



INTRODUCTION

The Communication Workers Union (CWU) & Connect between them represent over 100,000 telecommunications staff working in around 20 companies, both fixed and mobile operators, both incumbent and competitor operations. These companies include BT, Kingston Communications, Cable & Wireless, Telewest, O2, Vodafone, T-Mobile and Inmarsat. Furthermore some of our members work as independent telecoms consultants. This gives us a unique perspective on the British telecommunications industry.

Before addressing the specific questions posed in the Phase 2 consultation document, we would want to express some concern at the general direction and emphasis of that document. The Phase 1 consultation document posed no less than 21 questions. The first five of these were classed as “*fundamental*” and Question 5 asked whether “*the structural or operational separation of BT or the delivery of full functional equivalence*” were “*still relevant questions*”.

It seems to us that, in moving from the Phase 1 document to the Phase 2 document, an issue – equivalence – which was originally of doubtful relevance has become the dominating topic, overshadowing all others. We do not share this obsession and believe that it is in danger of distorting the whole review.

Ofcom has statutory duties to advance the interests of the citizen and the consumer. The key issue for citizens is how Britain is going to acquire a new generation network accessible to all - this is a formidable investment and operational issue that must be an absolute priority for the review. Ofcom’s emphasis on LLU, because it is not economic outside urban areas, rather neglects the interests of certain citizens, i.e. 60% of the population not covered by the largest exchanges. The interests of these citizens will be best served by ensuring that investment in 21CN actually occurs. The key issue for consumers is not simply the availability of competition, but empowering consumers to exercise informed choice in the marketplace – here Ofcom appears to be markedly hesitant in its proposals.

Of course, the issue of equivalence is important, but it needs to be seen in its full context. Equivalence must be available to BT Retail as well as to BT’s competitors; equivalence must be delivered in a practical way which still allows

BT to benefit from vertical integration; and the return to BT for equivalence must be genuine freedom in the wholesale market on a fair timescale. We address all these issues further when responding to the specific questions in the Phase 2 document.

1. Do you agree with Ofcom's proposed principles for regulation of telecoms markets?

1) When encouraging investment in infrastructure, it is vital that Ofcom seeks to avoid a repeat of the over investment seen during the 1990s, which led to a surplus of infrastructure creating huge corporate debts, a collapse of the market and thousands of job losses. Furthermore, the market crash resulted in a need for the intervention of one provider to sustain customer access to services on the failure of another.

In our view what is really required is competition in the development of rich, high quality data services such as video streaming which will begin to drive demand for broadband services.

We can see that increased competition in local loop unbundling could be beneficial for consumers in some locations if the regulatory climate encourages investment in this area. We are concerned, however, that operators will only unbundle local loops where it is most profitable to do so, ignoring the less lucrative areas e.g. Swansea and Southampton, and therefore creating a digital divide where some citizen consumers have access to advanced modern telecommunications services and others do not.

2) We agree in principle with the proposal to deliver equality of access in areas where there are economic 'bottlenecks'. This will give BT's competitors equal access to the monopoly 'bottlenecks' of BT's network such as the local loop or the 'last mile' of BT's copper network. However, Ofcom must ensure that this is done in such a way that does not disadvantage investment in 21CN, the provision of universal service, the interests of those in remote areas, or addressing the needs of the socially excluded.

Ofcom has not detailed in its consultation document exactly which areas and in what way it intends to create equality of access. It is widely accepted, however, that creating equality of access will be a lengthy, time consuming and detailed process which will require a product by product, system by system approach to succeed. The Regulator and BT will need to work hard at this together to be sure of creating a solution that is fair and does not disadvantage any participant.

In addition, it is still not clear what the Regulator's views are in opening up and applying equivalence in the cable network sector. Through the process of LLU

we can envisage the cable network provider having significant market share, and this will need to be addressed when applying any principles of equivalence.

3) We agree in principle with Ofcom's proposal to withdraw from regulation in other areas in return for regulation around monopoly bottlenecks, providing there are measures to protect and promote the interests of citizens. We anticipate that this will include measures such as allowing BT to reduce the price of some of its retail products in areas where it is currently subject to strict price controls. One such area is residential telephony where BT has been losing market share to rivals including those in carrier-pre-selection who, due to current regulatory measures are able to undercut BT on price.

4) We agree unequivocally with the principle of encouraging investment and stimulating innovation. It is vital for the prosperity of the UK from the point of view of economic success and social inclusion that we have a world class telecommunications network. Ofcom must encourage investment by equating risk with reward, and having respect for investments by setting a regulatory framework that allows companies to make a fair return on their investments. This should be done by setting out a long term view of regulatory certainty, so that potential investors are not deterred by the prospect of a change in the regulatory climate which could harm any investment they might make.

5) We recognize that varying regulatory solutions may be required for different products and different geographies. With rapid developments in technology we can expect a whole range of innovative products to appear if Ofcom gets the framework right for investment, and these new products may require specific regulatory measures. For example, VoIP is a new and developing product that is going to need some specific regulations around it to ensure that consumers using VoIP will still have reliable access to emergency services.

Until there is a universal service obligation for broadband, we expect there to be a requirement for geographical variations in regulation to encourage investment in products and services in less densely populated areas. Such measures will be essential for avoiding the creation of a digital divide where some areas have access to modern telecoms services and some do not.

