

UNDERTAKINGS GIVEN TO OFCOM BY BT PURSUANT TO THE ENTERPRISE ACT 2002

[Consolidated version of the Undertakings (covering all variations up to and including variation number22) dated 23 March 2010

WHEREAS:

- (a) Ofcom considers that it has the power to make a reference to the Competition Commission under Section 131 of the Enterprise Act 2002;
- (b) BT has offered undertakings to Ofcom in accordance with section 154 of the Enterprise Act 2002; and
- (c) Ofcom, instead of making a reference to the Competition Commission, has decided to accept BT's undertakings.

NOW THEREFORE:

BT hereby gives Ofcom the undertakings below (these "Undertakings") and shall act in the manner set out in this document.

1. **Scope**

- 1.1 These Undertakings shall be binding on BT in the United Kingdom.
- 1.2 These Undertakings shall apply in respect of the matters to which they relate in the whole of the United Kingdom (except the Hull Area) but shall apply to Northern Ireland only to the extent set out in section 13.

2. **Definitions and Interpretation**

- 2.1 In these Undertakings:

"Access Network" means the Electronic Communications Network which runs from a Local Access Node to a network termination point on an End-User's premise and which supports the provision of copper-based access services and fibre-based access services to End-Users.

"Alternative Communications Provider Operational Area" means a Communications Provider Operational Area at an 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.

“AS” means the Access Services division referred to in these Undertakings as AS, to be established by BT in accordance with section 5 of these Undertakings.

“AS CEO” means the Chief Executive Officer of AS.

“AS Headquarter Management Team” comprises the AS CEO and those of his direct reports based in the same city as the AS CEO, that city at the date these Undertakings take effect being London.

“AS Management Board” means the management board of AS, comprising the AS CEO, his direct reports and any other person(s) appointed to that board from time to time.

“Associated Services” means those products and services supplied from time to time ancillary to the provision of Metallic Path Facility and Shared Metallic Path Facility. At the date these Undertakings take effect they are listed in section B6, part 6.03 of the BT Carrier Price List and include:

- a) co-mingling space (variable exchange space footprints and rack space units);
- b) power (AC & DC);
- c) ventilation & cooling;
- d) internal tie cabling;
- e) external tie cabling (for distant location); and
- f) cable link for Metallic Path Facility and Shared Metallic Path Facility (installation of third party backhaul).

“Backhaul Extension Service” means BT’s product of that name existing at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the afore mentioned or a new name) from time to time.

“Backhaul Product” means a Network Access service which runs from a BT Local Access Node to:

- a) another BT Local Access Node; or
- b) a BT Core Node; or
- c) another Communications Provider’s point of handover (but which is not an interconnection circuit or interconnection service provided over that circuit),

provided that the straight line distance to any of the above is no more than the greater of:

- i) 15km (or such other distance as may be mutually agreed between BT and Ofcom); or
- ii) the straight line distance from BT's Local Access Node to the nearest BT Core Node.

For the avoidance of doubt this definition does not include backhaul services to nodes outside the UK.

"Bitstream Network Access" means a form of Network Access which provides transmission capacity between an End-User premise and a BT node or a point of handover to another Communications Provider, which allows a degree of control to Communications Providers (including BT) over how the service to the End-User is realised.

"BT" means British Telecommunications plc whose registered company number is 1800000, and including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989.

"BT Active FTTC Product" means an Ethernet based Bitstream Network Access product offered by AS as of the date it is available for order and provided over the entirety of FTTC.

"BT Active FTTP Product" means an Ethernet based Bitstream Network Access product offered by AS as of the date it is available for order and provided over the entirety of FTTP excluding any product or products:

- (i) falling within section 5.4 (d), or section 5.5 (c), (d) or (e); or
- (ii) designed as an input to an uncontended service between two business End-User premises.

"BT Group Operating Committee" means the committee of that name, established by the BT Group plc Board resolution approved on 19 February 2002 and any successor to that committee.

"BT Group plc" means BT Group plc whose registered company number is 4190816.

"BT's Backhaul Network" means BT's Electronic Communications Network from BT's Local Access Nodes to:

- a) another BT Local Access Node; or
- b) a BT Core Node; or

c) another Communications Provider's point of handover.

"BTNI" means the organisation within BT currently called BT Northern Ireland, together with its dedicated support teams in BT Regions, and includes any successors. For the avoidance of doubt, it does not include BT employees or agents working in Northern Ireland for other parts of BT.

"BT Wholesale" means the division within the BT organisation that currently has that designation and which predominantly manages upstream products and services, apart from those which will be provided by AS, designed for use by other Communications Providers, as inputs to their own products, and includes any successors to that division.

"Carrier Pre-selection" means a facility which allows a subscriber to whom a publicly available telephone service is provided by means of a public telephone network to select which pre-selected provider of such services provided wholly or partly by means of that network, is the pre-selected provider the subscriber wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of provider by use of a telephone number.

"Carrier Price List" means the price list having that name which contains charges for certain products and services provided by BT to Communications Providers and certain products and services provided by Communications Providers to BT, as such price list is amended from time to time, and which is published at www.btwholesale.com at the date these Undertakings take effect.

"Code of Practice" means the code or codes of practice drawn up and published in accordance with section 9 of these Undertakings.

"Commercial Information" means information of a commercially confidential nature relating to SMP Products or other products and services to which Equivalence of Inputs applies; or in the case of sections 6.10.3 and 6.13 and 6.14 relating to products and services described in section 6.1.2; and which relates to any or all of the following in relation thereto:-

- a) product development,
- b) pricing,
- c) marketing strategy and intelligence,
- d) product launch dates,
- e) cost,
- f) projected sales volumes, or
- g) network coverage and capabilities,

excluding any such information as agreed by Ofcom from time to time.

"Commercial Policy" means policies and plans in relation to SMP Products or, in the case of section 8.6, relating to products and services described

in section 6.1.2, and which relate to any or all of the following in relation thereto:-

- a) product development,
- b) pricing,
- c) marketing strategy and intelligence,
- d) product launch dates,
- e) cost,
- f) payment terms,
- g) product specific forecasting, or
- h) network coverage and capabilities,

excluding any such policies and plans as agreed by Ofcom from time to time. For the avoidance of doubt this excludes commercial policy of general application across BT which it is appropriate to set centrally.

“Communications Provider” means a person providing a Public Electronic Communications Service or a Public Electronic Communications Network, including BT where relevant and for the avoidance of doubt shall include any internet service provider. For the avoidance of doubt this does not include any person in so far as he procures such a service or network for provision to himself or the members of his group of companies for their own private use.

“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; and
- b) is not bona fide reasonably required by BT at any time for the purposes of BT’s business.

“Core Node” means a node in an Electronic Communications Network whose primary function is not to support the provision of access services to End-Users but to switch or route traffic between other nodes in a network.

“Customer Confidential Information” means any information, in whatever form, which, in the case of written or electronic information, is clearly designated by the Communications Provider as commercially confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as such or is by its nature commercially confidential, but excluding any information which:

- a) enters the public domain otherwise than by reason of a breach of confidentiality;

- b) is previously known to BT at the time of its receipt;
- c) is independently generated or discovered at any time by BT; or
- d) is subsequently received from a third party without any restriction on disclosure.

“Customer Service Record” means the set of data which is required to provide a customer with a product or service instance.

“Customer Side Record” means a Customer Service Record relating to BT as a purchaser from AS.

“DataStream” means an asynchronous transfer mode based Bitstream Network Access service offered under that name by BT at the date these Undertakings take effect.

“Downstream Divisions” means BT’s divisions which are predominantly concerned with providing End-Users with downstream products and services and for the avoidance of doubt excludes BTNI, BT Design and BT Operate.

“EAB” means the Equality of Access Board to be established by BT in accordance with these Undertakings.

“EAO” means the Equality of Access Office to be established under section 10 of these Undertakings.

“End-User” has the same meaning as in the Communications Act 2003.

“Equipment” means for the purpose of sections 5.19 and 7 Communications Provider’s equipment listed in Annex 4:

- a) which is under the sole control of that Communications Provider;
- b) which is used by that Communications Provider for the purpose of running and operating its own Electronic Communications Network;
- c) which provides Electronic Communications Services that make use of Network Access; and
- d) which is connected to the BT network.

“Equivalence of Inputs” or “EOI” means that BT provides, in respect of a particular product or service, the same product or service to all Communications Providers (including BT) on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Communications Providers (including BT) of the same Commercial Information about such products, services, systems and processes. In particular, it includes the

use by BT of such systems and processes in the same way as other Communications Providers and with the same degree of reliability and performance as experienced by other Communications Providers.

In this context “the same” means exactly the same subject only to:

- a) trivial differences;
- b) such other differences as may be agreed by Ofcom in writing;
- c) differences relating to the following:
 - i) credit vetting procedures;
 - ii) payment procedures;
 - iii) matters of national and crime-related security, physical security, security required to protect the operational integrity of the network and such other security requirements as agreed between BT and Ofcom from time to time;
 - iv) provisions relating to the termination of a contract; and
 - v) contractual provisions relating to requirements for a safe working environment; or
- d) such other differences as are specified elsewhere in these Undertakings, including where Commercial Information is provided in accordance with these Undertakings to any of the nominated individuals, and individuals occupying the roles and functional areas (and their relevant external advisers, subcontractors and agents) listed in Annex 2.

“Estimated Space Availability Details” means details of estimated space availability within the Exchanges annually notified (by being placed on a password protected BT website) in accordance with section 7.1.2 to those Communications Providers who have signed an appropriate confidentiality agreement with BT.

“Ethernet” means the standard networking protocol defined under that name in IEEE 802.3 and published by the Institute of Electronic and Electrical Engineers.

“Exchange” means for the purposes of section 7 , FTTC and FTTP a BT building containing a Local Access Node.

“Exchange Line” means apparatus comprised in BT’s Electronic Communications Network and installed for the purpose of connecting a telephone exchange run by BT to a network termination point comprised in network termination and testing apparatus installed by BT for the purpose

of providing Electronic Communications Services at the premises at which the network termination and testing apparatus is located.

“Featureline” means the products offered by the Downstream Divisions at 31 March 2007 under the names Featureline, Featureline Compact and Featureline Corporate/Embark and as they may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.

“FTTC” means a network structure for access at End-Users’ premises at fixed locations in which optical fibres connect a node in an Exchange to a Local Access Node contained in a street cabinet, and copper wires connect the End-Users’ premises to the Local Access Node contained in the BT street cabinet.

“FTTC Passive Inputs” means:

- (i) access to the copper wires that connect the End-User premises to a Local Access Node contained in the BT FTTC street cabinet;
- (ii) the provision to a Communications Provider of a FTTC street cabinet (which for the avoidance of doubt could include a cabinet facility attached to or otherwise integrated with a BT FTTC street cabinet), cooling, ventilation and power therein where practicable, and copper tie-cables, where required; and
- (iii) the various associated components of the Physical Layer of BT’s Access Network connecting the Local Access Node in the BT FTTC street cabinet and the End-Users premises to the extent that these components are only to be used in connection with the provision of services that are run over the entirety of FTTC.

“FTTP” means a network structure for access at End-Users’ premises at fixed locations in which optical fibres connect a node in an Exchange to the End-Users’ premises.

“Hull Area” means the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.

“IBMC” means, in relation to any product or service, Installed Base Migration Complete, and is the date by which the migration of all of the relevant BT installed End-User base to the Equivalence of Inputs product is completed.

“IPStream” means the IP-based Bitstream Network Access service offered by BT at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.

“IPstream Connect” means the IP-based Bitstream Network Access service offered by BT as of the date it is available for order and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.

“ITU” means International Telecommunications Union.

“KPIs” means Key Performance Indicators.

“Level 1 Systems Separation” means the application of access rights and controls to restrict access to information and, in the case of Operational Support Systems, functionality. Such controls will ensure that users can only have access to which they are entitled or which they are permitted, consistently with the Undertakings.

“Level 2 System Separation” means both (a) separation of the data held by the system and (b) separate instances of the application software, such that users can only have access to which they are entitled or which they are permitted, consistently with the Undertakings.

“Local Access Node” means a node in an Electronic Communications Network which supports the provision of services to End-Users. For the avoidance of doubt, such nodes include the following, namely a main distribution frame, an optical distribution frame, a digital local exchange, a digital subscriber line access multiplexer, a remote concentrator unit and an MSAN.

“Management Information Systems” means those management information systems which hold Commercial Information and/or Customer Confidential Information and which are used by BT to help plan and direct business and organisational operations, decision making and competitive strategies.

“MDF Site” means a BT site at which one or more Main Distribution Frames is located.

“Measured Products” means Wholesale Analogue Line Rental, Wholesale ISDN2 Line Rental, Wholesale ISDN30 Line Rental, Metallic Path Facility, Shared Metallic Path Facility, Wholesale Extension Service, Backhaul Extension Service, Wholesale Extension Service Backhaul Product, Wholesale Extension Service Access Product and Wholesale End-to-End Ethernet Service as at 31 March 2007.

“Metallic Path Facility” means a circuit comprising a pair of twisted metal wires between an End-User’s premise and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

“Migration Process” means a process by which:

- a) a Communications Provider transfers from using one product or service to another product or service;
- b) an End-User transfers from using one product or service to another product or service;
- c) an End-User transfers from using a product or service supplied by a Communications Provider to the same product or service supplied by another Communications Provider;
- d) any combination of a), b) or c) above;
- e) any combination of a), b) or c) above which involves more than one End-User and/or two or more Communications Providers and the transfer takes place within a single process; or
- f) any combination of a), b) or c) above which involves the synchronised transfer of multiple services or products.

“MSAN” means a Multi-Service Access Node, being a Local Access Node in BT’s NGN which is capable of supporting the provision of multiple services to End-Users whether over fibre or copper.

“Network Access” has the same meaning as is given to “network access” in section 151(3) of the Communications Act 2003.

“Network Layer” means the network layer of the International Standards Organisation seven layer model for communications protocols.

“NGA Statement” means Ofcom’s Statement entitled “Delivering super-fast broadband in the UK” published on 3 March 2009.

“NGN” means Next Generation Network, a packet-based Electronic Communications Network which is able to provide Electronic Communications Services and to make use of multiple broadband and quality of service-enabled transport technologies, and in which service-related functions are independent of underlying transport-related technologies.

“Ofcom” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984.

“Operational Support Systems” means those support systems carrying out the functions and processes which help to run a network and business, including (but not limited to) pre-ordering, taking a customer’s order, configuring network components, creating a bill and managing faults.

“Partial Private Circuit” means a circuit providing dedicated transmission capacity between an End-User’s premise and another Communications Provider’s point of handover, using an interface, as defined at G703 or G957 or X21, all as published by the ITU.

“Physical Layer” means the duct, fibre, copper, and other non-electronic assets in an Electronic Communications Network.

“Physical Layer Information” means information about Physical Layer assets either under the control and operation of AS for the purposes of section 5.12 or which is managed by AS on behalf of the rest of BT.

“Primary Accounting Documents” means that term as defined in Schedule 2 of the Notification to BT under sections 48(1) and 86(1) of the Communications Act 2003, and dated 22 July 2004.

“Proactive Review” means the AS process set out in section 5.49 (c).

“PSTN” means Public Switched Telephone Network.

“Ready to Mass Migrate” means that procedures and processes necessary to enable commencement of the migration of large volumes of Customer Service Records from Operational Support Systems shared between AS and the rest of BT to Operational Support Systems, which are physically separate for AS and the rest of BT, have been completed and such migration of large volumes has commenced. This includes, *inter alia*, the conclusion of the re-engineering of end-to-end processes and the completion of pilot migrations of varying volume. For the avoidance of doubt, once BT is Ready to Mass Migrate the volume of migrations going forward might fluctuate.

