

Easynet Response to the Strategic Review of Telecommunications: Phase 2 consultation

3 Feb 2005

Key Messages

- Easynet fully supports Ofcom's approach which is to promote competition by tightly focussing regulation on the enduring bottlenecks.
- Easynet is pleased that Ofcom have recognised the local loop as the deepest enduring bottleneck and will continue to focus its efforts on Local Loop Unbundling as the most appropriate place for operators to compete. Ofcom must ensure that they do not undermine LLU investments by promoting other access methods such as softLLU, MSAN access/interconnect or heavily incentivising alternative fibre access networks.
- It is acceptable to remove regulation from non-bottleneck services, but Ofcom need to be careful they don't remove regulation too quickly or they risk adverse consequences, particularly in immature, developing markets
- Easynet supports Ofcom's concept of Equivalence. It is a good concept, but the hard work will be the implementation. Ofcom must keep the pressure on BT to make equivalence a reality. Only once equivalence has been delivered, and seen to be working in practice, should Ofcom step back from regulation. A key point to this will be setting 'success criteria' for key milestones with swift and severe penalties if BT fails to comply at any point in the development process.
- The Business Rating regime has the potential to completely undermine Ofcom's equivalence discussions in both the core and copper access network. Ofcom must work closely with the relevant Government agencies and departments to address this issue.

- In order to ensure BT's commitment to equivalence and their confidence in their LLU products and processes, Easynet fully believes that BT should have to use LLU to build its own 21CN. Easynet has built its current 21CN based on LLU and so BT should be required to do the same. This points to an organisation split to ring fence the local loop and ensure that all operators, including BT, have access to this enduring bottleneck on the same terms.
- Easynet believes that LLU backhaul is not competitive and therefore Dark Fibre should be made available, ring fenced for this application. In effect these would Backhaul Extension Circuits without the associated NTEs.

Introduction

Easynet welcomes Ofcom's Telecoms Strategic Review phase 2 document. Easynet fully supports Ofcom's focus on competition as the primary means through which consumer interests can be served.

Consumer protection regulation should only be used to fill the gaps where competition has proven not to be able to provide adequate protection.

Easynet supports the concept of equivalence, particularly at the local loop level, and is encouraged that Ofcom are now working through what equivalence means in practice.

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

Easynet supports Ofcom's proposed principles for regulation of telecoms markets. Each of the principles is considered in turn:

- 1. promote competition at the deepest levels of infrastructure where it will be effective and sustainable;*

This principle is key to Ofcom maximising the potential for sustainable infrastructure competition. Easynet supports Ofcom's view that the copper loop is a natural monopoly and it is highly unlikely that any operator will seek to replicate these copper access assets.

Therefore, for many areas the copper loop represents the deepest level of infrastructure down to which effective and sustainable competition is achievable.

2. focus regulation to deliver equality of access beyond those levels;

The copper loop is a natural monopoly and therefore it is appropriate to focus regulation on providing access to this resource. Ofcom already mandates Local Loop Unbundling (LLU) in the UK. Ofcom should continue to promote and improve LLU from product, process and pricing perspectives to ensure that real equality of access is achieved.

Furthermore, for true equivalence of access, BT itself should be required to build its own products on the fundamental building block which is LLU. For its own broadband and narrowband products which rely on access to the copper loop, it should buy the same products, using the same processes and forecasting regime as other operators.

For its 21CN, BT is placing MSANs in local exchanges in exactly the same way that Easynet has already done for its own services. Easynet has had to build its network using the LLU products and processes, and associated backhaul products. BT should be required to use the same set of wholesale inputs.

In addition to being an excellent example of equivalence it also provides the right incentives on BT to make the LLU products and processes scale to meet its own, and industry's requirements, since if the LLU process is substandard then it is not just LLU operators who suffer, but also BT Retail and operators buying any of BT's bitstream products.

3. as soon as competitive conditions allow, withdraw from regulation at other levels;

Easynet agrees that regulation should be tightly targeted at the enduring bottlenecks. Therefore, if bottlenecks do not exist or become removed then it is appropriate to withdraw regulation in that area.

