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## **BT's Response to Ofcom's Consultation: Telephone directory information obligations and regulations**

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

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## EXECUTIVE SUMMARY

1. It has been over a decade since the regulation and regulatory policy of the directory information services industry was last substantively reviewed in the UK. Much has changed since then. Ofcom's consultation, and the debate it has encouraged, is therefore a helpful and timely contribution, particularly in light of the protracted regulatory disputes that have taken place over the last three years or so.
2. BT has consistently maintained that Universal Service Condition 7 (USC7) is unlawful and BT supports Ofcom's proposal to revoke that condition. However, any other regulatory changes must ensure that the generally vibrant and competitive directory information services market that has developed is not disrupted. It is also important that any regulatory changes do not discourage or harm the flow of information from subscribers, through communications providers, aggregators, and intermediaries, to those companies that provide retail directory and directory enquiry facilities.
3. The greater the disruption caused by regulatory change, the greater the cost to industry and therefore consumers. Any regulatory changes should therefore minimise, as far as possible, the need for the development of new systems and processes, and contract re-negotiation / negotiation of new contracts, and the risk of supply chain failure.
4. Irrespective of the future of USC7, BT has committed for the foreseeable future to continue to provide a comprehensive wholesale directory information database on terms that are fair, reasonable and non-discriminatory. The provision of this database is however dependant on the continued availability of quality information from the communication providers that supply the information to the database.
5. In BT's view, only the minimum amount of information that is essential for the UK to comply with EU obligations should be included in the scope of Directory Information. To the extent that there is demand for additional information, this can be provided on commercial terms. This will ensure end-users can experience a range of innovative directory information services from a varied choice of providers. This is potentially an area where the development of an industry Code of Practice would assist.
6. BT agrees with Ofcom's proposal that any communications provider with a contractual relationship with the subscriber should have the regulatory obligation to provide to others the minimum relevant directory information. However, it is equally important that those communications providers that, through the use of their networks, enable other communications providers to provide relevant services to subscribers, continue (at least for a transitional period) to aggregate and provide information from their communication provider customers.
7. BT would welcome the opportunity to further discuss its proposals, particularly in respect of the wording for General Condition 19, and work with Ofcom and industry to create certainty, clarity, limit risk and ensure healthy and vibrant competition.

## **THE SCOPE OF GC19**

### **Relevant Information**

8. BT understands that Ofcom wishes to facilitate arrangements for those providers of Directory and Directory Enquiry Facilities (DIPs) who want a broader scope of Subscriber information to be provided under GC19 by giving some flexibility to amend the name and addressing provisions. In practice, Ofcom's proposal could be unworkable for some DIPs and Communication Providers (CPs) and would not be of assistance to many DIPs.

### **Persons having 'rights of access' to telephone directory information**

9. There is insufficient clarity as to who has the right to request Directory Information and for what purpose(s). BT believes Directory Information should only be provided to a person (including a person acting as an intermediary or aggregator) where the principle and primary use of that information is ultimately the provision of a Directory and or Directory Enquiry Facility to an End-User and not where the use of the information is merely incidental to that purpose.
10. Intermediaries may be active both upstream and downstream. Upstream intermediaries act as a channel for the provision of information to aggregators (including BT Wholesale Directory Solutions)<sup>1</sup>. This upstream intermediary role ensures the flow of information downstream whilst minimising the cost of collection and is distinct from the role of a downstream intermediary or aggregator.
11. A downstream intermediary or aggregator provides a product for use in a related downstream market. For example a producer of a classified database may licence use of that database to others who in turn will use that database in products provided to End-Users.
12. BT would like clarification of Ofcom's views on the role of intermediaries and aggregators and how these roles align with Ofcom's proposed 'rights of access' to information.

### **Provision of non-geographic numbers**

13. BT has three concerns. Firstly, it is unhelpful to refer simply to 'non-geographic numbers' as they can cross a series of number ranges and uses. Secondly, some non-geographic numbers are used for short periods of time by specific Subscribers who would not necessarily want them included in a Directory or Directory Enquiry Facility. Thirdly, there are some issues concerning taste, decency and price notification and transparency (TDP). For these reasons BT Directory Information should be limited to PATS numbers.

### **Extension to End-User information**

14. BT understands the rationale for this proposal however it raises a number of significant issues. An End-User is essentially anyone who otherwise than as a CP uses a Public Electronic Communications Service – an extremely wide and diverse group – and the provider of a PATS to a Subscriber will not, unless the Subscriber

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<sup>1</sup> Unless otherwise stated in this document references to 'upstream' and 'downstream' are references to activities that take place upstream or downstream of the obligation to provide Directory Information under GC19.

and the End-User are the same person, have a contractual relationship with the End-User.