“Residential Customer” means any natural person who uses or requests a public electronic communications service for purposes which are outside his or her trade, business or profession.

“RFS date” means the Ready For Service date from which an Equivalence of Inputs product or service is available for use by other Communications Providers for their new End-Users, and is also available for use by BT (and is in use by BT) to handle all product or service events for New End-Users (being new after the RFS date). The RFS date is also the date of the start of migration of the relevant installed base of End-Users. In this definition “New End-User” means either:

- a) an End-User who has not previously been directly supplied by BT for any BT product or service; or
- b) an End-User with no current service from BT but who is returning to BT;

and excludes for the avoidance of doubt:

- i) an existing BT End-User who is moving premises, and
- ii) an existing BT End-User purchasing a new service.

“Scorecard” means a measure for setting targets in connection with the incentive remuneration of certain BT employees.

“SDH” means Synchronous Digital Hierarchy.

“Service Level Information” means information required for the operational management of a service or product, or a Transmission Layer input into a service or product.

“Shared Metallic Path Facility” means access to the non-voiceband frequencies of the Metallic Path Facility.

“SLA” means Service Level Agreement.

“SMP” means Significant Market Power, where this is found pursuant to a market review under the relevant provisions of the Communications Act 2003.

“SMP Condition” has the same meaning as in the Communications Act 2003.

“SMP Product” means a product or service falling within a market for Network Access in which BT has been determined from time to time by Ofcom as having SMP (excluding international direct dial products based on interconnection directly or indirectly to BT’s international switching centres).

“Statement of Requirements Process” means a procedure whereby a Communications Provider submits a request to BT for new or enhanced Network Access.

“Sub-Loop Unbundling” means access to the part of a Metallic Path Facility or the part of a Shared Metallic Path Facility from an End-User premises to an intermediate point prior to the main distribution frame.

“Supply Side Record” means a Customer Service Record relating to BT Wholesale in its role as supplier to AS.

“TILLAP” means a Traditional Interface Leased Line Access Product, being a leased line providing dedicated transmission capacity between an End-User’s premise and a BT Local Access Node which uses an interface, as defined at G703 or G957 or X21, all as published by the ITU.

“TILLBP” means either:

- a) A Traditional Interface Leased Lines Backhaul Product, being a Backhaul Product providing dedicated transmission capacity using an interface, as defined at G703 or G957 or X21, all as published by the ITU; or
- b) A Network Access service using an interface, as defined at G703 or G957 or X21 all as published by the ITU, up to and including a bandwidth of 2Mb/s, which runs from a Communications Provider's radio base station to:
 - i) a BT Local Access Node; or
 - ii) a BT Core Node; or
 - iii) that Communications Provider's point of handover (but which is not an interconnection circuit or interconnection service provided over that circuit);

provided that the straight line distance to any of the above is no more than the greater of:

- a) 15km (or such other distance as may be mutually agreed between BT and Ofcom); or
- b) the straight line distance from a Communications Provider's radio base station to the nearest BT Core Node.

For the avoidance of doubt this definition does not include backhaul services to nodes outside the UK.

"Transmission Layer" means the electronic assets at and below the link layer of the International Standards Organisation seven layer model for communications protocols. For the avoidance of doubt this does not include Network Layer assets such as voice switches or data routers.

"UK Combined Code on Corporate Governance" means the document of that name dated July 2003 and published by the Financial Reporting Council.

"United Kingdom" has the meaning given to it in the Interpretation Act 1978.

"Upstream Division(s)" means a BT division or divisions other than AS, predominantly concerned with providing upstream products and services designed for use by Communications Providers, as inputs to their own products. At the date of these Undertakings this includes BT Wholesale. For the avoidance of doubt "Upstream Division(s)" excludes BTNI, BT Design and BT Operate.

“User Access Control” means the application of user profiles and/or data tagging or authorisation control mechanisms combined with behavioural mechanisms such that users outside AS can only have access to systems or applications or data which is consistent with the Undertakings and which does not lead to undue discrimination against other Communications Providers.

“Vacation Exchange” means any Exchange identified on the list delivered to Ofcom under section 7.7.

“Wholesale Analogue Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an analogue Exchange Line.

“Wholesale Calls” means BT’s Network Access product consisting of the provision of an end-to-end calls service on a BT maintained line that the Communications Provider in turn offers to its End-Users.

“Wholesale End-to-End Ethernet Service” means a Network Access service providing uncontended Ethernet bandwidth between an End-User premise and another End-User premise up to a maximum straight-line distance of 25km between each premise unless technical feasibility dictates otherwise.

“Wholesale Extension Service” means BT’s product of that name existing at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the afore mentioned or a new name) from time to time.

“Wholesale Extension Service Access Product” means a Network Access service that provides uncontended Ethernet bandwidth between an End-User’s premise and a BT Local Access Node.

“Wholesale Extension Service Backhaul Product” means a Backhaul Product that provides uncontended Ethernet bandwidth.

“Wholesale ISDN2 Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an ISDN2 Exchange Line.

“Wholesale ISDN30 Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an ISDN30 Exchange Line.

“Wholesale Line Rental” means any or all of Wholesale Analogue Line Rental, Wholesale ISDN2 Line Rental and Wholesale ISDN30 Line Rental.

2.2 Words or expressions shall have the meaning assigned to them in these Undertakings and otherwise any word or expression shall have the same meaning as it has in the Communications Act 2003.

- 2.3 The Interpretation Act 1978 shall apply as if these Undertakings were an Act of Parliament.
- 2.4 Headings and titles shall be disregarded.
- 2.5 The Annexes shall form part of these Undertakings.
- 2.6 References to sections and Annexes shall mean sections of, and Annexes to, these Undertakings, unless otherwise stated.
- 2.7 In these Undertakings, “product” means product and/or service as appropriate, unless the context otherwise requires.

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 to the following products 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 where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP;
- h) IPstream Connect where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP; and
- i) Backhaul Extension Service.

The obligation to continue to apply Equivalence of Inputs in relation to IPStream shall cease to apply after IBMC for IPstream Connect.

3.1.2 When BT provides in the future the following products it will do so on an Equivalence of Inputs basis:

- a) Wholesale Extension Service Access Product;
- b) Wholesale Extension Service Backhaul Product;
- c) Wholesale End-to-End Ethernet Service;
- d) The IP based Bitstream Network Access product IPstream Connect that is the successor to IPStream where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP; and
- e) A successor product to Wholesale Line Rental if:
 - i) such a product 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 product.

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 product.

3.1.4 Should BT plan to provide a successor product to Wholesale Line Rental using BT's NGN and based on MSAN access, BT shall agree with Ofcom what, if any, input to this product it would be appropriate to provide on an Equivalence of Inputs basis, taking into account the commercial aspirations of those Communications Providers using Metallic Path Facility and Shared Metallic Path Facility and other Communications Providers and the long term interests of consumers. If agreement is reached, BT shall use such input for the successor Wholesale Line Rental product on an Equivalence of Inputs basis.

3.2 BT will as a gesture of good faith:

3.2.1 if notwithstanding the date specified in paragraph 1 of Annex 1 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, including the relevant parts of BT, 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 achieved 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), provide an allowance to Communications Providers, including the relevant parts of BT, 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 Metallic Path Facility and Shared Metallic Path Facility as appropriate is achieved. 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 3.2.1 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. 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 product that does not use BT's NGN in addition to those in section 3.1 such new agreed timetable will apply.
- 3.4 Commencing on 1 January 2006 BT shall make available to other Communications Providers a stand alone address matching service (on the basis that the data made available under that service can only be used by Communications Providers for address matching purposes directly related to the order and/or repair of the products concerned) with the objective of reducing address matching failures, until such service is no longer reasonably required by virtue of the availability of an alternative Equivalence of Inputs service.
- 3.5 Commencing on 1 July 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 as at the date of these Undertakings, until such service is no longer reasonably required by virtue of the availability of an Equivalence of Inputs service.

3.6

- 3.6.1 Commencing on 1 January 2007 and until such time as the relevant RFS date is reached, BT employees and agents will use the Wholesale Line Rental service provider gateway to raise Wholesale Analogue Line Rental 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 product.
- 3.6.2 In circumstances where a Communications Provider ceases to trade and BT takes a bulk transfer of customers of that Communications Provider, section 3.6.1 shall not apply to the extent that there is a requirement to use the Wholesale Line Rental service provider gateway to raise service transfer requests.

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 for products for which BT must apply Equivalence of Inputs. Where the migration involves EOI and non EOI products, the EOI Migration Process will only apply to the part of the process involving the EOI product. BT shall apply the EOI Migration Process at the same time as the relevant RFS date set out for each product in Annex 1 or as otherwise agreed with Ofcom. Where a process involves more than one EOI product, the RFS date for each product shall apply separately to the relevant EOI Migration Process.
- 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.

4. **Transparency**

4.1 BT shall, for Partial Private Circuits, Carrier Pre-selection and DataStream:

4.1.1 within three months of these Undertakings taking effect, provide sufficient transparency to other Communications Providers to enable them to identify and understand any differences between the matters BT is required to list in its reference offer pursuant to the relevant SMP Condition in connection with the products referred to above in this section 4.1 which it provides to other Communications Providers, and the comparable products that it supplies to itself; and

4.1.2 use its reasonable endeavours at all times to resolve any outstanding issues with any other Communications Provider concerning its provision of the products referred to in section 4.1 (including the systems and processes used to supply such products) to that Communications Provider.

4.2 When AS provides in the future a TILLAP or a TILLBP, the costs attributable to those products shall form part of the cost stack for BT's relevant Partial Private Circuits, and shall allow other Communications Providers to replicate commercially, from the point of view of their use of the TILLAP and/or TILLBP, relevant Partial Private Circuits, as set out in section 5.6.

5. **Access Services**

The establishment of Access Services

5.1 BT shall establish AS within four months of these Undertakings taking effect, and shall thereafter operate AS in accordance with these Undertakings.

5.2 BT shall, within five months of these Undertakings taking effect, satisfy Ofcom that it has established AS in accordance with section 5.1.

5.3 AS shall provide those SMP Products which are predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or the Physical Layer and/or Transmission Layer of BT's Backhaul Network, as set out in sections 5.4, 5.5, 5.7 and 5.8. The provision of products shall include in particular:-

- a) product management;
- b) sales (or equivalent internal supply between AS and other parts of BT);
- c) in-life service management;
- d) specification of the products and their functionality; and
- e) setting prices.

AS shall sell (or internally supply within BT) its products to any Communications Provider and shall determine Commercial Policy in respect of those products.

- 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 and relevant handover products;
 - e) Shared Metallic Path Facility and Associated Services;
 - f) Metallic Path Facility and Associated Services.
 - g) Backhaul Extension Service and relevant handover products.
- 5.5 AS shall also offer to provide to any Communications Provider within a reasonable time of a request the following and where relevant their handover products:
- a) TILLAP;
 - b) TILLBP;
 - c) Wholesale Extension Service Access Product;
 - d) Wholesale Extension Service Backhaul Product;
 - e) Wholesale End-to-End Ethernet Service; and
 - f) Sub-Loop Unbundling and any relevant associated services.
- 5.6 When AS provides a TILLAP or a TILLBP, those products shall be made available to other Communications Providers in a manner that provides them with the opportunity to replicate commercially, from the point of view of their use of the TILLAP and/or TILLBP, relevant Partial Private Circuits.
- 5.7 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 Network Layer functionality;

then, if so required by Ofcom, the new Network Access and any relevant handover product will be provided by AS.

- 5.8 For products not covered by section 5.7, if so required by Ofcom, AS shall provide on the same basis as set out in section 5.3 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 new form of Network Access would be predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or the Physical Layer and/or Transmission Layer of BT's Backhaul Network.
- 5.9 As part of the establishment of AS, the people and non-network capabilities used to provide fixed line number portability will be included in AS.
- 5.10 AS will develop its Backhaul Products in accordance with sections 5.16 to 5.18.
- 5.11 Where Network Access products are requested from AS by Communications Providers (including BT) which are not products which BT is obliged to provide as a result of a finding of SMP, AS will use a Statement of Requirements Process, and will be subject to EAB oversight in its operation of that process. In these cases, however, AS 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 AS;
 - b) commercial attractiveness to AS; and
 - c) opportunity cost to AS.

For the avoidance of doubt, section 5.11 does not apply in relation to internal products AS supplies to the rest of BT relating to the core network as described in section 5.46.1 f) or as otherwise agreed between BT and Ofcom.

- 5.12 Except as otherwise agreed with Ofcom AS 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 these assets, such as line testing and remote diagnostics. It shall determine which products 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 5.28. It shall have full responsibility for building, maintaining and repairing these assets.

- 5.13 Save as permitted by section 5.52, AS 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:
- 5.13.1 AS requirements for new SMP Products which determine platform requirements shall be set out in AS product roadmaps and volume forecasts which shall be agreed with relevant platform managers. This includes new AS SMP Products delivered over BT's NGN, as well as new SMP Products delivered over the current network. Where backhaul platforms support products supplied by AS and other products supplied elsewhere in BT, AS will have the principal role in determining delivery requirements where it is the predominant user of the platform or where AS provides the only SMP Product using that platform;
 - 5.13.2 any investment decisions required in consequence of the product roadmaps and volume forecasts referred to in section 5.13.1 shall be considered solely on their own merits, and shall not take into consideration the potential impact on other products offered by BT's businesses downstream of AS other than in as much as they affect aggregate demand forecasts;
 - 5.13.3 when AS makes use of Transmission Layer assets from BT 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 required standards shall be reasonably practicable and set out in SLAs between AS and BT; and
 - 5.13.4 new requirements for SMP Products to be provided by AS will be addressed by an AS owned Statement of Requirements Process.
- 5.14 BT employees working for AS shall include:
- 5.14.1 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 AS 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;

- 5.14.2 those employees involved in the design, planning, implementation and in-life service management of products 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 AS CEO; and
- 5.14.3 those employees who carry out activities which are ancillary to those described in section 5.14.1 and section 5.14.2, those who support and manage them, and those who undertake the sales function of AS.
- 5.15 In relation to particular geographical areas, AS and the rest of BT except the Downstream Divisions may agree from time to time that:
- a) the rest of BT except the Downstream Divisions shall on behalf of AS undertake activities which under these Undertakings are otherwise to be undertaken by AS; and/or
 - b) AS shall on behalf of the rest of BT except the Downstream Divisions undertake activities which under these Undertakings otherwise fall to be undertaken by the rest of BT except the Downstream Divisions,
- provided that, unless Ofcom agree otherwise, not more than 250 field engineers shall at any one time be engaged in the undertaking of activities under this section.

Backhaul principles

- 5.16 When AS makes available Backhaul Products it shall do so in the following manner:
- 5.16.1 AS 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 unless agreed by Ofcom;
 - 5.16.2 AS shall ensure that Communications Providers can purchase Backhaul Products which are SMP Products in such a way that they can join together multiple network nodes, for example in daisy-chain or hub and spoke topologies, but not where the use of those topologies has the intent or effect of replicating a core network;
 - 5.16.3 AS shall develop solutions that provide the ability to pick-up aggregated traffic from one or more smaller sites to a common handover point, including a managed transmission service. This section 5.16.3 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;

- 5.16.4 AS shall provide Backhaul Products which are SMP Products which carry aggregated traffic referred to in section 5.16.3 to a point of handover within other Communications Providers' own networks. Such Backhaul Products shall include products based on SDH technology and products based on Ethernet technology, and any future technologies which enhance or replace these; and
 - 5.16.5 AS shall ensure that Backhaul Products which are SMP Products provided to other Communications Providers shall give those Communications Providers the option to purchase the same degree of resilience as that offered to other parts of BT, and that the levels of resilience offered will be backed by appropriate SLAs.
- 5.17 Where charges for Backhaul Products are required by an SMP Condition to be cost orientated (however that requirement is expressed) BT shall set charges:
- 5.17.1 using a distance related pricing gradient that accurately reflects the underlying costs of providing the product, so that Communications Providers purchasing these products benefit appropriately from extending their own network reach; and
 - 5.17.2 using a bandwidth related pricing gradient that accurately reflects the underlying costs of providing the product.
- 5.18 Where charges for a Backhaul Product which is an SMP Product are not required to be cost orientated, AS shall ensure that bandwidth related and distance related costs variations are among the factors taken into account in setting charges.
- 5.19 BT shall provide space in accordance with the obligations set out in section 7 of these Undertakings to permit the location by other Communications Providers of 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 other Communications Providers' own Access Networks.