However, the regulatory rules should be withdrawn only following a period of detailed analysis which will take in to account the competitive impacts of such action. Premature withdrawal can easily undermine investments in that market, and closely related markets.

For example, the success of LLU could lead to a withdrawal of regulation on bitstream access, but, depending on the level of deregulation, this could potentially undermine existing investment in LLU and place significant disincentives on future investments.

4. promote a favourable climate for efficient and timely investment and stimulate innovation, in particular by ensuring a consistent and transparent regulatory approach;

As discussed in relation to the principle 3, Ofcom may artificially disincentivise new investment and undermine existing investment if it does not consider the wider investment landscape. Ofcom's fourth principle attempts to address this by promoting a favourable climate for efficient and timely investment.

Ofcom correctly identify that regulatory certainty is a pre-requirement for high risk, capital-intensive activities, such as infrastructure investment.

Ofcom should consider the whole spectrum of regulation and the impact that changes to individual products can have on investment and sustainable competition in other areas. For example, Ofcom's regulatory approach to local access fibre, Datastream, IPStream and retail prices to customers can all impact investments in LLU.

The key issues here are transparency and consistency. Easynet welcomes Ofcom's open approach in consulting on these issues through the Telecoms Strategic Review.

5. accommodate varying regulatory solutions for different products and, where appropriate, different geographies;

Easynet agrees that it is appropriate to vary regulatory solutions by product, since different products will have different characteristics and relate in different ways to regulatory bottlenecks.

Ofcom states that, where appropriate, regulatory remedies may vary by geography. Whilst Easynet agrees that this is possible in theory, there are significant practical issues with varying regulation by geography which are discussed in detail in the answer to question 5. The impact on customer welfare, current and future infrastructure investment, and the general regulatory burden on Ofcom, BT and the rest of the industry should not be underestimated.

6. create scope for market entry that could, over time, remove economic bottlenecks;

Ultimately the best way of removing enduring bottlenecks is through market entry and competition. However, it's important that regulation which provides cost based access to the bottleneck element (eg the copper for LLU) is not removed until a thorough analysis of the competitive landscape and the impact of withdrawing the existing regulation has been fully completed.

There is a balance between promoting competition, by providing cost based access to an underlying bottleneck element, yet still encouraging alternative infrastructures which compete with that same bottleneck element.

Of importance here is Ofcom's phrase 'enduring bottlenecks'. By nature of these bottlenecks being 'enduring' it must be assumed that they are unlikely to be removed over the short or even medium terms.

The regulatory approach to enduring bottlenecks should be the establishment of equivalence of opportunity for both competitors and BT.

7. in the wider communications value chain, unless there are enduring economic bottlenecks, adopt light-touch economic regulation based on competition law and the promotion of interoperability.

Regulation should be tightly targeted at enduring bottlenecks. Intervention in other parts of the value chain has the potential to distort competition. The promise of light touch regulation on non-enduring bottlenecks provides BT with the right incentives to comply with regulation on a fewer number of focussed locations in its network.

From a competitive network operator's point of view it is also unnecessary to implement intrusive regulation on BT across the value chain since, assuming BT and other operators have the same inputs, BT will be competing on an equal footing.

Ofcom's seven principles are a useful set of objectives on which to measure regulatory action. The tricky part is putting these principles in to practice.

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

Easynet agrees with Ofcom's proposed approach which is to tightly focus regulation on the enduring bottlenecks whilst taking a light-touch approach to other areas.

Ofcom has a wider role in terms of consumer protection and ensuring that customers who wish to move between operators are able to seamlessly, through the use of appropriately mandated migration products.

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

The regulation of geographic variance in products and pricing is one of the key issues which Ofcom will have to address as part of the Telecoms Strategic Review. The argument runs that if there is no likelihood of competition, even in LLU, in an area then regulation should be focussed on the bitstream product rather than LLU in that area.

Easynet has sympathy for the logic behind geographically dependent regulation, but is concerned that if Ofcom were to follow this route it could have disruptive and undesirable consequences.

Ofcom should consider the Public Policy consumer implications if geographic deaveraged prices were introduced. It is likely that prices in competitive areas may fall, at the expense of customers in less competitive areas who may see their prices rise.

