

BASIC DETAILS

Consultation title: Proposed Variation to and Exemption from BT's Undertakings under the Enterprise Act 2002 related to Fibre-to-the-Premises and Fibre Integrated Reception System

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Representing (self or organisation/s): Virgin Media

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Signed (if hard copy)

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20 November 2009

Dear Gideon,

Proposed Variation and exemption to BT's Undertakings under the Enterprise Act 2002 related to Fibre-to-the-Premises and Fibre Integrated Reception System

Virgin Media is pleased to respond to the above consultation. Virgin Media is a key investor in the United Kingdom telecoms industry with an investment of some £13 billion in its network. This investment by Virgin Media has helped to establish real infrastructure competition in the UK in a broad range of markets from consumer voice and broadband to business grade Ethernet. Virgin Media's ongoing investment in its network the most recent example of which is the upgrading of its network with DOCSIS3 to allow its customers to access broadband speeds of 50Mb continues to ensure that Virgin Media is spearheading competition within the UK. The launch by Virgin Media of 50Mb broadband has raised the competitive bar on broadband speeds and is helping to spur investment by others including BT in technologies such as Fibre to the Cabinet and Fibre to the Premises which can be used to deliver high speed broadband.

Virgin Media is concerned that the current consultation could result in a foreclosure of the opportunity for appropriate passive remedies as regards FTTP networks. Whilst Ofcom suggests that it will look at these remedies in the context of the forthcoming WLA/WBAM market reviews, Virgin Media is of the view that it is necessary to ensure that the issue is not closed off in the Undertakings given that the outcome of the reviews cannot be prejudged. In that context Virgin is of the view that Ofcom should be requiring BT to give a commitment in a form similar to those given in respect of Next Generation Network that BT shall not foreclose passive access on FTTP.

The foreclosure of passive access on FTTP may in Virgin Media's view impact on the ability of providers to tailor suitable solutions to ensure an adequate level of competition in particular areas such as for example areas that might be included in the Digital Britain final third. Whilst Virgin Media recognises that passive access is not a universal panacea and that remedies need to be appropriately tailored, it can see situations in particular geographical areas where appropriate forms of passive access could assist in ensuring a level of infrastructure competition as opposed to competition merely based on a single network in the form of GEA. Virgin recognises however that where there are already multiple networks that passive remedies may not always be a proportionate remedy to a finding of SMP.

Background.

As Ofcom notes in its consultation document BT plans to deploy a mix of FTTP and FTTC technologies in exchange areas covering 40% of premises in the UK by 2012 and estimates that some 25% of the premises that this deployment will cover will be served by FTTP. Whereas BT's original plans were only for FTTP in Greenfield areas, BT has now announced that it will deliver FTTP in brownfield areas as well.

It plans to start trials in brownfield areas in January 2010 and to start commercial deployment in the summer of that year. For any of these plans for FTTP to be possible BT argues that it is necessary for Openreach to own and operate the electronics thereby requiring a variation to the Undertakings.

In return for Ofcom's agreement to the variation BT has committed to providing an active access product GEA on a equivalence of inputs basis. However BT has made no commitments in relation to passive products in respect of FTTP.

Ofcom's position is that they do not consider it appropriate to seek commitments from BT in relation to passive inputs for FTTP as part of this proposed variation because it is not yet clear what if any are the appropriate passive FTTP inputs that BT could be required to provide. Ofcom's view is that BT's commitments for active products are sufficient to promote fair and effective competition.

Similarly BT has requested an exemption from the Undertakings in relation to its Fibre Integrated Reception System on the basis that it has no plans to deploy the system outside Ebbsfleet. Again Ofcom is inclined to agree to this proposal on the basis that this is unlikely to have a material impact on competition.

Virgin Media disagrees with the position put forward by Ofcom in the consultation document. Virgin Media is of the view that if the Undertakings are to remain as "*comprehensive a solution as is reasonable and practicable to the adverse effect on competition*" then it is necessary for Ofcom to require BT to make commitments about passive access on FTTP. To do otherwise is to foreclose real opportunity for competition based on appropriate passive elements.

