



**Internet Services Providers'  
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Dougal Scott  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London, SE1 9HA

Dear Mr Scott,

ISPA welcome the opportunity to respond to Ofcom's Strategic Review of Telecommunications Phase 2 consultation document.

ISPA believes that responding to this consultation offers a chance to change the regulatory contract with move to 21CN.

ISPA's response reflects that fact that ISPA believes that equality of access can be achieved without the structural separation of BT. By solving the problems of lack of equality of access to bottlenecks, ISPA believes that further relaxation of regulation in the sector is possible.

ISPA believes that revision of the telecoms market is necessary and is pleased with Ofcom's thorough approach.

This response will form the basis of ISPA's response to the Trade and Industry Select Committee on Ofcom's strategic review of communications.

BT have asked that their response to this consultation be considered separately.

Yours sincerely,

ISPA Secretariat

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

ISPA agrees with Ofcom's coherent and forward-looking approach to telecoms regulation, and would welcome a lasting and agreeable change in the whole basis of the regulatory approach such that regulation becomes focused purely on the furthest upstream activities – with consequent de-regulation downstream. We recognize that this will involve changes to BT's processes and internal governance. However, some of ISPA's members are very skeptical that BT is capable of the cultural and organizational change necessary to change its behavior significantly in the future.

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

ISPA believes that Ofcom should play a minimal regulatory role in the wider telecoms value chain. However, where circumstances dictate that regulation is needed, or there are enduring economic bottlenecks, ISPA believes that Ofcom must decisively intervene with tightly targeted regulation. In arriving at any such regulatory action, Ofcom should of course take into account the wider telecoms value chain insofar as it is relevant.

Implemented regulations should not be assumed to be finite; rather they should be subject to ongoing review as dictated by the competitive development of the market. Ofcom should consider carefully when withdrawing regulations so as not to stifle the early development of the competitive market.

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

ISPA believes that Ofcom should be very careful in its consideration of differences in competitive characteristics in different geographic areas because this is most likely to result in different prices for consumers being charged for the same products in different areas.

ISPA believes that prices should be equitable across all geographies. Currently, less cost effective areas are in part subsidised by more competitive areas with, for example, a broadband connection in a rural area costing the same as in a more competitive urban area, despite the service in the rural area costing more to provide.

Customers in rural areas may also have less choice when it comes to competitive offerings because other operators will be unlikely to offer services in those areas because of the increased costs. As a result of geographic deaveraging

customers in rural areas face increased costs whilst having access to less competitive offerings (compared to urban areas) .

**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?**

It is difficult to say which areas are likely to be competitive or not, as technology is still advancing, and the market is still developing.

ISPA believes that Ofcom needs sufficient data in order to be able to make appropriate decisions. ISPA accepts that while this is a burden, it is necessary and the onus of finding and establishing this data should reside with Ofcom.

ISPA would like to draw Ofcom's attention to the risk of delineation of geographic markets without appropriate data and thorough analysis. ISPA is concerned that the arbitrary delineation of geographic markets has the potential to turn into a postcode lottery.

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

ISPA believes that in line with the current European regulatory framework, *ex ante* regulation should be in place, ensuring appropriate regulations are put in place upfront.

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

ISPA is prepared to give BT the opportunity to prove that equivalence is the best solution. However, there should be some absolute criteria that BT have to accept.

ISPA believes it might be appropriate for Ofcom to make a reference under section 131 of the Enterprise Act if competition had been severely restricted or distorted, and if BT Retail and other parts of BT Wholesale were able to gain a clear advantage from BT Wholesale at the expense of competition of the market.

Some ISPA members believe reference under Section 131 of the Enterprise Act would also be appropriate in a situation where BT has showed a consistent lack of regard to the regulator in terms of the relationship between BT Retail and BT Wholesale. However, ISPA is aware that this could lead to the functional separation of BT, and ISPA does not believe that this would necessarily serve market purposes well, not least because of the long periods of uncertainty the referral would take.

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

Yes. However, ISPA believes that this is a balancing act, as Ofcom must promote consumer welfare, but not at the expense of competition.

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

ISPA believes that by all players starting from a level playing field, and thereby taking away any advantage that BT Retail might have over other players, where that advantage might not be objectively justifiable, real equality of access can begin to be achieved at the product level.

ISPA believes that regulation must be focused at the deepest part of the network, taking into account different types of products and processes, and that product equivalence must be developed in line with process and price.

However, ISPA would like to caution that care must be taken when designing the equivalence model so that it doesn't favor BT retail.

There is a vigilance role for Ofcom where policy is designed and implemented.

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

Most ISPA members agree with Ofcom's definitions of the various forms of equivalence.