15. This potential lack of a contractual relationship creates amongst other things serious potential problems in the discharge of CPs' obligations under data protection legislation where the End-User is an individual. BT would like to know what the Information Commissioner thinks about this issue.

### **Ported numbers**

16. BT welcomes the proposal to remove the current requirement to pass on Directory Information of Subscribers who have ported to other networks and therefore no longer have a contractual relationship with the CP originally Allocated the Telephone Number.<sup>2</sup>

## **TRANSITIONAL ISSUES**

### **Provision of GC19**

17. If Ofcom decides to implement an obligation under the proposed GC19 at the retail CP level considerable process, systems and contract development work will be required by BT and other CPs. This work will have an impact on the cost of provision of Directory Information. CPs will also require a period of time to implement the proposed regulatory change(s) if carried forward from this Consultation.

### **The Information Commissioner's Code of Practice**

18. The current Code of Practice was produced in 1998 and in the light of developments since then, it would be sensible for this to be updated.

### **Cost recovery**

19. It is vital that CPs who provide both Directory Information and (where there is reasonable demand), a broader dataset, have the ability to recover their costs and a fair commercial return. This should provide the necessary incentive to ensure the continued supply of information to downstream aggregators and the DIPs.

## **BT'S RESPONSE TO OFCOM'S SPECIFIC QUESTIONS**

### **Section 3**

**Question 3.1: Do you agree with Ofcom's proposed revocation of USC7? If you disagree, what are your reasons for this view?**

**Response:**

20. Yes, USC7 is unlawful and should be revoked.

**Question 3.2: Ofcom considers that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability. Do you agree with this**

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<sup>2</sup> Currently it is technically not possible to do this as Ofcom's public list of Allocated Telephone Numbers does not align with information held by BT on OSIS.

**assessment? If not please provide a detailed response as to which criteria is not fulfilled and in what way.**

**Response:**

21. BT broadly agrees that the current services are comprehensive, affordable, of appropriate quality and sufficiently available (subject to restrictions on the access to certain 118\*\*\* numbers on some networks – see Question 3.4).
22. However, there is concern amongst some in the industry about the quality and accuracy of information provided by some CPs. One way of addressing this issue (and other issues highlighted by the Consultation) would be for industry to establish a Code of Practice on the provision and use of Directory Information and other Subscriber information. This Code of Practice could operate contemporaneously with an updated version of the Information Commissioner's Code of Practice. This consultation is an ideal vehicle to stimulate negotiation of and publication of such a Code.
23. BT notes Ofcom's observation that BT supplies its printed directory, The Phone Book, free of charge to consumers. Although Ofcom recognises that there is a cost of provision component in BT's WLR charges for the 'White Pages' element of the The Phonebook and therefore implicitly in line rental charges, it may be more accurate to describe the provision as 'free at point of delivery' to End-Users.
24. BT agrees with Ofcom's view that consumer preferences for directory information services varies and that there is some substitutability across the range of directory services.

**Question 3.3: Do you agree with Ofcom's analysis [on the removal of the obligations to provide a printed directory]? If you do not agree please provide your reasons.**

**Response:**

25. BT is committed to providing comprehensive directory services to and for its customers, but needs to retain flexibility to adapt to changing market conditions. Ofcom's proposal to remove the obligation to provide a printed directory will allow this flexibility.
26. While BT goes beyond the current obligation to provide a printed directory to an End-User on request, there may be reasons why in the future provision on request would be more appropriate than blanket distribution. Apart from direct commercial considerations, BT is very conscious of the environmental impact of distributing large numbers of bulky books which not all consumers want or use, particularly as the use of on-line services at home and in the work place is increasing.

**Question 3.4: Ofcom considers that the DQ market is robust and delivering the level of service required by the Universal Service Directive. It also considers that it is appropriate to maintain the condition on Communications Providers to ensure access to a DQ service to ensure that the universality of provision is maintained. If you do not agree please provide your reasons.**

**Response:**

27. BT agrees with Ofcom's comments. However, charges for voice DQ services have risen since liberalisation and BT believes that this increase has, at least in part, been

driven by certain CPs limiting access to a specific DQ service, thereby reducing consumer choice and DQ competition on that CP's network. Ofcom should ensure that End-Users have full access to and choice of DQ providers by ensuring non-discriminatory access to all 118\*\*\* numbers on all networks, thereby promoting competition and potentially reducing voice DQ charges.

