



*BT's RESPONSE TO OFCOM'S
CONSULTATION
THE REPLICABILITY OF BT'S REGULATED
RETAIL BUSINESS SERVICES*

14th October 2005

BT welcomes any comments on the content of this document which is available electronically at <http://www.btplc.com/responses>

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Executive Summary

BT supports the objectives of Ofcom's Consultation and is pleased that its work in creating replicability through the implementation of robust wholesale products has been recognised. A pre-requisite to providing these wholesale products has been to pro-actively engage with industry, addressing any remaining issues associated with being able to replicate BT's retail business calls, exchange lines and leased line products.

This Consultation is timely considering the acceptance of the Enterprise Act Undertakings and BT's work on providing greater transparency within the telecommunications sector. These commitments provide Ofcom and industry with strong assurances relating to BT's wholesale portfolio such that Communications Providers have renewed confidence to actively participate in the marketplace. Indeed there are already over 5 million CPS users, more than 1.6 million Wholesale Line Rental installations and 67,800 Partial Private Circuits in existence, and trends suggest that these will continue to grow. Such intense competition has had a significant impact on BT's market share, but current regulation prevents BT from being able to compete on the same basis as others.

The market is ripe for deregulation; business customers often demand and expect to be offered tailored packages to meet their particular needs. It is helpful that Ofcom recognises the need for some degree of deregulation in this consultation, but the bundling proposals does not go far enough and it is therefore welcome that Ofcom is looking to further deregulation in its consultation regarding *Regulation of Business Retail Markets*, issued on 7th September 2005. BT is responding separately to the second consultation.

This Consultation focuses on satisfying replicability tests in three main areas.

Retail business calls: BT has addressed all outstanding issues such that BT's retail business calls products are replicable. Specifically, BT has:

- introduced a CPS pre-validation process, and further committed in BT's Undertakings to provide access to its address file by 31 December 2005;
- published an incompatible products list;
- agreed to BT Retail adopting an equivalent transfer charge as faced by CPSOs for successful orders from 1 December 2005;
- applied the same forecasting and penalty regime to BT's retail activities as is faced by CPSOs; and
- introduced a homemovers process for CPSOs that is comparable to those made available to BT's retail activities.

Retail exchange lines: BT has implemented a revised 'WLR2' product (called 'Wholesale Access') and supports Ofcom's initial conclusion in its October 2005 '*WLR Fit for Purpose Assessment*' consultation that this product meets the Fit for Purpose (FFP) criteria. BT has made changes to its systems to ensure that there are no material differences between the processes for BT Retail and other Communications Providers to order, provision and transfer lines. BT will implement a system from the end of October 2005 to enable Communications Providers to view WLR orders and faults that have been closed, and from January 2006 Communications Providers will be able to view the same information on open orders and faults. As a result, BT's retail exchange lines are replicable and regulation should be removed at the retail level.

Retail leased lines: BT has addressed the majority of the outstanding issues raised in the Consultation, including the introduction of price changes on Path protection products as of 1 October 2005 and improvements in the quality of PPC billing. Further, BT has plans in place to accommodate the other issues raised. BT believes that BT's retail leased lines product are replicable and hence that regulation at the retail level should be removed.

As BT's retail business calls, exchange lines and leased line products are replicable, BT urges Ofcom to conclude that BT should be able to bundle these products with non-SMP products. In relation to bundling, Ofcom has put forward some economic tests for the bundling of SMP products with non-SMP products and BT would like to comment on these tests. In particular:

- Implicit price-cost test: Ofcom's proposed requirement that each element of the bundle should have a margin is at odds with Ofcom's acceptance in its 'Retail Business Pricing' consultation that the whole bundle should pass a price cost test. A price cost test of the whole bundle is sufficient to ensure that competitors can compete with BT.
- Net revenue test: We do not believe that Ofcom should require BT to demonstrate that revenues would be higher with a bundle than without the bundle. Such a test would effectively amount to Ofcom's approval or rejection of commercial decisions on a price-by-price basis.

We believe that the steps that we have taken and the plans that we have in place mean that the ability to replicate BT's retail products is a reality. This has been achieved through pro-active and continued dialogue with our wholesale customers. The market environment demands deregulation at the retail level to deliver a truly competitive market where all players have the same ability to compete. Such a regime will deliver genuine benefits to business consumers and the industry as a whole.