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

Yes. Outcomes are subject to competitive forces of market and consumer decisions. ISPA believes that one of the key building blocks of equivalence is that BT wholesale must offer the same products to everyone, not only BT retail and other parts of BT Wholesale, in order to prove that BT is serious about equivalence.

In order to demonstrate BT is serious about equivalence it should undertake to provision it's 21CN network using the same products and processes that competitive operators have to use for their own NGNs. BT are proposing to place MSANs in local exchange buildings in order to offer Next Generation services, in exactly the same way that LLU operators have placed their DSLAMs in the same exchanges. It seems critical, therefore, that consideration should be

given to requiring that BT should use the standard LLU and backhaul products, using exactly the same systems and forecasts processes.

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

Yes. These principles are a good starting point, but further detailed discussion between BT, Ofcom and the industry on these issues is needed.

**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)?**

Currently, there are no incentives for BT in terms of 'associated products'. ISPA believes that there should be a firm regulatory obligation for BT to make sure that there is an effective migration system in place.

Migration is key for ISPs, as it is key to consumer choice, and aiding successful competition. Until BT Retail depends on these 'associate products', particularly migration products, to win customers, in addition to losing customers, equality cannot be assumed. Currently BT Retail will potentially lose more customers than it gains, so BT has strong incentives to build an efficient migration product.

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

ISPA is pleased that Ofcom is addressing the fact that BT needs to undergo behavioral changes. However, ISPA recognizes that while behavioral change by BT is necessary to achieve real equality of access, this change cannot happen immediately. ISPA believes that BT must offer key deliverables and time scales for the move to equality of access.

ISPA recognizes the difficulties involved in separating BT, and agrees that this might not even be the best course of action, and recognizes the significant practical element involved in the functional separation of BT.

ISPA supports Ofcom's belief that BT's different divisions should not be prevented from collaborating to the benefit of citizens and consumers (6.22). However, ISPA does believe that BT should be held accountable in order that a real change in practice is witnessed, with measurable change that holds up to scrutiny.

BT needs to be able to demonstrate that its wholesale arms offer products and service components on the same terms to all its customers – both within the BT Group and without. The same terms must include access to information, features, provisioning and (where appropriate) operational systems as well as

pricing. It might make sense for a start if the different arms of BT operated out of different physical locations and had different reporting lines to the BT Board. A key example of this is the fact that BT's field engineers operate out of BT Retail rather than BT Wholesale. ISPA believe that issues like this should be included in any review due to the fact that BT Retail, competitors in the market, are providing services to enable their competitors to gain customers.

**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?**

ISPA agrees that it is important that regulated returns reflect the degree of risk that is faced by BT when making the investment (7.5). However, investments should not be made unless there is proof and relative certainty of their success. Further, ISPA agrees that by supporting investment made by BT, other competing network providers may be discouraged from competing, as well as upholding the need to protect consumers from excessive charging. However, a balance must be found as BT still needs to be encouraged to invest in new innovations, and next generation access networks.

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

ISPA agrees with Ofcom's identification of current generation broadband representing a bridge between the past telecoms environment, and the possibility of sustainable competition across many types of competition in the future, including Next Generation Networks, and New Voice Services.

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

Many ISPA members believe that Ofcom should encourage naked DSL, in order to ensure a 'level playing field' – although cost recovery would require serious consideration. ISPA further encourages naked DSL as a way of removing economic bottlenecks to VoIP type services, although the specific nature of any requirement for such new wholesale services should, in the first instance, be left to the industry to define.

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

Care should be taken before Ofcom consider the possibility of different regulated wholesale products for current generation broadband services in different locations, as this may be to the detriment of consumers living in areas where only the incumbent was able to offer broadband service, thereby enabling the incumbent to charge a premium rate without the challenge of competition. ISPA

recognizes, however, that the fundamental network costs of operating within areas with differing population densities can vary widely.

In order to demonstrate BT is serious about equivalence it should undertake to provision its 21CN network using the same products and processes that competitive operators have to use for their own NGNs. BT are proposing to place MSANs in local exchange buildings in order to offer Next Generation services, in exactly the same way that LLU operators have placed their DSLAMs in the same exchanges. It seems critical, therefore, that consideration should be given to requiring that BT should use the standard LLU and backhaul products, using exactly the same systems and forecasts processes.

ISPA is concerned that there should not be a leveraging of dominance from telephony to broadband. ISPA would like to see a level playing field for the progression of VoIP type services, and believes that equitable prices will be a key way of removing bottleneck to VoIP types services, and other future developments.

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

ISPA believes that the potential lack of evidence faced by LLU operators in a 21<sup>st</sup> Century Network environment makes this an area where BT must be held accountable. The potential lack of equivalence highlighted in Ofcom's strategic review of telecoms with regards to 21CN is concern for ISPA, as this could turn into another area where BT holds an incumbent position.

