

Hutchison 3G UK Limited's response to Ofcom's Further Consultation on Next Generation Networks

Introduction

Hutchison 3G UK Ltd (H3G) welcomes the opportunity to respond to the Ofcom consultation on Next Generation Networks (NGNs).

H3G is the UK's only mobile network to utilise exclusively 3G technology, and is therefore already on the forefront of developing and rolling out new style networks. Some services on H3G's network still relies on circuit switched technology, e.g. voice and SMS, but there is an increasing subset of products that use internet protocol ("IP") as the bearer. Examples of this include MMS and Video downloads. H3G envisages moving to an IP network, both in its Core and Radio Networks. However it is worth noting that H3G envisages retaining some element of circuit switched network, probably working in parallel in, at least, the medium term.

For these reasons therefore H3G has significant interest in the Ofcom consultation.

Main comments

H3G agrees it is vital for Communications Providers (CPs) to have a clear regulatory framework in place at a time when key investment decisions are being made with regard to rolling out NGNs and it is incumbent on Ofcom to provide this. This is a fundamental requirement in order to minimise regulatory uncertainty and ensure dynamic investment incentives are not damaged. H3G would agree that it is not Ofcom's role to micro-manage the transition of BT and other CPs networks to NGNs.

It is almost inevitable that there will be both commercial and technical issues and disagreements that may not be able to be rectified by industry and on that basis Ofcom will be expected to step in. For example, the debate and negotiations in relation to interconnect and wholesale pricing for access to BT's 21CN Network has barely commenced, and with only a year to go before BT's intends to launch these services, there continues to be a great deal of uncertainty surrounding this area. Some of this uncertainty is inevitable, as until technical standards have been agreed, BT cannot give detailed specifications to its equipment manufacturers, who therefore cannot start quoting a price (on which access charges will be based). However it is wholly unrealistic to rely on BT given its market power and incentives to resolve these issues in a timely way which is optimal for competition and the public interest. Ofcom must play a role in ensuring that BT does not abuse its market power through the process of transition – the increased uncertainty has greater adverse impact on small players dependent on BT rather than on BT itself.

Even more fundamentally, it is still very unclear as to the actual nature of the likely charging structure to be used under an NGN framework. For example, it is possible that the interconnect charging model currently most commonly used in the UK (i.e. a pence per minute basis), may not be the most commercially suitable approach in an NGN environment. This is simply down to the way calls are handled in a Voice over Internet Protocol (VoIP) rather than the current circuit switched manner where a path is opened from one end of the call to the other and that path is used exclusively for that call. In a

VoIP environment, the voice data packets are sharing with other voice and data services, therefore a different charging structure may be required.

At this stage, H3G is not advocating any one particular methodology over another; it is simply highlighting this as an important issue which needs resolving. Further, although H3G believes it is correct to use negotiation as the best way of entering into a commercial framework, Ofcom needs to recognise the issue of market power in some of the markets where BT has dominance is likely to become an issue. There is a strong possibility that some regulation or some other form of intervention from Ofcom will be required. It is therefore vital that Ofcom remains abreast of the developments with regard to commercial negotiations, and is ready to intervene where necessary. There is also some scope for Ofcom to indicate now what its likely approach will be.

Answers to specific questions

Question 1. Do you agree with Ofcom's proposed approach for the charges for narrowband SMP produced over NGN's.

H3G recognises that there are likely to be some form of migration costs which would raise the costs of access to an NGN above a hypothetical floor. However there is likely to be significant debate between BT and other communication providers as to the nature and extent of that recovery. Ofcom needs to recognise that there will be migration costs incurred by other CPs as a result of enabling access to BT's 21CN , and BT should not be allowed to load additional costs of its own migration onto other CPs. Further, H3G would expect, given the many statements made by BT recently on the expected cost savings implied with the transition to NGN, for interconnect products to be priced below the equivalent C7/TDM prices from the outset.

The basic principle needs to be that efficiently incurred costs must be recovered in a non-discriminatory way. Implementation of such a principle is far from straightforward and needs to be assessed on the basis of the specific facts of the case in hand.

Question 2. Do you agree with the overall approach that there needs to be continuity for existing SMP products, but that it would not be appropriate to continue them indefinitely?

H3G agrees there needs to be a carry-over of SMP products in the new regime, however in terms of how long these should last will depend very much on the eventual speed of roll-out and uptake of NGNs. Claims made on effective delivery of new NGNs made to shareholders, analysts and other stakeholders prior to roll-out may differ widely from the practical reality which will have an impact on the length of time existing products are needed. The basis of SMP may often be nothing to do with a particular technology but rather on BT's control over real property rights which make it difficult for alternative suppliers to step in.