6) We agree with creating scope for market entry by encouraging the use of fibre and wireless networks, which could in turn remove economic bottlenecks. However, again we would warn of the danger of creating duplicate networks through over investment. The reason there is an economic bottleneck in the copper network is because BT owns the network, and it would be wasteful and ineffective to try to remove this bottleneck by encouraging operators to reproduce that network. Instead, telecoms operators and service providers should be given equal access to BT's network, but at a cost that will allow BT to invest and innovate, as well as rewarding BT for continuing to administer and maintain its network to a high standard.

7) We agree with the principle of adopting light-touch economic regulation where there are no enduring bottlenecks providing there are measures to protect and promote the interests of citizens and consumers where necessary and appropriate. There is a danger that leaving market forces to develop and shape the market without checks in place could see a situation where groups with less market power such as minority groups and disabled or disadvantaged consumers are not catered for. Merely asking telecoms providers to develop text relay services for the hard of hearing, and to push their broadband services and infrastructure out to remote rural areas, will not have the desired effect. It is necessary for regulation to ensure that there is equal access to lower pricing, a range of telecoms services, and quality provision for groups with less market power. If there is no economic incentive or regulatory requirement in place, telecoms providers simply will not cater for the needs of minority citizen and consumer groups.

1 a) What regulatory role should Ofcom play in the wider telecoms value chain?

We believe Ofcom should consider the wider telecoms value chain when setting its regulatory framework to encourage and set standards in areas such as application service provision and network equipment. We also agree that Ofcom should not constrain convergence of the telecoms, media and IT sectors in setting regulation. On the contrary, regulation should encourage this convergence which will drive the growth of content rich services such as video streaming, which will in turn drive growth in the telecoms industry and the development of a world class telecommunications network.

1 b) How should Ofcom reflect differences in competitive characteristics in different geographic areas?

Eventually we would like to see a universal service obligation for broadband. We understand that at the present time EU legislation rules out any UK-specific initiative to develop a broadband USO scheme except one funded by taxation. However, the EU will be reviewing this USO Directive in 2005 and may allow USO to be funded by market players. We will continue to argue for a broadband USO whether it is funded by taxation or by contributions from market players.

If there is a broadband USO with a geographically averaged price, then there should be no need for applying different remedies to different areas. However, until there is a USO requirement for broadband, we agree it is appropriate to regulate to define different markets in different geographies.

This might include using a light touch approach in areas high in competition and choice, which will tend to be densely populated areas, and focusing regulation on areas where there is strong demand but poor supply. These would tend to be

sparsely populated geographic areas where it is not economically viable or financially lucrative to roll out advanced telecoms services.

We think Ofcom should regulate to encourage investment in these remote areas, perhaps by offering incentives for innovation and regulatory certainty which will encourage investment in technologies that are the most appropriate to reach remote areas, such as wireless services.

1c) What factors need to be taken into account when considering the scope of demand and supply-side substitution in telecoms markets on a geographical basis?

The availability of not only traditional fixed voice services, but also of advanced services such as broadband and mobile services, needs to be taken into account. The price, choice and quality of those services also need to be considered. As Ofcom rightly points out, customers are unlikely to move locations to take advantage of cheaper or higher quality services supplied in another area.

So, whilst it is beneficial for Ofcom to measure the level of demand by geographic area, its primary objective must be to ensure that the supply of telecoms networks is provided where they are required. Time and cost should not be a barrier to providing telecoms infrastructure in remote areas where there is less demand. These disincentives need to be overcome by Ofcom and by the government if everyone is to benefit from the social and economic advantages a modern integrated voice and data network will bring.

We believe that where investment is not forthcoming, it should be the duty of the government to provide greater public investment to meet that shortfall. If this supply side requirement is not met, the consequence will be the creation of a digital divide, with supply reaching some geographic areas and not others.

1d) To what extent would it be appropriate in the future to take into account differences in competitive conditions in different areas through (i) the aggregation of similar geographic areas or (ii) through different remedies?

The aggregation of similar geographic areas in terms of level of competition may be a good way to standardise regulation for localised areas. Having standard remedies which are designed to be appropriate and effective in geographic areas with particular conditions may also work well.

Whichever way regulation is allocated in terms of geography, the objective must be to ensure that infrastructure and services of the highest quality are universally available at an affordable price where there is a demand for them. As we have discussed already, this requirement must meet the needs not only of the customers who are the most profitable, but also of minority groups such as the

hard of hearing, or those who live in remote areas where it is uneconomical to extend infrastructure.

In such circumstances it may be that the only remedy is to require the incumbent, BT, to roll out infrastructure to areas that are less economically viable, and to provide services to the less profitable social groups. However, BT will need to work with local government and local business to make this kind of project viable, and it will need encouragement and incentives from the regulator to succeed.

Therefore, the remedy for giving access to remote areas with a need for supply side substitution, may in many cases be to give BT the regulatory certainty it needs to justify investment in these areas. This might mean that BT has significant market power (SMP) in some rural locations where no other operator wishes to roll out infrastructure. In such situations Ofcom needs to be careful to resist penalizing BT with *ex ante* regulation which is likely to reduce the quality and universality of BT's offering in remote areas. BT needs to be rewarded, not penalized for entering geographic areas that no other operator is prepared to go, if we are to avoid the creation of a digital divide and develop a modern telecoms network that is available to all.

1e) Would you support a requirement to provide Ofcom with data on particular products on a geographic basis as part of the regular reporting requirements? What is the correct level of disaggregation?