Introduction

Over the past five years BT has taken significant steps to enable Communications Providers to replicate BT's retail products. BT's existing wholesale products, namely Carrier Pre-Select (CPS), Wholesale Line Rental (WLR), and Partial Private Circuits (PPCs), are designed to allow competitors, both commercially and technically, to offer the same or comparable business calls, exchange lines and leased lines products provided by BT's retail operation. The take-up of these wholesale services clearly demonstrates that Communications Providers are using such services to actively compete at the retail layer.

As set out below, BT has addressed the issues raised in Ofcom's consultation and means that Ofcom can conclude that the ability to replicate the identified products is in place. BT's Undertakings as part of Ofcom's Strategic Review of Telecommunications to provide a number of wholesale products and services on an 'Equivalence of Inputs' (Eoi) and/or transparency basis should provide Ofcom and industry with strong assurances that BT's retail products and services will remain replicable for the future.

BT has concerns, however, with the economic tests proposed by Ofcom for allowing BT to bundle SMP and non-SMP products. These concerns are discussed in detail below.

Economic Tests and Replicability Criteria

Q.1: Do respondents believe that the tests set out in the October 2003 consultation and May 2004 statement remain the correct tests to use when assessing whether BT should be permitted to bundle retail business SMP products or do the undertakings proposed in the TSR mean that some of the tests are no longer necessary?

In BT's view, the Undertakings resulting from Ofcom's Strategic Review, once implemented, make all tests proposed by Ofcom for permitting BT to bundle retail SMP and non-SMP products unnecessary. The Undertakings make explicit commitments to Equivalence of Input and/or transparency for industry. Aside from Equivalence of Input for WLR, the Undertakings also require BT to be transparent on PPCs and CPS and any differences to be fully explained.

But even before the Undertakings are implemented, BT's view is that, assuming replicability, some of the economic tests proposed by Ofcom are unnecessary, disproportionate and inconsistent with Ofcom's obligation to withdraw sector-specific obligations where markets are effectively competitive.

The Oftel October 2003 consultation and the May 2004 Statement regarding '*BT's pricing of services for business customers*' proposed there should not be a presumption that bundling of services where BT has SMP is unduly discriminatory, provided that:

- (I) the services within the bundle can be replicable, technically and commercially by competitors;
- (II) the bundle price is capable of passing a net revenue test;
- (III) the implicit price of each element in the bundle is capable of passing an implicit price-cost test (with the non-SMP elements taken together);

- (IV) eligibility for any level of discount for the overall bundle of services is not dependent on the customer spending a minimum sum on any individual service within the bundle;
- (V) details of the bundled price or discount scheme are published; and
- (VI) the bundled price or discount scheme is made available to all broadly comparable customers.

BT accepts that conditions (I), and (VI) are legitimate in the context of this Consultation. However, we do not believe that (II), (III), (IV) and (V) are necessary or proportionate or that their retention, in the light of current circumstances, is consistent with Ofcom's obligation to withdraw from sector-specific regulation wherever possible. Our response to this question therefore focuses on the three tests contained in (II), (III) and (IV) and the requirement in (V) to publish details of the bundled prices.

(III) Implicit price-cost tests

In its May 2004 Statement, Ofcom suggests that the implicit price-cost test should be applied to each component of the bundle, with non-SMP services treated together. In the October 2003 Consultation document, Paragraph 4.4, Ofcom explains

"The test is designed to capture a key decision parameter of a customer's choice between (a) purchasing the bundle and (b) purchasing a sub-bundle excluding the service in question coupled with purchasing the excluded service separately from another supplier".

As BT understands it, the test should ensure that there is a contribution on every SMP service within a bundle. It would mean, for example, that a bundle including access, local calls, national calls, international services and leased lines would need to be priced in such a way that a competitor offering just national calls would be guaranteed a contribution. This would mean that the customer might take access, local calls, international services and leased lines from BT but then take national calls from the alternative supplier.

BT believes that such a view of competition is unrealistic. Customers who want to purchase bundles will choose from suppliers that are capable of offering the range of services that they have requested. They will not therefore select a supplier that does not offer all the services required in the bundled package. Similarly, entrants are not likely to be single service suppliers, just offering one service.

Such a situation has been considered by the economic consultants NERA (National Economic Research Associates) in their January 2003 report to the Australian Competition and Consumer Commission¹. They make a key distinction. They explain there are three situations in which it is feasible and appropriate to apply a test on each element:

"when the Commission is concerned with the pricing of only some element of the bundle; when the Commission is concerned with the price of products both within the bundle and on an unbundled basis; and when rivals are unable to supply all the products within the bundle".

