake a competitive tender but ultimately end up with only one supplier.

Finally, Ofcom correctly notes in Paragraph 5.7 that customers can incur significant costs in holding genuinely competitive tenders like that described above and will typically be held only when the customer expects to spend a certain minimum amount on telecoms services. TC2 also agrees with the Director that an expected annual level of expenditure for all services included in the tender, however distributed among suppliers, is an appropriate defining feature of a tender. BT contracts typically last between 1 and 5 years. Using BT's suggested contract threshold of £5 million, the corresponding minimum annual threshold expended under the tendered agreement would be £1 million. TC2 believes that £1 million is an appropriate, sufficiently cautious, threshold to establish for services purchased pursuant to a competitive tender. For clarity, this expected level of expenditure need not be with a single supplier; rather, it establishes the expected level of annual expenditure with all suppliers that provide the services included in the tender process.

In short, for purposes of defining the circumstances in which BT should be given additional pricing flexibility, a tender should include any customer-initiated request to two or more potential suppliers for written information and pricing for one or more telecoms services, with an aggregate expected annual level of expenditure for the telecoms services of £1 million where the customer engages in some form of negotiation with at least one of the suppliers that have provided a written response to the customer's request for information or proposals.

Section 2: Tests to Ensure BT's Bundled Offers Do Not Have Anti-competitive Effects

TC2 firmly agrees with Ofcom's concerns regarding the potential for anti-competitive behaviour by BT if appropriate mechanisms are not in place prior to granting BT additional pricing flexibility. As the consultancy for large business users, we (and our clients) are interested in improving BT's ability to compete in the short term for certain services where its pricing is currently higher than its competitors due to certain regulatory restraints. Nevertheless, we do not want to trade short term pricing gains for long term competitive losses by creating an environment where BT, free of all meaningful regulatory restraints, is able to drive its competitors out of business with below cost pricing. Therefore, we offer the following opinions and suggestions with respect to the proposals set forth in the Consultation.

2.1. Replicability

2.1.1 Replicability Required in both Tender and Non-tender Offers

In response to Question 5, TC2 agrees that replicability is one of the key criteria—indeed, it is the single most important of all criteria—for deciding whether BT should be permitted to offer service bundles that includes services from markets where BT has SMP. If BT's competitors are unable to replicate the services included in BT's proposed bundle, they will not be able to compete effectively with BT's bundled offerings. Hence, the test for replicability adopted by Ofcom is crucial to prevent anti-competitive behaviour that could occur after granting BT additional pricing flexibility. BT's inability to satisfy the replicability test that is adopted by Ofcom should automatically disqualify BT from providing the non-replicable services as part of any bundled offering.

We believe that if BT is allowed to offer services that competitors cannot replicate at a discount to the stand-alone price for such services, then the value of this discount on the non-replicable services will become a barrier to BT's competition being able to provide the replicable services included in the bundle to the customer. Essentially, the price at which BT offers its competitors wholesale services used to replicate the BT services for which BT holds SMP cannot be greater than the discounted price that BT offers its customers for the same services by including them in a bundled offering. If BT's competitors' costs to replicate services are higher than the (discounted) price at which BT is offering the same services to its customers, the service cannot be considered replicable because it is not cost effective for the customer to use the competitors' service offering.

TC2 believes that the cautious regulatory approach is necessary to prevent the possibility of anti-competitive pricing. Therefore, we agree that the ability of BT's competitors' to replicate each service included in the proposed bundle on which BT wishes to offer a discount, should, itself, be a non-negotiable pre-requisite to permitting BT to offer the bundle pursuant to a discount.

2.1.2 Replicability Available to Competitors through BT Services or Independently Owned Facilities

Paragraph 3.6 of the Consultation proposes to base the replicability test primarily upon an assessment of the wholesale services available from BT. In response to Question 6, and as we note above, TC2 agrees that this approach is appropriate and desirable.