Investment in 21CN is an expensive step to take, and given BT's previous investment in this area it might be very hard for new competitors to enter the market successfully.<sup>1</sup>

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

ISPA recommends a cautious approach to the deregulation of voice services, as it is difficult to project and forecast evidence of solid competition. Before voice services are deregulated, ISPA advocates that Ofcom ensure that these services are running competitively without any hitches.

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

Yes.

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<sup>1</sup> For more information – please see ISPA's response to Ofcom's Next Generation Networks Consultation

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

Yes. ISPA agrees with Ofcom that it would be appropriate to conduct a market review to see whether regulation should continue (8.28).

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

Many ISPA members would prefer that Ofcom exercise caution in reviewing the need for such regulation.

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

With regard to the migration of PSTN services to the C21 network, as regulation should be technology neutral (a basic principle of the regime), ISPA believes the current regulatory regime should continue to apply until it is shown that there is no longer market power on the part of BT in this market. The transfer of services to a new network is therefore not a relevant consideration.

**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 evidence of increased competition for voice services driven by broadband access is not visible yet in terms of high volumes of user lines. However, for some ISPA members, this will become a major part of their business.<sup>2</sup>

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

Only by separating BT's Wholesale and Retail services, and by making sure there are no barriers to entry to this market.

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

Many ISPA members take the view that these services are fundamentally different from the point of view of the consumer, so ISPA does not expect substitution to occur in the foreseeable future.

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<sup>2</sup> Please see ISPA's response to Ofcom's New Voice Services Consultation.

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

ISPA agrees that if BT provided wholesale inputs to its competitors in a similar manner to its own retail operations (replicability) then deregulation of business voice services might be appropriate.

ISPA fully agrees with Ofcom that if equality of access was applied to key businesses, deregulation would be appropriate.

**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?**

ISPA has not seen any evidence of this.

**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?**

ISPA believes that a wide consideration of wholesale inputs should be used to test whether BT can provide an equivalence process. This should not be taken lightly, but should be a managed process. ISPA believes that this could be used as a test bed for wider equivalence policy.

**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?**

While BT estimate that by June 2005, 99.6% of UK homes and businesses will be connected to a broadband enabled exchange, some ISPA members do not believe that this statistic necessarily equates to 99.6% of UK homes wanting to access the internet through a broadband enabled exchange. Further, even with 99.6% of consumers connected to a broadband enabled exchange, there still remains 0.4% of consumers not connected to a broadband enabled exchange. ISPA believes therefore that narrowband internet access should continue to be regulated for the foreseeable future.

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

They must only be available to all other operations, retail or wholesale, (including BT's own) on the same terms.

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

Ofcom's regulatory approach to next generation access networks should be in line with Ofcom's key regulatory principles, particularly in terms of focusing regulation to deliver equality of access. This will help to ensure that there is equal opportunity to access the market with Next Generation Networks.

Ofcom's regulatory approach should also focus on promoting the right kind of climate for investment. This is particularly important in the ever developing and advancing world of telecoms, so that competitors are given the opportunity to invest in NGNs.

Creating scope for market entry is also particularly important in terms of making sure that BT doesn't inherit a new incumbency position on Next Generation Networks.

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

ISPA agrees with Ofcom's belief that there is a strong imperative that regulation should not disincentivise the timely and efficient deployment of Next Generation Networks.

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

Highly important. In the absence of contestability, ISPA believes that it is important to look at all options thoroughly.

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

Along the lines of Ofcom's regulatory principles, including the promotion of competition.

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

ISPA believes that Ofcom is right to suggest that for any of the structural options proposed it should be investigated how these options could be made attractive to BT.

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

Every replicable service sold by any retail operation (including BT's own) must be assembled from the same wholesale building blocks available, on the same terms, to all retailers, particularly where BT has SMP status.

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

ISPA believes that the facilitation of the migration of complex corporate services (e.g. VPNs) between suppliers, while complex, must be allowed to happen, and in an accountable and visible manner so any inappropriate delays in migration can be identified and remedied.

ISPA believes that interconnection is key to the future, and that different networks must work together in the future.

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

Most ISPA members are in favour of option 2 – positively encouraging switching.

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

ISPA agrees that increasing competition in telecoms complicates the issue of funding the USO, and that at some point it would be appropriate to consider alternative mechanisms and funding for the USO. However, ISPA believes that it is in consumer's best interest for such a change to occur without any disruption to the consumer and consumer's service.

Ofcom should consider funding the USO in future through the use of Dutch auctions for delivery, possibly subsidised through general taxation

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

Companies should bid in a Dutch auction format to meet the USO in defined areas with the USO being clearly defined. The solution should be technology neutral.

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

The solution should be technology neutral.