We agree that there is a need for data on the availability of products and services by geography, in order to determine which locations are suffering from a lack of availability so that a remedy can be offered in those particular areas. In our opinion the disaggregation of data to post code level is detailed to the extent that it would place a disproportionate cost burden on telecoms operators, and from that point of view it is undesirable. However, we believe that a fairly detailed level of disaggregation is required to obtain a clear picture of the need for and availability of services geographically.

We therefore think that the level of disaggregation used should be as detailed as possible without introducing disproportionate costs which would be prohibitive to allocating investment where it is needed.

2. Where and to what extent should Ofcom rely on *ex post* competition law rather than *ex ante* regulatory conditions?

We are in favour of a movement towards *ex post* competition law in the areas where BT has been subject to market specific interventions due to its significant market power (SMP). These have been identified by Ofcom and include residential and business calls in retail, and call origination and termination in

wholesale. We believe that more reliance on competition law in these areas will make regulation less intrusive, allowing for a situation where regulation is more strategic and enabling. We believe that this will promote investment, innovation and development in the network.

3. In what circumstances would it be appropriate for Ofcom to make a reference under Section 131 of the Enterprise Act?

Ofcom's consideration on Section 131 of the Enterprise Act appears to arise because of arguments around the break up of BT as a vertically integrated organisation. As we detailed more fully in our response to phase 1 of the Strategic Review, we think the break up of BT would be disadvantageous for the following reasons:

1. It would be technically and organisationally extremely difficult to define and implement.
2. It would be politically immensely controversial to achieve.
3. It would undermine investment and innovation in the network.
4. It would delay significantly the national-wide roll-out of broadband services.
5. It is not a model that has been shown to work anywhere else.
6. It would be precisely the wrong time to attempt such a structuring.

Under these circumstances we do not think it would be appropriate for Ofcom to apply this option.

4. Should Ofcom adopt a broad approach of focusing regulation on enduring economic bottlenecks while tackling the problem of inequality of access head-on?

As we understand it, the logic behind focusing regulation on the parts of BT's network that competitors need to access in order to operate, such as the copper last mile access networks or the 'local loop', is to create competition in these areas and ultimately more choice and lower prices for customers.

We hope that this regulatory focus will also prioritise the need for investment and quality universal services as much as it does choice and low cost. In our view, without the universal availability of high quality services, choice and low cost are of relatively little help to the citizen and the consumer. Quality and availability must come before choice if we are to create a world class telecommunications infrastructure and well served citizens and consumers.

Our real concern is that, in tackling inequality of access, Ofcom actually creates equality of access, and not something tipped in the favour of those companies

accessing BT's network. It is essential, therefore, that equivalence applies to BT Retail as well as to BT's competitors if the level playing field that Ofcom and the wider industry are striving for is to become a reality.

We think that Ofcom's proposal for equivalence can work, but it should not be taken to the point that it disadvantages BT and makes it subsidise its competitors. Ofcom needs to recognize that you cannot divorce the issue of how you introduce equivalence from the sustainability of the network. Ofcom therefore needs to be careful that its proposals for equivalence do not disadvantage BT in any way, or the funds for 21CN, which will be essential to the economic and social prosperity of the country, will not be forthcoming.

Ofcom therefore needs to plan very carefully and it will need to enter into detailed discussions with BT, taking each product, system and process individually and ensuring that equal access is achieved and that it is maintained. Equivalence also means sharing the costs directly or indirectly and proportionately of the respective Operational Support Systems. 'Equivalence' should therefore be an ongoing process of regulation and monitoring to ensure that equality of access does not slip into inequality of access.

After coming to the conclusion that the structural separation of BT would not be beneficial to the UK telecoms industry, in fact that it would hamper investment, it is vital that Ofcom ensures equivalence does not impose disproportionate costs on BT which could lead to its voluntary separation. We believe that Ofcom needs to create a regulatory situation where BT derives some benefits from the costs of being vertically integrated. Without any incentive to stay vertically integrated, the temptation may be for BT to separate its wholesale and retail arms, which would be a serious setback to the UK telecoms industry in terms of investment and network development.

5. How can real equality of access be achieved at the product level?

It will be a challenging process to achieve real equality of access at the product level. Firstly, the bottlenecks need to be identified and agreed upon. Ofcom has listed some areas with LLU and Datastream, but there are others that need to be considered such as rural bitstream and transition products.

Secondly, each of the products and systems identified will need to be worked through individually to apply the appropriate measures to achieve equality of access. It will be a long, detailed and time consuming process, and different solutions will be required for each individual product and system. Ofcom has already acknowledged that there are two basic models of equivalence that will each be appropriate at certain times according to the circumstances.

As well as all the detailed work that will be required, there will also need to be total commitment and openness from Ofcom and BT in order to achieve a result that suits everyone. Ofcom will need to be sensitive to the fact that achieving equality of access could require BT to disrupt its network code and IT systems which will affect quality of service and customer satisfaction. Ofcom needs to give BT the time it needs to put measures in place to avoid such problems.

Ofcom also needs to be sensitive to the fact that BT is investing heavily in creating a network stack that will support both BT Retail and its competitors, and that BT needs to be able to get an adequate return on this investment. If that regulatory certainty is not forthcoming, the stack being built by BT will not become a reality. As we have said before, you cannot divorce the issue of how you introduce equivalence from the sustainability of the network, and BT is currently the only company putting in the funds to develop and sustain that network.

Therefore equivalence has to be achieved in such a way that still gives BT the incentives it needs to invest and innovate.