Customers facing higher prices will be those who have less competitive options from which to choose, so end up with more expensive, less innovative products. Ultimately this could end up as a political issue with calls to revert back to national pricing.

Geographic deaveraging will lead to a large degree of micro management by Ofcom. Ofcom must decide at which level in the network it will target regulation in each geography. Whilst this sounds easy it will be far from trivial.

Ofcom will have to make assumptions about whether access business models are likely to be successful. This will prove particularly difficult since many of these business models are still evolving:

- DSLAM costs are falling, reducing the number of customers needed to make an exchange break-even
- LLU product and process improvements, including changes to backhaul costs are making LLU economic in exchanges which previously may have been marginal

- Technical evolution of DSL technology means higher speed, premium services can be offered over longer distances, further increasing coverage in a particular area. A good example of this is the current move to ADSL2+ based products
- Providers are still innovating around pricing and access speed with a view to gaining additional revenue from value added and 'triple play' services. Some service providers may be willing to make a small loss on access services in order to gain greater revenues from other services.

The danger of Ofcom determining an area as non competitive from the point of view of LLU is that it effectively rules out competition from LLU operators in that area, based on an assumption that they will be unable to compete with a cost based bitstream product.

Therefore, geographic deaveraging has the potential to effectively remove any opportunity for infrastructure competition in that area. Ultimately this means that BT becomes the only supplier of broadband services for large parts of the UK and service providers are restricted to the product set that BT Wholesale choose to offer to their customers.

Further key issues with geographic markets are the practical implementation issues associated with setting up and maintaining such a system. Ofcom will need a significant amount of market information from BT and the rest of the industry in order to effectively define discrete geographic areas. The burden of providing this information is discussed in answer to question 1e below.

If Ofcom were to decide to treat products differently by geographic area it should consider the implications of this on BT. For example, should BT offer the same product with completely separate business units and processes, and with completely different accounts ? If this is the case, which would seem appropriate if the product was deemed to be a bottleneck service in some locations and not in others, then BT would probably end up duplicating resources in order to comply. If resources were not duplicated between the SMP and non-SMP variants of the same product then Ofcom will need to address how costs are apportioned.

Any organisational solution would need to be flexible enough to cope with changes to the geographic area if future Ofcom reviews resulted in changes to the geographic boundaries covered by the different regulations (or alternatively an area which was deemed competitive being deemed non-competitive and vice-versa).

One other factor Ofcom must consider is the impact of the deregulation of BT's bitstream products on LLU operators. Easynet has invested large amounts in LLU based on a defined regulatory regime. Ofcom has the potential to change the market dynamics by deviating significantly from the current regime, to the detriment of LLU operators who could end up with stranded investments.

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?

Ofcom should consider the impact of geographic markets on those operators who wish to offer national services. This is particularly the case for businesses services which are often required to be provisioned nationally. Whilst it is often the case that business services need to be provided to a small number of large business locations, it is increasingly the case that smaller branch offices and remote home workers need to be connected as part of a bigger deal. As a result many multi-site businesses require their telecoms provider to have a national coverage. This suggests that the demand side is actually national in basis for many businesses and deaveraging geographic coverage could give a competitive advantage to BT which is the only operator to have a national coverage.

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?

As discussed above, geographic markets may follow from a purely economic analysis of the markets. However, the potential public

policy issues and the long term impact of regulatory micro management may mean that full regulatory impact assessment would find geographic deaveraging was not desirable.

If geographic markets were considered then it would make sense to aggregate areas with similar economic conditions so as to reduce the number of different geographic areas to be managed. In the same way, similar conditions should result in similar remedies. A proliferation of geographies and associated remedies would cause considerable confusion in the market which in turn would discourage investment.

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?

Accurate and timely data is absolutely key to enable Ofcom to determine how to group geographies. This data will need to be provided by the operators themselves and Ofcom should not underestimate the burden this places on operators of all sizes.

To be absolutely sure of the geographic areas it is necessary to provide data down to the deepest level of disaggregation possible. For business services this could be down to the individual building level. Analysing data down to this level from multiple competing operators will be a statistical nightmare, so perhaps it would be more appropriate to look at data at the postcode level. Postcodes were designed to describe areas for delivering post and so it is no surprise that they don't accurately define the footprints of wireless, LLU and cable networks. Therefore there will still need to be some degree of averaging in each chosen area, leading to parts of some areas being misrepresented.

