

---

**From:** Fitchie, Andrew  
**Sent:** 22 September 2005 12:20  
**To:** 'Ian Kendall'; 'tom.blackhall@tie.ltd.uk'  
**Cc:** Salwan, Anita; 'Gerry Henderson'; Fitzgerald, Sharon; 'stewart.mcGarrity@tie.ltd.uk'  
**Subject:** Utilities

Ian

Here is a short draft Memorandum of Understanding to be used as a means to engage SP, BT and C&W quickly - all of whom you will have seen have now signed up to the confidentiality agreements. Until it is clear which SP company is leading, all three feature. CEC is not a party to this document on the basis that these are non-objecting utilities.

There can be no guarantee that this approach will result in signature, in the absence of further convincing commercial discussion with the three utilities to stress the importance of meaningful engagement now to support tie's programme. As discussed, there is no obvious reason for any of these utilities to play on tie's need to progress matters swiftly.

The MoU will afford tie at least a tool for persuasion, should matters progress too slowly. I do not recommend going further than this style of commitment - e.g. by expressly stating that it creates a binding commitment or that specific timescales apply to the closing of the actual agreement. In my judgment, that will simply result in detailed legal input being required by the utilities - at which point the objective of securing corporate "buy in" and commercial/engineering level to MUDFA at the time of OJEU issue and underpin PQ process will be defeated.

The substance of the draft attached would be the same for BT, C&W and BT.

Anita has contacts for C&W, SP and BT respectively - but you would need to verify with Tom whether these are the right personnel to receive the MoUs. I think despatch of the MoU should be accompanied by the commercial level contact. Now that the confidentiality agreements are in place, this further contact is logical.

Please let me know if the draft MoU suits and we will prepare all 3.

Kind regards

Andrew Fitchie  
Partner  
DLA Piper Rudnick Gray Cary Scotland LLP  
T: [REDACTED]  
M: [REDACTED]  
E: [REDACTED]



7579831\_1\_UKMA  
TERS(Memorandu..