



**OFCOM CALL FOR INPUTS:
FIXED ACCESS MARKET REVIEWS: WHOLESALE LOCAL ACCESS, WHOLESALE FIXED ANALOGUE
EXCHANGE LINES, ISDN 2 AND ISDN 30; AND
WHOLESALE BROADBAND ACCESS MARKET REVIEW**

RESPONSE BY BRITISH SKY BROADCASTING GROUP PLC

1. This is the response by British Sky Broadcasting Group PLC (“Sky”) to Ofcom’s calls for inputs in relation to its reviews of the fixed access markets and the wholesale broadband access market¹.
2. Given their early stage, Sky has focused its response on those issues that we consider to be of greatest importance to these reviews.
3. In broad terms, we consider that the current scope and nature of regulation within the markets covered by Ofcom’s calls for inputs is appropriate and proportionate, and will remain so during the period covered by the market reviews.
4. There are, however, two particular issues that we consider would merit Ofcom’s attention during its market reviews:
 - **BT’s quality of service:** Sky, along with other communications providers (CPs), has suffered prolonged poor service from Openreach, highlighting the need for major changes to the current approach to regulation.
 - **Improvements to the current regulation of NGA:** Demand for NGA-based broadband services is likely to continue to expand over the period covered by the market reviews.
5. Sky will be providing a separate response to the call for inputs on matters pertaining to charge control and cost orientation remedies.

Background

6. The forthcoming market reviews will impact current generation broadband services and traditional voices services as well as shaping the development of NGA take-up and

¹ Ofcom Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 - Call for Inputs 9 November 2012; Ofcom Wholesale broadband access market review call for inputs, 9 November 2012.

services. It is essential for Ofcom to strike the appropriate balance in safeguarding current generation services in terms of quality and pricing and providing communications providers the right incentives to invest in taking up new services.

7. Sky purchases a range of services from BT that fall within the scope of the wholesale local access (WLA), wholesale fixed analogue exchange line (WFAEL) and wholesale broadband access (WBA) markets which are the subject of Ofcom's call for inputs:
 - **Local loop unbundling (LLU).** Sky has approximately 3.9m LLU (MPF (2.5m + SMPF 1.4m) customers and is expanding its LLU footprint to [CONFIDENTIAL] exchanges serving approximately [CONFIDENTIAL] of households by [CONFIDENTIAL];
 - **wholesale line rental (WLR).** Sky purchases WLR to provide retail telephony services for customers who are not supported by full LLU. Sky has approximately [CONFIDENTIAL] wholesale line rental lines;
 - **IPStream Connect.** Sky purchases IPStream Connect to provide a retail broadband service to customers in the minority of areas where it has not unbundled BT local exchanges or areas where LLU is not available. Sky has approximately 220,000 off-net broadband subscribers;
 - **Generic Ethernet access (GEA).** Sky currently has [CONFIDENTIAL] GEA customers.
8. Accordingly, the outcome of the forthcoming WLA, WFAEL and WBA market reviews will have a material impact on Sky and its continued ability to contribute to the competitiveness of retail broadband and telephony markets, with consumers benefiting through innovation and lower prices.

It is appropriate to maintain the scope and nature of current regulation

9. The developments that have taken place since the previous market reviews were concluded in 2010² have not changed the markets sufficiently to warrant any major changes to the current finding of significant market power (SMP) nor to the set of regulatory remedies presently in place. Nor are there foreseeable developments during the three year period when these market reviews will have effect that would invalidate this proposition. The current remedies are likely to remain appropriate and proportionate responses to BT's SMP in these markets.

Quality of service

10. Sky welcomes the inclusion in the calls for inputs of questions related to CPs' experience of Openreach's service performance. Quality of services delivered is as important a part of the benefits to consumers from telecommunications regulation as issues such as price control.
11. Sky has reviewed Openreach's service performance and analysed the regulatory regime that has permitted service to degrade and fluctuate to the degree that it has. Openreach's poor levels of service quality have had an adverse impact on competition and consumers. Sky's review, analysis and accompanying proposals to address

² Ofcom review of the wholesale local access market, 7 October 2010; Review of the wholesale broadband access markets: Statement on market definition, market power determinations and remedies, 3 December 2010.

incentives for improved service performance are detailed in its paper, *Regulating for Quality: Delivering service performance in UK telecoms*. The paper is attached to this response.

12. Sky considers that the issue of service quality must be at the centre of Ofcom's market reviews. Experience over the past charge control period has shown clearly that the current approach to regulation provides insufficient incentives for Openreach to maintain reasonable service quality levels. Indeed, RPI-X price control provides significant incentives for profits to be increased via cost reductions that can be achieved by reducing the delivered quality of service.
13. Sky would therefore strongly encourage Ofcom to examine in detail the issue of the level of service that BT should be expected to deliver during the next price control period, and to include this as an integral part of the modelling of BT's costs and setting of charge controls. This could be undertaken, for example, by:
 - (i) obtaining data on service levels delivered by "best in class" operators in other countries;
 - (ii) reviewing Openreach's financial and technical investment in its access network over the last few years to determine whether it has been appropriately applied to deliver the robustness of infrastructure expected and accounted for in the various previous charge controls;
 - (iii) reviewing Openreach's records of manpower deployment to determine whether the necessary on-going maintenance of the access network has been undertaken; and
 - (iv) assessing the impact of current SLA/SLG mechanisms across BT's regulated contracts.
14. We note, and welcome, the fact that Ofcom has proposed to undertake a separate review of the issue of Openreach service quality, with which Sky will engage fully. Sky considers, however, that the issue of service quality should be considered both in this review and the relevant market reviews.

