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Assessing the UK experience of functional separation in fixed telecommunication markets

Over the course of the last year or so there has been considerable interest in implementing functional separation within fixed telecommunications markets. In these markets, which are largely but not exclusively to be found within the European Union, functional separation is seen as a way to resolve the tensions that exist between incumbent operators and other service providers that require access to their networks to deliver their own services. Within the European Union, Commissioner Reding, among others, has spoken favourably about the UK experience of implementing functional separation.

The favourable comments that have been made raise two related questions that this paper will address. The first question is concerned with the precise nature of the UK experience of functional separation. In late 2005, Ofcom and BT agreed that a new division – Openreach – would be established to run BT's local access network. As part of this agreement, Ofcom agreed to accept an extensive range of undertakings from BT that would govern how Openreach operated in practice and the products that it offered to other service providers. In addition, performance indicators and deadlines were placed on BT and penalties for their non-achievement were outlined.

These measures to improve the relationship between BT and other service providers were widely welcomed when announced. Since late 2005, however, some commentators have questioned the manner in which the undertakings are being implemented. The cumulative and long-term effect of the temporary exemptions that BT has been granted by Ofcom are unknown, with some arguing that these have delayed the implementation process to the advantage of the incumbent. Other commentators have questioned the exact nature of the relationship between BT and Openreach, wondering among other things how subsequent investment in the local network will be funded. It has also been questioned what will happen if BT fails to implement the undertakings, not least because there are uncertainties associated with both imposing a financial penalty or referring BT to the Competition Commission.

Given the importance of Openreach and the uncertainties surrounding the implementation of the undertakings, this paper will assess the progress that has been made to date and explore the implications of the exemptions that have been granted. The paper will draw on the extensive published correspondence between BT, Ofcom and other operators regarding the undertakings as well as consultations and other documents.

The second question that will be addressed in this paper relates to the lessons that can be learnt from the UK experience for countries considering the adoption of functional separation. The pioneering nature of functional separation within the UK has inevitably led to it being frequently referred to by others considering its adoption. However, in this process the unique circumstances that led to the creation of Openreach are often overlooked. Consequently, this paper will take into account these unique circumstances when identifying the appropriate lessons that can be drawn for other countries.