**Question 3.5: Do you agree with the redrafting of GC8 set out above [at the end of Section 3]? If you do not agree please provide your reasons.**

**Response:**

28. BT is broadly content with the revised drafting of GC8 subject to: (i) clarification on the text at 8.2; and (ii) a relatively minor change to account for the potential additional cost of End-User information and the right of a CP to charge End-Users as well as Subscribers, should 'rights of access' extend to End-User information.

#### **SECTION 4**

**Question 4.1: Do you agree with Ofcom's view that GC19 should be modified so as to clarify persons having 'rights of access' as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.**

**Question 4.2: Do you have any other comments about 'rights of access'?**

**Response:**

29. BT has answered these questions together given the overlap of the issues addressed. Three broad themes are discussed below:
- The formal drafting of GC19;
  - Products and services qualifying for 'rights of access'; and
  - The role of intermediaries.

#### **The formal drafting of GC19**

30. The proposed changes to GC19 would significantly widen the number of CPs with which an aggregator of Directory Information such as BT Wholesale Directory Solutions would need to deal. The proposal would also considerably change the current model and so lead to a period of development on systems and processes for the change to be completed. BT would therefore prefer a solution that (at least for a transitional period) mimics the current industry relationships and information flows.
31. A possible alternative to the solution suggested by Ofcom is a solution that (either on an interim or permanent basis):
- provides for an obligation on the Communication Provider who has the contractual relationship with a Subscriber for a particular PATS telephone number (the retail level Communications Provider), to pass that Subscriber's Directory Information to an upstream aggregator / intermediary and / or to those persons making a reasonable request (downstream intermediaries and DIPs); and

- an obligation on the network level CP to provide Directory Information to those persons making a reasonable request (downstream intermediaries and DIPs).

BT would welcome the opportunity to discuss this alternative solution with industry and Ofcom so as to better understand for, example, its possible impact on upstream CPs and DIPs.

32. BT has a number of additional concerns on the drafting, these include:

- absence of a definition of what constitutes a directory enquiry service (proposed section 19.2) and how this relates (if at all) to a Directory Enquiry Facility in proposed section 19.1;
- in proposed section 19.4, it is unclear whether the requirement that '*no Directory Information need be provided other than an explanation that the Directory Information may not be supplied*' relates to downstream Directory Information providers or upstream CPs. Downstream Directory Information providers require the Directory Information of Subscribers who wish their number to be withheld in order to give the XD response; and
- clarification that an '*electronic document*' as referred to in the definition of a Directory, is not a searchable on-line database.

#### **Products and services qualifying for 'rights of access'**

33. BT has a number of issues concerning 'rights of access'. As context, we note the points made in Section 9, (in particular paragraphs 9.185 - 9.191) of Ofcom's Resolution of price disputes concerning supply of certain directory information by BT to The Number and Conduit of 10 March 2008 (the Final Determinations) in respect of Ofcom's obligations to promote competition in relation to the supply of directories, to further the interests of citizens in relation to communications matters and to have regard to the uses to which person have allowed their person data to be put.

34. Ofcom has also noted and acknowledged that:

- BT has a responsibility to its Subscribers to ensure that data provided to BT for the purposes of inclusion in a telephone directory and or for directory enquiry purposes is not used for other purposes; and
- BT may carry out activities which help BT identify whether the data is being used for an inappropriate purpose.

35. Ofcom stated that while BT is required to make GC19 data available to DIPs in order that those DIPs can make directory information services available to UK consumers, it is not unreasonable for BT to seek to impose some usage restrictions on GC19 data. Such restrictions are designed to prevent the data from being used in a manner not envisaged by GC19 i.e. where the information is not used for the primary and principle purpose of providing directories and DQ services, and do not go beyond this aim. Ofcom suggested that BT might wish to elaborate further on this point in its response to the policy consultation and BT does so in here.<sup>3</sup>

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<sup>3</sup> These comments need to be taken in the context that different downstream users of Directory Information may wish to receive slightly different specifications of data depending upon their own particular products and services. In line with good data protection principles, BT would expect that it would only be required to release relevant