This is an area that Ofcom will need to keep under close scrutiny and undertake the relevant market reviews where it sees fit to do so. However during the period of transition to NGNs, the market reviews may need to be undertaken on a reasonably frequent basis.

Question 3. Do you agree with the general criteria Ofcom has proposed for the withdrawal of legacy SMP products after an interim period.

In general, H3G agrees with the criteria used. It will be incumbent on Ofcom to ensure that it has adequately consulted industry before withdrawing legacy SMP products.

Question 4, Which network intelligence capabilities are likely to be associated with the underlying network where BT has SMP and cannot be independently provided by alternative providers, and why?

It is probably too early to have a meaningful debate on what may give rise to SMP until the scope and nature of BT 21CN is better defined. As a general point it would be preferable for BT to work with the rest of industry to ensure common standards for these services.

Question 6. Do you agree with the issues Ofcom has identified that need to be addressed by all communication providers and what others are there?

H3G fully supports Ofcom's view that a migration to a direct routing solution for Number Portability is a key requirement for NGN rollout. In its response Ofcom's consultation on Number Portability last year, H3G actively encouraged Ofcom to recognise direct routing as an industry requirement. H3G believes that Ofcom needs to engage with industry on a pro-active basis as there will inevitably be some communication providers who do not regard there being any great benefit in migrating to a direct routing solution. H3G has already fed its requirements for direct routing on Mobile Number Portability into BT's Consult 21 process. However it is already concerned at the lack of impetus from other mobile operators to take advantage of this opportunity, and therefore Ofcom will need to intervene to ensure an effective migration and thereby create a level playing field. This is an area where it is inevitable that the interest of the incumbent 2G MNO will not be coincident with the public interest – i.e. it is an area where Ofcom should actively intervene.

Other areas highlighted by Ofcom including End to End call quality, Emergency Call Prioritisation, emergency call location, text relay services will all need to be addressed in more detail. For some services such as Text Relay, Ofcom should consider whether NGNs can bring wider benefits to certain consumers over and above what is currently proscribed under the existing framework. Indeed, H3G believes that NGNs may alleviate the requirement for direct regulatory intervention on specific services for the disabled. H3G intends to comment further on through the USO consultation.

Question 7. Do you agree with the policy principles Ofcom has identified for consumer protection during the move to NGN?

Although clearly it is not in the consumer benefit to have a general degradation of call quality, it is certainly possible to envisage under an NGN framework a two tier (or more) arrangement for call quality. i.e. there may be a scenario where customers pay for calls on a 'best efforts' basis where the quality could be (in some cases) marginal, or is prepared to pay a slightly higher price for a guaranteed level of service, something that could be attractive to business customers and other high users. Ofcom should not preclude the opportunity of offering different tiers of service quality. From an interconnect perspective, H3G would expect BT Wholesale to offer the same level of services to H3G as it offers to BT Retail.

Industry Led Processes

Question 8. Do you agree with the overall processes for developing 21CN obligatory products?

H3G believes it is important that BT consults well in advance of making any changes to its obligatory product set. Further, other CPs must be fully informed by BT of any technological changes that may affect future interconnection arrangements particularly in those areas where BT continues to have SMP.

Question 9. Do you believe there is a need to co-ordinate and steer cross-industry NGN Issues which is not met by existing bodies and processes.

As discussed above, H3G believes there will be areas where there will be specific challenges for industry to ensure issues are addressed. For some of these, such as Number Portability, H3G believes a coordination role will be required. Who takes formal ownership of these issues is probably addressed on a case by case basis, but there will be some areas where Ofcom will need to take a regulatory role – because of market power problems or simply because of high transaction and co-ordination costs.

Question 10. Do you agree that there is a need to co-ordinate the planning and implementation of NGNs on an industry wide basis?

H3G has some concerns over using the SwitchCo model as the best example for the transition to NGNs. Telecommunications networks are more varied and often more complex than terrestrial television operators. For example the concerns of fixed line CPs may be different to that of mobile networks. We have already seen a great deal of activity under the 21CN working groups surrounding the closure of BT's Digital Local Exchanges (DLEs). This is a critical issue for many fixed line providers, but of only peripheral interest to mobile networks who do not as a rule interconnect with BT at the DLE layer.

H3G also has concerns that this organisation may simply add another layer to the complexity and bureaucracy of an already complex piece of work.

H3G therefore believes that Ofcom would be the best placed organisation for the co-ordination and planning of implementation of NGNs, should any such organisation be needed.