In response to Question 7, however, we note that there are circumstances in which BT's competitors can replicate BT retail services using their own networks rather than purchasing the services provided by BT at wholesale pricing. In particular, certain services within metropolitan areas (such as central London), can often be replicated by BT's competitors on the competitors' own networks, providing access to and between customer premises without requiring use of BT's network facilities. Indeed, TC2 can report to Ofcom that in precisely such metropolitan areas, large business customers most often find BT struggling to compete (due to regulations requiring them to offer what is, in essence, above-market pricing). Hence, we urge Ofcom to take into consideration the existence (or lack thereof) of competitive facilities — in addition to the price and availability of wholesale BT services — when determining whether service providers are able to replicate BT's services in markets where BT has SMP.

2.1.3 Replicability Also Achievable By Combining BT Wholesale Services and Independently Owned Facilities

Competitors may also successfully replicate a particular service by combining their own network infrastructure with certain point-to-point circuits purchased from BT that provide "last mile" connectivity between an individual competitor's network and its customers' locations.⁴ For large business users this scenario is far more typical than, for instance, the Carrier Pre Selection (CPS) example set forth in Paragraph 3.14 of the Consultation.

Continuing with the example used in the second bullet of Paragraph 3.14, in order to provide a calls service to large business users, competitors to BT will typically install an access circuit between their network and the customer location, bypassing any interconnection costs with BT that would be incurred under a CPS solution.⁵ Hence, the calls service in this example is technically

⁴ Such point-to-point circuits are variously referred to as "access circuits", "tail circuits" and "local loops".

⁵ The most notable exception to this common method typically involves a customer with numerous small locations where it is not cost effective to provision an access circuit at each location. For such small sites a CPS type solution would, indeed, be a far more cost-effective method to complement the access circuit solution which could be used at the customer's other, larger sites.

replicable (even though the access circuits are the only wholesale input from BT that is used in order to replicate the calls service).

Whether the service is commercially replicable requires additional and separate analysis. The charge for the access circuit to a particular location is analogous to the charge for an ISDN30 circuit from BT that is used for calls. Thus, the determination of commercial replicability need only be based on the cost of the access circuit, compared to an equivalent capacity ISDN30. The cost of the access circuit will depend on the distance between the customer location and BT's competitor's network. Therefore, the commercial replicability determination will depend to a very large extent on how close the customer's location is to the alternative suppliers' network access points.

As we state in Section 3 of this Representation, we believe that in non-tender situations, pricing should be generally published and BT should have limited freedom to target specific groups of customers. We believe, however, that Ofcom should continue to allow BT, as it does today, to provide discounted pricing in particular geographic areas in the UK where competition exists, such as Central London (for example the BT Prime service available to customers within the 0207 telephone area); Ofcom should not require that all of BT's pricing be the same throughout the UK. If, however, Ofcom is unable to make broad judgments about whether certain services are replicable in specific geographic areas by determining the ability of competitors to combine access circuits purchased from BT with the capabilities of their own networks, then TC2 recommends that Ofcom err on the side of caution and permit such bundled offerings only in response to formal tenders.

2.1.4 Specific Replicability Requirements for Formal Tender Offers

In response to Question 21, TC2 agrees with Ofcom that determination of replicability remains essential even in the context of formal tendering exercises. Because of the bespoke nature of a bundled offering made in response to a tender, Ofcom would need to apply the test of replicability to the specific bundle of services that BT has defined for the customer that began the tender process. This customisation of the replicability test would not be unduly burdensome because the tender process defines in great detail the customer's requirements and the specific location(s) where the services are required. In such cases, satisfaction of the test for replicability will likely depend much more significantly upon the specific geographic distribution of the customer's locations.

Notwithstanding the information available to Ofcom as a result of the tender process, TC2 recognises that Ofcom will not practically be able to determine the replicability of every bundle that BT offers in response to every formal tender. Instead, we propose that Ofcom could test for replicability (i) by selecting a

random sample of the confidential tariffs that TC2 proposes in Section 3 below that BT be required to file for every bundled offering made in response to a formal tender; or, (ii) in response to any complaint brought by a competitor of BT with respect to a specific bundled offer tariff filing made with Ofcom that it has reviewed pursuant to an appropriate agreement of confidentiality (explained further in Section 3).