Finally, Easynet doubts whether BT has truly accurate regional network footprint and costing data. It is understood that BT's national costs are based on an average of a sample set of regional exchanges rather than the actual costs of each exchange.

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

Enduring bottlenecks by definition implies a lack of competitive constraints on market behaviour on the dominant operator. As a result Competition Law is likely to be the least desirable approach.

The suite of *ex ante* regulation should attempt as far as possible to simulate the effects of a truly competitive market on the dominant operator. This may include such elements of pricing, availability and product offering (including migration products and associated elements such as LLU backhaul).

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

Ofcom's initial approach should be to try to make equivalence work. Only if that fails should BT be referred under the Enterprise Act.

However, in order to give BT the right incentives to deliver on equivalence, Ofcom should define measurable deliverables with associated dates. BT should be made aware that if it does not meet these deliverables it will trigger a swift referral under the Enterprise Act. This 'success criteria' should be agreed by Ofcom, BT and the industry in order to ensure transparency of implementation.

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

Easynet absolutely agrees with Ofcom's approach to addressing the issue of inequality of access.

Ofcom needs to be keenly aware that inequality does not exist for business rating and Easynet is very concerned it may be forced to pay increased rates on local loops. This has the potential to undermine Ofcom's pro-competitive, equivalence of opportunities

approach. Ofcom must work hard to ensure that the relevant authorities understand the implications of their ratings policy on the competitive telecommunications market in general, and the impact that will have on consumers.

Annex A contains a letter from Easynet to the Valuation Office Agency, copied to both Ofcom and the DTI, which explains the current issue in more detail.

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

This question needs to be answered on a product by product basis with the relevant BT and industry experts. Some discussions are already occurring under BT's Consult21 process, but these discussions are driven by 21CN architecture and not an equivalence agenda. Easynet would like to encourage Ofcom to steer 21CN discussions in this direction.

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

Yes

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

Easynet absolutely believes that equivalence of inputs can deliver more effective equality than other types of equivalence, simply because all the right incentives are on BT to make the underlying products fit for purpose since its own business relies on the same products.

With equivalence of outcomes, priority will always be to sort out its biggest customers and/or own retail arms, which in both cases is most often BT Retail. Equivalence of inputs retains this incentive, but all operators benefit from an improved product rather than just BT.

An ideal demonstration of equivalence would be for a BT 'loopco' business to provide LLU products to BT in the same way as it does to other operators. This would place other operators and BT on a level playing field.

Equivalence of inputs is also easier to police and measure since there is only one input to monitor. Equivalence of outcomes requires the monitoring of both BT's input and the alternative network operators' equivalent product. Any changes to the BT input product will need to be implemented on the competitors' product at the same time and it becomes very difficult to manage.

Organisationally, equivalence of input is easier for BT to manage since they only have one product. Again this makes things simpler from BT's perspective, which aids transparency and increases industry confidence. This is also a more cost effective solution since it does not require duplication of products.

In addition to the products themselves, equivalence is also required for ordering and support systems, and the development and introduction of new products.

Easynet agrees that the 21CN represents an ideal opportunity to 'design in' equivalence of input. However, BT's plans for 21CN are already under development and Ofcom must act quickly to ensure that this window of opportunity is not lost.

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

Easynet refers Ofcom to the UKCTA response to this consultation for a detailed discussion on equivalence and its application.

Easynet would additionally add that it believes that LLU backhaul is not competitive for fibre based Ethernet backhaul products. This is discussed further in answer to question 13 below.

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)?

Easynet agrees that Ofcom should pay close attention to 'associated products' such as migration. Migration is key to enabling customers to take advantage of competitors' offerings. Without effective migration customers are unlikely to wish to move between suppliers as the disruption and costs associated with changing products will act as a strong disincentive.

It is important that migration products allow seamless migration between products independent of the underlying infrastructure and with no discernable difference from the consumer's perspective. Based on BT's current product set, the experience of moving between any combination of LLU, Datastream and IPStream should be the same.