Equality of access must not mean that every asset or service created by BT is automatically available to other market players. It should only apply where there is an enduring economic bottleneck. Moreover, the timescales for the accompanying deregulation should be in step with the action BT takes on equality of access.

Equivalence requirements should be proportionate. 'Input based' equivalence may be achievable for new 21CN assets and services. However, output based equivalence may be the only practicable possibility in other areas such as 'legacy' networks and services.

5 a) Do you agree with Ofcom's definitions of the various forms of equivalence?

We agree with Ofcom's definitions of its equivalence of outcome and equivalence of input models.

5 b) Do you agree that equivalence of inputs can deliver more effective equality than application of equivalence of outcomes?

We believe that, under the right circumstances, equivalence of inputs could be more effective in delivering equality than equivalence of outcomes. However, as Ofcom points out, there are also various disadvantages to 'input based' equivalence, such as additional cost and delay of re-engineering of existing

products and systems. We believe that where these disadvantages exist, it would be inappropriate to require the use of input based equivalence.

5 c) Do you agree with the principles proposed on where equivalence should be applied and the specific suggestions for individual products?

We agree that equivalence of input should only be forced when the cost is proportionate such as new wholesale products.

We also agree that where equivalence of input is costly, it should be focused at specific levels in the value chain.

Ofcom needs to be sensitive to the fact that there will be significant costs to BT of providing equivalent access to its network, and that these costs should not be disproportionate to the benefits. Unnecessary and costly demands placed upon BT by the regulator in terms of equivalence will not create a situation that encourages investment from BT.

As Ofcom has pointed out, for some of today's regulated wholesale products, the cost of applying equivalence of input is quite significant, thus challenging the merits of applying this model of equivalence in such circumstances. Output based equivalence may be the only practicable solution for today's regulated wholesale products.

5 d) How do you suggest the principle of equality is achieved for 'associated products' that BT does not depend on (such as migration products)?

We agree that, for associated products such as migration products, applying equivalence is unlikely to be effective in delivering equality of access. This is because, as BT does not use these products itself, there would be little incentive for BT to provide a high quality service, since to do this would increase competition at the retail level.

It may be necessary to use a combination of all the approaches Ofcom has suggested to achieve equality of access to 'associated products'.

6. What behavioural changes by BT do you believe would be necessary to achieve real equality of access?

Although Ofcom has expressed concerns over BT's 'behaviour', BT has never been shown by proven examples to have behaved anti-competitively.

We are concerned that many of the proposals Ofcom has suggested to achieve equality of treatment will place disproportionate costs upon BT, such as the suggestion to locate retail and wholesale staff at different sites, and the suggestion to create separate brands for BT's wholesale and retail products. It is important to remember that any disproportionate costs placed on BT will divert funds away from the much needed investment for the development of 21CN.

The other problem we envisage is that, because there appears to be no requirement for BT Wholesale's customers to raise the standard of their behaviour in return for adjustments made by BT, there will be a tendency for BT Wholesale to lower the quality of its behaviour towards its customers. One such area that we foresee this happening is diagnostic testing.

At present there are high levels of fault activity undertaken by BT Wholesale which are ultimately found to be incorrectly allocated to its network. In our view one aspect of equivalence should be to implement measures to prevent faults being erroneously allocated to BT Wholesale. We believe that this will require a change in behaviour of the customers accessing BT Wholesale products, so that BT Wholesale is not the first and last resort for fault diagnostics. BT Wholesale's customers should be required to increase their technical capacity to fairly attribute and allocate network faults.

If BT is forced to lower the quality of its behaviour towards its customers, in order to compete on a level playing field this will have a seriously damaging effect and will reduce the quality and efficiency of the industry as a whole. Ultimately it will harm the experience of telecommunications end users and it will not benefit the people who work for the industry.

It is not clear how far Ofcom is intending behavioural changes by BT to extend. If Ofcom expects to extend those changes to BT's employees, then it must be able to ensure decent labour standards and good terms and conditions in return for the extra demands made upon those employees.

BT faces its own challenge in the transition to new wave services and the development of its 21CN, and complete commitment from its employees will be the driving force behind this transition and key to its success. If Ofcom fails to recognise this with appropriate measures to promote the interests of the telecoms workforce, then it endangers BT's ability to develop a world class next generation network.

We believe that Ofcom needs to be careful not to demotivate the workforce with its demands for behavioural change. There is a danger that whatever good work the trade unions and BT management do to create skilled, committed and motivated employees, Ofcom will undermine that by failing to create legislation which recognises that an effective workforce is fundamental to the success of the industry.

Regulation should take account of the interests of those who work in the industry and the need to work with trade unions to secure skills and training at the highest levels and promote decent labour standards and practices throughout the industry.

We would also like to express a degree of caution against Ofcom involving personnel related aspects of behavioural management, because it opens itself to the challenge that it is seeking to micro-manage BT rather than regulate the market. This would take it beyond the remit intended by Parliament.

7. How should Ofcom reflect the competing considerations of efficient investment and consumer protection in determining the regulated returns that BT may earn from its network?

It is a central contention of this submission that Ofcom has so far failed to appreciate the nature of the investment project that is represented by BT's 21st century network (21CN). This is an enormous project that in scale and complexity is probably without current equal in the global telecommunications marketplace. The business model for 21CN is not given; this is an enormous investment, subject to technology risk, cost risk and market risk. Its success cannot be assumed or taken for granted.

