

# Ofcom Strategic Review of Telecommunications Phase 2 Consultation OpenPlanet Response

31st January 2005

## **Introduction**

This is a response from a newly established company, OpenPlanet Ltd. We have collaborated in this with OpenHub Ltd. These are independent companies which share an interest in the development of next generation open access networks. They have no exclusive commercial relationship with each other and do not intend to do so - both operate on a non vertically-integrated "open" basis.

OpenPlanet's focus is on network infrastructure. OpenHub's focus is on applications which use such 'open access networks'. Both companies are currently engaged in project definition for several new local networks, serving business and residential communities, based on the OPLAN (**open public local access networks**) model. An outline of the OPLAN model and the regulatory context in which it has evolved, is provided on the OpenPlanet website:

[www.open-planet.net](http://www.open-planet.net).

OpenPlanet's response focuses primarily on our area of expertise: next generation access networks. We provide a brief response, first to the seven regulatory principles.

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

We support the seven principles. Implications are discussed in more detail below. With respect to the wider telecoms value chain we support, in particular, your comments in 5.12 - 'Where appropriate, we will seek to promote open standards and interoperability.' We believe there are very few, if any, circumstances where this would **not** be appropriate.

Ofcom states in J22 that 'the right focus of policy at this stage is to ensure that there are no artificial barriers or impediments to the roll-out of networks that will support [converged] services.' We believe that Ofcom should make it explicit that this statement must be read in the light of the seven regulatory principles and in particular that these lead to a presumption against vertically integrated services, unless there is extensive competition at all levels and that protecting this presumption is not an 'artificial' barrier or impediment.

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

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

We would support Option B, as set out in 8.61. We would be strongly against the 'American' solution of allowing vertical integration of next generation access networks, even for a limited period. As Ofcom rightly suggest (8.64), there is significant risk of undue market power arising in these new markets. At the present time, at least, regulation should not proceed on the basis of any confidence in there being more than one next generation access network in any one locality. Consequently, the implications of 'forbearance' in terms of customer choice and leverage are severe and negative. Ofcom should require any next generation access networks to provide equality of access from the outset in line with the seven regulatory principles. The equality of access which is protected by regulation must include access to the lease of dark fibre.

In this context, it is also worth noting that public announcements of future investment intentions by network owners with significant market power may hamper investment by others. Any such announcements with respect to investment intentions in next generation access networks should carry severe regulatory penalties should they not be fulfilled or not fulfilled within indicated timescales.

Beyond these key roles, Ofcom should avoid regulation of next generation access networks.

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

This appears to refer to investment in new fibre within BT's local ducts. As Ofcom states (8.66) this presents 'very significant practical problems'. We do not have confidence that it is achievable.

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

As set out in our response to 13 a) , it should be a key responsibility of Ofcom to avoid this outcome. If it were to arise, the regulatory response would depend on the circumstances. If equality of access proved in practice not to have been secured then a tougher regulatory stance, perhaps involving separation of local access infrastructure, would need to be considered.

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

We believe that the OPLAN model, referred to above, provides one of the means by which such an outcome can be avoided. An OPLAN is constitutionally unable to be or become vertically integrated. Regulation can avoid the problems 13 b) envisages as we suggest in our response to 13 a) above. The key public policy questions are:

(i) how important is the facilitation of next generation access networks for the UK economy and society?

(ii) Is vertical integration undesirable?

(iii) If so, is there a practicable means of promoting (i) without (ii)?

Each of these questions is important. Our response is:

(i) if we wish to avoid putting at risk the UK's competitive position over the coming decade vis a vis other economies which are now wasting no time in investing in low cost next generation networks, the answer must be 'highly important'

(ii) yes – to protect leverage and choice for the customer

(iii) yes – we believe the OPLAN model provides an optimal means of achieving this objective.

We believe that Ofcom should encourage all kinds of next generation access networks which guarantee equality of access. The OPLAN approach is a non telco venture using alternative civil infrastructure wherever practicable, combining the first two options set out in 8.67. Our other comments on your five options are:

1. JVs to build new ducting: it is hard to see that these could compete with use of existing telco ducting. The response must be to promote equality of access to the latter, as in 13a) above and use of alternative infrastructure

2. Use of alternative civil infrastructures: From our own current experience in developing next generation access propositions in dialogue with wastewater infrastructure owners, we are confident that, in many areas, such networks are sufficiently extensive, low cost and

fit for the purpose to provide a suitable alternative to existing telecoms infrastructure for the deployment of next generation access networks. They represent an important means by which the economics of new local access networks can be financially viable.

3. Industry joint venture: this only seems plausible if conceived as something which is regulatorily mandated which seems both unlikely and undesirable.

4. Divestment of dark fibre and duct assets by BT: this only seems plausible if conceived as something which is regulatorily mandated. Any such divestment must be prescribed by regulation to be to a body which is not controlled by the telco sector – such a body should be controlled by agencies which represent customer interests.

5. Different structures for new build housing: We believe that Ofcom should require that new ducting provided to any new housing or business development should enshrine the equality of access principles set out in 13 a) above.

**Summary: Ofcom does not need to introduce 'heavy' regulation of next generation access networks. It needs to ensure full equality of access to new networks, especially those of incumbents and that those with SMP do not manipulate markets or abuse that SMP. It needs to encourage and do nothing to hinder independent next generation access networks, providing these display equality of access, and the provision of innovative and convergent services on an open and interoperable basis over next generation networks. Beyond that, it should allow freedom to private and public agencies to shape this newly emerging infrastructural asset which is key to the nation's future prosperity.**