2.2 Implicit Price Cost Test

Ofcom should require that BT's bundled offering pass a price-cost test with all non-SMP services taken together. Thus, in response to Question 15, we believe that BT's proposal in Paragraph 4.7 is reasonable and that Option 1(ii) provides the most useful safeguards against anti-competitive behaviour while still providing BT with appropriate flexibility to make a bundled offering.

By definition, competition to BT exists for non-SMP services; thus, even if a particular competitor was not able to compete for all the non-SMP services included in a bundle, business customers could combine a number of competitors' bids to compare against all of the non-SMP services included in BT's bundle. In fact, large business customers already make these types of comparisons and consider it a fairly standard practice. It bears noting that if a supplier was more competitive than BT for a particular non-SMP service, the large business customer will likely request BT remove this from its bundled offering. Thus, there is minimal risk that BT will materially benefit from not having to perform the implicit price-cost test individually on each non-SMP service included in a bundle.

TC2 believes that both the implicit price-cost test and the replicability test should be required as a prerequisite to granting BT additional pricing flexibility. Options 2 and 3 are therefore not appropriate at this time.

In response to Question 20, TC2 believes that the implicit price-cost test has continuing value in the context of formal tendering exercises. First, we note an apparent mischaracterisation or misunderstanding by Ofcom of the results of the tendering process, as articulated in Paragraph 5.12. Tender processes are not necessarily "all or nothing". Neither the objective nor the end result of a tender process is necessarily that the entire scope of services included in the tender will be provided by a single supplier. In fact, much more frequently, customers use a formal tender process to determine the optimum combination of suppliers (whether a single supplier or multiple suppliers) that will best meet the customer's commercial and technical objectives: reducing its telecommunications costs, optimising the quality of its telecommunications services and ensuring resilience (and, increasingly, redundancy) in its voice and data networks. Recent instability in the telecoms marketplace and increasing concern about the financial stability

of telecoms suppliers, have led many customers to require that multiple suppliers provide their services. Indeed, obtaining multiple suppliers is often, in itself, an important objective of tender processes, somewhat contradictory of the view expressed by Ofcom in Paragraph 5.12.

Thus, TC2 believes that the implicit price-cost test has continuing value in the context of formal tendering exercises, as it is likely that suppliers which will ultimately provide only part of the services in the bundle will be competing.

2.3 Net Revenue Test

In response to Question 22, TC2 strongly agrees with Ofcom that the net revenue test remains relevant in the context of formal tendering. We believe that it should be applied as described in Paragraph 5.15.

Section 3: Publication Requirements and General Availability of Bundled Offerings

3.1 Non-Tender Offers

In response to Question 4, TC2 agrees with the general proposition that prices for discounted bundles of services, including services provided in markets where BT has SMP, should be published prior to BT entering into an agreement with a particular customer to provide the bundled services. Ofcom should apply such a requirement, however, only to the extent that a bundled offering is not created or proposed as part of a tender process that meets the requirements set forth in Section 1 above.

In the case of non-tender offers, publication of BT's bundled offerings for services provided in markets where BT has SMP will provide much of the transparency necessary to mitigate the risk of BT engaging in anti-competitive behaviour. In particular, TC2 shares the concerns summarised in Paragraph 2.14 of the Consultation with respect to the possibility that buying power and BT's competitors' ability to identify profitable business opportunities would be diminished in the absence of publication of BT's non-tender bundled offerings. We therefore also concur with the Director's views, as expressed in Paragraph 2.3, requiring notification of charges, terms and conditions of offerings in markets where BT have SMP, and any subsequent amendments thereto, but only to the extent such publication requirements are limited to non-tender offers.

A bundled offering that is created outside a tender process should be made generally available to all customers satisfying any minimum set of qualifying conditions necessary to purchase the bundle and willing to pay the charges established by BT. We believe that the publication required hereunder should contain a sufficient amount of information so as to permit a potential customer of the bundle to evaluate whether it would be interested in or able to purchase the bundled offer from BT based solely upon the contents of the publication.