¹ Imputation tests for bundled services, A report for the Australian Competition and Consumer Commission, Jan. 2003, pp 27

The first two situations relate to the point we have made above. As for the third, with replicability in place, it does not arise. If all the SMP elements of a bundle are replicable and by definition the non-SMP elements are available on a competitive basis, competitors who want to replicate a BT bundle will always have the choice between:

a) buying the same SMP elements as BT Retail from BT Wholesale (or Openreach), on the same basis as BT Retail; or

b) buying some of the SMP elements on the same basis as BT Retail, and using their own network when this is more efficient.

In this case, NERA explain that a test at the bundle level is "*a more useful (and robust) approach than attempting to disentangle the information relating to particular products*".

We set out below a worked example of the test, and note that it produces some odd results where each part of the bundle has been found replicable.

Worked example of implicit price-cost test

Three products: A, B and C.

	A	B	C	Total
Expected Volumes	2	1	1	4
Individual retail price	6	4	3	
Individual retail cost, including NCC prices	4	3	2	
Individual margin	2	1	1	
Combined revenue at full price				19
Combined contribution				6

The normal aggregated price would be 19 and there is a total margin of 6. Can the bundle be priced at 16?

This would reduce the margin to 3, but this is still a positive contribution and a rational business decision if this achieves a sale where the combined price of 19 would not.

Applying the proposed test:

Assume "C" is not in the bundle – the margin falls to 2 and the test is passed

Assume "B" is not in the bundle – the margin falls to 2 and the test is passed

Assume "A" is not in the bundle – the margin falls to -1 and the test fails

But it is clear that the bundle overall passes a price-cost test, and if each service is replicable there is no reason from a competition law angle why BT should not be permitted to offer the bundle.

We believe that a more proportionate obligation is that set out in Ofcom's September 2005 consultation '*Regulation of Business Retail Prices*' which considers bespoke pricing for larger businesses. In this consultation, Ofcom's view is that, given replicability, bundles offered at large should not be required to pass an implicit price

cost test on each element and that the test could be passed for the whole bundle. Ofcom's explanation is basically a (qualified) version of that given above.

"It could be argued that where it is possible for competitors to replicate the SMP elements (and one assumes that, by definition, non-SMP elements can be sourced competitively) then the implicit price-cost test for each service is no longer required and that any comparison of prices and costs should take place at the level of the bundle as a whole".²

Consistent with this the OFT in its July 2005 discussion paper 'Selective price cuts and fidelity rebates' examined the issue of multi product rebates and suggested that:

"...if a rival can replicate the dominant firm's bundle (including through alliances with other firms), the rival and the dominant firm can, in principle compete head on. However, to replicate the entire bundle would require that there are no entry barriers to producing the other components"³

By definition, there are no entry barriers for non-SMP products as these markets are effectively competitive.

An implicit price-cost test could instead be considered on a case-by-case basis where concerns about any anti-competitive effects arise. This is precisely the type of issue for which the Competition Act, not *ex ante* regulation at the retail level, is appropriate, and given replicability, there would be little to distinguish telecommunications from any other sectors. Hence the need for sector specific rules does not arise.

(II) Net revenue test / incremental profitability test

Although Ofcom has suggested that this test is commonly applied by competition authorities, BT does not know of any competition or regulatory authority which has imposed a Net Revenue Test as a matter of routine, with the exception of the FCC in the late 1980s, where the test proved to be cumbersome and largely unworkable. We would therefore like to know more about the NRT as implemented by other competition or regulatory authorities to understand exactly what would be involved.

Our understanding is that the rationale for the net revenue test is that a profit-maximising company should not introduce a bundled service which cannot reasonably be expected to generate revenue at least equal to revenue which would have been generated by prevailing stand-alone prices. As Ofcom has stated:

"If it does so, it is likely that the motive is anti-competitive, that is, it expects to drive competitors for the market and increase prices later to recoup the short-term losses. It is therefore consistent with exclusionary intent."⁴

This is clearly correct, but it does not mean that the test should be routinely applied.

Such an assessment will inevitably depend on forecasts – of what will happen to costs and revenues without the bundled service and with the bundle. These assessments are part of the basics of commercial management based on knowledge

² para 4.25

³ para 1.66, page 17

⁴ Para 4.14 October 2003 Consultation Document entitled 'BT's pricing of services for business customers'

of many market factors, including likely customer behaviour and the effectiveness of supporting advertising campaigns. The customary vetting of prices cannot be a core function of a regulator, as this would effectively amount to Ofcom reviewing decisions on a price-by-price basis and, for the reasons given below, we believe it is unnecessary.