General

- 5.20 Where assets controlled and operated by AS, as described in section 5.12 above, are not or cease to be used in connection with any SMP Product, such assets may be re-allocated to another part of BT and (notwithstanding anything in section 5.14), relevant field engineers and other relevant BT employees working for AS may be re-allocated outside AS.

- 5.21 To the extent that a product supplied by AS which is an SMP Product ceases to be such, BT may provide matters set out in section 5.3 (a) to (e) other than within AS and notwithstanding anything in section 5.14, relevant BT employees working for AS may be re-allocated outside AS.
- 5.22 Products offered by AS in accordance with section 5 will also be offered by BT in Northern Ireland.

The composition and duties of Access Services

- 5.23 AS shall be a separate division within BT.
- 5.24 In anticipation of section 5.1, BT shall appoint the AS CEO within one month of the date that these Undertakings take effect.
- 5.25 The AS CEO shall report solely and directly to the BT Group plc CEO.
- 5.26 The AS CEO shall not be a member of the BT Group Operating Committee but may attend where matters pertaining to AS are discussed and where such attendance is appropriate. The EAO shall be notified of such attendances.
- 5.27 The AS Management Board shall manage AS in a way designed to secure compliance with those sections of these Undertakings applicable to AS and shall operate to terms of reference agreed by the BT Group plc CEO following consultation with Ofcom. The terms of reference will be notified to Ofcom.

Governance of Access Services

- 5.28 With effect from the BT financial year 2006/2007, AS shall establish an annual operating plan which shall be submitted to the BT Group plc Board for approval. Once approved, execution of that plan shall be the responsibility of the AS CEO and the AS Management Board. The plan will establish the budget, including capital and operating expenditure, for AS. The plan shall include plans and targets for implementing and applying those sections of these Undertakings applicable to AS for the relevant year. Following each year of operation of AS such plan shall include a commentary on the previous year's implementation and application of these Undertakings as they apply to AS. The annual operating plan and commentary shall be shared with the EAB.
- 5.29 The AS CEO shall have delegated authority from the BT Group plc Board to authorise capital expenditure of up to £75 million within the annual operating plan referred to in section 5.28. This limit may be varied from time to time at the discretion of the BT Group plc Board. Ofcom and the EAB shall be notified of such variation within five working days.

- 5.30 With effect from the start of BT's financial year 2006/2007, the charging approach, management accounts and management information associated with AS shall be prepared on the following basis or as may be otherwise agreed by BT and Ofcom:
- a) charges will be calculated on the same basis for BT and other Communications Providers;
 - b) information relating to those charges shall be provided in the same way for BT and other Communications Providers;
 - c) transfer charges in the regulatory accounts for products provided to and from AS and other BT divisions will be separately identified and based on the transfer charging principles set out in the Primary Accounting Documents of the regulatory financial statements; and
 - d) Physical Layer access and backhaul assets will be capitalised and depreciated in AS's financial statements in line with BT's accounting policies. AS's use of the Transmission Layer access and backhaul assets will be accounted for as a charge in AS's P&L. BT will implement a transfer charging arrangement between AS on the one hand and the other BT divisions on the other hand consistent with the scheme used for the regulatory financial statements and agreed with Ofcom.
- 5.31 With effect from the start of BT's financial year 2006/2007, the regulatory financial statements of BT will also separately present the financial results of AS. The form, content and basis of preparation of the financial results of AS will follow those used in the preparation of the regulatory financial statements of BT except where differences are agreed with Ofcom and properly disclosed in the financial statements and related documentation. Information about the financial results of AS will include the following: headline revenue, cost of sales (or gross margin), SG&A, EBITDA, depreciation, operating profit and capital expenditure, revenues broken down into the broad product groups that the AS provides and further split between internal and external sales, separately identified payments to other parts of BT for products that form inputs to AS products (e.g. electronics); and a commentary that explains any changes in the basis within which the above figures are presented. BT's regulatory financial statements will reconcile AS's revenue and operating profit (and other such items as may be agreed between BT and Ofcom) with information about AS shown in BT Group plc's annual report and accounts. The independent audit of BT's financial statements will include AS.
- 5.32 BT shall begin to report AS's financial performance in BT Group plc's annual and quarterly reports in the same format as is used for BT's existing divisions from the start of BT's financial year 2006/2007.
- 5.33 The AS Headquarter Management Team shall move to:

- 5.33.1 access controlled accommodation which is separately secured from BT businesses downstream of AS and shall have completed this move within six months of the date that these Undertakings take effect; and
 - 5.33.2 accommodation which is separately located from BT businesses downstream of AS unless otherwise agreed by Ofcom and shall have completed this move within eighteen months of the date that these Undertakings take effect.
- 5.33A For the avoidance of doubt, the AS Headquarter Management Team shall be located in separate accommodation from the headquarters of BT Design and BT Operate.
- 5.34 Once the AS Headquarter Management Team is established the AS CEO will review with the EAB the adequacy of any planned moves to access controlled accommodation, and make appropriate changes.
- 5.35 None of the employees described in section 5.14 may, whilst working for AS, work for the Upstream Division(s) or any of the Downstream Divisions or BT Design or BT Operate, save as agreed in writing by Ofcom.
- 5.36 All incentive remuneration of BT employees working for AS shall reflect solely the objectives of AS. AS will operate to a Scorecard which reflects its responsibilities to deliver Equivalence of Inputs and fair access to its products. The principles of that Scorecard will be cascaded to all BT employees working for AS who have currently, or may have in the future, bonus payments. Bonus payments based on Scorecard performance shall relate solely to the performance of AS and to any other relevant obligations under these Undertakings. Such bonus payments shall not be denominated in BT Group plc shares, but BT employees working for AS remain eligible to participate in BT's ongoing and future general all-employee share plans and benefits arrangements.
- 5.37 BT shall as soon as reasonably practicable:
- 5.37.1 introduce new long term incentive plans for relevant BT employees working for AS including a deferred bonus plan ('new plans') which BT anticipates will be in place for implementation during the summer of 2006;
 - 5.37.2 where a BT employee has been granted an option over shares under the BT Group Global Share Option Plan or an award of shares under the BT Group Incentive Share Plan or the BT Group Retention Share Plan, and subsequently moves to AS, use its reasonable endeavours to replace those options or share awards with awards under the new plans.
 - 5.37.3 ensure that, where a performance condition applies to the granting or vesting of an award under the new plans, that

performance condition shall relate to the performance of AS or some other appropriate index related to the objectives of AS; and

- 5.37.4 ensure that no such awards in respect of BT Group plc shares shall be made to BT employees at a time they are working for AS except that BT Group plc shares may be part of an appropriately weighted basket of shares or some other appropriate index.
- 5.38 Save as set out in section 5.41, no employee or agent of BT (including its external advisers and sub-contractors), who is not working for AS shall:
- 5.38.1 directly or indirectly participate in the formulation or making of, or influence or attempt to influence, the Commercial Policy of AS except through such mechanisms and processes that are also available to other Communications Providers; or
- 5.38.2 have access to Commercial Information of AS held by any employee or agent of BT working for AS unless it is of the nature that would be provided to other Communications Providers in the ordinary course of business.
- 5.39 AS Customer Confidential Information shall not be disclosed to:
- BT employees working for the Upstream or Downstream Divisions; or
 - BT Operate; or
 - BT employees working for BT Design whose incentive remuneration reflects the objectives of the Upstream or Downstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team,
- except:
- a) with the relevant customer's consent; or
- b) to the minimum extent that disclosure to BT employees working for:
- the Upstream Division(s); or
 - BT Operate; or
 - BT Design whose incentive remuneration reflects the objectives of the Upstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team,
- is necessary to operationally enable AS to deliver products provided by AS under section 5 of these Undertakings; or
- c) where an order is transferred from one part of BT to another pursuant to section 5.47.5, and the information is disclosed

solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

5.40 No employee or agent of BT (including its external advisers and sub-contractors), who is working for AS, shall directly or indirectly influence or attempt to influence, the Commercial Policy of the Downstream Divisions or Upstream Division(s) of BT except:

- a) through such mechanisms and processes that are also available to other Communications Providers;
- b) as required for the delivery of these Undertakings, for example for the development of AS services utilising network assets managed by Downstream and Upstream Divisions of BT, or for the planning and implementation of BT's NGN;
- c) if they are nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2;
- d) as otherwise provided for in these Undertakings; or
- e) if otherwise agreed with Ofcom.

5.41 As referred to in section 5.38:

5.41.1 sections 5.38.1 and 5.38.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2;

5.41.2 section 5.38.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part B of Annex 2;

5.41.3 any nominated individuals and individuals occupying the roles and functional areas listed in Annex 2 shall be subject to dedicated training on the receipt and sharing of information relating to AS and on the restrictions on the exercise of influence required by these Undertakings. The EAB may review both the scope of Annex 2 and the training offered under this section; and

- 5.41.4 BT and Ofcom may agree from time to time to modify the lists in Annex 2. If no agreement is reached the list will remain unchanged.
- 5.42 For the avoidance of doubt, AS may draw upon support services from any part of BT or BT's agents and sub-contractors and may use BT's centres of excellence (including billing), provided that doing so will not require the disclosure of Commercial Information of AS, except where such support services or centres of excellence are included in either Part A or Part B of Annex 2.
- 5.43 AS shall ensure that the way in which new product requests are received and evaluated and Commercial Information of AS is made available is substantially the same for all Communications Providers (including BT) in like circumstances in relation to products where Equivalence of Inputs applies and is on a not unduly discriminatory basis in the case of other SMP Products.

5.44 BT shall:

5.44.1 ensure that all its Operational Support Systems designed for AS are designed on the principle of separation from the rest of BT systems except for those Operational Support Systems listed in Annex 6, in accordance with section 5.44.6;

5.44.2 ensure that:

(a) its Operational Support Systems, other than those Operational Support Systems listed in Annex 6, will be run physically separate for AS and the rest of BT when reasonably practicable and proportionate, unless otherwise agreed between BT and Ofcom;

(b) by 30 June 2010:

- i) at least 90% of BT's relevant installed End-User base shall be migrated so that the products that this base purchases, that consume the Measured Products, do so on an EOI basis from AS; and
- ii) at least 80% of BT's Customer Side Records relating to the Measured Products held on Operational Support Systems shared between AS and the rest of BT are migrated to at least Level 2 System Separation;

(c) by 31 December 2012:

- i) at least 95% of BT's relevant installed End-User base shall be migrated so that the products that this base purchases, that consume the Measured Products, do so on an EOI basis from AS; and
 - ii) at least 90% of BT's Customer Side Records relating to the Measured Products held on Operational Support Systems shared between AS and the rest of BT are migrated to at least Level 2 System Separation;
 - (d) by 31 December 2011 or within six months of the date of the completion of the migration of the BT business stack, whichever is the earlier, Ofcom is advised of the further increased percentage migrations of both the relevant installed End-User base and BT's Customer Side Records to be achieved by 30 June 2014 to demonstrate continued significant progress towards the migration of business customers to separate Operational Support Systems;
 - (e) that the implementation and ongoing application of the obligations in relation to Customer Side Records in section 5.44.2 is:-
 - i) subject to regular audits by BT's internal audit group;
 - ii) subject to an audit commissioned by the EAB on an ongoing basis at least every 24 months from 30 June 2010;
 - (f) for the purpose of this section the Measured Products shall additionally include the AS EOI products CCTV Access, Optical Spectrum Access, Optical Spectrum Extended Access, Broadcast Access and Bulk MPF existing as at 1 April 2009 (and as they may evolve, be developed or replaced (whether under the aforementioned or new names) from time to time);
- 5.44.3 until such time as an Operational Support System is physically separated, and unless otherwise agreed between BT and Ofcom:-
- (a) implement User Access Controls for Operational Support Systems capability to the extent it supports the Equivalence of Inputs products of Wholesale Analogue Line Rental, Shared Metallic Path Facility and Metallic Path Facility by 30 June 2007, the Equivalence of Inputs product of Wholesale ISDN2 Line Rental by 30 September 2007 and the Equivalence of Inputs product of Wholesale ISDN30 Line Rental 29 February 2008;
 - (b) ensure that it is Ready to Mass Migrate Customer Side Records where those records relate to the consumption by Residential Customers of PSTN voice telephony products by 31 March 2008;
 - (c) ensure that 50% of all Customer Side Records relating to the Measured Products held on Operational Support Systems

shared between AS and the rest of BT are migrated to physically separate Operational Support Systems by 30 November 2008;

- (d) in calculating the percentage in section 5.44.3 (c) include those Customer Side Records already separated since 30 June 2006;

5.44.4 review on a regular basis with Ofcom achievement on a roadmap for the separation referred to in sections 5.44.1, and 5.44.2;

5.44.5 ensure that the implementation and ongoing application of the User Access Control requirement referred to in section 5.44.3 (a) and section 5.44.6 is:-

- (a) subject to regular audits by BT's internal audit group;
- (b) subject to an audit commissioned by the EAB (in the exercise of its function under section 10.9) in relation to User Access Controls for Operational Support Systems capability to the extent it supports the Equivalence of Inputs products of Wholesale Analogue Line Rental, Shared Metallic Path Facility and Metallic Path Facility; such audit to commence as soon as reasonably practicable after 30 June 2007 and to be completed including having the outcome agreed by the EAB by 31 December 2007 unless otherwise agreed with Ofcom and the outcome of such audit to be shared with Ofcom in writing no later than 15 working days after its completion;
- (c) subject to an independent, external audit focussing on risk assessment, solution design, implementation assessment and ongoing controls to be completed by 30 June 2008; and
- (d) subject to an additional independent external audit in the period between the completion of the audit referred to in 5.44.5 (c) and 30 June 2010 focussing on the ongoing application of User Access Controls and thereafter on an ongoing basis every 24 months from 30 June 2010; and

5.44.6 unless and insofar as an alternative solution is agreed with Ofcom, on or before 30 June 2010:

- (a) implement User Access Controls to those Operational Support Systems listed in Annex 6 that contain Physical Layer Information or Service Level Information such that access to that information is limited to BT employees:-
 - i) working for AS; or
 - ii) working for BT Operate or BT Design to ensure the efficient design, planning, building, configuring, management, maintenance and removal of the Access Network, BT's

Backhaul Network and BT's other electronic communications networks, efficient network incident management and resolution, or for the provision of Transmission Layer assets utilised by AS in the provision of its products; or

- iii) who are nominated individuals (if any), or individuals occupying the roles and functional areas (and their relevant external advisers, subcontractors and agents) listed in Part A and Part B of Annex 2.

For the avoidance of doubt AS shall be responsible for and control the Physical Layer Information contained in those Operational Support Systems listed in Annex 6.

