

The Bit Commons response to Ofcom's BCMR's initial consultation on passive remedies. Jan 5th 2015.

Thank you for the opportunity to reply to what is a critical consultation for the future of connectivity services and future of competition in the UK market, including any transition to an all fibre access network.

The Bit Commons has contributed to the UK Government strategy for Broadband and made contributions to securing the 4G coverage obligation. This consultation is of particular interest as the failure to include PIA for business connectivity services in the 2012 market reviewed removed any opportunity, however small, for Fujitsu to compete with BT for the BDUK contracts in rural areas. Thus, a robust approach to 'passives' is the most promising route for a pro-competitive approach to the provision of direct fibre and the delivery of differentiated on demand TV services. Without it BT is likely to retain its dominant market position for at least a generation.

The impact of BT's takeover of EE could have a profound impact on this consultation as it provides Ofcom a context to test its non-discriminatory proposals and address equivalence of input issues where BT is supplying its own 4G broadband network. Furthermore Ofcom's concerns around the future of BT's common costs should be mitigated by a merged EE/BT where BT's common costs could be balanced across the new group. This should reduce the impact of any cost of re-balancing from business connectivity to residential services, given one rationale for the merger are the estimated cost savings of some £5bn. Ofcom should not forget its own references in the FLAMR to several hundred million of cost efficiencies the BT board highlight as future efficiency savings in the BT presentations to analysts.

Overall the consultation is cautious with a large emphasis or fear expressed about BT's common costs and the consequences of re-balancing. The approach might be better served by a more robust approach on the need that any passive infrastructure delivers a new competitive paradigm to support an in-depth rollout of 4G broadband services while supporting a pro-competitive approach to delivering an all fibre access network and the broadband services including the converged communications services they will support. Ofcom need to look no further than their own research on Future TV where on demand TV viewing is very likely to need more than that can be delivered by VDSL cabinets.

Access to passives ought to facilitate the best in Europe objectives for all customers, including those 13-20% too far from a cabinet to benefit from NGA and those business customers in every town centre not served by a BT cabinet but direct from the exchange.

Question 1: Do you agree with our preliminary framework for considering the case for passive remedies?

I think the framework being considered would benefit from assessing a broader set of objectives in addition to those mentioned.

It would be good to assess the impact of excluding business connectivity from the existing passive remedies for broadband services. This exclusion had a significant impact on Fujitsu's ability to compete for BDUK funding. The assessment therefore should be passive remedies for all services not just business connectivity. Using 4G broadband services as proxy for all services would probably

suffice as 4G operators need to support business and residential customers including customers needing direct access to buildings.

In this broader context, Ofcom could then pose the question as to the role of these passive remedies in increasing and sustaining long term competition including investment in FTTP transition activity. This is particularly important where BT have declared fibre access as a premium service and re-positioned the fibre on demand product and priced for business customers. Overall, while the investment public and private in FTTC needs to be applauded, it should be declared as an end in itself but a stepping stone towards a more comprehensive connectivity transformation.

Ofcom should include an analysis as to why existing passive remedies for broadband have not been successful with a view to identifying that which would make them more successful.

The concern with BT's common costs should include a published definition of an 'efficient' operator. The stranglehold by BT and if it is to be challenged seems tied to Ofcom's willingness to ensure that BT's common costs are indeed efficiently incurred.

The notion that BT's common costs allocated to private circuits should act as a dis-incentive to invest in improving network access seems a most unusual constraint.

The Framework would benefit from referencing the impact of £1.2bn of state on BT's passive infrastructure on some 30,000 routes to the UK major regional cities towns and rural areas. Ofcom are considering a secret report to show the impact of state investment on VULA pricing in the regulated accounting process. Ofcom should also consider in this analysis the impact of that public investment of £1.2bn cash on PIA pricing. This includes some 20% of the contract value identified by the NAO as being used to future proof the network. As a consequence there will be substantial fibre bundles paid by state aid and available for re-use in significant parts of the country adjacent to businesses and population centres. It should also be noted by Ofcom that Phase 2 BDUK funding is permitting BT to reduce what was announced as areas covered by BT's commercial investment.