BT is committed to competing fairly on the merits of its services. We accept, however, that there may sometimes be complaints about our prices which Ofcom feel the need to investigate. There is an established legal process in such cases and we know that, in such a competition investigation, the commercial basis of the pricing decision, which may include something akin to the "Net Revenue Test" will be a relevant factor. However, there is a large distinction between the provision of commercial information on a regular basis as *ex ante* regulation and its use in a Competition Act investigation.

Finally, BT feels that an *ex ante* Net Revenue Test would, in any case, be redundant if a bundle already passes a price-cost test at the bundle level (implying that retail prices are above costs) and there is replicability on the SMP products.

(IV) Eligibility for level of discount

Ofcom suggests that "*eligibility for any level of discount for the overall bundle of services is not dependent on the customer spending a minimum sum on any individual service within the bundle*". By this we understand that it would prevent BT from offering bespoke bundles to targeted customers if discounts were based on how much customers spend on a specific service.

BT's view is that for the stacks test to be taken one has to predict the proportions of the various services in the bundle. For example product X has a 20% contribution to a bundle and product Y has 5%, to offer a 10% discount on the bundle price you would need to know if more of X was being sold than Y in the bundle. Therefore, with differing margins on products, there will need to be targets or bands by product in any offering in order to pass the other tests and BT's own commercial decision-making processes.

BT's proposal for proportionate regulation

BT believes that the obligations proposed by Ofcom in their October 2003 consultation are neither appropriate nor proportionate. In particular:

- if the SMP elements of a bundle are replicable, an implicit price-cost test for each element of the bundle, for SMP and aggregated non-SMP, is inappropriate; and
- an *ex ante* net revenue test on the bundle price is disproportionate.

Instead of these two separate tests, BT proposes that bundles of retail services that are replicable should only have to pass a price-cost test at the bundle level. The test should be sufficient to ensure competitors can compete with a BT bundle.

Such a test would check whether the bundle price is at least as high as BT's wholesale access price plus BT's incremental costs of transforming the input into the final product.

When computing this test, considerations should be given to alternative providers' management of their own additional costs, including administration, sales, customer management, etc. BT's pricing freedom should not be constrained by less efficient alternative providers.

The prices and costs that should be considered for the test are:

- For SMP services: BT Wholesale access price and BT retail costs calculated on an incremental costs (IC) basis
- For non-SMP services: BT Wholesale network costs and BT retail incremental costs, as there are competing networks.

A bundle would pass a price-cost test at the bundle level if:

$\text{Bundle retail price} \geq (\text{BT wholesale access price} + \text{BT retail costs based on IC for SMP elements}) + (\text{BT network costs for non-SMP elements} + \text{BT Retail costs based on IC})$
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(V) Details of the bundled price or discount scheme are published

BT is concerned that where there is replicability its competitive position is weakened by the need to publish details of the bundled price or discount scheme. It would allow competitors a competitive advantage, especially in a bid environment, as they would have full view of BT's prices and thereby could always underprice BT - such price shadowing also has a detrimental effect on consumers as they do not benefit from real market forces. Additionally, a requirement to publish details of bundles or discount schemes suggests that BT has some type of advantage over its competitors in relation to the bundled product, thereby necessitating transparency of BT's prices. However, if replicability exists, all Communications Providers including BT should be able to compete with BT on a level playing field.

Replicability criteria

Q.2: Respondents are invited to comment on Ofcom's proposed criteria for assessing whether BT's retail business products are replicable.

BT accepts the principles which Ofcom has cited in considering the criteria as to whether a product group is replicable and notes that these have been translated into the Undertakings. The replicability criteria will enable BT to demonstrate the lengths to which the company has worked to provide transparency and decrease the perceived barriers for industry to compete with BT's downstream units. BT's Undertakings, accepted by Ofcom, will ensure transparency and increased certainty for industry.

BT accepts that replicability is an ongoing concept and would not expect it to be regarded as a snapshot at a particular point in time. In order to ensure there is certainty with regard to this principle, BT suggests that there be a clear and unambiguous system so that, whilst on the one hand other Communications Providers may feel secure that there is a continuing equivalence, on the other hand

BT and Ofcom are not subjected to a series of frivolous complaints that spark a significant amount of additional and unnecessary work.

Retail fixed line telephony calls

Q.3: Have the outstanding issues in relation to CPS been correctly identified?

Q.4: Do respondents agree with Ofcom's assessment of the replicability of retail business fixed line telephony calls?

In general terms we consider that Ofcom has identified the outstanding issues associated with replicability in CPS for other Carrier Pre-Selection Operators (CPSOs). However, some issues do not affect BT Retail and so addressing them would make no difference to how BT Retail would operate; for example transfer charges on rejected orders.