- (b) ensure that where there is an operational need for BT people other than those referred to in sub-section (a) to access Service Level Information contained in an Operational Support System listed in Annex 6 that the information shall only be accessed via a physically separate Operational Support System and BT shall implement User Access Controls to such Operational Support Systems;
- (c) the EAB shall carry out periodic checks on a quarterly basis, unless BT and Ofcom agree in consultation with the EAB to extend the periodic review interval up to a maximum of 6 months, to monitor access to the Operational Support Systems listed in Annex 6, in accordance with sub-paragraphs (a) and (b) above, to ensure that there was a valid reason for access. The EAB will also, at the same time, confirm the total number of users who have accessed the Annex 6 systems at that specific time and report this figure to Ofcom.

5.45.1 Within 13 months of these Undertakings taking effect, BT shall implement Level 2 System Separation of its Management Information Systems between AS and the rest of BT, apart from those listed in Annex 5.

5.45.2 Within 13 months of these Undertakings taking effect BT shall implement Level 1 System Separation of those Management Information Systems listed in Annex 5 between AS and the rest of BT such that they do not lead to undue discrimination against other Communications Providers.

- 5.45.3 By 30 June 2010 BT shall implement Level 2 System Separation of those Management Information Systems listed in Annex 5 between AS and the rest of BT other than in relation to those Management Information Systems which:-
- a) are no longer shared, or
 - b) are closed or have been replaced, or
 - c) have been otherwise agreed between BT and Ofcom.
- 5.45.4 The implementation and ongoing application of any Level 1 System Separation referred to in section 5.45.2 shall be audited by independent, external auditors.
- 5.45.5 BT, following timely consultation with Ofcom and after consideration of Ofcom's comments, will provide Ofcom with a roadmap by 30 June 2007 which will set out how BT plans to implement Level 2 System Separation between AS and the rest of BT for those Management Information Systems listed in Annex 5 (other than those Management Information Systems which will be no longer shared, or will be closed or replaced or have been subject of an agreement between BT and Ofcom under section 5.45.3 (c)) by 30 June 2010. The roadmap will be a plan and all dates contained in it will not be legally binding. For the avoidance of doubt the existence of the roadmap will in no way affect the IBMC dates set out in Annex 1 of the Undertakings.

5.46 The products and services supplied by Access Services

- 5.46.1 AS will not supply any product to any other part of BT unless it also offers that product to other Communications Providers on an Equivalence of Inputs basis. This requirement does not apply to:
- a) TILLAP and TILLBP;
 - b) such Associated Services as may be agreed with Ofcom;
 - c) any product where Ofcom agrees Equivalence of Inputs is not required for reasons of practicability or otherwise;
 - d) products listed in Annex 1 before Equivalence of Inputs is required to be provided in accordance with section 3.1;
 - e) any new product to the extent of any agreement by Ofcom that Equivalence of Inputs shall only apply from any particular date;

- f) products relating to core network, duct, fibre and transmission between Core Nodes;
- g) any other product or class of products that Ofcom and BT agree does not need to be supplied externally;
- h) maintenance and provision carried out by AS field engineers, on behalf of a Communications Provider, on network termination equipment and internal wiring which is located on End-User premises; and
- i) 'handover products' referred to in sections 5.4, 5.5 and 5.7.

5.46.2 In addition to the products listed in paragraphs a) to i) of section 5.46.1, the requirement set out in that section does not apply to products which:

- a) exist at the date the Undertakings come into force; and
- b) will be supplied by AS; and
- c) are not listed in Annex 1.

BT will by 31 December 2008 review such products with Ofcom and agree either that:

- a) section 5.46.1 c) shall apply; or
- b) the product will be withdrawn from sale or supply by AS; or
- c) Equivalence of Inputs will be required.

If the product will be withdrawn from sale or supply by AS, BT and Ofcom shall agree an appropriate and reasonable withdrawal date.

If EOI is required, BT and Ofcom shall agree appropriate and reasonable RFS and IBMC dates.

Forty-two months after these Undertakings come into force, the exemption from section 5.46.1 above shall lapse in relation to products to which this section 5.46.2 applies, unless BT and Ofcom agree otherwise.

5.46.3 For the avoidance of doubt, section 5.46.1 shall not alter the obligations concerning Equivalence of Inputs:-

- a) in respect of any product referred to in Annex 1; and
- b) in respect of any product falling within section 11.

Sales

5.47 In relation to sales activities:

5.47.1. AS is expected to be the primary channel to market for its portfolio of products.

5.47.2 AS can take orders for products which are product managed by BT Wholesale or another part of BT, and project manage their delivery, only under the following circumstances:

- a) where products which are managed by parts of BT other than AS and AS products require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products, such as combined orders for Wholesale Line Rental and Carrier Pre-selection; or
- b) where a Communications Provider's commercial relationship with BT is only with AS because it predominantly purchases AS products, but it wishes as a matter of convenience to place a low volume of orders for other BT products via AS; or
- c) by agreement between BT and Ofcom.

5.47.3 AS shall only accept orders for products from Communications Providers, including BT, unless otherwise agreed with Ofcom.

5.47.4 Other parts of BT can take orders for products which are product managed by AS and project manage their delivery, only under the following circumstances:

- a) where products which are product managed by AS and other parts of BT require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products as described in section 5.47.2 a) above; or
- b) where a Communications Provider has or wishes to have a commercial relationship with a part of BT other than AS; or
- c) by agreement between BT and Ofcom.

5.47.5 Where a Communications Provider places an order with one part of BT which pursuant to sections 5.47.2, 5.47.3 or 5.47.4 should properly have been placed with another part of BT, the part of BT which receives the order will arrange for its transfer and will advise the Communications Provider accordingly.

5.47.6 Where sections 5.47.2 and 5.47.4 permit an order to be submitted either to AS or other parts of BT, then BT shall ensure that Communications Providers are able to submit such orders to either AS or to those other parts of BT, according to their choice, and that they will experience no disadvantage in terms of price, service or quality as a result of this choice, provided such products are SMP Products or are required to be provided by BT on an Equivalence of Inputs basis.

5.47.7 In relation to sections 5.47.2 and 5.47.4 where they relate to the provision of products required to be provided by BT on an Equivalence of Inputs basis, the part of BT that product manages the relevant Equivalence of Inputs product will be responsible for resolving any service issues.

Access Services brand

5.48 BT shall develop a separate brand name for AS which does not incorporate the elements “BT” or “British Telecom” and which will be used in proximity to an endorsement containing the words “a BT Group business (and BT corporate device)”. Such endorsement shall be secondary to the AS brand. There will be a progressive programme for branding or rebranding the following items only:

- a) Stationery, relevant website and web addresses and relevant buildings during the first sixteen months from the date these Undertakings take effect; and
- b) Clothing and vehicles as these are replaced, to be completed within five years of the date of establishment of AS.

Other items will be re-branded as and when AS decides it is appropriate to do so.

Exchange space and power

5.49 In relation to space and power:

- a) AS will develop and launch a space-only-allocation product on an Equivalence of Inputs basis which will enable Communications Providers to pre-book and have Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space allocated to them in an MDF site for an appropriate charge. The maximum duration of the space-only-allocation product is 18 months, after which time the space will be released if the Communications Provider has not placed a firm build order for space for either its Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product equipment.

- b) AS will develop and publish guidelines detailing the approach it will adopt for the space and power allocation process for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products. The approach for allocating space and power will be on an Equivalence of Inputs basis, subject to this being on a “first come first served” basis. The guidelines will include a description of the space and power allocation process for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products, and the roles of AS and BT Operate (acting on behalf of AS).
- c) The guidelines will also set out the process for reviewing Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products space availability on a proactive basis where space is in short supply with a view to verifying the space records and identifying options to free up space (the “Proactive Review”). Space allocated to be used for BT’s NGN within the next 18 months will be included in considering MDF sites where space is in short supply.
- d) BT Operate will carry out the Proactive Review based on planning instructions provided by AS, which will decide which options to implement to free up space. The Proactive Review will focus on a list of MDF sites agreed between Ofcom and BT, from time to time, as the most probable locations for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products space demand. This list of MDF sites will be published in accordance with the space and power allocation guidelines.
- e) Communications Providers whose Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul space requirements have not been met under the space allocation process may raise concerns with the EAB about the outcome of the Proactive Review, including where the Proactive Review occurs pursuant to section 5.49 (g).
- f) The EAB will periodically monitor the Proactive Review process and in particular review those MDF sites where space is constrained. The EAB’s initial review will also include 20 randomly selected MDF sites where space records indicate that there is sufficient space. Subsequent periodic reviews will be based on a random sample of MDF sites. The EAB also has the right, if necessary, to audit the operation of the Proactive Review process.
- g) Where AS identifies a conflict for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space between BT’s NGN and other Communications Providers’ requirements for space, and the BT NGN date as published in the NGN plan of record is more than 18 months away, the BT NGN space allocation will be released provided the space is needed to meet a Communications Provider’s earlier Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space requirement firm build order.

- h) Other divisions of BT will not be required to use the Equivalence of Inputs space-only-allocation product for space allocated in connection with the initial deployment of NGN as documented in the NGN plan of record. All other allocations for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space by BT will be required to use the Equivalence of Inputs space-only-allocation product.
- 5.50 AS will consult with industry with regard to changing the scope of the existing co-mingling product within the definition of Associated Services and/or launching a new space product to allow for a more flexible use of space specifically to enable Communications Providers to house in that space either their Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product equipment connected to the BT network and used in connection with AS' regulated Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product services. Following industry consultation, AS will make such changes to the existing Metallic Path Facility and Shared Metallic Path Facility co-mingling product within the definition of Associated Services and/or launch a new Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space product, unless there is no reasonable demand from one or more other Communications Providers for such a space product or unless otherwise agreed with Ofcom.

AS Product and Service Roadmap and Commitments

5.51 AS shall:

5.51.1 publish on or before 30 September 2009:

- a) a 18 month AS roadmap which will establish the timing and content of the product and service developments and enhancements to existing products (the "Roadmap"); and
- b) a document specifying the change control process (the "Change Control Process") that applies to the Roadmap;

5.51.2 update and republish both the Roadmap and Change Control Process, following discussion with its customers, at least every six months thereafter;

5.51.3 ensure that the Roadmap:

- a) includes the list of the commitments agreed by BT and AS with its customers through the OTA-facilitated AS product and service development and enhancement identification process from December 2008 until August 2009 (the "Commitments"); and,
- b) describes when the Commitments will be delivered;

- 5.51.4 ensure that the Change Control Process provides for any change to the Commitments, including the delivery date, or the list of Commitments, to be subject to agreement with AS's customers following OTA-facilitation and review, reflecting the need for any revised Commitments to continue to deliver customer needs in a comparable manner to the Commitments.

Next Generation Access

5.52 AS may control and operate the assets contained within:

- (i) the Transmission Layer of BT's Access Network where required to test, build, implement and operate a BT Active FTTC Product and/or a BT Active FTTP Product; and
- (ii) the Transmission Layer of BT's Backhaul Network where required to test, build, implement and operate a BT Active FTTC Product.

5.53 To the extent that BT offers a BT Active FTTC Product and/or a BT Active FTTP Product it shall be provided by AS until such time as or to the extent that the active product in question is determined not to fall within a market for Network Access in which BT has been determined from time to time by Ofcom as having SMP.

5.54 If AS provides a BT Active FTTC Product and/or a BT Active FTTP Product pursuant to Section 5.53, it shall be provided in ways which ensure that:

- (i) it has robust and scalable processes and systems supporting provision, migration, monitoring and fault repair such that Communications Providers using that product are able to provide their End-Users with a reasonable experience (in terms of delivery within reasonable timescales and with minimal disruption);
- (ii) its availability, in such locations as that product is offered, satisfies reasonable Communications Providers' demand;
- (iii) it conforms to appropriate industry standards;
- (iv) the contracts for its provision include SLAs; and
- (v) there is timely delivery against the product roadmap developed in accordance with section 5.55.

5.55 If AS provides a BT Active FTTC Product and/or a BT Active FTTP Product pursuant to Section 5.53:

- (i) AS shall ensure that it is developed in accordance with a product roadmap developed through effective and appropriate ongoing consultation with AS's customers. The consultation process must consider, on an on-going basis, the specification of that product, the

Ofcom Ethernet Active Line Access, Updated Technical Requirements published on 3 March 2009 as amended from time to time and monitor the development, operation and deployment of that product.

- (ii) AS will set out in published guidelines the consultation principles it will follow for consultations related to FTTC and FTTP. These principles will include the setting out of the objectives of each consultation and the questions it will ask, the decisions they will inform, the timescale and process for responses, and how responses will be considered to ensure transparency. They will provide for a reasonable consultation period of not less than two weeks, other than in exceptional circumstances. They will also provide for publication of a statement explaining the decisions made, together with objective reasons, with clear linkages to the questions raised in the consultation.

5.56 AS shall conduct a consultation with industry in order to assess the demand for and Communications Providers' views on the design of FTTC Passive Inputs and Backhaul Products provided over the optical fibre part of FTTC. AS shall complete this consultation within three months of such time as End-Users in 1million premises are taking services based on a BT Active FTTC Product or at the latest during the course of 2011. The consultation process will address the needs of Communications Providers wishing to invest at the time of BT's upgrade programme as well as the reasonably foreseeable needs of those considering investing at some future time.

5.57 AS shall:

- (i) ensure that it meets reasonable demand (including willingness to pay according to Ofcom's approach to cost recovery as set out in paragraphs 8.40-8.46 of the NGA Statement) for FTTC Passive Inputs from Communications Providers wishing to locate their FTTC equipment in a Communications Provider's FTTC street cabinet facility (i) attached to or otherwise integrated with the BT FTTC Cabinet; or, if it is not technically or commercially viable for BT to do so, (ii) in the vicinity of the BT FTTC street cabinet, whether at the same time as AS installs its BT FTTC street cabinet or at some future time, where practicable and recognising that all reasonable security measures need to be adhered to.
- (ii) in designing the capabilities around its FTTC street cabinet deployment (the "Street Cabinet Solution"), adopt design principles relating to the provision of power and optical fibre availability that will enable other Communications Providers to locate their own equipment at or in the vicinity of BT's FTTC street cabinets in the most cost-efficient manner possible, all where practicable.
- (iii) taking into consideration the findings of the consultation with Communications Providers (as set out in section 5.56), review and modify its design principles for the Street Cabinet Solution, where

practicable, to facilitate meeting reasonable future demand for FTTC Passive Inputs cost effectively.

- (iv) in designing its systems for a BT Active FTTC Product, where practicable, adopt design principles that make it possible in future to enable the delivery of FTTC Passive Inputs on the basis provided in section 5.58.

5.58 This section will apply to the provision of FTTC Passive Inputs by AS until such time or to the extent that: they are determined by Ofcom to fall within a market for Network Access in which BT has not been determined from time to time to have SMP; or they are not included in SMP Conditions imposed upon BT following such a market review concluded after 01 June 2009 in which BT has been determined from time to time by Ofcom as having SMP.

- (i) In providing any FTTC Passive Inputs, AS shall use the same components, processes and systems it uses itself for the purposes of its BT Active FTTC Product where reasonably practicable and on the most cost-efficient basis.
- (ii) Where AS cannot provide FTTC Passive Inputs in accordance with sub-para (i), it shall provide FTTC Passive Inputs as far as possible to the same specifications with the same functionality and performance as the inputs it uses itself for the BT Active Product.

The EAB shall monitor the provision of the FTTC Passive Inputs pursuant to this section in accordance with appropriate metrics to be agreed by BT and Ofcom.

5.59 BT will by 31 December 2011 review with Ofcom whether sections 5.52-5.58 need to be varied, superseded or released in light of the FTTC and FTTP deployment and relevant FTTC and FTTP market and technological developments and may agree either that:

- (i) no changes to these sections of the Undertakings are required; or
- (ii) additional commitments, variations to, or release of, existing obligations in these sections, are required.

For the avoidance of doubt, if BT and Ofcom are not able to reach agreement sub-paragraph (i) above shall apply.