Furthermore its success is not just a matter for BT, critical though that is when BT's traditional markets are being seriously diminished by growing competition and falling prices. Subject to satisfactory access and interconnection arrangements, implementation of the 21CN project will enhance the scope for genuine competition which will be good for both alt nets and for consumers. Furthermore the creation of a next generation network accessible to all will have major benefits for the citizen – it will enhance the prospects for e-commerce and e-government and improve the international competitiveness of British businesses.

For all these reasons, Ofcom must ensure that the returns that BT is permitted to make on its 21CN investments take proper accounts of the risks to the company and the risks to consumers and citizens if Ofcom regulatory policy acts as a disincentive to investment.

8. Do you agree with Ofcom's proposed approach to current generation broadband?

8 a) What should Ofcom's approach be to naked DSL?

8 b) Should there be different regulated wholesale products for current generation broadband in different locations?

8 c) How should the potential lack of equivalence faced by LLU operators in a 21st Century network environment be addressed?

We agree that current generation broadband represents the bridge between the old telecommunications environment and the new. However, we do not believe that Ofcom has sufficiently acknowledged the considerable achievement of BT in rolling out DSL to nearly all of its exchanges and in creating one of the most vibrant broadband markets in Europe. Equally we are not convinced that Ofcom has given adequate acknowledgment to the cooperation that BT has given to alt nets and to the Independent telecommunications Adjudicator in opening up local loops.

There is a constructive dialogue on LLU between BT and its competitors facilitated by the Adjudicator and there is a massive process of consultation between BT and all interested parties on the 21CN. These discussions should be permitted to address and resolve issues like 'naked DSL' and a next generation LLU product.

9. Do you agree with Ofcom's proposed approach to deregulation of voice services?

We agree with the principle of giving equality of access to Wholesale Line Rental (WLR), providing as we have said that this truly is equality of access and does not disadvantage BT.

We agree that once a fit-for purpose WLR product has been introduced and competition increased, it will be possible and desirable to withdraw from price regulation in the fixed voice retail market. This, we believe, is an essential part of the case to allow BT to justify creating real equality of access to its network.

We agree that where competition is increasing in wholesale markets it will be appropriate to withdraw SMP findings and associated remedies. Again, this is the incentive Ofcom needs to deliver to BT in return for providing equality of access. We agree that a market review to determine whether continued regulation is required would be beneficial. However, the process of providing equality of access will be ongoing and gradual, and Ofcom will need to monitor the development of this process and withdraw the remedies accordingly.

With migration to IP based networks the regulatory regime specific to the PSTN will need to be adapted to suit an IP environment. Key to this is ensuring that regulation effectively delivers a high standard of service quality. It can do this by ensuring technical standards for compatibility between networks, and ensuring that all IP networks meet certain quality standards.

Also key is ensuring that the appropriate regulation is in place to allow the setting of interconnection charges so that those companies that have invested in and created NGNs are able to achieve adequate returns on their investment.

We agree that it is appropriate to monitor the relative differences in prices of voice calls on fixed and mobile networks to determine whether it is necessary, and at what stage it is necessary to regulate fixed and mobile services in the same market.

9 a) Do you agree that Ofcom should review regulation of retail voice markets in 2005?

We agree that Ofcom should review regulation of retail voice markets in 2005, and we envisage that because of the detailed and time consuming nature of the process of equality of access, this will need to be an ongoing exercise beyond 2005. We believe that as equality of access to BT's network develops, Ofcom should declare at the earliest possible date withdrawal of regulation in line with these developments.

9 b) Do you agree with Ofcom's proposals for deregulating call conveyance markets and wholesale IDD?

We agree with deregulating call conveyance markets and wholesale IDD. There are some other areas where regulation could be withdrawn which are around call origination and leased line origination.

9 c) When would it be appropriate to remove the requirement on BT to provide indirect access?

It will only become appropriate to remove this requirement when the infrastructure becomes such that telecoms services are no longer reliant on BT's copper network or local loop. Unless BT gives indirect access to its copper network, other telecoms service providers may begin to create alternative network infrastructure, which would be both costly and unnecessary.

We believe that, unless there is a viable alternative to BT's 21CN which promises to be the UK's most advanced and extensive NGN, it will be desirable and necessary for BT to provide some indirect access to alternative providers. We would hope that other service providers will be encouraged to use BT's 21CN, and not only in the densely populated areas, but also in the more remote locations where other operators are unlikely to have built networks.

9 d) How should PSTN-specific regulation evolve under NGNs? What should next generation CPS and WLR products look like?

We believe that when migrating PSTN-specific regulation to an NGN environment, Ofcom should properly understand and take into account the impact of reduced PSTN, but increased ATM and IP traffic volumes on the efficient costs of supply. Ofcom should respond to this situation by setting interconnection charges at the appropriate level to allow adequate returns on investment for those operators that build NGNs.

We also believe that regulation should ensure that NGNs offer high standards of service quality, as well as providing for access to essential services such as emergency services, directory enquiries and text relay services.

9 e) What are the prospects for increased competition for voice services provided using broadband access products (such as LLU and the evolution of DataStream)? What conditions and transitional arrangements would need to be in place to allow service providers to secure access on the basis of commercial terms rather than PSTN-specific regulated products?

No comment

9 f) How should Ofcom ensure competition in areas where alternative platforms were not in place?

No comment

9 g) When do you expect fixed-mobile substitution to result in a single economic market for voice call origination?

The fixed and mobile markets are currently very different and priced very differently. We think it will be some years yet before they can both be regulated on an equal basis.