## Definition of a Directory and Directory Enquiry facility

36. In order to properly assess the legitimacy of a request under GC19 BT would prefer to have a clear and unambiguous definition of a Directory and Directory Enquiry Facility, including the purpose of such a Facility. BT has been required on various occasions to discuss with DIPs the purpose of a directory and directory enquiry facility, and it is evident to BT that within the industry there is some confusion on this matter.
37. This is particularly important when considering innovative new services. BT endorses Ofcom's statement in the Final Determination that '*...innovation is only permitted to the extent that the use of the data complies with the requirements of GC19 and the purposes that it sets out for which data must be provided, i.e. the provision of directories and DQ services*'.
38. BT generally agrees with Ofcom's interpretation and description of directory types and search methods (included in the Final Determination and the Consultation), subject to a few small amendments for clarity, and believes these descriptions would help provide a clear regulatory framework within which the industry can operate. The descriptions, including BT's suggested amendments, are set out below:

### (a) Directory types:

Voice-derived: voice DQ services where End-Users call a particular telephone number to speak to an operator (or automated voice recognition service) about their search requirements in the expectation of receiving the telephone number they are looking for. The agent questions the End-User so that one unique number or a limited set of directly related numbers is identified and returned.

Searchable: on-line DQ services and CD ROM products, where End-Users will submit search requirements e.g. via a website in the expectation of receiving one or a limited number of matching listings from which the telephone number they are looking for can be identified.

Browsable: this consists of published directories of telephone numbers including paper directories and electronic directories where the End-User has to 'browse' through rather than 'search' through the directory to identify the required listing.

### (b) Search methods:

Name and address specific searches: here the user knows the name of the person/business and at least the approximate locality (by which BT means a recognised unique location which should be at least a village, suburb, locality, town or city in which the Subscriber is situated or post codes that relate to the aforementioned categories) where they require the telephone number. The information disclosed to the End-User should match the search criteria e.g. "Mr R Jones, Acacia Avenue, Bristol", or "Barclays Bank, High Street, Ilford"; and

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information to third parties, particularly with respect to the more restricted DQR and XD data, and that the information would only have to be made available to licensees who produce products for which Data Subjects have given consent, such as Voice DQ services.

Classified business searches: the End-User wants a telephone number for a particular type of business in a particular location e.g. “plumbers in Muswell Hill”, “taxi firms in Nottingham”, “printers in Belfast”.

39. The descriptions set a clear standard on which to build expectation of what constitutes appropriate use of Directory Information. However, some additional points follow which need to be reflected in the definitions above.
40. In the third directory type (renamed ‘browsable’ but originally referred to by Ofcom as ‘other data services’) it is unclear what other data services Ofcom considers fall into these categories and therefore be could expected to trigger ‘rights of access’ under GC19. One possibility is of browsable directories published on media other than paper but BT is not aware of any that are similar to a fixed printed directory. It would be helpful if Ofcom could clarify to what services Ofcom was referring to in the Consultation at paragraph 4.9, ‘...wide variety of publications’.
41. BT has amended ‘name-specific’ searches to be ‘name and address’ searches to better align with UK data protection requirements and the fact that ‘tariff’ is not included in the Directory Information, as not being necessary to identify a Subscriber.
42. Further, there are instances of sole traders and partnerships as well as residential Subscribers being registered on the OSIS database as business listings. This occurs as different Communication Providers take a different approach to allocation of ‘tariff’, often relating it to:
  - the type of telephone line a Subscriber purchases as apposed to the status of the Subscriber, or
  - the level of service associated with a line rather than the Subscriber’s trading status.BT expects the same issues would arise with regard to ‘tariff’ classification if included as Directory Information. BT is willing to consider the inclusion of a ‘tariff’ classification indicating the status of a Subscriber as either a ‘residential’ customer (i.e. an individual) or ‘business’ customer (i.e. a sole-trader, or partnership (who in both cases have agreed not to be treated as an individual for the purposes of data protection legislation) a company or other body corporate).
43. Ofcom’s definitions (as amended) would make it clear what types of products and services ‘rights of access’ apply and the expectations of the purpose of the service. This would constitute a clear set of principles against which each GC19 request could be assessed and subsequently monitored and form part of the suggested industry Code of Conduct.
44. BT has regarded ‘on-line’ services as Internet Directories provided over the Wide World Web, such as BT’s service accessed through <http://www.bt.com>. However due to increasing lobbying from DIPs as technology has developed, BT questions whether the term ‘on-line’ should be broader or used distinctly from, the approach currently adopted i.e. referring only to directories made available on or via the Internet.
45. BT has interpreted ‘on-line’ narrowly as meaning an internet directory. The result of this narrow definition is that directory classifications (namely XD and DQR) are excluded from such services. If however Ofcom were to define ‘on-line’ more widely,

then for example a DIP providing 'white labelled' Voice DQ service who provides access to their database using technology which could fall subsequently into a definition of 'on-line' services, this would then create an issue as such services would need access to XD and DQR data.