5.60 If Ofcom materially changes its approach to cost recovery in relation to the assessment of the costs that BT could recover in meeting the commitments in relation to FTTC Passive Inputs (as that approach to cost recovery is set out in paragraphs 8.40-8.46 of the NGA Statement), then Section 5.56 to 5.58 will cease to apply.

- .5.61 Sections 5.52 to 5.60 of the Undertakings will cease to apply for any future deployments in the event that the number of End-User premises capable of receiving a service based on either a BT Active FTTC Product or a BT Active FTTP Product does not exceed 500,000 by 31 December 2010 unless otherwise agreed by BT and Ofcom.

6. **Management and structure of BT Wholesale**

- 6.1 Within four months of the date that these Undertakings take effect, BT shall separate from each other and create the following two product management organisations within BT Wholesale each of which will be separately responsible for:

6.1.1 the product management of BT Wholesale's SMP Products other than those to be managed by BTS in accordance with these Undertakings (referred to herein as BTWS); and

6.1.2 the product management of other products of significance to other Communications Providers (referred to herein as BTS) namely:

- a) Wholesale Calls;
- b) any leased lines product variants of the types of leased line listed in paragraph 1 of Annex 3 created to meet the needs of Communications Providers in accordance with paragraph 3 of Annex 3; and
- c) any products added or removed in accordance with sections 6.4.2 or 6.4.3,

where 'product management' describes the activities referred to in section 6.5 a) to c).

For the avoidance of doubt the product management of BT Wholesale products which are neither SMP Products nor products within section 6.1.2 can be within BTS, BTWS or elsewhere within BT Wholesale as BT may decide from time to time.

- 6.2 A member of the BT Wholesale Executive Board will have responsibility for the performance of BTWS and BTS.
- 6.3 For the avoidance of doubt both BTWS and BTS may at any time product manage products which are not otherwise required to be product managed within either BTWS or BTS as provided for in section 6.1.
- 6.4 Products may be added to or removed from the scope of activity of BTWS or BTS on the following basis:

- 6.4.1 any new SMP Product or any Network Access falling within section 11.8.2 unless otherwise agreed by Ofcom which is not required to be provided by AS in accordance with section 5 shall be product managed within BTWS;
- 6.4.2 BT and Ofcom may agree to add existing or new products to the list of products required to be managed by BTS. Such products will generally only be added:
- a) if they are new products that are successors to the existing BTS portfolio; or
 - b) where:
 - i) a BT downstream managed product receives 55% or more of product revenue from other Communications Providers, and there is not an upstream managed product that provides equivalent functionality; and
 - ii) there is reasonable demand from Communications Providers for an equivalent product managed and supplied from BT's Upstream Division(s).

For the avoidance of doubt if BT and Ofcom are not able to agree the list will not be changed.

- 6.4.3 BT and Ofcom may agree to remove any product from the list of products required to be managed by BTS. For the avoidance of doubt if BT and Ofcom are not able to agree the list will not be changed.
- 6.4.4 BT shall product manage leased lines products for other Communications Providers in BTS in accordance with Annex 3.
- 6.5 BT employees working for BTWS and BTS shall have responsibility and control in relation to their respective products as follows:
- a) product management, including product specific terms and conditions and pricing;
 - b) product specification; and
 - c) product related procurement processes.

Incentive arrangements

- 6.6 The Scorecard for the member of the BT Wholesale Executive Board referred to in section 6.2 shall not include measures related to overall BT Group plc performance.

- 6.7 All incentive remuneration of BT employees working for BTWS shall reflect solely the objectives of BTWS. BTWS will operate to a Scorecard which reflects its responsibilities to deliver fair access to its SMP Products. The principles of that Scorecard will be cascaded to all BT employees working in BTWS who have currently, or may in the future have, bonus payments. Bonus payments based on Scorecard performance shall relate solely to the performance of BTWS and to any other relevant obligations under these Undertakings. Such bonus payments shall not be denominated in BT Group plc shares but BT employees working for BTWS remain eligible to participate in BT's ongoing and future general all-employee share plans and benefits arrangements.
- 6.8 BT shall as soon as reasonably practicable:
- 6.8.1 introduce new long term incentive plans for relevant BT employees working for BTWS including a deferred bonus plan ('new plans') which BT anticipates will be in place for implementation during the summer of 2006;
 - 6.8.2 where a BT employee has been granted an option over shares under the BT Group Global Share Option Plan or an award of shares under the BT Group Incentive Share Plan or the BT Group Retention Share Plan, and subsequently moves to BTWS, use its reasonable endeavours to replace those options or share awards with awards under the new plans.
 - 6.8.3 ensure that, where a performance condition applies to the granting or vesting of an award under the new plans, that performance condition shall relate to the performance of BTWS or some other appropriate index related to the objectives of BTWS; and
 - 6.8.4 ensure that no such awards in respect of BT Group plc shares shall be made to BT employees at a time they are working for BTWS except that BT Group plc shares may be part of an appropriately weighted basket of shares or some other appropriate index.
- 6.9 BT employees working for BTWS may not work at the same time for any of the Downstream Divisions, save as agreed in writing by Ofcom.

Other provisions

- 6.10
- 6.10.1 BT Wholesale Customer Confidential Information shall not be disclosed to AS or to the Downstream Divisions, or to BT employees working for BT Operate and BT Design whose incentive remuneration reflects the objectives of the Downstream Divisions, except:

- i) with the relevant customer's consent; or
- ii) to the minimum extent that disclosure to BT employees working for AS is necessary to operationally enable BT Wholesale to deliver BT Wholesale products to customers; or
- iii) where an order is transferred from one part of BT to another pursuant to section 5.47.5, and the information is disclosed solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.2 BT employees working for BTWS shall not directly or indirectly disclose its Customer Confidential Information to BTS except:

- i) with the relevant customer's consent; or
- ii) where an order is transferred from one part of BT to another pursuant to section 5.47.5, and the information is disclosed solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.3 BTWS and BTS Commercial Information shall not be disclosed to BT employees working for the Downstream Divisions unless:

- i) it is of the nature that would be provided to other Communications Providers in the ordinary course of business; or
- ii) the BT employees working for the Downstream Divisions are nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.4 Except in the case of those nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2, BT employees or agents (including its external advisers and sub-contractors) working for BTS, shall not unduly influence or attempt unduly to influence, the Commercial Policy

of BTWS otherwise than through mechanisms and processes identical or similar to those available to other Communications Providers.

6.11 Where:

6.11.1 BTWS decides, or is required, to add new functionality or capabilities to its products and such changes require changes to the assets delivering SMP Products within BTWS; or

6.11.2 BTWS receives from Communications Providers (including BT) and evaluates requests for new SMP Products,

BTWS shall secure in either or both cases that this is done in a manner which ensures that other Communications Providers do not suffer material competitive disadvantage in relation to BT.

6.12 In circumstances where demands for product enhancement from AS, BTWS or BTS create a situation which requires prioritisation by BT of its capital expenditure, BT will not unduly discriminate in its prioritisation. BT will seek the view of the EAB on the best means of avoiding such undue discrimination.

6.13 As soon as is reasonably practicable after the date that these Undertakings take effect, and for the purposes of assisting compliance with sections 6.10.2 and 6.10.3, BT shall secure:

a) the Management Information Systems which hold BTWS and BTS Commercial Information such that such systems are not available to BT employees working for the Downstream Divisions; and

b) the Management Information Systems which hold BTWS Customer Confidential Information such that such systems shall not disclose such information to BT employees working for BTS.

6.14 For the avoidance of doubt, nothing in this section 6 precludes BTWS or BTS or any other part of BT Wholesale from being provided with support services from across BT or from using BT's centres of excellence, provided that doing so will not require the disclosure of BTWS or BTS Commercial Information except in the case of those nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2, and except in the case of BT employees working for BTNI.

6.15 Where a product supplied by BTWS no longer falls within a market which Ofcom has notified as having SMP then to that extent, this section 6 of these Undertakings shall cease to apply in respect of that product, unless that product is then added to BTS in accordance with section 6.4.2.

7. **Equipment location**

7.1 Sections 7.1 to 7.8 apply to the location of Equipment in Exchanges.

7.1.1 The Undertakings in these sections 7.1 to 7.8 are given on the basis that BT will be deemed to be acting reasonably if its actions are substantially consistent with its corporate property strategy and its objectives for NGN deployment.

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

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

7.1.4 BT will consider reasonable observations provided under section 7.1.3 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.

7.2 Within six months of these Undertakings taking effect and on an on-going basis thereafter and subject to sections 7.3 to 7.8 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:

7.2.1 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;

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 they reasonably think BT must carry out to provide the Communications Provider Operational Area and having regard to any information that BT may have given the Communications

Provider about any work required to provide the Communications Provider Operational Area; and

7.2.2 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); and
- 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).

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

7.3 On receipt of the Communications Provider's request under section 7.2, BT shall 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.

7.4

7.4.1 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.

7.4.2 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.

7.4.3 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 7.4 and 7.8 the Communications Provider's request under section 7.2 will be deemed withdrawn unless there exists a bona fide dispute between BT and the Communications Provider in relation to the terms of offer made by BT in which case the period may, at the written request of either party to the dispute, be extended for further successive periods of one month (up to a maximum aggregate

period of six months from the date of the offer by BT) during which time such parties shall endeavour to resolve the dispute.

- 7.4.4 If no resolution is reached within two months from the date of the offer by BT the dispute may be escalated to a BT Wholesale Executive Board member at the written request of either of the parties to the dispute and if unresolved on the expiry of such six month period the Communication Provider's request under section 7.2 will be deemed withdrawn.
- 7.5 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.
- 7.6 BT may require that any Equipment must meet appropriate standards including, but not limited to, ETSI and ISO 14001 standards.
- 7.7 Within six months of these Undertakings taking effect, BT will provide (by placing the list on a password protected BT website) to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT a list of Exchanges that it intends to vacate in accordance with its property strategy. BT will inform any Communications Provider requesting to occupy a Vacation Exchange before the Communications Provider deploys its Equipment at the site that it is a Vacation Exchange and the proposed date of vacation. Subject to BT complying with its obligations under this section 7.7, the Communications Provider will vacate that site on or before the proposed vacation date and will not be entitled to any compensation from BT, except where existing SMP Conditions, directions or contractual terms apply. BT will have the right to amend that list from time to time as appropriate, and must do so at least every six months, during the period of these Undertakings, if there have been any changes, and such amended list shall be provided in the same manner as the original list to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT.
- 7.8
- 7.8.1 It will be part of the reasonable commercial terms offered by BT under section 7.4 that if any Communications Provider remains in occupation of an Exchange after the expiry or earlier termination of the agreement granting rights to occupy for the purposes of locating its Equipment, then the Communications Provider will fully indemnify BT against all payments, compensation, damages, actions, costs and claims howsoever arising under the terms of the BT and Telereal property transaction completed on 13 December 2001.

7.8.2 The reasonable commercial terms referred to in section 7.8.1 shall also include a process to enable the Communications Provider to obtain the best information available to BT at the time BT contemplates vacating an Exchange in respect of such payments, compensation, damages, actions, costs and claims.

For the avoidance of doubt, this section 7 does not apply to co-location as defined for the purposes of Metallic Path Facility and Shared Metallic Path Facility.

8. **Separation of Upstream and Downstream Divisions**

8.1 BT shall maintain an organisational separation between the Upstream Division(s) and the Downstream Divisions. BT will maintain a strong organisational separation of people, Commercial Information and Management Information Systems, between the sales functions of the Upstream Division(s) and the sales functions of the Downstream Divisions so that:

8.1.1 the sales functions of the Downstream Divisions are not in a position to influence the Commercial Policy of the Upstream Division(s) otherwise than through mechanisms and processes identical or similar to those available to other Communications Providers;

8.1.2 Customer Confidential Information of the Upstream Division(s) is not disclosed by its sales function to sales functions of the Downstream Divisions other than:

- a) with the customer's consent; or
- b) where an order is transferred from one part of BT to another pursuant to section 5.47.5.

8.1.3 Commercial Information of the Upstream Division(s) is not disclosed by its sales function to the sales functions of the Downstream Divisions unless it is of the nature that would be provided to other Communications Providers in the ordinary course of business.

8.2 Communications Providers wishing to purchase products which are product managed by either the Upstream Division(s) or Downstream Divisions, shall be account managed by either the Upstream Division(s) or Downstream Divisions according to their choice and they will experience no disadvantage, in terms of price, service, or quality, or product range by being managed by the Upstream Division(s).

8.3 BT shall ensure that other Communications Providers, wishing to purchase products from BT, are not obliged to deal with the Downstream Divisions in relation to such purchases, where such products are inputs to

products that they shall offer to End-Users in competition with the Downstream Divisions. In such circumstances BT shall ensure that other Communications Providers shall be able, in dealing with the Upstream Division(s) in relation to the purchase of products, to purchase them on exactly the same terms and conditions (including price) as offered by the Downstream Divisions, save where differences are trivial or where there are material differences between the products that the Downstream Divisions supply and the products that the Upstream Division(s) supplies.

- 8.4 For the avoidance of doubt, nothing in this section 8 shall of itself require BT to supply products which are not within a market in which BT has been determined by Ofcom as having SMP.
- 8.5 BT shall implement Level 1 Systems Separation between AS on the one hand and the Upstream and Downstream Divisions on the other of any system which is not a Management Information System or Operational Support System but which holds Commercial Information and Customer Confidential Information by 30 June 2010. For the avoidance of doubt the obligation in this section does not extend to any system which is operated exclusively by a function located outside AS and the Upstream and Downstream Divisions, or by a function listed in Annex 2 and accessed only by people in Annex 2. BT will use its reasonable endeavours to achieve such Level 1 Systems Separation earlier.
- 8.6 Except in the case of those nominated individuals (if any), and individuals occupying the roles and functional areas set out in Part A of Annex 2, BT employees working for the Downstream Divisions may not directly or indirectly unduly influence or attempt to unduly influence the Commercial Policy of BTWS or BTS, except through mechanisms and processes identical or similar to those available to other Communication Providers. This section shall not prevent the provision of information to, or provision of expert advice to, BTWS or BTS where these are so required.
- 8.7 Where the Downstream Divisions require changes or enhancements in SMP Products or BTS products described in section 6.1.2, these requirements will be addressed by a Statement of Requirements Process, as used by other Communications Providers. BTWS and BTS will ensure this operates without undue discrimination.

9. **Code of Practice**

9.1 Within four months of the date these Undertakings take effect, BT shall draw up and publish on relevant BT websites a Code of Practice, to be made available to all BT employees, which sets out how BT employees must act to ensure compliance with these Undertakings.

9.2.1 Unless otherwise agreed with Ofcom, the Code of Practice shall include specific guidance for BT employees in the following areas:

- a) AS;
- b) BTWS;
- c) BTS;
- d) rest of BT Wholesale; and
- e) those BT nominated individuals (if any), and individuals occupying the roles and functional areas listed in Annex 2 distinguishing between Parts A and B.

9.2.2 In the case of BTNI, the Code of Practice shall include specific guidance which shall cover those behaviours which will be required of BT employees working for BTNI to achieve consistency with the intent of these Undertakings.

9.3 The Code of Practice shall make plain the rules set out in these Undertakings for access to, and dissemination of, Customer Confidential Information and Commercial Information, and the restrictions on influencing Commercial Policy of AS, BTWS, BT Wholesale and BTS and, following appropriate union consultation in accordance with current agreements, make clear the disciplinary consequences of non-compliance. The Code of Practice shall also draw attention to BT's confidential telephone number and other access routes, established for general purposes and in accordance with the UK Combined Code on Corporate Governance, for reporting any concerns about BT's compliance with these Undertakings.