10. Do you agree with Ofcom's proposals for deregulation of business voice services?

10 a) Has the voice market for large business become more competitive since Ofcom issued its large business pricing statement, necessitating the conduct of a new market review?

10 b) What wholesale inputs should be provided on an equivalent basis before BT should be granted greater freedom in relation to the pricing of voice services to large businesses?

We agree that it is appropriate and necessary for Ofcom to look at the business market when conducting the market review relating to its proposals for voice deregulation.

However, we agree with the view held by BT that there are areas of the business market where the level of competition would already allow for significant regulatory withdrawal, and that there is a strong case for Ofcom to examine the market in these areas. We agree that if equality of access was applied to key business voice products, then the deregulation requested by BT would be appropriate.

We also agree that, in return for providing equality of access, Ofcom should allow BT more flexibility to offer differential tariffs, and should relax regulation relating to downstream price discrimination in the retail market.

11. How should regulation of narrowband internet evolve as networks migrate to NGNs, and how will functional, low bandwidth internet access be provided in future?

We believe that the regulatory framework should actively encourage narrowband Internet users to migrate to broadband. It is not simply and self-evidently that broadband is faster, but flat-rate charging and always-on access totally change the Internet experience, promoting a wider range of use that is in the interests of both consumers and citizens. Broadband services are now so competitive in terms of provision and price that it would be wrong of Ofcom artificially to prop up a narrowband market of declining importance and relevance.

12. How can the arrangements for access and interconnection to next generation networks best address our proposed regulatory principles?

Ofcom has already issued a separate consultation document on these arrangements and no doubt detailed consideration of these complex issues will be pursued through that route.

At this stage, we would simply emphasize the need for Ofcom to give proper weight to the fourth of its regulatory principles in chapter 5, namely promotion of a favourable climate for efficient and timely investment. Unless the 21CN is built, interconnection to it will not be an issue. If the proposed terms of interconnection undermine BT's business case for building the 21CN, next generation networks will be a distant aspiration.

13. What should Ofcom's regulatory approach be to next generation access networks?

13 a) In what circumstances should Ofcom forbear from regulating next generation access?

13 b) How important is it that the investment be made contestable; is this achievable?

13 c) How should Ofcom regulate next generation access if market power were to emerge in this market?

13 d) How might structural options help to eliminate the problems of monopoly access assets being owned by vertically integrated operators?

We are opposed to the creation of a structurally separate entity providing next generation local access. In many ways, this is simply a reopening of the debate on the structural separation of BT. We believe that the deployment of next generation local access is likely to be achieved most rapidly by the time-limited forbearance option briefed outlined in para. 8.64.

Ofcom is correct to state: “.. *there is a strong citizen interest in seeing these networks deployed as soon as possible*” (para. 8.60). We share Ofcom’s concern that “*the market appears to be giving such strong signals about a lack of interest in a new technology [fibre in the local loop] which purportedly holds considerable promise for innovation to the benefit of customers*” (para. 8.57).

We feel that Ofcom dismisses too easily the experience of other countries that are investing already in fibre in the local loop (para. 8.56). The tone of Ofcom’s analysis seems to suggest that the UK should simply accept that it is different from these other countries and will inevitably be years, maybe decades, behind them in deployment of next generation access networks. For Ofcom to simply accept such a view would seem to be an abrogation of its responsibilities to the ‘Citizen’. Instead of dismissing the experience of others as not relevant, we should be examining how best we can make it relevant by tailoring their experiences to the specific circumstances of the UK.

14. What set of wholesale access services should BT be required to provide in order to promote competition in the business market?

No comment.

15. What can be done to facilitate the migration of complex corporate services (e.g. VPNs) between suppliers?

No comment.

16. Are any alternative structures for call termination appropriate? Could evolution to IP interconnection introduce market mechanisms that make intrusive regulation unnecessary?

BT’s 21CN is likely to be the most significant next generation network to emerge in the next few years. However, other companies have also begun to develop their own NGNs. Regulatory policies will need to recognise which networks do what and where, as a single call may be routed through various NGNs.

Rules need to be developed and agreed on interconnection to allow appropriate returns on investment, and to create a high level of service quality.

We therefore think it is unlikely, especially in the short to medium term, that evolution to IP interconnection could make intrusive regulation unnecessary. On the contrary, regulation will need to be rigorous enough to ensure that interconnection ensures adequate returns on investment.

An important issue to resolve is, if PSTN traffic falls (as a result of voice call origination moving to IP), how should the interconnect prices change to reflect the incremental costs of providing interconnect? We would argue that those companies that invest to develop Next Generation Networks (NGN), should be allowed to set their interconnect prices to reflect the cost of that investment and make continued investment worthwhile.

When regulating interconnection and of retail and wholesale prices, Ofcom should properly understand and take into account the impact of reduced PSTN, but increased ATM and IP traffic volumes, on the efficient costs of supply for the incumbent operators. We believe that as competition increases, cost-based interconnection and wholesale charges should be allowed to increase to compensate for any reduction in economies of scale experienced by the incumbent.

It is important that Ofcom takes into account the impact of VoIP on voice revenues of the incumbents when setting the regulatory framework for network competition, because it is these major network providers that the industry will rely upon to put in the massive investment required for network modernisation.

