

Notification to Ofcom pursuant to Section 89C Communications Act 2003

WHEREAS:

- (A) British Telecommunications plc (*BT plc*) gave Ofcom certain undertakings (the *Undertakings*) which took effect on 22 September 2005, pursuant to the Enterprise Act 2002.
- (B) Implementation of the Undertakings resulted in a form of functional separation of BT plc's line of business known as Openreach and which was established on 22 January 2006 (*Openreach LoB*).
- (C) BT plc is the provider of a public electronic communications network.
- (D) Ofcom has made a determination that BT plc has significant market power in an identified services market.
- (E) Having regard to matters raised in the course of Ofcom's Strategic Review of Digital Communications, on 18 July 2016 BT plc made a notification to Ofcom pursuant to Section 89C of the Communications Act 2003 of its intention to implement changes to the governance structure of the Openreach LoB in order to enhance the functional separation of the Openreach LoB (the *Initial Notification*).
- (F) Having regard to further issues raised in the course of Ofcom's Strategic Review of Digital Communications, BT plc has decided to notify Ofcom, pursuant to Section 89C(3)(b) of the Communications Act 2003, of its intention to vary the proposals set out in its Initial Notification in the manner set out in this notification (supplementing and, where relevant, superseding the Initial Notification), in order to further enhance the functional separation of the Openreach LoB through the incorporation of a separate legal entity with a separate board of directors and the transfer of the BT plc employees working in the Openreach LoB to such legal entity.
- (G) The purpose of making such an enhancement is to ensure that the Openreach LoB will secure greater strategic and operational independence.
- (H) BT plc will retain ownership of the assets and all trading (including any future assets and trading) that comprise the Openreach LoB from time to time and will retain all of the economic benefits and risks of those assets and trade.

NOW THEREFORE:

1. Pursuant to Section 89C(3)(b) of the Communications Act 2003, BT plc hereby notifies Ofcom of its intention to vary the plan, stated in its Initial Notification, in order to effect greater functional separation of the Openreach LoB.
2. Subject to paragraph 3 below, the form of greater separation of the Openreach LoB that BT plc intends to apply is as follows:
 - (a) BT plc will adopt certain commitments as a substitute for the Undertakings (the **Commitments**) pursuant to a resolution of the Board of BT plc to operate the Openreach LoB as a functionally separate division of BT;
 - (b) BT plc will establish Openreach Limited as a wholly owned private company limited by shares and incorporated in England and Wales (**Openreach Limited**, taken together with the Openreach LoB, the **Openreach Division**);
 - (c) the board of directors of Openreach Limited (the **Openreach Board**) will be established comprising a majority of independent (unaffiliated) directors in accordance with a governance protocol (the **Governance Protocol**);
 - (d) the articles of association of Openreach Limited will contain customary governance arrangements as well as an obligation of the Openreach Board to ensure that the company treats all customers equally as described in the Commitments;
 - (e) BT plc will resolve to delegate authority to Openreach Limited, acting through its Board, to set the strategy of and oversee the performance of the Openreach Division, develop and implement the Openreach Annual Operating Plan and Medium Term Plan and to manage and operate the Openreach LoB on behalf of BT plc, in accordance with the terms of the Governance Protocol;
 - (f) the Governance Protocol will provide for the independence of the Openreach Division within a framework defined by BT plc. The supervisory controls of BT plc and BT Group plc will be referred to in the Governance Protocol, including those needed to ensure ongoing compliance with BT plc and BT Group plc's corporate and listing responsibilities;
 - (g) following consultation with the relevant employees and their representatives, BT plc and Openreach Limited will enter into an agency and services agreement (the **ASA**) pursuant to which BT plc will engage Openreach Limited to manage and operate the Openreach assets described in the Commitments, provide the Openreach products described in the Commitments on behalf of BT plc and act as BT plc's agent to manage and operate all Openreach customer and supplier relationships and all Openreach trading on behalf of BT plc, including invoicing customers and acting as collection and paying agent on BT plc's behalf;
 - (h) upon entry into the ASA, the employees assigned to the Openreach LoB shall transfer to Openreach Limited, along with their activities, by way of the Transfer of Undertakings Protection of Employment Regulations 2006 (**TUPE**), assuming it remains in force at the relevant time and provides for such a transfer;

- (i) BT plc will provide Openreach Limited with access to assets of the Openreach LoB as described in the Commitments, which will continue to be owned by BT plc, in order to enable Openreach Limited to manage and operate the Openreach Division; and
 - (j) the Openreach Division will have significantly enhanced discretion to devise its strategy and to manage its activities and operational decisions within the scope of the framework described above.
- 3. The arrangements set out in paragraph 2 are subject to the boards of each of BT plc and BT Group plc resolving to implement these arrangements and that the following conditions have been met:
 - (a) the adaptation of the Crown Guarantee or the provision of a new guarantee in respect of Openreach Limited's pension liabilities (insofar as they relate to pension benefits of employees who are currently covered by the Crown Guarantee) which is equivalent in operation and scope to the guarantee provided in respect of BT plc's pension liabilities under the Crown Guarantee, in terms acceptable to BT plc and the trustee of the BTPS from time to time (the **BTPS Trustee**);
 - (b) BTPS Trustee's consent (on terms acceptable to BT) for Openreach Limited to become a participating employer in the BTPS in connection with the arrangements set out in this Notification coming into force;
 - (c) subject to satisfaction of conditions (a) and (b) and in anticipation of a TUPE transfer occurring when the ASA becomes effective, completion of consultation with the relevant employees and representatives, as prescribed by TUPE persisting at the time, to the satisfaction of BT plc; and
 - (d) release by Ofcom of BT plc from the Undertakings pursuant to section 154(6)(c) of the Enterprise Act 2002.
- 4. BT plc will notify Ofcom when any of the conditions set out in paragraphs 3(a), (b) and (c) have been satisfied.
- 5. The Commitments and Governance Protocol referred to in this notification are attached.

Signed for and on behalf of British Telecommunications plc

Signature:



Name: Gavin Patterson

Position: BT Group Chief Executive

Date: 10 March 2017