9.4 A programme of briefing and training shall be introduced on the launch of the Code of Practice, ensuring that all relevant employees of BT are, as soon as reasonably practicable, aware of their responsibilities in ensuring that BT complies with these Undertakings.

9.5 BT's mandatory compliance and regulatory training for all its employees shall cover compliance with these Undertakings and the Code of Practice.

10. **The establishment of an Equality of Access Board**

- 10.1 BT shall, within six months of these Undertakings taking effect, establish an EAB, consisting of five people, namely three independent members, one BT Group plc non-executive Director and one BT senior manager. The independent members shall be appointed once BT, having consulted Ofcom, is satisfied there is no material conflict of interest, having taken into account whether such person is:
- 10.1.1 an employee or former employee of BT;
 - 10.1.2 a director or senior executive of any other Communications Provider;
 - 10.1.3 a partner or senior executive of any firm, company or other organisation providing consultancy services to BT or any other Communications Provider;
 - 10.1.4 an employee of Ofcom; or
 - 10.1.5 a material shareholder in BT Group plc or in any other Communications Provider.
- 10.2 The BT Group plc Chairman shall appoint the BT Group plc non-executive Director. The BT Group plc Chairman shall also appoint the BT senior manager to the EAB who shall not be someone who is within the AS, the Upstream Division(s) or the Downstream Divisions.
- 10.3 The EAB shall be chaired by the BT Group plc non-executive Director.
- 10.4 Subject to receiving confirmation from BT that there is no material conflict of interest as referred to in section 10.1, the Chairman of the EAB shall appoint the three independent members following agreement with the BT Group plc Chairman (on behalf of the BT Group plc Board) and consultation with Ofcom.
- 10.5 BT shall consult Ofcom on any terms of reference for each EAB member and on the terms of appointment of each independent member.
- 10.6 The Chairman of the EAB, following agreement with the BT Group plc Chairman and consultation with Ofcom, may remove the independent members of the EAB.
- 10.7 The BT Group plc Chairman, in consultation with Ofcom, may remove the Chairman of the EAB or the BT senior manager.
- 10.8 In the first twelve months of operation the EAB shall have at least six meetings. Thereafter the EAB shall meet as frequently as the EAB determines from time to time.

- 10.9 The role of the EAB is a general one of monitoring, reporting and advising BT on BT's compliance with these Undertakings and the Code of Practice, with a specific focus on the provision of products on an Equivalence of Inputs basis, the operation of AS and the process set out in section 11.14A. It is not one of executive policy making for BT or any part thereof.
- 10.10 The minutes of each meeting of the EAB shall be sent to Ofcom within a reasonable time of each such meeting. Such minutes shall be a fair, true and accurate summary of each EAB meeting.
- 10.11 The EAB:
- 10.11.1 shall review the content of the Code of Practice;
 - 10.11.2 shall review BT's performance against KPIs which relate to these Undertakings;
 - 10.11.3 shall review reports of the EAO on complaints and complaint handling concerning BT's compliance with these Undertakings, including the conclusions of investigations into those complaints;
 - 10.11.4 shall review complaints regarding these Undertakings made by BT employees to BT's confidential helpline and access routes established for general purposes in accordance with the UK Combined Code on Corporate Governance;
 - 10.11.5 shall have the right to review any reports produced by the EAO;
 - 10.11.6 may, of its own initiative, review any aspect of BT's compliance with these Undertakings; and
 - 10.11.7 may, of its own initiative, review, or request the EAO to investigate, any other issue concerning these Undertakings.
 - 10.11.8 shall review reports of the EAO on its periodic monitoring of the Proactive Review process relating to space as set out in sections 5.49(e) and (f), including the conclusions of any investigations into Communications Providers' concerns relating to the space allocation process;
- 10.12 The EAB shall be responsible for monitoring and reviewing the product roadmaps and volume forecasts as referred to in section 5.13.1, as well as the associated investment decisions as referred to in section 5.13.2, as they relate to AS and SMP Products.
- 10.13 The EAB will be informed of the SLAs set by AS including those referred to in section 5.13.3 and may call for reports on performance against them. The EAB shall have oversight of compliance with these SLAs and may use the escalation route mechanisms set out in section 10.20 to comment

on the subject matter of SLAs, the levels at which SLAs are set or on performance delivered against them.

- 10.14 The EAB will review AS's supply of products to other parts of BT in accordance with these Undertakings.
- 10.15 In respect of any of the activities described in sections 10.11 to 10.14 the EAB:
- 10.15.1 may suggest to BT remedial action to ensure compliance with these Undertakings. BT shall take due account of any suggestions or comments the EAB may have;
 - 10.15.2 shall be informed of any action that BT has taken in relation to section 10.15.1 above. BT shall explain its conclusions and approach to the EAB;
 - 10.15.3 may comment on any action BT has taken, comment on whether such action was appropriate in ensuring compliance and suggest further remedial action if necessary; and
 - 10.15.4 shall record its view in the minutes of the appropriate EAB meeting. The EAB's annual report shall show summary details of such minutes, subject to commercial confidentiality.
- 10.16 BT shall inform the EAB of any breaches of these Undertakings that it identifies and the EAB secretary shall record such breaches in the minutes of the next meeting of the EAB.
- 10.17 The EAB shall inform Ofcom, within ten working days, when it comes to its attention that there has been a non-trivial breach of these Undertakings.
- 10.18 The EAB shall report regularly to the BT Group plc Board on BT's compliance with these Undertakings, with a particular focus on those sections of these Undertakings which concern the provision of products on an Equivalence of Inputs basis, the operation of AS and the adequacy of existing reporting controls, including the scope of proposed and actual KPIs.
- 10.19 BT shall report performance on KPIs relevant to these Undertakings. The EAB may review, from time to time, the matters which the KPIs shall cover and propose changes. BT shall provide information on such KPIs to the EAB in a timely manner unless it has a reasonable reason for not doing so. The EAB shall pay particular attention to proposed KPIs for migrations and for behavioural measures and may for these activities propose target performance levels. BT shall publish its performance against the KPIs on a quarterly basis. The first such publication shall be within three months of the establishment of the EAB.

- 10.20 In the event that one or more of the members of the EAB has a serious concern, the EAB shall have an escalation route via the EAB Chairman, ultimately to the BT Group plc Board. The EAB's annual report shall show summary details of any such escalations to the BT Group plc Board, subject to commercial confidentiality.
- 10.21 BT shall apply to the operation of the EAB those principles of the UK Combined Code on Corporate Governance which it considers appropriate and relevant.
- 10.22 The EAB shall be supported by the EAO, the resource for which shall be supplied by BT. The role of the EAO shall be to:
- 10.22.1 support the EAB on matters within the EAB's remit by analysing and reporting on the data provided on performance, commissioning reviews, and conducting such other inquiries as the EAB may from time to time require;
 - 10.22.2 consider any complaint brought to it by a Communications Provider that these Undertakings have been breached, report its decision to the EAB and once the EAB has noted or responded to the EAO, the EAO shall report back to the complainant on the action, if any, taken by the EAB as a result of the complaint;
 - 10.22.3 publish guidelines for dealing with such complaints. It shall inform Ofcom of any such complaints within a reasonable time of their receipt;
 - 10.22.4 produce reports to the EAB on the nature, type and pattern of complaints from Communications Providers relating to these Undertakings; and
 - 10.22.5 track and follow-up any complaints of breaches of these Undertakings made by BT employees to BT's confidential helpline. It shall report any relevant findings to the EAB.
- 10.23 BT shall ensure that the EAO has reasonable access to information held by BT that it needs to fulfil its role, regardless of where such information may be held by, or within, BT.
- 10.24 The EAO shall be able to draw upon the expertise of functions within BT including from BT's Internal Audit and Compliance team and the office of BT's Company Secretary.
- 10.25 BT shall ensure that the EAO is resourced commensurate with the demands placed upon it and is able to operate with the level of independence required.
- 10.26 The EAB shall have no remit in respect of:

- 10.26.1 actions and activities conducted in respect of the Regulation of Investigatory Powers Act 2000 and any other legislation relating to national security or relations with a foreign government;
 - 10.26.2 conduct of claims or litigation; and
 - 10.26.3 for the avoidance of doubt, matters outside these Undertakings.
- 10.27 The EAB shall conduct an annual review of compliance with these Undertakings in their entirety in relation to BT's financial year, commencing with the relevant months of the BT financial year 2005/2006. Upon completion of such a review the EAB shall send a report to Ofcom, which shall include a detailed, accurate and complete account of:
- 10.27.1 performance against KPIs;
 - 10.27.2 instances where a material breach of these Undertakings has been identified, and any steps taken as a consequence of such material breach and including a summary of non-material breaches for which purposes the EAB shall treat as 'material', any breaches notified to Ofcom as 'non-trivial' pursuant to section 10.17;
 - 10.27.3 Exceptional Incidents which have been formally notified to Ofcom under section 20.11;
 - 10.27.4 areas where it has a concern with regard to possible future breaches of these Undertakings, and the EAB considers that such concerns have not been adequately addressed by BT;
 - 10.27.5 steps BT has taken or is taking to ensure compliance with these Undertakings;
 - 10.27.6 the adequacy of the governance measures in place to ensure compliance with these Undertakings;
 - 10.27.7 how the report was compiled;
 - 10.27.8 a summary of any documents (excluding any internal audit reports, legal advice or legally privileged documents) prepared for the EAO for the purposes of preparing the report that substantiate significant conclusions of the report. Such documents shall be supplied to Ofcom if so requested; and
 - 10.27.9 whether the EAB had adequate resources at its disposal to discharge its duties pursuant to these Undertakings.
- 10.28 Once the review referred to in section 10.27 of compliance with these Undertakings has been approved by the EAB, the EAB shall offer a briefing on the report's findings to Ofcom.

- 10.29 Once the briefing on the report has been made to Ofcom, EAB shall publish no later than 30 June each year a summary report (the 'EAB annual report') on its activities as a distinct part of BT's annual regulatory compliance report. It shall be made available on the BT website.
- 10.30 The EAB annual report shall be audited by independent external auditors as part of their audit of BT's annual regulatory compliance report. The audit may include an opinion on the processes for non-financial metrics such as KPIs.
- 10.31 BT shall use reasonable endeavours to include in its letter of engagement appointing the external auditors referred to in section 10.30, provisions acknowledging the acceptance by the external auditors of duties and responsibilities to Ofcom in respect of its audit work, audit report and audit opinion, subject to a liability limit to be agreed with Ofcom.
- 10.32 The EAO shall report to the EAB on matters within the terms of reference of the EAB. Otherwise the EAO shall report as appropriate to the BT senior manager on the EAB and/or the BT Group plc Company Secretary.
- 10.33 The most senior person of the EAO and the EAB Secretary shall be appointed with the agreement of the EAB, save where the first such appointments occur before the establishment of the EAB and hence are made by BT.
- 10.34 The EAB will aim to reach decisions on a unanimous basis. Where it is unable to do so decisions will be made on a majority basis with the Chairman of the EAB having a casting vote and any dissent in relation to such a decision by an EAB member shall be noted in the minutes.
- 10.35 The EAB shall be quorate with three members present, one of which must be the Chairman of the EAB or his nominee. The BT senior manager shall also be entitled to nominate an alternate for him if he is unable to attend a meeting of the EAB, such alternate shall not be someone who is within AS, the Upstream Division(s) or the Downstream Divisions.
- 10.36 BT shall review with Ofcom the operation of the EAB within twelve months of its establishment and thereafter as agreed in writing by Ofcom.
- 10.37 The EAB shall determine how best to engage with representatives of industry in order to understand their issues and concerns.

11. **Next Generation Networks**

No foreclosure of network access

- 11.1 BT shall supply other Communications Providers with Network Access using its NGN in Network Access markets in which, from time to time, BT is determined by Ofcom to have SMP. Such provision of Network Access

shall not be conditional on the provision of another form of Network Access or another product, unless agreed by Ofcom.

- 11.2 The supply of Network Access covered by section 11.1 shall be on terms and conditions which allow other Communications Providers to compete effectively with downstream end-to-end services which BT provides over its NGN.
- 11.3 Whilst constructing its NGN BT shall not make any network design decisions on network architecture the effect of which would be to prevent the provision of Network Access as described in section 11.1 to other Communications Providers, without first formally consulting with other Communications Providers. If such consultations suggest that demand may exist for a specific form of Network Access, BT shall enter into commercial negotiations with those Communications Providers interested in such Network Access and shall continue such negotiations for a period of up to three months, during which period BT will not implement any such design decisions to its NGN which would prejudice the outcome of these negotiations.
- 11.4 Section 11.3 shall not apply where:
 - 11.4.1 the subject of the proposed design decision has previously been the subject of a consultation in accordance with section 11.3; or
 - 11.4.2 BT consulted with other Communications Providers and Ofcom but such consultations did not suggest demand existed for such Network Access; or
 - 11.4.3 BT consulted with other Communications Providers and Ofcom, such consultations did suggest such demand existed for the particular form of Network Access, BT entered into commercial negotiations with other Communications Providers, but BT did not supply the particular form of Network Access and was not required to do so by Ofcom as a result of regulatory action initiated by Ofcom within two months of Ofcom receiving notice from BT that the relevant commercial negotiations with other Communications Providers had ceased; or
 - 11.4.4 any request for Network Access made before or during the consultation referred to in section 11.3 is evidently frivolous or disingenuous.

Charges for SMP Products to be based on efficient design

- 11.5 Where charges for Network Access are required by an SMP Condition to be on a cost-orientated basis (however that requirement is expressed), and BT provides such Network Access using its NGN, BT shall set its charges for such Network Access on the basis of the costs it would have incurred in designing and building its NGN in the most efficient manner

that could reasonably have been employed in order to provide such Network Access. This section shall not apply where:

- 11.5.1 section 11.3 applied and BT complied with that section 11.3; or
- 11.5.2 BT consulted with other Communications Providers and Ofcom but such consultations did not suggest demand existed for the particular form of Network Access; or
- 11.5.3 BT consulted with other Communications Providers and Ofcom, such consultations did suggest such demand existed for the particular form of Network Access, BT entered into commercial negotiations with other Communications Providers, but BT did not supply the particular form of Network Access and was not required to do so by Ofcom as a result of regulatory action initiated by Ofcom within two months of Ofcom receiving notice from BT that the relevant commercial negotiations with the other Communications Providers had ceased; or
- 11.5.4 Ofcom sets a charge or charge control for the relevant form of Network Access pursuant to the Communications Act 2003.

Provision of Network Access on an Equivalence of Inputs basis

- 11.6 BT shall build its NGN and associated systems in such a manner as to ensure that other Communications Providers can purchase from BT Network Access on an Equivalence of Inputs basis.
- 11.7 Where BT provides Network Access using its NGN, it shall do so on an Equivalence of Inputs basis.
- 11.8 Sections 11.6 and 11.7 shall apply only to Network Access in markets in which:
 - 11.8.1 from time to time Ofcom has determined that BT has SMP; or
 - 11.8.2 BT may reasonably expect it to be determined that BT has SMP because:
 - a) the market is the immediate successor to a market or markets in which BT has previously been determined by Ofcom to have SMP; and
 - b) the SMP, which Ofcom has previously determined BT to have, is of an enduring nature.
- 11.9 Sections 11.6 and 11.7 shall not apply where it would not be reasonably practicable to provide Network Access on an Equivalence of Inputs basis for example where:-

- a) both Ofcom and BT agree that it is not reasonably practicable to provide Network Access on an Equivalence of Inputs basis; or
- b) in relation to a specific Communications Provider, that Communications Provider is not in a position to use the relevant Equivalence of Inputs product; or
- c) it is not practicable for BT to use that product internally, such as interconnection circuits; or
- d) it is a form of Network Access that is one that Ofcom and BT have agreed does not need to be supplied externally.