Further, BT welcomes Ofcom's view that it has largely and successfully met those issues considered outstanding by CPSOs prior to the consultation period. BT considers that it has further addressed these issues so that there is no bar to replicability in relation to retail business fixed line telephony calls.

CPS has been a great success since its launch in 2000; there are now over 5 million CPS customers. This can only indicate that the CPS product enables the CPSOs to successfully replicate the outgoing call service provided by BT Retail and enabling them to compete directly for end users. BT expects CPS to continue growing as WLR Communication Providers route their outbound calls via CPSOs.

BT would like to make the following comments on the issues Ofcom have highlighted in the Consultation, which demonstrate the work BT has undertaken to ensure replicability.

Order rejection levels

BT and industry have discussed what needs to be done to reduce rejection levels. At the CPS Process group meeting on Thursday 15th September 2005, BT asked the Industry what they required from a pre-validation process for CPS. Industry were keen to understand more about what the "Address matching system" would provide them and a presentation has since been provided. Aside from the "Address matching", the CPS Industry do not consider that there are any other "pre-validation" processes that will offer SPs any significant benefits though the industry have planned to debate this issue further in future CPS meetings.

BT is pleased that Ofcom recognise that not all of the order rejections are within BT's control. Analysis of this issue shows there is a marked difference between different CPSOs on rejection rates, which demonstrates that the problems lie within those companies themselves (it is suggested that some CPSOs could reduce some of the order rejections by implementing better sales techniques). BT has also made a commitment in the Undertakings to provide access to the BT address file by 31 December 2005, which will assist in pre-validation, and so further address CPSO concerns about order rejection levels.

Incompatible services

BT has published a list of incompatible products to CPS on the following website:

http://www.btwholesale.com/content/binaries/service_and_support/Network_Resources/cps_documentation/conflicting_and_excluded_products.doc

The list clearly shows where orders can be rejected due to incompatibility with CPS. The document will be under constant review and updated as necessary - in line with BT's commitment for transparency.

Transfer Charges for Rejected Orders

BT does not consider that there is a need to introduce CPS transfer charges for BT Retail. BT Retail, as with any Communications Provider with a line and calls relationship, has access to information related to a particular end user installation and hence the notion of rejected orders or incompatibility rejections does not exist. Therefore, if BT were to introduce such a system to enable charges for rejected "return to BT orders", no charges would actually materialise for BT Retail as there would be no rejected orders. As a result, BT believes it is an unreasonable overhead with no tangible benefits. BT does consider transfer charges are suitable in the case of rejected orders to cover the costs of progressing that order to the point of rejection, and that this is consistent with its approach here. BT is happy to discuss this with Ofcom and industry, but does not consider this issue to be a bar to replicability.

Transfer charges

BT has agreed that BT Retail will incur the equivalent transfer charge as CPSOs on transfers from other operators to BT. The transfer charge will be the transfer charge incurred by CPSOs minus Retail costs, which is the appropriate cost as recognised by Ofcom. Such transfer charges will be implemented with effect from 1st December 2005.

Forecasting and forecasting penalties

The Consultation has highlighted a requirement for BT Retail to forecast on an equivalent basis as CPSOs. BT Retail has agreed to submit to BT Wholesale the number of orders they expect to receive on a monthly basis. BT Retail will also incur the same financial forecasting penalties as CPSOs. Forecasts will be submitted to BT Wholesale from the 17th November 2005 in line with CPSO timescales.

It should be noted that whilst BT expects CPSOs to adhere to the agreed Industry forecasting rules the process operated by BT allows for a good degree of flexibility for the CPSOs. Where a CPSO believes they may have over forecast for a particular month, then that CPSO is at liberty to request BT to amend their forecast if the request is made prior to the month start. Where a CPSO believes they have under forecast for a particular month, then that CPSO is at liberty to request BT additional transactions for the month if there is spare transaction capacity available.

As such, BT considers it has met the criteria associated with this issue, and so it should no longer be considered as a bar to replicability.

Customer database

Ofcom acknowledge that BT does not use customer database data in an inappropriate way to enable BT Retail to gain a commercial advantage over competitors. All BT's employees are aware of and follow BT compliance practices and these are constantly reviewed to ensure best practice across the company.

This issue is further addressed in the Undertakings and BT is drawing up appropriate codes of practice and training sessions to ensure that this principle continues to be adhered to going forward.

Churn management

BT acknowledges the problems on churn and is currently running a feasibility study on a homemover (new number) to complement the existing homemover (same number) process. BT is committed to a homemover process for CPSOs and will provide regular communications with industry and Ofcom on progress and relevant dates.