Virgin media has a particular interest in this because Virgin Media has for some time been engaged in discussions with Openreach about the possibility of Openreach providing to industry generally a wavelength service or a fibre to enable CPs to deploy a Radio Frequency over Glass Service. Access to the wavelength or fibre would allow Virgin Media and others to offer competition at a lower level than Openreach's proposed GEA product.

Ofcom's Reasoning with Respect to the Variation.

Ofcom indicates that in considering BT's variation request are objectives are to deliver benefits to consumers by supporting early investment in super fast broadband and where appropriate, by promoting competition. Ofcom then goes on to refer to the seven regulatory principles that it set out in the TSR consultation including the principle that Ofcom "*should promote competition at the deepest level of infrastructure where it will likely be effective and sustainable*" and "*should focus regulation to deliver equality of access beyond those levels*".

Virgin Media notes that some of the other regulatory principles set out in the TSR consultation which would seem to be appropriate here are “*accommodate varying regulatory solutions for different products and where appropriate different geographies*” and “*create scope for market entry that could over time, remove economic bottlenecks.*”

The recognition that different remedies might be suitable for different geographies is an important part of any regulatory solution and whilst the market review process may be the appropriate place for defining those remedies more specifically, it is important that this consultation does not foreclose Ofcom’s ability to adequately impose those remedies at a future point in time. Therefore Virgin Media suggests that it is essential that Ofcom obtain a commitment from BT not to foreclose appropriate passive remedies on FTTP infrastructure.

Ofcom’s view is that Openreach’s proposals for providing FTTP GEA present an option for competition in neighbourhoods where BT deploys FTTP. It goes on to say “the technical and commercial development of FTTP is at an early stage and it is not yet clear what if any, options could prove to be a viable basis for effective and sustainable competition based on passive inputs.” In making this statement Ofcom is basing this on its view that there are two levels of passive inputs in the GPON FTTP architecture:

- Duct access: access to infrastructure facilities such as ducts and poles;
- Fibre Unbundling; access to individual dark fibre after the splitter which would typically be located in a footway box, between the exchange and the home.

In rejecting the option to require BT to make commitments on passive remedies, Virgin Media believes that Ofcom has taken too narrow a view of the passive options that might be available. There are obviously a spectrum of passive options from the deepest level of passive elements such as duct access, to fibre unbundling, to the making available of a wavelength or a complete fibre.

As Virgin Media has raised with Openreach previously the provision of a wavelength or fibre would allow service to be provided using cable protocols. Virgin Media is of the view that a wavelength services could be used to carry the RF spectrum required by the DOCSIS and DVB-C cable specific protocols over a passive fibre access network. Such an approach does not preclude other wavelengths on the same fibres being used to support other protocols. For example different wavelengths could be used to simultaneously support both RF over Glass and a GPON which could be used to offer the GEA product. The alternative would be to offer a single fibre over which the RF could be carried.

Despite raising this with Openreach in a bilateral meeting and in response to a number of Openreach consultations such as GEA over FTTP and Voice over NGA Virgin Media has been unable to obtain any traction with Openreach on this issue. Openreach continually cites the complexity of operational and commercial aspects as justification for its rejection of Virgin Media’s request for a trial of this service over FTTP.

In Virgin Media’s view Openreach is likely to be significantly overstating the complexity of the operational and commercial aspects necessary to offer this service and particularly so on a trial basis. For example, if Openreach were to offer a wavelength service it is technically straightforward to separate out that wavelength at the exchange and make it available to a 3rd party such as Virgin Media. In addition, it requires very little dynamic interaction between the IT systems of a 3rd party and Openreach because the wavelength service would be accessible by a significant

number of homes as and when required and Openreach would no longer be involved in the activation and deactivation of services for individual homes. Homes taking the wavelength service would require different CPE to those taking a service based on GEA, but this would be straightforward to install or swop over as and when required. Virgin Media has completed live network trials of multiple wavelengths being used to carry both RF over Glass services and GEA like services on the same fibre and has been able to confirm for itself the ease with which such a service could be provided.

