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Dear Justin

### **Next Generation Networks Consultation**

I write with reference to the Ofcom consultation document mentioned above, which was published on 25<sup>th</sup> November 2004.

Tiscali is a member of UKCTA and supports the submission made to Ofcom by UKCTA covering this consultation, addressing issues of concern in some detail.

I structure my response below to cover the issues raised that are of most concern to Tiscali.

### **Regulatory Principles**

Tiscali agrees with the Ofcom principle that competition should be promoted at the deepest levels of infrastructure, but is concerned that principles should not lead to inconsistency or a premature drive to remove regulation. It is true that the main focus should be on access and interconnection at the MSAN in that there is a definition of a local access bottleneck. However, there is no reason to assume that more competition will develop in backhaul services (in comparison to the current low level) or that geographic differences will have a large impact on the amount of regulation needed in the future. The development of the BT 21CN will produce risks to the competitiveness of Altnets in the UK as they try to make a transition and catch up with BT. The regulatory focus must be consistent with current regulation and not fail to account for lack of competition at any geographic point, MSAN, Metronode or elsewhere.

A similar issue will arise with regulation at different depths of service layer. Competition should be encouraged at the lowest level of service provision (ie as close to physical as possible) but reality will not supply a simple solution. The demands of the industry and competition currently identified in the UK indicate a need to provide physical unbundling and interconnection at MSAN as well as Metronode to enable services similar to existing LLU and bitstream. The danger is that business models based on current models of interconnection are rendered invalid by changes made by BT to its network and this possibility is more likely if there is a lack of regulatory will to intervene. Although BT is currently acknowledging industry demands for MSAN interconnection, answers are very slow in coming and indications provided by proposals for transition arrangements are not encouraging.

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Tiscali strongly believes in principles of equivalence of product, process and price for relevant wholesale products and input equivalence as an unequivocal requirement. These principles must be built into BT's 21CN from the beginning. Having said this, extreme caution must be exercised regarding any approach towards de-regulation. The concept of regulatory withdrawal becoming feasible as a result of equivalence is probably valid, but the requirement for equivalence must be 100% met first. Any risky, premature de-regulation must be avoided as the consequences would be far worse than having to live with continued onerous regulatory regimes. The example quoted by Ofcom, Wholesale Line Rental (WLR), is currently nowhere near this level of equivalence and this is a good indication of how close true equivalence is for existing products in general. It is to be hoped that success with the 'build-in' approach to equivalence for 21CN products will improve on the current situation and lead to quicker progress on legacy products. It may prove difficult to change systems and products in advance of 21CN development, but goals should be identified and every possible step taken at the earliest opportunity.

Similar caution should be exercised in looking to reduce regulation as a result of convergence, but the principles expressed by Ofcom are potentially sound. Regulation must operate to prevent abuse of monopoly situations where they exist as a first principle – simplification should not reduce effectiveness.

It is not Ofcom's duty to encourage the building of 21<sup>st</sup> century networks by BT or any other operator or to reward BT for any investment decision it may have made. BT decided to invest shareholder funds in the future 21CN some considerable time ago, without needing to consult the regulator or the rest of the UK industry prior to that decision. However, the principles recognised by Ofcom relating to risk, confidence and migration from old to new are all good ones.

### **Access and Interconnection**

Issues of broadband dialtone migration and the geographic constraints on LLU investment are serious ones that should be addressed as early as possible. The most efficient and effective form of 'soft LLU' may be desirable (although will not be the solution to the need for 21CN LLU), but migration timescales must be equivalent (see the comments in the next section below).

MSAN interconnection has already been requested of BT by industry and discussions continue. Requirements are likely to focus on the ability of operators to replicate their DLE interconnection capabilities (BT are so far talking about transition and backhauling to Metronode to simulate that) and those afforded by DataStream (bitstream access at Metronode is also likely to be required). The potential for backhaul competition should be nurtured, of course, but operators should be able to use their own networks and not be forced to buy backhaul from BT. Interconnection to 'parent' or aggregated MSANs may be more feasible for operators unlikely to interconnect with thousands of MSANs. It is important that current business models, supporting the level of competition that exists in the UK market today, can survive the transition to the 21CN. These models may currently rely on DLE interconnection, DataStream or LLU. Therefore, it is essential that issues around MSAN interconnection, next generation bitstream access and 'soft LLU' are addressed and resolved as soon as possible. Bitstream access as both a regulated transition product and alternative to LLU must be protected, although it may be that successful LLU implementation in geographic centres enables eventual limited regulatory relaxation on wholesale bitstream access. The challenge is to ensure the existence of alternatives without favouring one over the other and to move towards simplification of regulatory solutions at the same time. Any solutions must, of course, contain input equivalence as the foundation principle for product, process and price.

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Tiscali believes that systems and processes for the ordering and management of next generation services must be the same for BT retail divisions and competing operators and providers. This is at the heart of input equivalence and recognised in this consultation and the Strategic Review by Ofcom. It is also essential that all parties work together on the same level of equivalence for systems and processes as they relate to existing products, in advance of any 21CN implementation. BT has already stated an intention to build input equivalence into 21CN systems and industry will be engaged with BT as this develops. Many issues will arise in this respect as the strategic review process continues. Altnets and BT retail divisions must interface with systems equally from outside the 'walled garden'. It may be necessary to ringfence management and ownership of BT systems away from current operational divisions or to break them up in some way to enable equivalence goals to be met. The guiding principle will be that equivalence objectives must be met and BT should not be able to refuse to comply on grounds of inertia or cost.