The 'local calls' issue

BT agrees with Ofcom's view that the CPS local calls product is sufficient to ensure replicability as long as some form of local interconnection is available. BT will continue to address and discuss this issue with industry via the Consult 21 process. Any concerns about future availability are well addressed and it will be addressed through a well-understood review process.

CPS Performance

Industry has been presented with new CPS Gateway SLAs increasing the targets from 90% to 98% and has been using the new targets in the August KPIs submitted to Ofcom and industry. The latest figures show that BT has exceeded the new targets of 98%.

Conclusion

BT believes it has met all the criteria associated with replicability in respect of CPS, in particular having satisfactorily addressed the issues which have been considered by Ofcom to be a bar to replicability.

Exchange lines

Q.5: Should business analogue exchange lines, business ISDN2 exchange lines and business ISDN30 exchange lines be regarded as replicable if the functional specification and operational effectiveness elements of the WLR 'fit-for-purpose' test are passed?

BT agrees that the stringency of an Equivalence of Input model is not a necessary condition for replicability. BT is, however, committed to achieving EOI for the WLR products as set out in the Undertakings. BT also agrees with the conclusion in section 5.7 of the Consultation that the measure of market impact is not relevant, whilst the other two 'Fit for Purpose' ("FFP") requirements form a valid basis for the assessment of replicability.

Those two FFP assessment tests will ensure satisfaction as follows:

- The delivery by BT of a Wholesale Line Rental (Analogue) product that is consistent with the 'WLR2' Product Specification as set out in Annex A of the Statement issued on 11 March 2003 entitled '*Wholesale Line Rental: Oftel's Conclusions*'.
- The implementation by BT such that the functionality of the 'WLR2' product is in such a manner as to minimise barriers to effective retail competition.

The March 2003 Statement referred to a revised 'WLR2' product. BT has implemented this product which is called 'Wholesale Access' (WA) and it is referred to as such throughout the remainder of this document. During the course of the development of WA, some areas have been modified in consultation with Ofcom and industry and these are referenced as such in this document.

Q.6: Do respondents agree with Ofcom's assessment of the replicability of retail business exchange line products?

BT agrees with Ofcom's assessment that the developments to the WLR product largely meet the requirements for replicability at the onset of the consultation period, and further suggests that there is now no bar to replicability in respect of WLR. A substantial amount of work has already taken place to improve both equivalence and replicability in areas such as billing and debt management, KPIs and line types, and BT is pleased to see that this has been recognised by Ofcom in the Consultation.

The implementation and operation of the WA (Analogue) product as required by the Product Specification for 'WLR2' has been effective so that any implementation or operational issues have not constrained the take-up of WLR in any way. This is evidenced by the take-up of more than 1.6 million lines and channels by the beginning of September 2005 and circa 120,000 new WA (Analogue) lines per month.

The current Wholesale Access (Analogue) Product Specification and the processes established for ordering, provisioning and transferring lines offers the same opportunities to other Communications Providers as that offered by BT Retail.

There are no material differences between the timescales for ordering, provisioning and transferring lines for SPs and the corresponding timescales for BT Retail. This is

evidenced by reference to the Internal Reference Offer for WA (Analogue) as published on the BT Wholesale website at:

http://www.btwholesale.com/content/binaries/service_and_support/service_provider/products/wholesale_access/product_information/contracts/bt_network_access.pdf

This is also evidenced in the WA FFP Retail Comparators regarding service performance (see Maintenance and fault management section below).

BT has met many of the replicability criteria cited in the Consultation and we are pleased that our efforts have been recognised by Ofcom and industry. BT would like to comment on the current progress on two areas of work; the ordering process, and maintenance and fault management.

Ordering processes

The Consultation highlights a requirement for BT to improve how its systems handle orders for replicability. As noted above there is no material difference in ordering and provision of lines for SPs in comparison to BT Retail. However, in recent months BT Wholesale has been striving to ensure that the WLR Systems provide an even more reliable and effective service to our customers. This has involved a thorough evaluation of the WLR Systems Stack, and a number of improvement plans being implemented.

A three month plan to provide a live test environment and full backup to BT Wholesale.com, the major point of access for service providers to our systems has just been completed. In addition to this, capacity has been increased on the Service Provider Gateway (SPG), our provisioning gateway, and a plan is in underway to ensure that there are no remaining single points of failure in the systems that form our repair capabilities.

There is also substantial work being planned and undertaken to improve the ordering processes to meet the Equivalence of Input requirements as laid out in the Undertakings. This work is planned to be completed by December 2006.