17. What approaches should Ofcom adopt to reducing search and switching costs in telecoms?

We argued in our introductory remarks that Ofcom had over-emphasized the issue of equivalence. In part, this is because competition means little to consumers in practice if they are not empowered to make informed choices between suppliers and tariffs. Consumer can even be duped or pressured into switching suppliers when it is not necessarily in their best interests, Therefore we devote a significant amount of our submission to the issue of strengthening the power of the consumer.

The Ofcom consultation document discusses six options to make it easier for consumers to make comparisons between suppliers:

- We could leave it to the market to provide enough information.

We agree with the document when it states: *“We do not believe at present that the market, left entirely to its own devices, will provide enough information in a sufficiently comparable format to facilitate consumers searching out*

alternative suppliers and switching between them". The evidence for this – and Ofcom rightly wishes to be an evidence-based regulator – is to be found in Ofcom's own consumer research (contained in Annex M of the consultation document).

- Ofcom could itself provide comparable price information and an online comparison tool.

The document concedes that *"This approach would be consistent with that adopted by other sector regulators"*. One example of this is the service provided by Energywatch:

http://www.energywatch.org.uk/help_and_advice/saving_money/index.asp

The document appears to express reluctance for Ofcom itself to move in this direction because of *"the number of suppliers and wide range of packages and tariffs"* in the telecoms sector as opposed to other sectors. However, telecoms regulators in some other countries have felt able to provide such consumer assistance, as is apparent from Norway [<http://www.telepriser.no>] and Sweden [<http://hosting.ibitec.se/pts/Prices.aspx>]. The Australian Communications Authority (ACA) provides useful consumer information and support: <http://www.toolkit.aca.gov.au/fixed/index.htm>

It may be the case that the UK is a larger and more complex market than those of Norway, Sweden and Australia but, if this is true for Ofcom, then it is even truer for British consumers. The proliferation and complexity of choice is not an argument **against** Ofcom providing a price comparator service or at least more consumer support but precisely an argument **for** it to do so.

The document asserts that *"Ofcom believes that this service can be offered more creatively and at lower cost by such third parties than by Ofcom itself"*. No evidence is offered for such a view and we see no reason why this should be the case. Ofcom could sub-contract such a service to a third party who is subject to an Ofcom contract and puts the information on the Ofcom web site and in other Ofcom publications and informational material.

While we see no reason why this approach should be more complex or more costly, we see other benefits: consumers would find this information on the pre-eminent web site for telecoms regulation, instead of having to search for it, and they would regard Ofcom as an independent and trusted source in a way that would not be so of other sources. Furthermore Ofcom would be in a good position to encourage media coverage of new information on tariffs, so that low income consumers – who may not have access to an Internet connection but read a 'red top' newspaper – benefit from the new information.

- Ofcom could instead simply promote the provision of basic information by accredited intermediaries.

We are not encouraged by all existing providers of comparative price information. For instance, consider the service <http://www.mobilechooser.com>. To us, this typifies what can be expected if

this sort of service is left entirely to the industry. It ignores the possibility that one already has a phone and/or an existing subscription and comes up with options that are considerably more expensive than necessary.

We see no reason why Ofcom could not **both** provide its own price comparator service on its own web site **and** accredit appropriate intermediaries to provide a competitive service (after all, Ofcom does favour competition). If the accredited intermediaries became so numerous and so beneficial to consumers, it may be that subsequently Ofcom could scale back or drop its own service. However, currently we are in the unacceptable situation that Ofcom's PASS scheme only accredits one service [http://www.ofcom.org.uk/consumer_guides/comparative_20031214/?a=87101], while the Energywatch site – which has its own price comparator service - currently accredits nine other services [http://www.energywatch.org.uk/help_and_advice/saving_money/price_comparison_services/index.asp]

- Ofcom could encourage a more responsible approach to service comparisons in advertising by providers.

We would certainly support greater efforts by Ofcom and the Advertising Standards Authority to develop detailed guidelines governing comparisons in advertising telecoms services. However, even before such information appears in media advertisements, there is a responsibility on suppliers to provide accurate and relevant information to their customers that will enable customers to have a proper understanding of the tariffs they are paying such that meaningful comparisons are possible.

- Ofcom could restrict the range of tariff packages and structures offered to customers in the market.

We would not favour this approach, since it would reduce choice and stifle innovation, both of which would be to the disadvantage of the customer. We note the work in financial services to make products more comparable but, in this industry, the potential consumer detriment is much greater than in telecoms and therefore the trade off between comparability and innovation is different.

- Service providers could make their bills easier to understand and to facilitate comparisons.

We would certainly favour this approach and we feel sure that bodies like the Plain English Society, consumer organisations and the Ofcom Consumer Panel would be willing to advise on the sort of changes that would best assist consumers at no real cost to companies.

However, it is not simply a question of the clarity of information, but also of the type and amount of information. We would like to see service providers making available to their customers more information of a relevant kind, such as how to complain to the provider if there is a problem and how to access the

appropriate alternative dispute resolution procedure if the complaint is not handled by the supplier to the customer's satisfaction.

The document outlines four options to make it easier for customers to switch between suppliers:

- Ofcom could regulate retail switching costs so that they are low cost or even no cost.

It may be unreasonable and even inefficient to require that there is always nil cost associated with switching, but certainly we would want every reasonable effort to be made to ensure the minimum of costs in all switching processes.

We believe that there is more that could be done in this respect. For instance, in the mobile market the practice of SIM-locking seems to have come in for remarkably little regulatory attention. It is obviously a barrier to switching. It seems to us that it should at least be obligatory for suppliers to state clearly at the outset whether or not one's handset is SIM-locked and the terms and conditions for unlocking it. Indeed we would question whether should it be permitted at all, on top of minimum contractual periods (or after a certain minimum term for prepay).