One point that Ofcom should keep in mind when considering its approach is that BT have a strong incentive to make the migration process as difficult as possible since BT has more customers to lose than it has to gain (especially when migrating from Datastream/IPstream to LLU) .

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

Behavioural change requires commitment from management at the highest level. Easynet expects BT to make such a commitment in its response to the phase 2 Telecoms Strategic Review. Such written commitment must be demonstrated in practice at all levels within BT, from senior management down.

The best way of reinforcing behaviour is by implementing physical operational and organisational splits. Splitting BT into separate organisational bodies along the bottlenecks (rather than simply the existing BT Wholesale, BT Retail split) is likely to be the most effective solution.

Easynet refers Ofcom to the UKCTA response to this consultation document where this question is discussed in more detail.

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?

Ofcom needs to recognise the state of the current market, particularly relating to broadband and next generation services. Operators and service providers are still innovating. For example, consumer broadband prices are falling whilst at the same time speeds of access are increasing. In periods of such rapid development it would be unwise for the regulator to intervene and risk undermining the market dynamic.

Some service providers' retail pricing structures are based on expected increased returns once they roll out their LLU networks. As such, regulated LLU prices are already underpinning current retail offerings.

Easynet fully supports Ofcom's proposed approach which is to focus regulation on the enduring bottlenecks. In order to encourage competition down to this level in the network it is necessary to ensure the enduring bottleneck services are offered on a LRIC basis.

Ofcom is separately consulting on the Cost of Capital and Cost of Copper. These two consultations will be key to ensuring efficient build signals are given to operators.

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

Easynet strongly believes that LLU should underpin all BT's copper based broadband products and they should use the same LLU products and processes as used by competing operators.

Functionally a 'loopco' business should sell LLU access to a separate part of BT Wholesale as well as other operators.

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

Easynet does not believe that BT should be required to offer a 'naked DSL' variant of its bitstream products. However, if it does it is vital to ensure that BT does not disincentivise LLU by how it prices such a product. It must be assumed that the increase in price between naked DSL and 'non naked' DSL is at least as big as the difference between MPF and SMPF pricing. Anything less would favour BT's bitstream products above alternative infrastructure LLU products.

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

See answer to question 5

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

Easynet has provided answers to this question in response to Ofcom's 21CN consultation document.

LLU operators should not be disadvantaged with respect to BT. For 21CN this means BT should be required to use the same LLU products and processes as other operators have to.

On questioning at the Westminster eForum meeting on the 26th January Ben Verwaayen confirmed that BT were prepared to use the same products and processes as LLU operators for their own MSANs.

One important area of potential non-equivalence relates to broadband dialtone. Ofcom must make it clear to BT that it is not acceptable for BT to be able to provision products and services faster than an LLU operator could using the standard LLU product and processes.

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

Easynet supports Ofcom's general move to deregulate voice, however it urges caution with respect to the timing of the removal of regulation. In particular Ofcom should be very careful not to remove existing regulation before BT has provided adequate next generation replacement services to traditional PSTN voice services. The incentive of the eventual removal of existing regulation should remain on BT for as long as it is necessary to ensure they deliver a proper functioning next generation replacement wholesale product.

Ofcom should give the same care and attention, in terms of market analysis, to the removal of existing regulation as it does for introducing new regulation. In particular regulation should only be removed when it can be proven that there has been a demonstrable improvement in competition.

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

Ofcom should be aware of the industry resource which is required when Ofcom reviews markets. It should also consider whether it is appropriate to review the voice market before BT's 21CN plans are finalised. There is a danger that reviewing the market at this stage could produce a distorted view since the market is about to enter in to a period of rapid change as operators build their own NGNs to compete with BT's 21CN.

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

Ofcom should not remove regulation until it can prove that competition is flourishing and is sustainable in the absence of the regulation which is to be removed. Premature deregulation could have the effect of stifling fledgling competition.

Easynet would only support a general move to deregulate these markets if Ofcom has successfully completed this analysis and found that deregulation was justified.

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

Ofcom should do a thorough review of how indirect access is used in practice to ensure that it fully understands the implications of removing Indirect Access.

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

Easynet provided its views in its response to the Ofcom NGN interconnect document.