Provision of Network Access

11.10 Where BT launches a new downstream product which makes use of its Network Access provided by means of BT's NGN, it shall ensure that such Network Access is made available to other Communications Providers sufficiently in advance of the launch of such new product so that such other Communications Providers are able to launch competing downstream products to Communications Providers or End-Users at the same time as BT. For the avoidance of doubt, except where BT is required by virtue of these Undertakings to provide products on an Equivalence of Inputs basis, the AS or the Upstream Division(s) can deliver Network Access using BT's NGN to the Downstream Divisions as they see fit, provided that those Downstream Divisions experience the same charging regime and functionality as experienced by other Communications Providers.

11.11 Section 11.10 shall apply where the downstream product is based on Network Access in markets in which:

11.11.1 from time to time Ofcom has determined that BT has SMP; or

11.11.2 BT may reasonably expect it to be determined that BT has SMP because:

- a) the market is the immediate successor to a market or markets in which BT has previously been determined by Ofcom to have SMP; and
- b) the SMP, which Ofcom has previously determined BT to have, is of an enduring nature.

Industry group

11.12 Insofar as a multilateral industry group is established to agree key aspects of the transition from existing PSTN to NGN networks, and this industry group is endorsed by Ofcom, BT agrees to participate in that group.

Subject to agreement by other industry participants, BT agrees that the group should if it so wish and if it exists have authority to do the following:

- 11.12.1 Produce a reference interconnection architecture, setting out the manner in which NGN networks are expected to interconnect with each other;
 - 11.12.2 Produce a transition plan setting out the detailed process for managing the transition from PSTN to NGN networks, including the process for migrating PSTN interconnection to NGN interconnection;
 - 11.12.3 Produce a communications plan setting out how this transition will be communicated to End-Users; and
 - 11.12.4 Oversee the actual transition, taking any such action as may be necessary in order to ensure that the above plans are achieved.
- 11.13 For the avoidance of doubt, the group referred to in section 11.12 will not be responsible for, nor have authority over, managing the deployment by BT of its NGN, nor can its actions have the effect of materially delaying such deployment, except with the agreement of BT.
- 11.14 In the absence of such a new industry group as referred to in section 11.12, issues related to SMP Products impacted by BT's NGN, will continue to be managed through the Consult21 process and technical standards issues will continue to be managed through the Network Interoperability Consultative Committee.
- 11.14A (a) BT will set out in published guidelines the consultation principles it will follow for consultations related to BT's NGN.
- (b) These principles will include the setting out of the objectives of each consultation and the questions it will ask, the decisions they will inform, the timescale and process for responses, and how responses will be considered to ensure transparency. They will provide for a reasonable consultation period of not less than two weeks, other than in exceptional circumstances. They will also provide for publication of a statement explaining the decisions made, with clear linkages to the questions raised in the consultation.
 - (c) BT will publish its NGN plan of record every three months, with the first plan of record to be published no later than the 15th calendar day of October 2008. This will include information on points of interconnection, migration plans (on an exchange by exchange basis) moving from the current network to its NGN, and indicative non-binding roadmaps over two years for SMP products linked to BT's NGN.

- (d) BT will announce projected launch dates at least three months before launch of SMP products over its NGN, unless other regulatory obligations impose a different lead-time or as otherwise agreed with Ofcom.

Operational dispute adjudicator

11.15 Insofar as an operational dispute adjudicator scheme as a form of alternative dispute resolution (which does not conflict with sections 185-191 of the Communications Act 2003) for fast-track binding adjudication of operational disputes in relation to BT's NGN is established by Ofcom, following consultation with BT and other Communications Providers as to its terms of reference, BT agrees to participate.

11.16 Such operational dispute adjudicator scheme shall not deal with:

11.16.1 disputes which materially affect the initiating operator's business case associated with specific products, markets, or providers, including:

- a) pricing; and
- b) contractual terms; or

11.16.2 matters which materially affect the policy framework established by Ofcom; or

11.16.3 disputes whose outcome is likely to result in significant operational disruption or financial expenditure.

11.17 Such operational dispute adjudicator scheme will enable any Communications Provider, including BT, within two months of an operational issue arising in the context of BT's NGN implementation plan, including transition, relating to that Communications Provider, to refer operational disputes to this adjudicator for a time-limited binding decision. The nature of the time-limited decision shall be such that only the directly affected parties may file a dispute and all disputes must be resolved within four weeks. Following the resolution of a dispute, if further disputes are submitted addressing the same or similar points, BT can elect to bypass the operational dispute adjudicator scheme and refer directly to Ofcom.

Compensation arrangements

11.18 The principles BT will use in making compensation to a Communications Provider taking Network Access from BT as part of BT's implementation of NGN for network costs necessarily borne by such Communications Provider taking Network Access as a result of notified planned changes to access and interconnection arrangements, will take into account:

- a) the extent to which these changes are unilaterally decided by BT without industry agreement;
- b) the distribution of benefits that accrue from these changes;
- c) the asset life of any legacy interconnect equipment employed at the time of the change;
- d) the extent to which new investment of assets which cannot be re-employed is reasonably and justifiably made by a Communications Provider after it has been made aware of forthcoming changes; and
- e) the additional cost necessarily and directly incurred as a result of having to bring forward investment in new interconnect equipment.

“Broadband dialtone”

11.19 BT shall ensure that no Communications Provider, to which it supplies Metallic Path Facility or Shared Metallic Path Facility, suffers a material competitive disadvantage to its products based on such Metallic Path Facility or Shared Metallic Path Facility solely as a result of BT’s software-controlled migration between products made possible by its NGN.

NGN implementation

11.20 This section 11 contains all BT’s specific obligations by virtue of these Undertakings in relation to the development and implementation of its NGN. Subject to the provisions of this section 11, nothing in these Undertakings shall impede the flow of information reasonably required to enable BT to design, build, and implement its NGN or the decision making process relating thereto. Nothing in these Undertakings shall impede the flow of information reasonably required to allow BT to comply with its obligations under section 11.14A.

12. Contract management mechanism

12.1 BT will work with Ofcom and other Communications Providers to set up, within six months from the date these Undertakings take effect, an effective mechanism to deal with issues surrounding terms and conditions relating to SMP Products, it being noted that the mechanism will not apply to certain types of contractual provision.

13. Northern Ireland

13.1 Sections 5 (other than section 5.22), 6 and 8 of these Undertakings (subject as below) shall not apply in respect of BTNI.

13.2 For the avoidance of doubt:-

- a) in section 5.38 a BT employee or agent working for BTNI is not to be treated as an employee or agent of BT who is not working for AS;
- b) nothing in section 5.44 requires any separation in respect of BTNI or its systems or prevents BT employees or agents working for BTNI accessing AS systems.

13.3 For the purposes of section 5.45, “the rest of BT” does not include BTNI.

13.4 Notwithstanding anything in section 8.2, a Communications Provider based in Northern Ireland who meets the criteria referred to therein shall, if it so chooses, be entitled to be account managed by BTNI.

14. **Information requests and Co-operation**

14.1 Where, following consultation with BT on the draft of such a request, Ofcom make a proportionate request in writing for information reasonably necessary for Ofcom to monitor compliance with these Undertakings, BT shall provide such information to Ofcom within a reasonable period, being not less than fifteen working days, and which is reasonable having regard to the seriousness and urgency of the matter, of the request being received.

14.2 Where a request for information is received by BT under section 14.1 the reckless or deliberate provision to Ofcom of false or misleading information shall be deemed to be a breach of these Undertakings.

15. **Directions**

15.1 Where Ofcom:

15.1.1 has given BT a notification that it has reasonable grounds for believing that BT has breached any of these Undertakings, which specifies the Undertaking or Undertakings concerned and setting out its reasons and enclosed a draft of a direction which may specify or describe steps to be taken by BT for the purpose of securing compliance with the Undertaking or Undertakings concerned; and

15.1.2 has allowed BT a reasonable period, being a period of at least one month, to make representations to Ofcom following receipt of such notification; and

15.1.3 having considered any representations BT has made, is satisfied that BT is in breach of one or more of these Undertakings and has given BT a direction with reasons which may specify or describe steps to be taken by BT for the purpose of securing compliance with the Undertaking or Undertakings referred to in that section and which includes an address at which BT may give notice under a) or b) below,

BT may within two weeks of receipt of the direction, or such longer period as may be agreed with Ofcom in any particular case, give notice to Ofcom that it either:-

- a) accepts the direction; or
- b) following a decision to that effect of the BT Group plc Board, declines to accept the direction, in which case, for the avoidance of doubt the direction shall be of no effect.

In the event that BT fails to give a notice to Ofcom within the period specified above, it shall be deemed to have accepted the direction.

15.2 Where under section 15.1 BT accepts a direction it shall comply with the same. For the avoidance of doubt, if BT fails to comply with a direction it has accepted, it shall be in breach of these Undertakings.

15.3 For the avoidance of doubt, no prior finding, or direction under section 15.1 above, is required by Ofcom for BT to be in breach of these Undertakings.

16. **Breach of these Undertakings**

16.1 For the avoidance of doubt, where these Undertakings require BT to obtain Ofcom's agreement or consent, or to consult Ofcom before or when acting in a particular manner, but BT fails to do so, BT shall be in breach of these Undertakings.

16.2 Where any matter under these Undertakings involves BT obtaining Ofcom's consent or agreement or consultation with Ofcom, BT's obligations in respect of that matter, or any constraint on BT's ability to act in the case concerned, shall be conditional on that consent or agreement or any response to that consultation not being unreasonably withheld or delayed.

17. **Compliance with other legal requirements**

17.1 Compliance with these Undertakings does not affect the duty on BT and its respective directors and officers to comply with any of its obligations under:

- a) the Competition Act 1998;
- b) the Communications Act 2003;
- c) the Companies Act 1985, as amended;
- d) the Companies (Audit, Investigations and Community Enterprise) Act 2004; and
- e) any other law or enactment in any jurisdiction.

18. **Variation of these Undertakings**

18.1 BT and Ofcom may, from time to time, vary and amend these Undertakings by mutual agreement.

19. **Expiry and termination**

19.1 These Undertakings will automatically terminate in the event that a market investigation reference is made to the Competition Commission under the Enterprise Act 2002 in respect of markets to which these Undertakings relate and the Competition Commission determines remedies to address any findings by it in respect of the reference, unless the reference relates wholly or mainly to features of the market other than those addressed by these Undertakings.

19.2 Subject to sections 6.4.3 and 6.15 any commitments made under these Undertakings in respect of any SMP Products apply only for such time and to the extent that such SMP Products are required to be supplied as a result of a finding of SMP.

19.3 The entirety of these Undertakings shall no longer apply if, at any point in time, BT is not the subject of any determination by Ofcom that it has SMP in any market connected with Network Access. These Undertakings will cease to apply to the extent that, in the case of any geographical area, BT is not the subject of any determination by Ofcom that it has SMP in any market connected with Network Access in relation to that area. In either case, BT will give Ofcom notice that the Undertakings have ceased to have effect, or the extent to which this is the case, as the case may be.

19.4 BT shall be entitled at any time to make representations to Ofcom with a view to Ofcom undertaking a review of these Undertakings to determine whether and if so to what extent they should cease to apply.

20. **General**

- 20.1 For the avoidance of doubt nothing in these Undertakings shall automatically amend BT's contracts with other Communications Providers.
- 20.2 Nothing in these Undertakings shall prevent BT from complying with any applicable laws and regulations and in particular nothing shall inhibit the provision of information to any employee of BT who requires that information for the purpose of matters relating to the Regulation of Investigatory Powers Act 2000 or any other matters relating to national security, or otherwise prevent BT from doing anything necessary in connection with national security.
- 20.3 These Undertakings apply in so far as BT is not prevented from complying owing to a matter outside its reasonable control.
- 20.4 During an initial transitional period for implementation, these Undertakings shall have effect subject to any changes agreed between BT and Ofcom.
- 20.5 For the avoidance of doubt, the following sections shall not come into force until four months from the date on which these Undertakings take effect: 5.38, 5.39, 5.40, 5.41, 5.47, 6.10, 8.1 and 8.6.
- 20.6 Nothing in these Undertakings shall require BT to publish or otherwise disclose confidential information, other than to Ofcom.
- 20.7 For the avoidance of doubt nothing in these Undertakings affects the participation of BT employees in the various BT pension schemes.
- 20.8 Where any matter under these Undertakings involves either BT or Ofcom's consent, agreement or need to consult the other, such consent, agreement or consultation shall be in writing.
- 20.9 For the avoidance of doubt, the nominated individuals (if any) and individuals occupying the roles and functional areas set out in Annex 2 shall not abuse their positions to circumvent the intent of these Undertakings and BT employees or agents working for BTNI shall not abuse the provisions set out in sections 13.1 to 13.4 to circumvent the intent of these Undertakings.
- 20.10 Notices
- a) All notices given by BT to Ofcom under section 15.1.3 of these Undertakings must be in writing and may be delivered by hand, fax, e-mail or first class registered post to the address shown in the direction given by Ofcom as described at section 15.1.3:
 - b) The reasonable period allowed for BT to make representations set out in section 15.1.2 and/or the two week period (or such longer period as may be agreed with Ofcom in any particular case) set out

in section 15.1, shall only begin if the notification received by BT as referred to in section 15.1.2 or the direction received by BT under section 15.1.3 is in writing and has been delivered by hand, fax, e-mail or sent by first class recorded delivery post as follows:

to: the Office of the Group General Counsel
British Telecommunications plc
pp C5A
BT Centre
81 Newgate Street
London
EC1A 7AJ

Tel: +44 20 7356 6279
Fax: +44 20 7600 6891
Email: generalcounsel@bt.com

copy to: the Office of the Group Director of Regulatory Affairs
British Telecommunications plc
pp C8K
BT Centre
81 Newgate Street
London
EC1A 7AJ

Tel: +44 20 7356 3256
Fax: +44 20 7600 2709
Email: directorregulatoryaffairs@bt.com

- c) Any notice referred to in this section 20.10 shall be duly served:
- i) if delivered by hand, at the time of delivery;
 - ii) if sent by first class recorded delivery post, three working days after the date of posting;
 - iii) if sent by fax, at the time of transmission; and
 - iv) if sent by email, at the time of transmission.

In the case of service by way of fax or email, a print out of the fax or email must also be sent by post as soon as reasonably practicable thereafter.

20.11 Exceptional Incidents

- 20.11.1 Nothing in these Undertakings shall prevent BT from taking any reasonable and proportionate steps strictly necessary for dealing with an Exceptional Incident to the extent required in terms of duration and geography to resolve that Exceptional Incident, including taking any action, or otherwise doing or not doing any thing, which, but for this section 20.11.1, may be considered to be a breach of any of these Undertakings.