Whilst BT considers the improvements it has made up to now are sufficient for Ofcom to be able to conclude there is no longer a bar to replicability, these further plans will ensure that our customers receive the highest possible standard of availability and effectiveness from the BT systems they utilise.

Maintenance and fault management

BT has developed and publishes a set of Fit for Purpose Key Performance Indicators (FFP KPIs) on a monthly basis in accordance with requirements agreed with Oftel, subsequently Ofcom, and Industry. These requirements were initially set out in the March 2003 Statement and subsequently refined in the September 2004 'Requirement on BT to publish Key Performance Indicators' paper published by Ofcom. Any variation in the detail of the implementation of these requirements has been with the full agreement of Ofcom subsequent to the September 2004 Paper.

WA (Analogue) performance as experienced by independent SPs for the key FFP KPI service measures covering service delivery is equivalent to the performance as experienced by BT Retail. This is evidenced by the performance shown in the set of FFP Retail Comparators published each month alongside the FFP KPIs.

Where equivalent measures and targets exist, WA (Analogue) is delivered to the same service delivery and performance targets as BT Retail. Where no equivalent BT Retail target exists the WA (Analogue) product is delivered and performs to the specification as laid out in the Product Handbook and the Service Level Agreement.

BT has undertaken significant work in this area to address the issue cited in the Consultation and believes that fruition of those plans enables Ofcom to conclude there is no bar to replicability. Current activity to deliver a system from the end of October 2005 will enable viewing of WLR orders and faults that have been closed, a positive development from the current process which views data monthly in areas. A further improvement so that it will be possible to view the same information on open orders and faults will be available from January 2006.

Conclusion

BT believes it has met all the criteria associated with replicability in respect of WLR, in particular having satisfactorily addressed the issues which has been considered to be a bar to replicability.

Retail leased lines

Q.7: Has Ofcom correctly identified all the outstanding issues in relation to PPCs?

Q.8: Do respondents agree with Ofcom's assessment of the replicability of retail leased lines?

Many of the issues Ofcom has identified were originally raised by Communication Providers and the UK Competitive Telecommunication Association (UKCTA) in May 2005 and BT has worked with industry and industry groups to resolve these issues. As Ofcom has already noted in the Consultation some of the issues are not outstanding as BT has already met the requirements for replicability. The following paragraphs contain BT's view of some of the issues which Ofcom has raised in the Consultation.

Routing inefficiencies

BT has already provided comments regarding Communications Providers' concerns around routing inefficiencies and these are reflected in the text of the Consultation document in paragraphs 6.8 to 6.11. In particular, BT has commented on the extent to which a competitor can replicate BT's retail leased lines services.

Ofcom has commented in paragraph 6.12 that Communications Providers raised two options for consideration. Notwithstanding the important question of materiality, BT would like to comment on the practicality of these suggestions.

The creation of an artificial list of PPC handover points on which BT is required to route and cost its own circuits would add another layer of activity and cost to what is already a complex product area. At a practical level it would be difficult to manage, with significant changes required to underlying processes and systems. In BT's view this suggestion therefore appears disproportionate to the requirement it wishes to address.

The second option, to require BT's retail activities to incur interconnection charges at points throughout the BT network appears to make no allowance for the extent to which Communications Providers have already built out their networks. It would have implications for systems and processes and potentially raise the retail cost stack and it is difficult to see how this would benefit customers in any way.

Paragraph 6.13 discusses the issue of same exchange circuits and the level of materiality. BT has previously provided Ofcom with supporting data that demonstrates that the proportion of BT's retail leased lines revenue represented by same exchange circuits is very low.

It is BT's view that any differences in costs incurred by Communications Providers as a result of interconnection arise from regulatory policy which led to the introduction of PPCs i.e. the promotion of infrastructure competition, rather than as a result of the way in which BT has implemented its regulatory obligations.

BT considers that any routing inefficiencies arise from the required design of the PPC product, and not BT's implementation of that design, and that it therefore does not form a bar to replicability.

Forecasting

The Ofcom consultation considers that BT must provide evidence to Ofcom during the consultation period to show that the forecasting penalties only reflect genuinely incurred costs. We have provided our views to Ofcom as to why the current forecasting penalties are justified.

BT has previously committed to Ofcom and UKCTA that BT Retail will provide monthly forecasts and face charges on an equivalent basis as Communications Providers. This will be implemented with effect from 1st December 2005.

Inequality of information

BT has recently reviewed its wholesale processes with regard to the handling of incorrect name/contact details.