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?

The prospects for increased competition for voice services are good. Broadband enables service providers to offer voice services to their customers without having to rely on a BT voice origination services. This gives providers more control over their services and reduces the cost of provision.

Furthermore Voice over IP services will enable new innovative services which will provide additional incentives on customers to move from existing 'vanilla' PSTN services.

Of course, BT are promising innovative products which will take advantage of BT's investment in 21CN. BT will make use of what it

calls 'network hooks' to gain additional information about customers, such as their physical location in their network or their terminal capabilities, to offer differentiated services. BT has discussed making these features available to other operators and service providers to enable them to offer competing services. It is essential that these features are provided on an equitable basis to all operators, including BT, to ensure that BT are not able to take advantage of their inherited dominance in call origination. 'Network Hooks' potentially represent another enduring bottleneck in the market which must be tightly regulated.

In order for customers to be able to take advantage of competition they must be able to move between providers and services easily. This calls for mandated migration products, including the ability to port telephone numbers between different technologies.

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

Ofcom should not be concerned if only copper based access platforms exist in a particular location. Where LLU is viable operators will compete in speed and quality of their products. LLU speeds already exceed the demands of most subscribers and there are still plenty of opportunities to exploit the bandwidths available using LLU further as technology improves. A good example of this is the current move towards SDSL and ADSL2+.

If LLU is not viable then BT's bitstream products will provide an adequate route to market for competitors to offer competing products.

Above all Ofcom must be consistent with its aim to promote competition down to the deepest level of infrastructure. Since the copper access network is almost always the enduring bottleneck it is not surprising if alternative platforms did not develop in many areas. Ofcom needs to ensure it does not undermine LLU by encouraging alternative infrastructure build in the local loop.

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

It is difficult to see mobile and fixed substitution becoming widespread because of the different technical characteristics of the services.

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

Easynet refers Ofcom back to the core principle of the Strategic Review which is to ensure that BT's products are replicable by other operators. To be able to compete on business voice services true equivalence of the enduring bottleneck inputs is required by competing operators. Once competing operators have this access then deregulation in other parts of the value chain can be removed.

The enduring bottlenecks which form inputs for business voice services are often wider than simply voice services. Partial private circuits are usually required to compete with BT, and increasingly such services are moving to IP based solutions.

It's also worth noting that many home worker voice services will appear very similar to residential voice services so it may be artificial to regulate the same service in two different ways depending on whether it's being sold to residential or business customers.

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?

Easynet has seen no evidence of a change in the market conditions for large business pricing.

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?

BT should provide at least voice interconnect, data interconnect, VPN interconnect (voice and data) and workable migration products before other services can be deregulated. Other products required include WES, PPCs and LLU, and dark fibre access ring fenced for LLU backhaul.

Furthermore, BT should provide access to its network database which gives customer connection details so that competitors get the same access to physical network information as other parts of BT. This will greatly simplify operations for alternative operators and reduce the uncertainty, and therefore risk, in providing solutions to customers.

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?

Easynet discussed narrowband Internet and other low speed data services in its response to the Next Generation Network consultation.

Narrowband Internet call minutes are in decline but still represent a significant volume of calls, and revenues, for Internet Service Providers. It is likely that minutes will continue to decline, although it is unlikely they will disappear for a while.

Ofcom should consider the implications of other types of narrowband access, such as ISDN, especially where this is used for diverse routing in leased line backup solutions.

It is likely that some form of low speed, long reach ADSL service may be possible from BT's MSANs at a small incremental cost. Ofcom may wish to consider this in the context of a broadband USO if this becomes relevant in the future.

For now, Narrowband Internet (underpinned by the NTS charging regime) needs to remain as it is still the main means by which many people currently access the Internet.

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

This question was addressed in considerable detail in Easynet's response to the Ofcom Next Generation Interconnect consultation document.

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

Easynet believes BT should be required to offer equality of access from the outset with standard rates of return (Ofcom's option A).

BT has a significant advantage over other operators in that it owns a considerable amount of local duct infrastructure and therefore its cost of rolling out a fibre access network is considerably less than competing operators. Requiring BT to provide equality of access from the outset with a standard rate of return will provide a level playing field on which operators can compete.