A final point to make is in respect of the future of the Network Charge Control (NCC) regime as a new period of control is due to start in October 2005. BT legacy interconnect charges are generally regulated by this method and the transition to either existing products on new networks or new products on new networks raises many issues for how BT deals with the changes, complies with regulation and maps between old and new. As BT has chosen to develop the 21CN largely on grounds of reduction in cost, any efficiency increases projected must be built into the new controls proposed by Ofcom for October onwards. Also, the period of the control must reflect the rate of change expected as 21CN rolls out and future needs for Ofcom to revise the controls put in place. NCC issues are to be the subject of a forthcoming consultation and Tiscali is participating in industry liaison with Ofcom as solutions are developed.

## **Transition**

Ofcom is correct to recognise the importance of transition and the fact that serious conflicts may arise as time progresses. It is entirely correct to state that BT has independently decided to make these developments, regardless of whether they suit the business models and plans of other operators and that the operators must be protected from detriment arising from forced early transition.

Tiscali generally agrees with the principles for transition that Ofcom proposes. What is missing is the imperative that BT retail divisions must not be in a significantly better position during transition than other telecommunications operators and service providers in the UK. Although differences in experience are likely, it would be contrary to the goals of equivalence for the transition of such BT divisions to occur in an advantageous manner, be it in terms of technology, products or timing.

Product migration and geographic rearrangement are likely to raise difficult issues and could result in dispute between BT and affected operators. On its own, a sensibly designed and managed transition from old to new products may be achievable without massive dispute. However, every competitor to BT will be in a unique situation and the product issue will not be separable from issues of geography and the operation of existing regulatory regimes. It is also dangerous to begin predicting the death of services such as dial-up internet access at this stage, when many businesses in the UK market are still dependent on it and so many millions of consumers use it. BT must compensate operators for the financial disadvantages created by changes forced upon them because of 21CN.

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BT has already attempted to make a commercial offer to industry covering the closure of DLEs and the transition to 21CN. The idea is to compensate interconnected operators that are affected for a limited period in terms of new costs incurred and arrangements to simulate existing interconnects by backhauling to new sites. However, serious issues arise with the timescales proposed (in that the process should start almost immediately) and the lack of consultation prior to the solution offered. BT proposes to cease support after six months and charge for 21CN interconnect products that are not yet specified, at locations not yet known. The proposal conflicts directly with the current project to renew the Network Charge Control in that the 21CN products (say, 'Single-Metro') suggested would need to be included within it and discussions so far have tended towards a continuing mapping of 21CN network activities to existing NCC products.

Any such proposals are not final, of course, and are unlikely to be agreed by any customers. The situation indicates very clearly a problem in dealing with transition and does not give confidence for the future in terms of the design of new products and the migration to them by BT customers. Serious concerns also remain about the equivalence between migration for BT retail divisions and industry customers, as it appears likely that BT will be able to migrate (to MSAN interconnect) en masse at the very end of the process, rather than be forced to do so six months in advance.

### **Service Specific**

Some service specific issues have been raised above, particularly concerning dial-up internet, DLE closure, and principles of regulatory withdrawal. Tiscali expects future growth in and focus on Voice over Broadband (VoB) for next generation voice services, but cautions against any premature de-regulation or changes to existing conditions based on this type of service. It is unlikely that VoB will fundamentally alter voice competition in the UK for the foreseeable future. Similar caution must be exercised in respect of dial-up internet access. Consumers are likely to continue to demand metered services for years to come and it is probably wrong to assume that flat-rate services can be phased out imminently. Issues have already arisen regarding transition for these services (see above).

Whether 21CN results in a convergence between DataStream and IPStream methods of interconnection or not, demand for these types of service (along with LLU) will continue. This is not surprising given the variety of business models in operation in the UK telecoms industry and it highlights the need for access and interconnection issues, which are discussed above, to be resolved. Clearly, challenges will arise in regulation as technologies change, especially in respect of equivalence and the maintenance of obligations on BT. A key issue will be that of 'broadband dialtone', which will create a threat to LLU as it exists today and raise issues around migration and equality. The focus on equivalence as the chosen means by which to prevent abuse of monopoly power by BT should be maintained, even if the result is that BT should be prevented from using provisioning capabilities that come with 21CN to their full extent, but which would be to the detriment of market competitiveness from which flows the ultimate consumer benefit.

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## Conclusion

It is encouraging that Ofcom is consulting on the implications of BT's 21CN plans, but not very clear where this will lead as yet. Tiscali is fully engaged with BT and Ofcom in terms of feedback on these issues and consultation on the future of the networks and the wholesale products BT provides. Progress on the latter has been slow to date, with many more questions unanswered than answered and a certain amount of suspicion expressed regarding BT intentions. It is essential that these issues are addressed immediately and that BT does not force solutions on industry (in the manner of the recent legacy interconnection offer) that are ill conceived and prejudicial.

Above all, the principles advanced in the Strategic Review Phase 2 and conclusions reached in Phase 3 must be adhered to as 21CN is rolled out in forthcoming years. A new network, with new products and systems, provides an ideal opportunity to dispense with the lack of equivalence of access and highly contentious regulatory environment that have been characteristic of the UK telecoms industry for so long.

Please contact me should you wish to discuss any aspects of this letter. None of the contents of this letter are confidential.

Yours sincerely

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