Consumer Protection

11. Is there a need for a process to address the wider consumer protection issues arising from the move to NGNs?

H3G questions the need for Ofcom's proposals on consumer protection. The roll-out of NGNs is supposed to benefit the consumer by offering enhanced products and services and cheaper prices for existing services. An analogy could be made with the rapid evolution of Mobile networks from Analogue to GSM, then GPRS and finally 3G. At no stage in this process of developing an increasing number of products and services at lower costs to consumers was there need to give specific updates on what the mobile

networks were delivering on a technical basis. H3G is not convinced of the need to do so now.

13. Do you agree that it appropriate for Consult 21 to continue to take responsibility for developing detail of SMP product migration and development of new products?

Yes, as long as Ofcom are engaged in the process, and BT adheres to its relevant SMP obligations until such time as it is appropriate to remove them. H3G believes that in general BT's SMP obligations should be analysed in reference to ensuring a level competitive playing field in the context of the provision of specific services, rather than the underlying technology. Though different technologies may lead to different solutions to ensure this.

14. Do you agree that Consult 21 combined with bi-lateral commercial negotiation and backed-up by Ofcom dispute resolution is the best approach to the agreeing the commercial aspects of new and migrated products?

It is H3G's preference to be able to negotiate with BT on a bilateral basis for the outset to attempt to agree the pricing of new and migrated products. However, as discussed in H3G's general comments, Ofcom needs to recognise there is a high probability that some of the commercial discussions between BT and industry will not be resolved through negotiation and Ofcom will be asked to intervene. Ofcom will have to be fully prepared to deal with these referrals in order to avoid undue delay in resolution which could lead to significant pricing uncertainty and a corresponding impact on investment decisions relating to NGNs.

15. Do you agree that NICC should continue to be responsible for standardisation of NGN interconnect, but needs to be re-constituted as an independent industry owned body?

The NICC has a pivotal role to play in the establishment of NGNs as unless the relevant standards are agreed, the project will not move from the drawing board stage. H3G has representation on some of the sub-committees and working groups addressing NGN standards and it is clear that there are seemingly entrenched positions in some key areas of work which could ultimately affect the speed of roll-out of NGNs.

If the NICC becomes industry owned it is possible that the commercial imperative for a timely roll-out of NGNs may dilute some of the stronger positions being taken. On the other hand, some parties may gain a commercial advantage by deliberately delaying the agreement of new standards, particularly if they are not in a position to roll out a NGN of their own for some time.

H3G believes therefore that whatever the future composition of the NICC, Ofcom will have to remain a key stakeholder within it to ensure 'fair-play' and *ex-ante* prevention of discriminatory or anti-competitive behaviour.

16. What are your views on the establishment of a new multi-lateral industry group to address NGN issues, its terms of reference and governance arrangements?

H3G believes that before a group such as this is established formally, more detailed consultation with industry is required to address the scope and powers of such a group. H3G understands Ofcom is already undertaking this consultation and we look forward to contributing to the process.

17. What are your views on the establishment of a NGN operational dispute adjudicator, its terms of reference and governance arrangements?

18. Would your organisation be prepared to sign-up to such an adjudication scheme and abide by the adjudicator's decisions?

H3G believes that an adjudicator may help to resolve some small scale issues related to the implementation of NGNs. However it must be recognised that most technical issues will have a knock-on commercial implication. Where a CP believes it may be seriously commercially disadvantaged by a technical decision, it must be able to retain the ability to take the case to Ofcom for resolution, rather than take the case to adjudication.

It is too early for H3G to comment on whether it would join or abide by any such scheme.

Conclusion

The migration to NGNs will inevitably be complex, both technically and commercially. H3G's preference is to achieve a corresponding commercial framework through negotiation, rather than *ex-ante* regulation. However Ofcom must recognise that not all issues are likely to be solved through commercial agreement and it must be ready to deal with relevant disputes on a timely basis. Ofcom should consider issuing guidelines on how it might handle such disputes. It may also be appropriate to require BT to continue to provide on the closest equivalent terms to existing interconnect terms while any dispute is being considered as to how those terms might be amended to reflect the changed technology. This would limit BT from abusing its market power in the transitional period.

There are some areas of the migration where Ofcom needs to take a more proactive approach. H3G supports the aims of Ofcom in ensuring that a direct routing solution for Number Portability is achieved as part of the NGN migration, but Ofcom needs to be seen to steer these types of project directly and be prepared to impose sanctions where delay, or the imposition of particular solutions, is being used to limit competition