Ofcom have rightly identified next generation access networks to be a key regulatory issue and Easynet would encourage Ofcom to consult fully on its principles before applying them. The issues related to next generation access networks can only be touched on in a document such as the Strategic Review.

It is worth noting here that Easynet believes that dark fibre should be made available in the near term for the ring-fenced application of LLU backhaul. This particular market, ie operator to BT LLU exchange backhaul, is not competitive and rather than focussing regulation on wholesale variants of BT's retail services (eg the BES variant of the retail LES product), Ofcom should be concentrating on enabling similar access at a dark fibre level. In effect this would be an NTE-less BES product. Easynet's answers to 13a-13d relate to Access Fibre only.

An absolute key consideration in fibre networks is the question of business rates. As discussed elsewhere, the inequitable business

rating of physical network infrastructure between operators has the potential to undermine any regime that Ofcom puts in place, no matter how pro-competition it is.

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

Easynet believes that forbearance with respect to the local access networks is a potentially dangerous approach. This would be particularly if the operator in question were BT since they already have control of the copper access bottleneck. BT would simply be able to extend this dominance to a fibre access network, which could also be assumed to be a natural monopoly.

Easynet recognises the large financial risks associated with building a new fibre access network, but clarity as to Ofcom's position in advance of any investment would act to reduce this risk.

As Ofcom identify there is a significant first-mover advantage when building out next generation access networks, so whilst forbearance may be attractive from a regulatory perspective it would be very worrying from a competing operator's perspective.

Ofcom should consider whether the new network will be an enduring bottleneck. If it is then it should be regulated as such from the start to risk distorting the market for competitors, particularly those using LLU.

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

Easynet believes it is very important that BT's network is contestable by securing open access to the civil infrastructure, principally BT's ducts. In practice however this may prove very difficult to manage since BT's access network ducts contain lots of copper infrastructure and are unlikely to physically allow access to multiple network operators. Even if there were space in the access ducts to allow

other operators to have access, the process of managing this resource would be significant.

BT will therefore most likely always have a cost advantage in rolling out its own, single, fibre access network, which ultimately becomes a new enduring bottleneck.

Easynet believes fibre for use in LLU backhaul is a different issue as this is simply replicating the fibre routing rules as used for LES/WES/BES (but without the associated NTEs). Issues related to duct sharing are not relevant in this instance.

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

Easynet believes there is a high probability of market power emerging, particularly if BT were to build a fibre access network. In part this relates to BT reduced costs in building such a network due to its existing physical access network, including ducts and poles etc.

In view of BT's likely dominance and lower cost base, Easynet believes it would be appropriate to regulate for equality of access from the outset.

Easynet would expect BT to be able to make a return on its investment and accepts a standard rate of return is probably not sufficient. However, the risks for BT in building an alternative access network would actually be reduced by offering equality of access as it is likely the total market for fibre access would be stimulated and grow faster by competitive pressures on BT from other operators.

As stated above, Ofcom's risk-adjusted rate of return must recognise BT's significantly reduced risk in building next generation access networks compared to other operators.

The risk-adjusted rate of return is a key issue and Easynet would encourage Ofcom to consult with the industry in detail before setting such a figure.

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

Ofcom have already identified that it is important to ensure there is equivalence of opportunities for all players in markets where there are enduring bottlenecks. Easynet believes this is absolutely the case for vertically integrated operators, such as BT, who own monopoly access assets. Therefore Easynet's earlier analysis of equivalence issue applies equally to the issue of next generation access fibre.

Next generation access networks give further weight to an additional organisational split along the edge of the access network (the 'loopco' model described earlier) rather than just the current BTWholesale/BTRetail split.

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

See answer to question 10b above.

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

Interoperability for VPN solutions (voice and data) would assist operators in offering services to customers, particularly to fill in areas which are 'off net'. As discussed elsewhere, business customers have many similarities to high end residential consumers, particularly for home workers and small remote businesses locations. Without such interconnection BT will become the preferred supplier for businesses who require nation-wide coverage.

Ofcom correctly identify the lack of migration products as a disincentive on customers to move between competing suppliers. It is important that BT are not simply able to migrate existing voice

VPNs customers on to its 21CN infrastructure without offering a migration to other operators.