Question 2: Do you agree with our preliminary views on the potential benefits of passive remedies? Please provide evidence to support your view.

I think Ofcom have outlined the benefits but clearly the status of BT's common costs needs to be reviewed if meaningful progress is to be made.

Ofcom have not referenced the possibility of an a more substantive move to direct fibre access networks, something Ofcom's own research on the Future of TV suggests is needed as on demand television develops. The review of passive access should explore this as another source of demand while working to create a pro-competitive approach to fibre access and investment.

Question 3: Do you agree with our preliminary views on the impacts and risks of passive remedies? Please provide evidence to support your view.

Comment on Investment incentives for BT – Ofcom have cut BT a lot of space in not scrutinising the current level of investment in FTTC. It would be healthy for Ofcom to report accurately what exactly has been invested by BT and how much of this was incremental to BT's planned capital expenditure. It may be more appropriate to use regulation to ring fence a proportion of the costs BT recovers to secure network investment. BT could then decide whether to invest in legacy access or future access. Given the decisions BT has taken in the rural broadband programme to hide its costs behind commercial confidentiality agreements and to self-certify its own capital contributions it may be

time for Ofcom to consider ring fencing a proportion of the costs recovered through FLAMR for network investment.

Comment on Danger of stranded assets – In the case of FTTC this should not be the case as BT planned investment of £2.5bn became closer to £1.2bn to reach 19m premises. Ofcom should not concern itself with stranded investment if not accurate audit of that investment is publicly verifiable. Were FTTP to be contemplated then all of the fibre and the work to clear ducts will not need to be repeated. If FTTC are just equipped with a subset of the cards then they will be able to recover their costs over a much shorter period than planned. If anything the experience of FTTC should prove to Ofcom the need to proceed aggressively in order to create a competitive advantage for the UK economy.

BT's fair bet argument needs to be placed alongside an analysis of who has been paying for any excess capacity. Public investment in connecting schools has been over £1bn of public monies in cash. The current rural broadband project amounts to £1.2bn cash (not capitalised labour) plus a possible further £500m in extending BT's fibre capacity. If the BT argument is to hold, then proof of BT's direct investment is needed and any numbers should be audited rather than having the underlying costs being subject to an economic gaming exercise.

Question 4: What are your views about the potential impact of passive remedies on the pattern of common cost recovery and the associated distributional impacts?

The modelling of the impact of re-allocating common costs should be extended to see what that might look like for the most efficient operator. The £70m referenced in Figure 2 scenario 1 would add (£70m/26m lines) circa £2.70 a year to each line. If BT common costs were split proportionally between Openreach and BT Retail then it may not be as big an impact as expected. Figure 3 shows a maximum impact of 5% does not make the task impossible but addressable.

Some of the impact also needs to be discounted where BT has mis-sold private circuits to solve what is a distance or attenuation problem. Many companies have purchased private circuits to solve a basic connectivity problem. At Perseverance Works, Shoreditch, of the 90 tenants, 11 had purchased a private circuit. Of these only one needed the capability of a private circuit, the remainder needed a functioning broadband connection. It would seem wrong at any level to seek to encourage the mis-selling of any kind and to reward previous efforts to mis-sell. BT should not need compensating before companies are permitted the opportunity to access cheaper and better connectivity.

The product definition for Business Connectivity also needs to be reviewed. A private circuit should not be sold to fix a broadband problem. Where the advertised broadband speeds cannot be delivered then investment from the costs recovered through the FLAMR process do need to be actually invested in these locations. The FLAMR includes FTTP using an ATA in its definition for a fixed access line. It should be used where the traditional line no longer functions adequately and needs to be replaced.

Common cost recovery assumes BT is an efficient operator. Ofcom should take the opportunity to challenge this orthodoxy. Perhaps this will change should BT's attempts to takeover EE succeed. It may indeed be a condition of the takeover that BT's common costs are spread across its new mobile service so this matter can be put aside.