46. BT however raises two concerns which it thinks should be considered as part of the consultation. The first relates to the permissions gained for the use of such data. BT currently interprets the permissions it has gained from its own consumers, and those gained by CPs and passed onto BT under the Schedule 11 of the SIA contract as meaning that no service other than a Voice DQ or Teleappending service (such a service being distinct from an on-line service) may utilise XD and DQR data.
47. The second issue concerns the requirement for Directory Information to include in publicly available directories or directory enquiry facilities. BT does not believe that it is required to make Directory Information available for products which are not publicly available, at least not under the terms of GC19.

#### Provision of ancillary services

48. DIPs are clearly looking for ways in which they can deliver the broadest dataset to their customers and wish to make use of technology which is evolving. This is therefore also a debating point for the influence of innovation on directories, and CPs need a way to assess such requests against a clear set of defined principles moving forward.
49. The primary and principle purpose has to be demonstrated in practice. Some DIPs may appear to obtain Directory Information for an appropriate purpose, but then subsequently use the information as part of a service such as credit vetting, or verification/validation, in which the Directory or Directory Enquiry Facility element is either not sufficiently delivered, not obvious to the End-User, or is so small as to make it unrecognisable as a Directory or Directory Enquiry Facility.
50. There are a number of uses which BT considers unambiguously fall outside the scope of Directory and Directory Enquiry Facilities and which BT would like Ofcom to acknowledge as such. For example the production and sale of marketing lists, and the production and sale of movers lists.
51. BT does not consider that Teleappending services necessarily will fall within the range of uses or services outlined by Ofcom as a Directory or Directory Enquiry Facility. The appending of a telephone number to an existing name and address in a customer list is part of a list verification service, and in many cases, is not the primary and principle service being offered by the DIP.
52. BT notes Ofcom's opinion regarding 'rights of access' by DIPs to produce a classified voice DQ service or classified paper directory. However, 'rights of access' should not extend to the production of other products or services (regardless of whether a business customer subsequently consents) as these products do not meet the purpose for which Directory Information is made available. (This does not mean that BT would not necessarily be prepared to make the information available under other commercial terms to the DIPs.)

#### Availability of services

53. To qualify for 'rights of access' to Directory Information the Directory or Directory Enquiry Facility offered by the DIP must be publicly available. Therefore restricted

user groups (for example where End-Users must meet some form of vetting criteria) or refusal by the DIP to supply to the general public would not qualify as a Directory or Directory Enquiry Facility. (Again, this does not mean that BT would not necessarily be prepared to make the information available under other commercial terms to the DIPs.)

### **The Role of Intermediaries**

54. While BT continues to have concerns about the role of downstream intermediaries, BT welcomes the clearer definition that Ofcom has proposed in the Consultation. In particular BT notes the requirement for an intermediary to pass information directly to a provider of Directory or Directory Enquiry Facilities. However, an issue arises where an intermediary holding a comprehensive database passes information to another intermediary who creates a classified directory which that intermediary in turn sells to a DIP who provides a DQ service – as, applying Ofcom’s definition of an intermediary, a chain of intermediaries would exist.
55. Intermediaries will play an important role in aggregating information upstream prior to provision of Directory and other Subscriber information downstream. There is the potential for a number of ‘intermediary’ roles of some sort or other which it would be useful to define as this will:
- help the industry to understand the various components in the information supply chain; and
  - facilitate the creation of the specific and clear commercial terms;
- to ensure that parties can establish whether they are merely acting as an agent for a CP in the discharge of that CP’s regulatory obligations or as an intermediary in their own right.
56. The likelihood of different roles for intermediaries may create some issues with the current definitions where an intermediary needs to provide Directory Information to a party who is itself providing the Directory or Directory Enquiry Facility. For example, BT may act as an intermediary (in an upstream sense) if it facilitated the collection of Directory Information from WLR CPs through its Openreach business division and also as an ‘agent’ for other CPs through its BTW Directory Solutions business unit.
57. We believe that there are differences in the role of aggregation of Directory Information upstream to facilitate the discharge of the GC19 obligation, and that the role downstream which is based on commercial gain rather than regulatory compliance.
58. Upstream aggregators should be distinguished from those operating downstream. In particular the number of parties in the upstream chain should not be artificially restricted or extended, but should facilitate an efficient transfer of Directory Information – recognising that each link in the chain adds some inefficiency and cost.
59. The issues raised above will not necessarily apply to the provision of BTW Directory Solutions’ OSIS dataset as, as Ofcom has rightly pointed out, BT’s continued provision of the wider dataset is established on commercial terms.
60. BT also requires the right to monitor the activity of intermediaries and of the persons to whom intermediaries have passed Subscriber information and the terms on which

they do so. This will ensure appropriate use of the information. This should include the ability to audit usage and to 'seed' data.