Easynet would go so far as to say that BT should not be able to migrate VPN customers on to the 21CN until a workable, next generation VPN migration product for voice and data services were made available to competing operators. This approach would ensure that BT does not continue its stranglehold of such customers.

Moving to the 21CN offers Ofcom the opportunity to ensure interconnect and migration products for both voice and data VPNs , thus removing artificial barriers to a competing market.

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

Whilst it is right for Ofcom to consider the issue of call termination in mobile, and fixed, next generation networks, it needs to be careful it does not distort the market by making inappropriate or untimely assumptions about market structures. It is likely that the call termination model will evolve, but it is too early to conclude whether regulation needs to be removed, or indeed added, for future call termination markets.

Ofcom must be convinced that the market is mature enough to function efficiently in the absence of regulation before any existing regulations are removed.

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

Easynet believes that regulation of switching costs should focus on the dominant provider of services. This operator has the most to lose

by offering a good migration/switching service as it has the most customers.

In such cases it remains appropriate to maintain a degree of regulation on the retail price of switching costs. Without such regulation it is likely the dominant operator would raise these costs to act as a barrier to customers moving operator. Similarly the dominant operator has good incentives to produce an inadequate, slow, cumbersome switching product, and so Ofcom should continue to be involved in the design and evolution of such products.

Easynet would encourage Ofcom to play an active part in the negotiation of migration agreements between operators in a facilitating role. A good example of this approach has been Ofcom's involvement in the broadband migration working groups.

Easynet would urge caution on Ofcom's proposals for consumer information, in particular their proposal to encourage migration between tariff plans. Requiring operators to encourage their customers to move to cheaper packages on their own networks may have the result of increasing prices for consumers rather than decreasing them, particularly for customers buying entry-level low end products.

If such regulation were introduced operators would most likely increase the cost of their cheapest packages, particularly if these products were loss-leaders, to avoid mass migration of their customers to these price points.

Care must also be taken when encouraging operators to produce tariff packages and structures in standard formats as this may seriously undermine pricing innovation and potentially adds an additional financial burden on operators to comply (which will be passed on to consumers).

There is a general move in the market towards inclusive minutes and eventually flat rate calling (at least for geographic calls). Operators have to make a decision when offering flat rate packages as to which sorts of calls are opted-out of their inclusive call allowances and flat rate packages. Increasing the number of call types which can be

included in the flat rate element of such packages increases the cost and risk to operators (particularly if NTS services are included).

Operators currently compete in some areas by offering simple, easy to understand tariff packages to encourage customers to join their network, but there is a balance here between complexity and price.

Ultimately, competition between operators is the best sustainable way to drive prices down for consumers. Raising the profile of consumer information with consumer groups will put pressure on operators to respond to customer demands by voluntarily making their tariffs simpler to understand.

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

The arrangements for funding the USO will in part depend on the scope of the USO. If the USO remains primarily voice based, which Easynet supports, then the continuation of the current model would seem appropriate.

Easynet supports Ofcom's conclusions that a broadband USO is not currently appropriate, even if this were within the scope of the European directives. Infrastructure access is a minor point compared to the penetration of computers in households and the current take up of broadband services.

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

Easynet would certainly encourage Ofcom to look at innovative solutions to delivering the USO, in particular using alternative operators to deliver solutions.

One way to use the USO to encourage competition in rural areas is to encourage alternative operators to provision the USO network. If a competing operator were funded to rollout its network to meet the USO, its competing infrastructure could be used to provide services

to other customers, both residential and businesses, in that area. In this scenario the USO operator not only provides basic service, but can also provide competing services to other customers in that area.

For this reason, Easynet believes that in general there should be an assumption that public institutions should support alternative infrastructure players when awarding tenders as this promotes competitive infrastructure in these areas.

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

Initially Ofcom should identify the requirements which the USO must deliver. Once these criteria are defined it is then appropriate to consider whether they could be provided by mobile technologies, or indeed any other technologies.

Annex A - Letter from Easynet to the Valuation Office Agency dated 22 November 2004.

Annex A - VOA letter.pdf