There is an important difference in the way orders are received by BT Wholesale and BT Retail. In respect of BT Wholesale, customer orders are received electronically predominantly via eCo (some Wholesale customers still place their orders via email); whilst orders are received by BT Retail via Telephone/email or fax. The use of eCo or email ensures that there is an audit trail in the event of any subsequent disputes

Although the method of placing the order may differ, there is no difference in the way in which discrepancies are handled and changes to name or contact details do not result in the order being rejected. The PPC product handbook was updated to this effect on 15 October 2004 to clarify this point:

"4.12.1 Changes Before / After FOC

The only acceptable change to an order will be as listed below:

- *Change of Interface – A charge for the change will be applicable as detailed in the Carrier Price List.*
- *Change of Name or Contact*

All other 'in-flight' changes to an order will result in the order being cancelled and re-issued. Where applicable cancellation charges will apply."

All Communications Providers receive responses to their order via eCo mail regardless of how the order is received. In the event that the Customer Management Centre (CMC) require further information/clarification from a Communications Provider on name/contact details a request is sent via eCo mail and a diary entry is made to proactively chase the Communications Provider (should a response to the request not be forthcoming). It is possible that the customer may incorrectly perceive this as a rejection; however, the customer is not required to re-input the whole order, just to input the missing or incorrect information.

In order to maintain visibility of this process, BT has recently issued a briefing to CMC teams.

Migration

BT has already reopened the circuit migration facility in March 2005.

In response to a request from UKCTA, BT is prepared to add the ability for operators to redesignate /grandfather retail muxes. BT plans to submit pricing for internal authorisation in November 2005.

Contract Complexity

BT has progressively been seeking to simplify its contracts with Communications Providers, as can be seen with the recent WES and BES contracts. Further to that, BT has put forward an initiative to radically simplify BT Wholesale contracts in conjunction with recent UKCTA proposals. The initiative proposes a single set of 'umbrella' terms and conditions - a "Master Services Agreement" - covering clauses which are common to the majority of agreements in order to the contract agreement process significantly more efficient. For example:

- key clauses would only be discussed and negotiated once, leaving both parties to concentrate on product specific terms;
- there would be greater consistency of product terms and conditions; and
- as key clauses would be identical for many products, Communications Providers would save time and cost as they would no longer need to familiarise themselves with different terms and conditions.

BT hosted an initial meeting with representatives of the Communications Provider industry to discuss this concept on 27 July 2005. Following the meeting BT commenced work on some initial documents for discussion with industry. A new web page <http://www.btwholesale.com/msa> has been created in order to ensure industry is informed providing updates on all contract rationalisation meetings, documents and notes. A further meeting was held on 8th September. Whilst all parties agreed that the timelines for the completion of this negotiation process will be relatively long as a reflection of the complexity of issues involved and the number of interested parties, good initial progress has been made and BT is committed to developing this project.

Reasonableness of contract terms

BT is happy to consider issues raised as part of the PPC contract review process which commenced on 1st October 2005. The project mentioned above to simplify BT's contractual terms will also help in this respect.

Billing accuracy

BT recognises the importance of this issue and continues to deliver improvements in the quality of PPC billing over time, with the full benefits of the Circuit Revenue Assurance Board (CRAB) being visible by March 2006. The programme takes into account the fact that Communications Providers are billed quarterly and that they have been given the opportunity to validate their bills. In addition, whilst reviewing the whole issue, significantly more circuits have been examined since the reopening of the circuit migration window in March 2005.

Exclusion of certain services from the charge control

BT is addressing the issue of price changes on ISH extension and Path protection products. Path protection price changes took effect from 1 October 2005 and price changes on ISH extension are due to be submitted for internal authorisation in October.

PPC performance

BT has reviewed its current practices and has ensured that it offers the same processes to all BT Wholesale customers (including BT Retail) on the same terms for emergency repair.

Conclusion

BT believes it has satisfactorily addressed outstanding issues before and during the Consultation period, permitting Ofcom to conclude that BT's retail business leased lines products are replicable.

Summary

BT supports the Consultation in assessing the replicability of BT's regulated business services. The key points BT would like to make in response to the Consultation are:

- BT welcomes the recognition by Ofcom of the work BT has done to ensure replicability of BT's retail business calls, exchange lines and leased lines products. All key issues have been resolved by BT and there is nothing now preventing Ofcom from concluding that these products are fully replicable.
- BT disagrees with the need for an implicit price-cost test and net revenue test for bundling of SMP with non-SMP products. If replicability exists, these tests are unnecessary. The only test that should be required by Ofcom is a price cost test of the whole bundle at the bundle level.
- BT's Undertakings recently accepted by Ofcom ensure that replicability will continue to exist for the future.