**Question 4.3: Do you agree with Ofcom's view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19 incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.**

**Response:**

61. In principle BT agrees with Ofcom. It is clear that there are difficulties with the current version of GC19, and in particular the peculiarity of collecting and making available the Directory Information of:

- Subscribers who have ported out their telephone number to another network on behalf of the recipient CP to those making a GC19 request; and
- Subscribers who have ported in their telephone number to the donor CP and not those making a GC19 request.

Here BT agrees that it makes no sense for such information to be passed around as under the current rules.

62. BT recognises the logic which Ofcom is attempting to introduce in the proposed redrafting of GC19 i.e. that every CP (retailer of telephony services in this context) should have responsibility for providing Directory Information relating to its Subscribers and thus having a vested interest in ensuring the information is accurate and of requisite quality.

63. That said there is a trade-off between having several intermediaries (each aggregating and passing information on to the next level) which has, potentially, a higher cost and the opportunity for errors (each level being more distant from, and having no direct contractual relationship, the Subscriber), and alternatively, DIPs having to contract directly with (potentially) large numbers<sup>4</sup> of retail level CPs which would cut out intermediaries but be costly in its own right.

64. BT has suggested in its response to question 4.2 an alternative solution which BT would wish to explore with Ofcom and industry.

65. These issues underlie the need for an industry Code of Practice which can set out the roles and responsibilities of all parties. Providing all parties act reasonably, it should be possible for the market to further develop one or more sources of Directory Information with the aggregator(s) acting as agent(s) to the many upstream CPs. The cost of provision of Directory Information from such a source(s) may be more cost effective method of provision compared with the cost of a DIP approaching each CP separately.<sup>5</sup>

66. There are however some issues requiring resolution; BT would be content to discuss with CPs, DIPs and Ofcom how best to resolve these issues with regard to GC19. BT has contractual relationships in place for the broader data set in OSIS at the

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<sup>4</sup> The Ofcom website identifies 1700 RID codes.

<sup>5</sup> To put into context, if the Ofcom Determined charge of £10000 per CP (GC19.2 charge) was applied to each and every CP irrespective of size of subscriber base, the cost of a GC19 feed would be £17m.

moment. It remains to be seen whether BT will be asked by other CPs to act as their agent for the provision of Directory Information and on what commercial basis.

**Question 4.4: Do you agree with Ofcom's view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.**

**Response:**

67. BT has assumed that the relevant CP to which Ofcom refers to is the retailer of the relevant Electronic Communications Service to the Subscriber.
68. In general terms the capture of End-User information should be a matter for industry agreement / commercial terms, rather than through a regulatory obligation. It would also be appropriate for the incremental costs of collection of such information – which are not incurred for the provision of telephony service – to be recovered.
69. If GC19 is extended to include End-User information, the processes of capturing and verifying that information would, ideally, be set out in a Code of Practice, and in conjunction with this proposal, also set out how non-geographic numbers are to be treated if they are to be included in GC19.
70. BT also has concerns regarding privacy, data protection and passing off. Some simple but realistic examples illustrate how problems could arise:
  - Mr Smith has separated (but not formally divorced) from his wife who has gone ex-directory. He can ask for her name to be included as the End-User of his telephone number and potentially receive calls that were intended for her.<sup>6</sup>
  - The same situation can arise in the business world. Mr Smith is a plumber and acquires calls from his business rival Mr Jones by having Mr Jones' name as the End-User against one of his own business lines.
71. BT also sees issues regarding maintaining legality, taste and decency in extending GC19 to include non-Subscriber End-Users.
72. BT would like to know what (if any) opinion the Office of the Information Commission has expressed to Ofcom on this and related data protection issues.

**Question 4.5: Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as 'Directory Information') to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS) (a proposed redrafting of the condition and Telephone directory information obligations and regulations and definition is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part only (e.g. a reference to public Electronic Communications Service being too wide), how do you suggest that Ofcom should address this matter?**

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<sup>6</sup> This is an example which is not dependent on the persons actually ever having been married.