- Ofcom could positively encourage switching and back this up with education materials.

Ofcom does, of course, already offer advice to consumers on switching:

http://www.ofcom.org.uk/consumer_guides/telephony_con_guides/ofw165/?a=87101

However, in other sectors, the regulator has gone much further in positively encouraging switching, for instance the joint Ofgem/Energywatch Energy Smart campaign:

http://www.energywatch.org.uk/help_and_advice/energysmart/index.asp

- Ofcom could require suppliers to offer a service which encourages customer migration to cheaper tariff plans.

We would very much welcome Ofcom encouraging such an approach by suppliers. The current arrangements require consumers to guess exactly what their usage patterns will be and therefore which tariff option would be cheapest and then to continue assessing their changing usage patterns and changing tariff options in order to decide whether it would be better to switch to an alternative tariff. It is frankly unrealistic to expect most consumers to have this sort of knowledge and invest this sort of time.

We are aware that some suppliers will advise a customer of a cheaper tariff if invited to comment on the customer's bill. However, we believe that there should be a much more proactive approach.

If suppliers were proactively to approach their customers when their change in usage or the company's change in tariffs suggested that a better deal was available, customers would be delighted. This would reduce revenues from that customer in the short term but it would minimise the prospects of that customer switching to another supplier, so that it would be in the financial interests of the company in the medium term. Such an approach might actually reduce the amount of switching, but this would not worry us. We do not support switching for its own sake. We support the best deal for the customer – if the customer's existing provider can offer that, we are content; if such an approach resulted in less switching from the incumbent, then that would simply be the market operating efficiently.

- Ofcom could encourage providers to reduce the complexity of the switching process.

If the complexity of switching processes can be reduced without compromising consumer protection, then we would support and encourage this.

Having addressed all the options floated by Ofcom for reducing search and switching costs, we would want to emphasize that there are other issues to be considered in relation to switching.

A major one revolves around a recognition that for the consumer price, while it is important, is not everything. The total consumer experience, involves price, quality of service, attention to faults and handling of complaints. The comparable performance indicators produced by Oftel have clearly fallen by the wayside and we are aware that Ofcom is currently planning to revive and restructure them. We attach great importance to the regular and accessible provision of such information so that consumers can make a fully-informed choice on whether to stay with their existing provider or to switch.

Finally, we would argue that all this is not simply about consumer protection – although it is certainly about that. The provision of better information to facilitate selection of the right tariff and the right provider would provide collective benefits to the nation. It would maximise effective competition in telecoms and enhance the competitiveness of UK plc and it would encourage the maximum connectivity to and use of the Internet for e-commerce and e-government services. In that sense, this issue is at the heart of the consumer/citizen duality that is fundamental to Ofcom's remit as set out in Section 3(1) of the Communications Act 2003.

18. What should be the arrangements for funding the USO in future?

In Ofcom's review of the universal service obligation consultation document, it is stated: *"Ofcom does not believe that there is an undue financial burden on BT that would justify conducting a full-scale review under Section 70 and any subsequent setting in place of new Universal Service funding arrangements"* (para. 9.21). However, the Phase 2 consultation document states: *"As competition continues to erode high margins across a widening set of products, at some point providing the USO may become an unfair burden on BT and on Kingston"* (para. 10.7).

In our view, it would be helpful to have clarity from Ofcom as to how it would determine at what point the USO became *"an unfair burden"*. There ought to be some sort of threshold or trigger mechanism.

In principle, we would favour a universal service fund since this would be a fairer means of funding the obligation. We note that such a fund is already in operation in France, Italy, Australia, New Zealand and the USA.

We do not believe that direct government funding is likely in the current political climate and such a funding mechanism would probably require legislation. Equally we do not believe that a direct levy on consumers would be perceived as fair, Ofcom itself believes that such a mechanism would create distortionary arbitrage, and again legislation would probably be necessary. Therefore, if there is to be a USO fund, we would favour a levy on communications providers and services.

19. How could competition for the delivery of the USO be organised in future?

We are not convinced that this would be a necessary or sensible approach. There is no evidence that providers other than BT (and Kingston Communications) wish to provide the USO and the time and effort in organizing an auction or other scheme seems out of proportion to any marginal benefits to consumers.

20. Should mobile technologies be used to help address the existing USO?

We believe that the review of the European Universal Services Directive should be an opportunity to reconsider aspects of the delivery and scope of the USO.

In principle, we see no reason why provision of the USO should not be service-specific rather than technology-specific which would permit appropriate use of mobile technologies.

As for the scope of the USO, we believe that Ofcom is taking a conservative view and that we should be ready now to include some broadband obligations in the USO. At a time when, BT is very near to being able to provide around 512 kbps DSL service to 99.4% of the population, it is wrong to stay with a functional Internet access speed of a mere 28.8 kbps. Broadband is not an absolute or a fixed concept. We should be thinking in terms of including in the USO a set of graded objectives that progressively makes available to consumers ever-greater access speeds. The first and immediate step by Ofcom within its power as a National Regulatory Authority to define functional Internet access, should be an increase to 33.6 kbps as a minimum, the next highest standard speed for modems beyond 28.8 kbps. If and where this is not possible due to the physical characteristics of the network but can be overcome by focused investment, then this should take place with funding from the USO Fund

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