The proposal of geographic de-averaging is also peculiar given Ofcom's findings in the FLAMR and WBAMR where incremental cost of bandwidth were found to be consistently uniform across geotypes. The re-refresh of BT passive infrastructure using state funding of £1.2bn should not be ignored

in this review. The need for geo-geographic de-averaged pricing should be resisted, given the level and scale of public investment compared to BT's total outlays.

Overall the potential impact is not so great that Ofcom should not address the issue in this review. On balance re-balancing on active products rather than passive products provides the best opportunities for competition for FTTP services to come forward for the long term.

BT would then be free to seek to tackle its common costs and benefit from any savings it makes.

Question 5: Do you agree with our initial view that mobile backhaul and fixed broadband backhaul are likely to be the primary applications with significant demand for passive remedies?

Using 4G Broadband services to model costs is a good approach. However there is a longer term gain in creating conditions for a pro-competitive market to progress and supply FTTP to every home and business. In the short term the supplying of fibre only access to multi-dwelling units, business parks and multi-tenanted business units could grow significantly. Access to BT passives in a less constrained environment would support and accelerate what should be considered a new access market.

Modelling use by Mobile Network Operators is useful as it will be little different to a broadband ISP. BT should it complete its takeover of EE, then such an event could provide a good framework to discuss EOI for passive access.

Question 6: What benefits might duct access offer over dark fibre and vice versa? Is there a case for having both remedies?

Passive remedies can be built upon the existing PIA product supporting SLU. Dark fibre should also be a service in the manner private circuits are offered today.

Question 7: If passive remedies were restricted to particular product types or geographic areas how might this affect the usefulness and benefits of the passive remedy?

There should be no geographic or product type restrictions. Ofcom must prepare for a pro-competitive switch to all fibre access networks. BT investment in FTTC must be viewed as an interim solution viewed from the perspective of a national infrastructure programme.

Question 8: What arrangements would be appropriate for the supply of new infrastructure for passive remedies?

Where new capacity is needed, then existing industry processes should be used. It is most likely new capacity would be needed in the most densely populated areas.

Question 9: Do you agree with our initial views about the non-discrimination arrangements for passive remedies?

Ofcom have covered most options in their discussion of non-discrimination arrangements. BT's takeover of EE may present the opportunity to create non-discrimination arrangements where trading with EE is on the same basis as all other CPs, including BT Retail. Volume, particularly the number of customers served or capable of being served in an area should be a consideration in preventing cherry picking.

The EE takeover also provides Ofcom and BT the opportunity to rebalance the BT's common costs across a larger asset base.

Question 10: In light of the trade-offs identified, which broad options on pricing do you consider would be most appropriate for passive remedies and why? Please also provide details if there is another pricing approach you consider would be appropriate in light of the considerations identified in this section.

The cost plus approach for duct access should be considered given some level of re balancing is inevitable.

The review would benefit from running some scenarios on future duct and fibre usage. What would passive infrastructure look like if it was expected to support a pro-competitive transition to direct fibre access for all?

The use by mobile operators will be no different to that need to support broadband operators. 4G is IP networking and users expect affordable services. Modelling the needs of a 4G operator given the volume of customers they support suggests there be a way around the concerns Ofcom have regarding the arbitrage opportunity.

Question 11: If a value-based (active minus) approach to pricing dark fibre were adopted, what do you think would be an appropriate active wholesale product (or products) to reference?

I do not think active minus option should be considered.

Question 12: Do you have any other comments on the issues raised in the document or comments that might aid our consideration of the passive remedies as a whole?

The possibility of BT taking over EE should have a profound impact on this review. The needs of EE as a 4G Broadband access provider is a good basis to model a passive infrastructure solution which could promote a structure compatible with the principles of EOI. This would support on-going efforts to progress investment in direct fibre access. The EE deal also presents the opportunity to reduce the impact of re-balancing by re-allocating BT common costs on its new asset base.

End Jan 2015