- 20.11.2 By the third working day after an Exceptional Incident has been declared by the BT Group Senior Representative concerned, BT will notify Ofcom in writing of the Exceptional Incident. The notification shall include an explanation of the basis on which the BT Group Senior Representative declared the incident to be an Exceptional Incident.
- 20.11.3 Following notification of an Exceptional Incident Ofcom shall notify BT when BT shall be reasonably required to provide Exceptional Incident Report or Reports to Ofcom during the period of the Exceptional Incident. For the avoidance of doubt these reports may be oral or written.
- 20.11.4 Where an Exceptional Incident lasts for more than 30 calendar days, BT will notify Ofcom in writing of the continuation of that Exceptional Incident and will renotify Ofcom in writing at a minimum every 30 days throughout the duration of the Exceptional Incident. Such notification will be accompanied by a written Exceptional Incident Report.
- 20.11.5 If Ofcom reasonably decides, following notification under section 20.11.2, that an Exceptional Incident should not have been classified as an Exceptional Incident or during the period of an Exceptional Incident that the incident should no longer be classified as an Exceptional Incident Ofcom may give BT 5 working days written notice that section 20.11.1 shall cease to apply to that incident as from the conclusion of the notice period and for the avoidance of doubt any obligation under section 20.11.3 to report to Ofcom shall cease.
- 20.11.6 When an Exceptional Incident is closed BT will notify Ofcom in writing of the closure.
- 20.11.7 Following closure of an Exceptional Incident, or if pursuant to section 20.11.5 an incident ceases to be classified as an Exceptional Incident, BT will, within 10 working days thereof, deliver to Ofcom a written Exceptional Incident Report.
- 20.11.8 Following receipt by Ofcom of a written Exceptional Incident Report under section 20.11.7 BT shall provide to Ofcom on a confidential basis any additional information about the Exceptional Incident which Ofcom may reasonably require of it.
- 20.11.9 The EAB will include in its annual report to Ofcom under Section 10.27 of these Undertakings a review of the operation, if any, of this section 20.11 during the year concerned.
- 20.11.10 Ofcom may at any time review the operation of this section 20.11 and if Ofcom considers that this section 20.11 should no

longer apply Ofcom may give BT six months notice that this section 20.11 will cease to apply. Any Exceptional Incidents which are ongoing at the expiry of the six months notice shall automatically be closed, unless otherwise agreed with Ofcom.

20.11.11 In this section:

‘Exceptional Incident’ means an incident, whether or not related to BT’s electronic communications network, where:

- a) in accordance with BT’s normal incident management process, a BT Group Senior Representative is appointed to oversee the management of the incident; and
- b) the BT Group Senior Representative reasonably declares the incident to be an Exceptional Incident falling within section 20.11 of these Undertakings. For the avoidance of doubt the BT Group Senior Representative will be regarded as acting reasonably in declaring an Exceptional Incident if the incident involves for example:
 - i) increased risk of loss of life or significant risk for the health and safety of BT people or others;
 - ii) major terrorist or criminal activity or extremely severe weather conditions or other significant unforeseeable events adversely affecting the network and resulting in significant and widespread damage to considerable parts of BT’s network;
 - iii) the activation of BT’s emergency response teams to deal with dangerous chemical, biological, radiological or nuclear substances; or
 - iv) serious and widespread illness of pandemic or epidemic proportions affecting a significant proportion of BT’s workforce at the same time or imposing movement restrictions on BT’s workforce.

and where the scale or nature of the incident is such that it is likely that exceptional measures will be required in response.

‘Exceptional Incident Report’ means a report concerning the incident that contains the following information:

- a) a description of any action(s) that BT has taken, or any thing which it has done or not done, which, but for this section 20.11, may be considered to be a breach of any of these Undertakings;
- b) an explanation of why BT considered it reasonable and proportionate to act in such ways; and

- c) the period or periods during which BT acted in such ways, the locality of such actions and the approximate number of people involved.

For the purposes of sections 20.11.4 and 20.11.7, the written Exceptional Incident Report that contains confidential information, commercial or trade secrets, personal information, or defence or national security information shall be accompanied by a non-confidential version suitable for publication by Ofcom.

'BT Group Senior Representative' means the BT on-call manager, who acts as the senior representative of the BT Crisis Management Team appointed to advise on the assessment of incidents and oversee and arbitrate in respect of the triggering and delivery of BT's response to those incidents.

21. **Effective date of these Undertakings**

21.1 These Undertakings take effect on 22 September 2005.

Signed for and on behalf of British Telecommunications plc:

Signature: - - - - -

Name: - - - - -

Position: - - - - -

Date: - - - - -

Accepted for and on behalf of Ofcom:

Signature: - - - - -

Name: - - - - -

Position: - - - - -

Date: - - - - -

Annex 1
Equivalence of Inputs Timetable

1. For Wholesale Analogue Line Rental, the RFS date will be 30 June 2007. The following intermediate staged milestones post the RFS date will apply in respect of Wholesale Analogue Line Rental:
 - a) at least 30% of BT's relevant installed End-User base as at 30 June 2008 will have been migrated to the Equivalence of Inputs product by that date; and
 - b) at least 70% of BT's relevant installed End-User base as at 30 June 2009 will have been migrated to the Equivalence of Inputs product by that date.
2. For Wholesale ISDN2 Line Rental, the RFS date will be 30 September 2007.
3. For Wholesale ISDN30 Line Rental, the RFS date will be 29 February 2008.
4. For Wholesale Extension Service, the RFS date will be 30 September 2006, and the IBMC date in relation to BT's relevant retail Ethernet-based local area network extension service will be 31 March 2007.

5. The RFS date for Shared Metallic Path Facility will be 30 June 2006. The IBMC date in relation to asymmetric IPStream will be 31 December 2006.
6. The RFS date for Metallic Path Facility will be 30 June 2006. The IBMC date in relation to symmetric IPStream will be 31 December 2006.
- 7.(i) For IPStream the RFS date will be 31 December 2005 and the IBMC date in relation to BT's relevant retail broadband service will be 31 December 2006.
- 7.(ii) BT will make IPstream Connect available for order on 31 October 2008. On 31 October 2008 BT will start the migration of the relevant BT and Communications Providers installed End-user base. For IPstream Connect the IBMC date in relation to IPStream will be 31 March 2009. The migration of the Communications Providers installed End-User base will be completed on 31 March 2009.
8. For Backhaul Extension Service BT will have Equivalence of Inputs capable systems in place by 30 September 2006.
9. BT shall by 30 September 2006 launch a Wholesale Extension Service Backhaul Product which shall be offered on an Equivalence of Inputs basis.
10. With effect from the relevant RFS date, for those Communications Providers who wish to migrate their existing End-Users to the EOI product, BT will discuss with any such Communications Provider how their End-Users' migrations could be accomplished with minimum disruption to the Communications Providers' End-Users, their service and systems, dependent in particular on the volume of customers each Communications Provider needs to migrate. BT and the Communications Provider will endeavour to work jointly in achieving a smooth transition. In any event, subject to the provisions of section 20.3, the migration will be completed by the relevant IBMC date. For the avoidance of doubt this paragraph refers to customer migrations rather than product migrations dealt with in sections 3.7 and 3.8 of the Undertakings.
11. For Shared Metallic Path Facility and Metallic Path Facility the RFS dates shown above are the dates from which an Equivalence of Inputs product is available for use by Communications Providers and by BT (and is in use by BT) for new customers of products based upon that Shared Metallic Path Facility or Metallic Path Facility. The BT products to which the Shared Metallic Path Facility is an input are asymmetric IPStream until IBMC for IPstream Connect and asymmetric IPstream Connect as of the date IPstream Connect is available for order. The BT products to which the Metallic Path Facility is an input are symmetric IPStream until IBMC for IPstream Connect and symmetric IPstream Connect as of the date IPstream Connect is available for order. The definition of End-User included in the RFS date definition set out in section 2 of these Undertakings shall be read accordingly.

Annex 2

PART A

Any member of the board of directors of BT Group plc or British Telecommunications plc, and the Company Secretary of either Company

Any member of a committee of the Board of BT Group plc, including the BT Group Operating Committee

Group General Counsel

Legal and Regulatory

Group Strategy

Group Risk and Insurance

Head of Ethics/Business Practices

Group Technology for the purposes of planning and implementing BT's NGN

Group Portfolio

Group Commercial Policy Forum

Any part of BT acting under the Regulation of Investigatory Powers Act 2000 or other legislation relating to national security or relations with a foreign Government, or any body empowered to advise on or define pan-BT security related policies

Procurement

The following areas in Group Finance:

Group Financial Control

Group Treasury

Group Tax

Group Reporting, Planning and Analysis, and Controller BT Group

Group Corporate Finance

Commercial and Regulatory Finance

Industrial Action Contingency Group and other crisis management teams

And in all cases their:

- a) equivalents working for BTNI;
- b) relevant external advisers, sub-contractors and agents; and
- c) their successor bodies, roles and functional areas from time to time.

PART B

Any member of the EAB and the EAO, including the EAB secretary

External Auditors

External Quality Assurance

Finance

Internal Audit

Compliance

AS Audit Committee members

Human Resources

Group Information

BT Property

Group Technology (including development)

BT Company Secretary's Office and Board Secretariat

Press, communications, media, public affairs, government relations and investor relations; BT Regions, BT Regional Directors and members of BT Regional Board

BT Group Risk Panel

Billing Centre of Excellence

Business Improvement Centre of Excellence, for the development of equivalent processes in discharge of these Undertakings, and as a source of expertise and advice in modelling and process development

Security

The Program offices involved in implementing these Undertakings

And in all cases their:

- a) equivalents working for BTNI;
- b) relevant external advisers, sub-contractors and agents; and
- c) their successor bodies, roles and functional areas from time to time.

Annex 3

Leased lines

1. The leased lines products to which paragraphs 2 to 8 below will apply are the following products offered by BT at the date these Undertakings take effect:
 - 1.1 Netstream private circuits;
 - 1.2 Analogue private circuits;
 - 1.3 Kilostream private circuits;
 - 1.4 Megastream digital private circuits, up to and including 45Mb/s; and
 - 1.5 Variants of the above which are used to provide enhanced resilience.
2. BTS will appoint a senior product manager who will be responsible for ensuring that BTS complies with paragraphs 3 to 8 below of this Annex 3.
3. It will be the responsibility of BTS to develop, manage and offer variants of the leased lines products set out in paragraph 1 above which are intended to meet the reasonable requirements of its customers who are Communications Providers.
4. BT will proactively consult and engage with its customers who are Communications Providers in order to seek out their requirements in relation to leased line products. BT shall ensure that within four months of the coming into force of these Undertakings BT has identified if and how those Communications Providers' customers consider that the current leased lines products offered by BT do not adequately meet their reasonable needs, and the modifications or enhancements they would consider appropriate.
5. Communications Providers will remain free to purchase the variants of BT's leased lines products which are offered by the Downstream Divisions should they so wish.
6. Communications Providers will be eligible to migrate leased lines described in paragraph 1 of this Annex 3 which they have purchased, prior to BTS offering new leased lines variants, through the Downstream Divisions to any new variant of that type of leased line offered by BTS without charge or penalty. For the avoidance of doubt, if, after a Communications Provider has migrated a leased line purchased from the Downstream Divisions into a leased line variant offered by BTS, and prior to the termination of the contract period, it then migrates that BTS supplied leased line product to another leased line product, BT will be entitled to charge a reasonable fee both for the migration to the other leased line product and for the prior migration to the leased line product offered by BTS.

7. It is not BT's intention that any leased lines product variants to be offered by BTS should be any form of intermediate product between Partial Private Circuits and retail leased lines.
8. BTS will undertake a review of the progress it has made towards development of leased lines product variants that meet the reasonable needs of Communications Providers approximately six months after the creation of BTS and shall share the findings of its review both with Ofcom and with those Communications Providers who were consulted in accordance with paragraph 4 of this Annex 3.

Annex 4

Equipment

- a) Access network termination equipment
- b) Broadband servers
- c) Video servers
- d) Aggregation equipment for backhaul
- e) Private circuit termination
- f) Any additional equipment reasonably identified by any other Communications Provider and agreed in writing between BT and Ofcom.

Provided that none of the equipment shall be used in the provision of Wireless Telegraphy as defined in the Wireless Telegraphy Act 1949 (as amended or re-enacted). This restriction shall be reviewed from time to time with Ofcom.

Annex 5

List of the Thirteen MIS Systems

Amethyst Wholesale	Amethyst is a data warehousing application developed on an Oracle database. It gives users the capability to drill down and search for detailed information. Amethyst contains network product, financial and investment data.
Aspire	Accounting Separation, Product Integration & Reporting Environment (ASPIRE) is BT's regulatory accounting system based on ORACLE. It is the source system for BT's annual published regulatory financial statements. It ensures that costs are appropriately allocated across BT's activities, and provides detailed product level cost information
CAMERA	Campaign Management Evaluation and Reporting Application (CAMERA) is a BT wide system for creating, managing and reporting on BT Marketing Campaign spend. The system manages the financial and procurement activities associated with marketing campaigns and provides a reporting function for campaign managers.
CDS	CDS is a data warehouse which receives inputs from various systems including CAMSS, COSMOSS and CSS. Against these inputs, CDS provide various quality of service and management information reports against BT line of business provision, repair, customer contact and call centre activities.
CID	The Central Information Database is a data warehouse which collates financial and non-financial information from all Lines of Business. Information is accessible by Line of Business and is also summarised for Group-level accounting and reporting purposes .
eCAESAR	E-Caesar stands for "electronic COSMOSS Activity Extract and Summary Analysis Reports". It extracts real time order data for Private Circuits from COSMOSS and makes it available on a web page.
Hyperion Strategic Finance	Hyperion Strategic Finance is a tool that is used by BT within its annual strategic planning process. It forecasts the financial data for any predefined account based upon the driver of that account.
Netview	Netview stores Quality of Service data for orders that have been provided to customers. The system calculates and reports measures for Productivity, Quality, Finance and Volumes.
NIMS MIS	NIMS MIS is a data warehousing system which measures and reports on the performance of field force activities. The system also reports on costs for engineering jobs.

POWERHOUSE	The Powerhouse is a BT Group Level data warehouse which collates Product Volumes information from all Lines of Business. Information is summarised for Group-level accounting and reporting purposes.
Retail Amethyst	Provides reports to support the debt management processes by integrating "Aged Debt" reports/feeds from the separate billing systems into unified reports for the Lines of Business.
RM Datamart	The RM Datamart is a Resource Management system providing web-based reports. Its prime function is to match and supply appropriately skilled resources based on demand.
Web MIS	Web MIS provides reports that are used by teams across BT Lines of Business to identify and act against the causes of customer dissatisfaction and business process performance issues.

Annex 6

List of Shared Operational Support Systems

OSS Name:	OSS Description
Exchange Records in BT (BerT)	BerT is used to record the physical inventory of Transmission and 21CN related equipment in BT exchange buildings.
Core Cable Management System (CCMS)	CCMS holds fibre Core Cable records for the whole of the UK, it provides data into systems like NETRISK to support separacy checks.
Fibre Repair Analysis Centre (FRAC)	FRAC is a fault report database that tracks information pertaining to fibre optic faults.
Integrated Network System (INS)	INS supports planning, assignment and maintenance of the Analogue and PDH network. Used for the planning and routing of Wideband provisions and BT's PSTN Core Network. This includes the SDH Physical Bearer Network, WDM Bearer Network, and 21CN Networks. Provides facilities to design, repair and route circuits, record transmission equipment and fibre information and check separacy/diversity requirements.
The National Cable Database (NCD)	NCD holds all data relating to the design, planning and provision of network cables.
The Network Decision Support Database (NDS)	NDS provides scheduled and ad-hoc operational management information reports and data extracts relating to the network and switches. It is widely used for provision, problem management, network management, and resource management purposes.
NETRISK	NETRISK records inter-exchange fibre cable routes down to duct level (i.e. box to box records), and reports the results of physical separacy checks as risk ids between specific routings or cable ids passing though a given duct structure.
Physical Inventory Planning E-Records (PIPeR)	PIPeR will in time hold all BT's internal and external physical inventory in support of the planning process.
Planning And Recording Modernisation (PRM)	PRM is used by BT's planners to plan network changes. It contains scanned raster images of BTs external network overlaid on a geographic map base of UK.
Mobile Infrastructure	MIPT is a planning tool used for 3rd Generation Mobile

Planning Tool (MIPT)	networks. It overlays information about BTs network onto UK maps to support shared infrastructure planning decisions.
Common Infrastructure System (CIS)	CIS is a web based tool which provides reports based solely on CCMS information. These may include e.g. the core cables in a particular manhole or duct.

Or such successor or replacement Operational Support System, or such additional Operational Support Systems as may be added by agreement between BT and Ofcom.