**Response:**

73. No, Ofcom should retain the current provision limited to PATS. While BT appreciates the rationale of extending GC19 to non-geographic numbers, it is not obvious to BT that all such numbers/services should be collected automatically.
74. BT suggests that some industry discussion is needed on this matter to see if consensus can be reached and that Ofcom does not at this stage prescribe rules extending beyond the current range of numbers. CPs may not wish to have obligations to collect directory information for downstream products which do not come under the conventional understanding of directory information services and where no commercial case can be made to ensure cost recovery of the information.
75. There are also issues of TDP regarding some 08 and 09 numbers and it is not the current obligation of CPs to ensure that all actual End-Users are listed in a directory. Extending GC19 will further raise issues of how a CP can be sure that the directory information service offered is comprehensive in practice.
76. The issue of charging for entries of end-users was discussed above (see Question 3.5); in some cases the cost of collection of information may be quite high and certainly substantially more than current costs.
77. BT's current position is that it is therefore not appropriate for an extension of GC19 but if industry can agree to broaden the flow of information on a consensus basis in this area then that would be a better approach.

**Question 4.6: Do you consider that Ofcom should modify GC19 (and related definitions, such as 'Directory Information') such that:**

- **end-user name and address are also required to be provided; and**
- **business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?**

**Question 4.7: Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?**

**Response:**

78. BT is responding to these two Questions together given their close relationship.
79. BT's position on the inclusion of End-User information is discussed above. BT does not consider that this should be a regulatory requirement. However if industry can develop appropriate procedures for collecting End-User information to agreed standards, this may be possible. (See also the response to Question 4.8 below regarding the verification of directory information.)

80. BT has serious concerns on the second proposal (replacing geographic information with 'more relevant data') and believes that this would be unworkable in practice.
81. There are three issues around using address fields for non-address information each of which strongly suggest that this is not a sensible path to adopt. OSIS has a defined structure which can be intermingled with GC19 feeds to and (potentially) from OSIS into other databases. Where the fields become ill-defined and misused, these flows will become overly complex and error prone.
82. Firstly, the fields actually used for any given listing become uncertain and this presents problems for systems developers who do not know what information might appear in what field e.g. part of the name or company structure or part of the address. This leads to problems with formatting and layout.
83. Secondly, a DIP as part of 'cleansing' and maintaining their database will check for accuracy using a 'PAF-based address cleansing utility'. This utility will check the post code and the address fields for accuracy and overwrite any name-based information that might exist in the address fields. It would be highly likely therefore that information would be duplicated or missed deleted leading to a reduction in product quality.
84. Thirdly, address fields are used for searching and the database user would have to know that an element of a company name might appear in the locality field as a search criterion rather than a street or town. (This is linked to the first issue.) This may also lead to data protection issues where information is being searched and disclosed in a manner that an individual Subscriber (the Data Subject) had not envisaged and for which they had not given their consent.
85. Turning to the necessity or otherwise for a wider mandated data set BT agrees with Ofcom's current<sup>7</sup> definition of Directory Information (subject to BT's comments above (Question 4.6) and sees no reason for significant change. Extending the definition to include information which does not form part of the information that a retail CP necessarily gathers to deliver service to Subscribers is likely to be costly and difficult to maintain e.g. information about occupation may change with no clear reason or incentive for a Subscriber (or End-User) to advise the CP of that change.

**Question 4.8: Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.**

**Response:**

86. The context of this Question appears to be on the obligation of both Subscribers to confirm details of End-Users (paragraph 4.47) and secondly on CPs to allow Subscribers to confirm the information provided under GC19 (paragraph 4.48). A third strand to obligations appears to concern withholding information (paragraph 4.49).
87. BT agrees that as retail level CPs would not have contractual relationships with End-Users (unless they also happen to be the Subscriber) the onus will fall on the Subscriber to ensure that information pertaining to an End-User is accurate.

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<sup>7</sup> Insert reference to the Final Determination



88. On the second issue, BT proactively gives its Subscribers the opportunity to verify that their information is correct at the time of provision of the BT service. BT does not subsequently proactively contact Subscribers to clarify the continued accuracy of their information. A BT Subscriber may at any time reactively contact BT to correct, update or change their information or change the status of that information e.g. to unlisted.
89. BT agrees with the third strand of obligation.

**Question 4.9: Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.**

**Response:**

90. BT agrees with this position. The current process for BT Mobile Subscribers is for opt-in and unless they do no information is recorded on OSIS – this is equivalent to an unlisted option (NQR). BT would not include such information in OSIS has it would not have the Subscriber's permission to do so. If a Subscriber wishes to be included on an opt-in basis, then the relevant details will be passed on. In relation to fixed line services, BT supports the opt-out approach and will include a BT Subscriber's information unless the Subscriber chooses (having had the options explained) otherwise.