3.2 Tender Offers

In the case of tender offers, we believe that Ofcom should adopt more limited publication obligations than those required for non-tenders. While the tender process, as defined in Section 1, provides a competitive environment wherein vendors must bid against one another for a potential customer's business, there remains the potential risk that BT could engage in anti-competitive behaviour in markets where it has SMP by discounting its services below its wholesale prices in an effort to gain a particular customer's business. In the absence of some

form of publication of its proposed pricing, the only party available to evaluate BT's proposal would be the customer that organised the tender process and whose primary interest in obtaining the lowest price available for telecoms services would not provide a meaningful safeguard against BT's anti-competitive behaviour.

To ensure fair play in tender processes for bundled offerings, we propose that Ofcom require BT to file a confidential tariff that summarises the pricing and discounts included in the bundled offering within a reasonable period of time, perhaps 60 days, after completion of its negotiations with the customer. Upon receipt of such filing, Ofcom could publish a general notice that a filing for a bundled offer has been made by BT and that such filing is available for review by BT's competitors. The competitors could be permitted to review the tariff filing provided that they agree in writing to keep confidential the information in the tariff. In the event that a competitor has a reasonable basis to conclude that BT has made an offer that does not meet one or more of the conditions upon which BT is permitted to make bundled offers (i.e., satisfaction of the replicability, implicit price cost, and net revenue tests (as set forth in Section 2)), the competitor may advise Ofcom in writing of the reasonable basis for its belief and request to review the filing to determine whether it violates any of the requirements imposed upon BT.

We believe that this system of review will provide the transparency necessary to prevent anti-competitive behaviour by BT while at the same time minimising the amount of resources Ofcom would be required to expend to review each and every BT filing. BT's competitors would have access—on a confidential basis—to the pricing that BT is offering and can provide Ofcom valuable input and information about whether such pricing is potentially anti-competitive.

We believe that Ofcom should not unintentionally disadvantage BT or undermine its ability to provide competitive pricing by requiring that a bundled offering created in response to a bona fide tender process be made generally available to all customers. The obligation imposed upon BT's competitors to preserve the confidentiality of the tariff filing would permit BT, to offer bespoke pricing to specific customers in genuinely competitive tender processes without having to make the charges, terms and conditions of such offer known to the general public. Too often, BT does not offer competitive charges for its services to business customers because BT claims that in so doing, it would be required to publish the offering and provide the same deal to any customer that requested it. If bundled offerings resulting from a competitive tender are made available for review only on a confidential basis by a limited number of parties, BT will no longer be faced with this undesirable outcome. Rather, BT will be able to offer charges based upon the competition it faces for a particular customer's business

without concern for whether another customer, in a less competitive position relative to BT, would be entitled to such bespoke pricing.

While we generally agree with the sentiments expressed in Paragraph 2.12 of the Consultation that allowing BT to target specific customers could potentially harm competition, we firmly believe that rigorous enforcement of the tests described in Section 2 above would prevent such behaviour. Ofcom can allow BT to target individual customers—which could increase BT's competitiveness in particular markets (such as central London)—without necessarily harming competition there or elsewhere in the UK, as long as the tests described in Section 2 are thoroughly and comprehensively applied.

CONCLUSION

TC2, as the representative consultancy of numerous business customers, strongly encourages Ofcom to provide BT with additional pricing flexibility subject to the restrictions described above. We believe that granting BT such flexibility, coupled with rigorous enforcement of the tests identified in Section 2, will promote BT's competitiveness for specific services while at the same time protecting BT's competitors from anti-competitive behaviour in markets where BT has SMP. To that end, UK telecoms markets will be made increasingly efficient and new and existing telecoms services will be made available to business customers at more favourable rates.

Any questions with respect to this Representation should be sent to Steve Shea and Ben Fox at sshea@techcaliber.com and bfox@techcaliber.com respectively.