



Notice under Section 155(1) of the Enterprise Act 2002

**Consultation on undertakings offered by British
Telecommunications plc in lieu of a reference
under Part 4 of the Enterprise Act 2002**

MCI's Response to Ofcom's Consultation

Part 1: Non-Confidential Statement

Submitted to Ofcom: 12th August 2005

About MCI:

MCI is a leading global communications provider, delivering advanced communications connectivity to businesses, governments and consumers. With one of the world's most expansive, wholly-owned data networks, MCI offers an extensive portfolio of innovative Voice, Data and IP communications services that are the foundation for commerce and communications in today's market.

Through 38 Points of Presence and 12 data centres in the UK, MCI provides services to more than 30,000 business customers across the UK. Major sectors served by MCI are finance, retail, government, technology and production, and it has become one of the main competitors in the “business to business” sector. For more information on MCI in the UK visit <http://www.mci.com/uk>

Overview:

MCI welcomes Ofcom's acknowledgement that “BT has a position of market power in markets for the provision of access and backhaul network services” and that “this, combined with its vertical integration into directly related downstream markets, provides BT with the ability and incentive to engage in discriminatory behaviour against its downstream competitors”.

MCI therefore also welcomes the opportunity to respond to the consultation to address these enduring problems in the market, and submits this response to assist Ofcom in deciding whether or not to accept the undertakings which have been offered by BT in lieu of a reference to the Competition Commission under Part 4 of the Enterprise Act 2002, following consideration of the current state of fixed telecoms in the UK by means of the Strategic Review of Telecommunications.

It is an undisputed fact that, 20 years after privatisation BT still retains undue power over much of the market, to the detriment of competition and consumers. Given free reign to do so, it is a reasonable assumption that BT might continue to act in a manner to maintain power over bottleneck access services to the detriment of the market.

This is therefore a very important consultation, demanding achievement of the optimal outcome for the industry. As such, MCI is disappointed that Ofcom has restricted the consultation period to six weeks only, stating that “it is critical for the development of competition in UK fixed telecoms markets that these issues are resolved *rapidly*”. This limitation is further compounded as this consultation is running in parallel with another important (and inextricably linked consultation) ‘Next Generation Networks; Further Consultation’ - which is also of 6 weeks duration only. It is also relevant that both of these consultations close on 12th August;- the height of the summer holiday period.

Rather than ‘*rapidly*’ as Ofcom suggests appropriate, MCI stresses the importance of achieving resolution of these issues ‘*properly and robustly*’, and in a manner that ensures ‘*longevity*’. If the undertakings fail to deliver true and enduring equivalence, industry will be in a worse position. Not only will a long time delay have been introduced before a referral to the Competition Commission can be initiated, but BT's competitors might also have postponed investment decisions, limiting competition. It is vital therefore that the undertakings are not accepted before being fully developed.

MCI is therefore deeply concerned by Ofcom's statement at Annex E, point C, which confirms that “Ofcom, instead of making a reference to the Competition Commission, has ***decided*** to accept BT's undertakings”. MCI feels that this statement leaves no room for either clarification or negotiation of BT's undertakings to achieve addition to, amendment of, or ongoing review of the legally binding commitments offered by BT.

MCI's position:

MCI fully supports the notion of securing *real* equality of access to bottleneck products and services, together with the operational separation of BT business unit managing these. However, the emphasis is and should remain on achievement of 'real' equality, and on ensuring that this is not time limited or without the flexibility to be revised and shaped according to industry reflection on the effectiveness of the undertakings.

Although Ofcom proposes to accept the undertakings offered, on the basis that Ofcom believes the undertakings to be both appropriate and proportionate to address competition concerns and detrimental effects on consumers, MCI remains to be convinced that the undertakings (in their present form or on their own) are likely to be sufficient to fully address the many valid concerns held by industry and does not share Ofcom's confidence as to this being the final solution.

MCI acknowledges that the undertakings could represent a starting point towards a significant step forward from the current market situation where discriminatory practices by BT still appear to prevail to the detriment of consumers and BT's competitors. However, MCI has a number of serious concerns with the undertakings in their current format. These concerns are relayed to Ofcom within the attached *confidential Annex*.

MCI asks that Ofcom takes these, and other concerns held by wider industry into full consideration *prior* to Ofcom accepting a proposal from BT in lieu of a reference. Certainly MCI wishes Ofcom to translate these concerns into firm commitments from BT, to be documented within the undertakings as enforceable obligations.

Summary:

MCI is prepared to support acceptance of a set of undertakings offered by BT in lieu of a reference to the Competition Commission, but does not consider the offer presently available to be sufficient. MCI suggests that Ofcom should gain commitment from BT to expanding the undertakings document to adequately address concerns raised by industry, and to ensure that BT consents to the undertakings being subject to regular review and ongoing amendment to maintain effectiveness without any limitation on duration of enforceability.

In particular, MCI would wish this expansion of the undertakings to include clearer definition of the longevity and enforceability of the undertakings, scope of ASD (in particular that ASD will never sell further up the value chain), split of products between ASD and other BT divisions (in particular that ASD products will *only ever* be available from ASD) and that BT agrees to the effects and achievements delivered post-acceptance being regularly reviewed with any necessary amendment being applied to the undertakings in a legally enforceable manner.

In the event that the undertakings in lieu of referral are accepted by Ofcom, but subsequently prove to be unsatisfactory (and if BT is not prepared to rectify any such issues arising to the satisfaction of industry), then MCI feels that Ofcom should refer the matter to the Competition Commission without further delay.

MCI is a member of UKCTA, the UK Competitive Telecommunications Association, a trade association promoting the interests of competitive fixed-line telcos competing against BT, as well as each other, in the residential and business markets. MCI therefore also endorses the UKCTA response to this consultation.