**Question 4.10: Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.**

**Response:**

91. BT broadly supports the provisions in the current privacy legislation (but see the issue raised in Question 4.12 below) and considers that the Subscriber should be aware of and agree to how their information will be used. Therefore if the collection and use of additional information by DIPs alters the manner in which the information originally collected by, and agreed with, the CP changes – then the Subscriber (and or End-User) should be advised and given opportunity to withdraw their information.
92. This also raises an issue for BT in terms of whether the additional data collected changes the purpose for which the Directory Information is being used. If this were the case then BT would argue that it no longer has an obligation to provide the Directory Information to the DIP.

**Question 4.11: Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.**

**Response:**

93. See the points raised in Question 4.12. BT would also appreciate sight of any comments of the OIC on this matter.

**Question 4.12: Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)?**

**Response:**

94. BT has a number of concerns here which also linked to Questions 4.10 and 4.11.
95. Firstly, the Privacy Regulations refer to individual and corporate subscribers; however Ofcom is proposing to extend the GC19 scope to include End Users. This raises a number of issues including:
- whether the term 'Subscriber' as used in the privacy regulations mirrors that used by Ofcom, in which case the privacy regulations do not extend to End Users - an issue in itself which may need to be addressed when Ofcom considers the scope of GC19; and
  - if the term 'Subscriber' in the Privacy Regulations is considered to extend to the End User then whose responsibility is it to have made the end user aware of the purpose to which their data will be put and gain their agreement - the Subscriber or the CP?
96. Secondly, looking more specifically at the specific regulations of 18(3) and 18(5), we raise again the issue of a CP being able to convey to an end user, the concept of reverse search facilities, or indeed any other purposes for which the data will be used, as there is no direct relationship between the two. The requirement of the privacy regulations may well therefore fall to the Subscriber to discharge, and our view is that they would normally not be qualified to complete this task.
97. Putting to one side for a moment the issue raised above regarding subscriber vs. end user, we also consider that the Privacy Regulations are fundamentally flawed, as the onus to subsequently allow changes and gain consent for reverse search rests with the DIP rather than the CP. Once again one of the key concerns is that the DIP does not have a direct relationship with the individual customer and in practice it can be difficult to be confident that consent has been gained from the authorised party in these circumstances. Furthermore individuals do not wish to be contacted by numerous DIPS requesting consent, and auditing data obtained in this manner would be a commercial impossibility.
98. BT therefore considers that any facility to obtain any consent to reverse search individual subscribers should be prohibited at every level.

**Question 4.14: Do you agree that GC19 should be modified so as to referring also to the word “objective” in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.**

**Response:**

99. BT agrees with this change.

**Question 4.15: Do you agree with the proposed redrafting of GC19 and related definitions as set out above [at the end of Section 4] and discussed through that section? If you disagree, please provide detailed reasons for this view.**

**Response:**

100. BT has proposed an alternative solution for discussion with industry and Ofcom that would require alternative amendments to GC19 as discussed above.

## SECTION 5

**Question 5.1: Do you consider that BT will have sufficient commercial incentive to maintain the comprehensiveness of OSIS? Or do you consider that Ofcom should consider additional regulation to ensure that it will remain comprehensive?**

**Response:**

101. BT has made public its intention to continue with OSIS in its current form subject to the provision that there is a viable commercial demand (taken in conjunction for the associated demand for GC19) and that CPs continue to supply the broader dataset. We do however raise a number of issues in response to the earlier Questions of this Consultation where clarification from Ofcom would assist us in evaluating the financial viability of OSIS in the long-term. BT is also reliant on all other parties and CPs acting in a reasonable manner to enable this sector to operate in an efficient way.

**Question 5.2: Do you consider that there is no need for further regulation on the maintenance and management of BT's OSIS database and it is sufficient to rely on existing market incentives on BT and the option of drawing on ex post competition powers when competition issues are raised? Or do you consider that regulated access to BT's OSIS database is necessary in order to achieve Ofcom's policy objective? Or do you think that there are other options that Ofcom should consider? Please state your reasons.**

**Response:**

102. BT supports Ofcom's stance and is strongly of the view that there is no legal basis for regulation of the OSIS database.

**Question 5.3: Do you have any other comments on assessments made or the matters affecting the issues discussed in this Section concerning access to a UK central database?**

**Response:**

103. BT has no additional comments to make.