



**Change to BT's regulatory
financial reporting obligations
2006/07**

Statement

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Section 1

Executive Summary

Background

- 1.1 The current regulatory financial reporting regime for BT requires its regulatory financial statements to be published within four months of BT's financial year end (31 March). BT asked Ofcom to consider extending this timetable in respect of the 2006/07 regulatory financial statements to allow for material changes to the form and content of the statements and important costing methodological changes to be implemented.
- 1.2 On 5 June, Ofcom published a brief consultation proposing that the period in which BT can publish its 2006/07 regulatory financial statements be extended from four to six months.

Final decision

- 1.3 This Statement sets out Ofcom's final decision. No responses were received on this relatively minor matter and Ofcom has decided to grant a consent allowing BT to publish its 2006/07 regulatory financial statements up to six months after its financial year end.
- 1.4 In effect, this consent will require BT to publish its 2006/07 regulatory financial statements no later than Friday 28 September although BT has indicated that it is aiming to publish in early September if it can finalise the statements earlier.

Section 2

Consent to defer publication

Introduction

- 2.1 BT is required under Condition OA6(b) to publish its regulatory financial statements and any corresponding audit opinions within four months of the period to which they relate (BT's financial year end is 31 March).
- 2.2 BT asked Ofcom for a small extension to the normal publication timetable explaining that important changes to the financial statements would need additional time to fully implement.
- 2.3 Ofcom recognises that, for this reporting year, there are practical and operational reasons why the information may take longer to prepare. However, prompt publication of robust regulatory financial information, particularly where that information addresses compliance with cost orientation and non-discrimination obligations, makes an important contribution to the development of effective markets.
- 2.4 Ofcom published a consultation on 5 June 2007 proposing that a consent be granted to BT allowing the publication date to be no later than six months after their financial year end.

Responses

- 2.5 No responses were received on Ofcom's consultation.

Final decision

- 2.6 Ofcom has decided to consent to an amendment to the normal publication obligation which defers the latest date for publication to no later than six months after BT's financial year end (that is, no later than Friday 28 September 2007). The formal Notification of Consent is attached as an annex to this Statement.
- 2.7 The Consent relates only to the 2006/07 regulatory financial statements and BT's obligation to publish within four months of its financial year end will apply to the 2007/08 regulatory financial statements.

Legal tests

- 2.8 The section below sets out Ofcom's reasons why it considers that the relevant legal tests under the Act for granting the Consent are met. This section should be read in the light of relevant considerations and Ofcom's conclusions as set out in this statement.

Section 3 and 4 – general duties & the six Community requirements

- 2.9 Section 3 of the Act sets out the duties of Ofcom in carrying out its functions, in particular that it furthers the interests of citizens in relation to communications and furthers the interests of consumers in relevant markets. Section 4 of the Act requires that Ofcom acts in accordance with the six Community requirements concerning: the promotion of competition; the development of the European internal market; the promotion of the interests of all EU citizens; non-discrimination; promoting efficiency

and sustainable competition and the maximum benefit for consumers; and facilitating service interoperability and securing freedom of choice for consumers.

- 2.10 This Consent is necessary as it recognises the practical implementation issues faced by BT, taking account of the changes and enhancements proposed and in train.

Section 49(2) tests

Objectively justifiable in relation to the networks, services, facilities, apparatus, or directions to which it relates

- 2.11 Ofcom considers that granting the Consent as described in paragraph 2.6 is objectively justifiable because it allows BT sufficient time in which to prepare an important set of financial statements for compliance purposes recognising implementation issues caused by changes proposed in the current "Blue Sky" consultation and a significant amendment to a cost attribution method.

Not unduly discriminatory against particular persons or against a particular description of services

- 2.12 Ofcom considers that granting the Consent as described in paragraph 2.6 is not unduly discriminatory because KCL (the only other operator with a similar condition) does not have such extensive or detailed reporting requirements and is not subject to any change proposed in the current "Blue Sky" consultation.

Proportionate to what it is intended to achieve

- 2.13 Ofcom considers that granting the Consent as described in paragraph 2.6 is proportionate because it recognises the additional resource necessary to fully implement proposed changes to the published statements and new cost attribution methods.

Transparent in relation to what it is intended to achieve

- 2.14 Ofcom considers that granting the Consent as described in paragraph 2.6 is transparent because Ofcom is explaining and consulting on this change and has provided explanatory material.

Annex 1

The Consent

Consent under section 49 of the Communications Act 2003 and SMP Services Condition OA1, imposed on British Telecommunications plc in Schedule 2, Part 2 to the Notification at Annex 2 of *The regulatory financial reporting obligations on BT and Kingston Communications* final statement and notification made on 22 July 2004, and SMP Services Condition FA10.1, imposed on British Telecommunications plc in Schedule 1 to the Notification at Annex 1 of *Review of the wholesale local access market* explanatory statement and notification made on 16 December 2004.

WHEREAS:

(A) as a result of a market analysis carried out by the Director General of Telecommunications (the "Director") and Ofcom, in accordance 79 of the Act, BT has been designated as having Significant Market Power ('SMP') in respect of certain identified markets.;

(B) as a result of such SMP designations, BT has been subjected to various SMP services conditions in accordance with sections 45 and 86 to 92 of the Act including:

- (a) Services conditions OA1 to OA34 and FA10, imposing obligations on BT in respect of wholesale cost accounting, retail cost accounting and accounting separation in relation to BT's activities in those markets where BT has been designated as having SMP;

(C) this Consent concerns matters to which SMP services conditions OA6(b) and FA10.6(b) relate;

(D) for the reasons set out in the explanatory statement accompanying this Consent, Ofcom are satisfied that in accordance with section 49(2) of the Act, this direction is:

- (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (iii) proportionate to what it is intended to achieve; and
- (iv) in relation to what it is intended to achieve, transparent;

(E) for the reasons set out in the explanatory statement accompanying this Consent, Ofcom are satisfied that in accordance with the relevant duties set out in sections 3 and 4 of the Act;

(F) on 5 June 2007, Ofcom published a Notification of the proposed Consent and accompanying explanatory statement in accordance with section 49 of the Act and invited representation about any of the proposals therein by 3 July 2007;

(G) by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if-

- (i) they have considered every representation about the proposal that is made to them within the period specified in the notification; and

- (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

(H) Ofcom has not received any representations about the proposal and the Secretary of State has not notified Ofcom of an international obligation of the United Kingdom for this purpose.

Therefore, pursuant to section 49 of the Act and SMP Conditions OA1 and FA10.1, Ofcom give the following Consent:

1. In SMP services condition OA6(b) and SMP services condition FA10.6(b), the four month period within which BT must publish its Regulatory Financial Statements and any corresponding audit opinions after the end of the period to which they relate shall be extended to six months for the reporting period ending 31 March 2007.

2. For the purpose of interpreting this Direction, the following definitions shall apply:

- (a) 'Act' means the Communications Act 2003; and
- (b) 'The Notification' means the notification at Annex 2 of *The regulatory financial reporting obligations on BT and Kingston Communications* final statement and notification made on 22 July 2004.

3. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

4. For the purpose of interpreting this Consent:

- (a) headings and titles shall be disregarded; and
- (b) the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.

5. This Consent shall take effect on the day it is published.

Craig Lonie

Director of Regulatory Finance, Ofcom

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

31 July 2007