Virgin Media's view that Openreach is significantly overstating the complexity of making available such an offering (and in particular making this offering available for a trial) is strengthened by the fact that Openreach is currently asking for an exemption in relation to its Fibre Integrated Reception System for the Ebbsfleet development.

As the consultation explains the Fibre Integrated Reception System product is a Radio Frequency over Passive Optical network based product used to provide one way TV/Radio signal distribution to multiple end user premises over an FTTP access network. Fundamentally therefore the FIRS product that Openreach is offering at Ebbsfleet is a unidirectional version of the product which Virgin Media is requesting that Openreach trial on FTTP.

Virgin Media's view is that given that it is possible to provide RF over FTTP on a one way basis, it is very unlikely that it will be significantly more complex to provide the passive elements to support RF over FTTP on a two way basis as Virgin Media has requested.

Virgin Media notes that one of the reasons put forth in support of the exemption is that BT suggests that in the event that any other CP is interested in offering vision/audio services the GEA product is capable of supplying video/telecoms signals from multiple CPs to individual premises. GEA is being delivered on an EoL basis alongside FIRS deployment or usage.

Virgin Media notes that it had expressed interest in providing a TV service using RF over FTTP in relation to the Ebbsfleet development and that it does not believe that it should be restricted to the provision of video/audio services over GEA when a similar service could be offered over RF over FTTP in a way that would allow Virgin Media to be significantly more independent of Openreach than by utilising the GEA product.

The greater level of independence and innovation that passive solutions potentially offer providers was acknowledged by Ofcom in its statement on Delivering Super Fast Broadband in the UK. Virgin Media recognises that the flip side of passive access is the need for competitors to replicate many of the elements such as access electronics, backhaul links and a network field force.

Virgin Media believes that the prospects for greater competition based on the making available of a fibre are also borne out by the very different pricing on offer for the FIRS service and the GEA over FTTP service. The GEA over FTTP pricing is set out below in the first table whereas the FIRS pricing is set out in the second table.

Feature	Operative date	Connection £ Exc VAT	Annual Rental £ Exc VAT
Product variants			

135 Kbit/s	30/06/2008	80.00	95.00
2.5 / 0.5 Mbit/s	30/06/2008	130.00	175.00
10 / 2 Mbit/s	30/06/2008	130.00	210.00
30 Mbit/s Peak Rate (includes 10/2 product charges)	30/06/2008	130.00	234.00
100 Mbit/s Peak Rate (includes 10/2 product charges)	30/06/2008	130.00	294.00
Handover Port Connectivity (provides access to the Fibre-enabled customer base)	30/06/2008	2,000.00	0.00

Feature	Operative date	Connection (£) £ Exc VAT	Rental (£) £ Exc VAT
Product variants	05/06/2009	£230.00	£36.00 p.a.*

The difference in rental prices for the FIRS product versus the GEA product is extremely marked with FIRS attracting a rental price of £3 a month. Were similar pricing to be applied for a wavelength or fibre that would allow a two way RF product this would allow for higher levels of innovation.

Question One. Do you have any comments on our analysis as set out in this document, and do you agree with our provisional conclusion that we should agree to this variation as proposed in the legal text in Annex 5?

Virgin Media refers to its comments set out above. It disagrees with Ofcom's provisional conclusion that Ofcom should agree to this variation on the basis set out in the legal text in Annex 5. Virgin Media considers that Ofcom should take this opportunity to obtain from BT commitments as to the offering of passive inputs on FTTP access. As Virgin Media suggests above, the commitments should be in the form that BT agrees not to foreclose passive remedies on FTTP.

Question Two. Do you have any comments on our analysis of the proposed exemption set out in this document and do you agree with our provisional conclusion that we should agree to this exemption as proposed in the legal text in Annex 6?

Virgin Media refers Ofcom to its comments set out above. Virgin Media welcomes the opportunity to respond to this consultation, and we would of course be happy to discuss the matter further or expand on any of the points that we have made. Please do not hesitate to contact me should you wish to do so.

Yours sincerely,

Annemaree McDonough

For and on behalf of Virgin Media.