Improvements to the current regulation of NGA

15. Whilst Sky considers that the current NGA remedies should remain broadly unchanged during the next market review period, there are a number of areas that warrant attention by Ofcom during the forthcoming market reviews in order to make existing regulation more effective:
 - (i) regulation of GEA commercial terms and transaction charges;
 - (ii) SLU bitstream or virtual port unbundling;
 - (iii) improved usability of PIA; and
 - (iv) wavelength-unbundling of fibre to the premises (FTTP) gigabit passive optical network (GPON).

Regulation of GEA commercial terms and transaction charges

16. Whilst Sky does not consider that it is appropriate or proportionate to regulate BT's core rental charges for GEA during the next market review period, Sky does consider that

Ofcom's review should consider a number of ways in which existing regulation of GEA could be made more effective:

- (i) consideration of whether GEA is fully compliant with the VULA characteristics, now and in the future, and whether the active line access (ALA) characteristics, as previously defined by Ofcom³ would not be a better VULA specification to work to. There is still some uncertainty over GEA's adherence to the VULA requirements, for example around quality of service (QoS), flexible interconnect, and contention;
- (ii) regulating the commercial terms of GEA. For example, presently Openreach requires a twelve month minimum contract term which is at odds with other regulated services, and would appear to have no commercial foundation in the absence of a subsidised product justifying a long fixed contract to cover pay-back; and
- (iii) regulating charges for the ancillary or transaction services necessary for the delivery of GEA, for example, installation and migration charges. Because BT Retail purchases different types of products in relation to GEA – or does not purchase inputs required by other CPs to deliver GEA-based services at all – BT has the ability significantly to distort retail competition by setting high charges for some ancillary products and services, charges that far exceed any reasonable measure of their underlying costs. Accordingly, Sky considers that Ofcom should examine during its market reviews the case for applying controls to charges for such services.

SLU bitstream or virtual port unbundling

- 17. Compared to current generation regulated access options such as LLU, VULA/GEA offers considerably reduced opportunity for operators downstream of Openreach to invest in access provision and to be able to invest and innovate in order to differentiate their offers from those of BT Retail.
- 18. Sky has demonstrated its appetite to invest and to offer distinctive service choice to consumers through its LLU-based broadband offering and would be keen to do the same with NGA-based broadband services.
- 19. In the early industry discussions around NGA during 2008 and 2009, Sky and other CPs advanced proposals for several possible unbundled FTTC access products. These were rejected by BT. Sky considers that with the progress made to date by BT, and experience gained by all CPs in the roll-out of BT's FTTC, it is appropriate to reconsider access products unbundled to a greater extent than the current GEA product. The solution considered by Sky to offer the most likely near term benefits is a product variously referred to as sub-loop unbundled bitstream (SLU bitstream) or virtual port unbundling.
- 20. SLU bitstream has the following characteristics:
 - (i) rental of a DSLAM port in the cabinet (dynamically assigned by Openreach to a customer at the time of installation) which would include an active VDSL-based bitstream service from the cabinet to the customer premise;
 - (ii) an ability for the CP to control the cabinet DSLAM port of their customer through Openreach's control plane;

³ 'Ethernet Active Line Access: Updated Technical Requirements', Ofcom, 3 March 2009. <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/updated.pdf>

(iii) various options for CPs to provide backhaul from the cabinet to the exchange, including:

- a) digging to the cabinet and use of own fibre;
- b) use of PIA and own fibre;
- c) rental of a pair of spare dark fibres from Openreach;
- d) rental of a GPON wavelength within Openreach's own fibre; and
- e) reserved fixed bandwidth on Openreach backhaul.

(iv) flexibility for CPs to use the backhaul from the cabinet for carrying traffic other than just the VDSL SLU bitstream traffic, and to share the backhaul from cabinet to exchange with other CPs; and

(v) interfaces within Openreach cabinets as required for interconnect of the backhaul types listed.

21. Sky and other CPs are soon to recommence commercial discussions with Openreach for the provision of this product. If, as in the past, Openreach is not minded to provide such an unbundled access with the flexible backhaul options proposed, there would be considerable merit in Ofcom considering during its WLA market review whether BT should be required to provide a SLU bitstream product.

Improved usability of PIA

22. There is currently little use made of the PIA remedy. Whilst potentially valuable in the longer term (for example, if there is greater use of SLU bitstream), the efficacy of the PIA remedy is currently poor due to a lack of information available to third parties about BT's ducts and poles infrastructure. Accordingly, there would be considerable merit in Ofcom considering ways in which the provision of such information could be improved as part of its WLA market review. In particular, Sky considers that Ofcom should give consideration to:

- (i) requiring BT to provide an "as built" database of its access network, accessible electronically to all CPs. Initially this database could be populated with the survey data gathered henceforth from surveys commissioned by both BT and other CPs. Given that Openreach is engaged in a major upgrade of its access network as it rolls out NGA, this would appear to be a rich source of current information⁴; and
- (ii) relaxing the current narrow constraints on the use of PIA to take a technology neutral approach to include the carriage of broadband traffic delivered to both residential and business consumers by both fixed and wireless means.

⁴ Sky notes that provision of data via a centralised database in order to ensure the effectiveness of access remedies in relation to state funded infrastructure is now a requirement under the European Commission State Aid rules. (See EU guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks:

http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html#broadband.) Whilst the relevant infrastructure here is not state funded, the point is that it has been recognised that a centralised database can assist in improving the effectiveness of access remedies.

Wavelength-unbundling of FTTP GPON

23. Availability of and demand for FTTP services are expected to grow over the period addressed by this market review. Accordingly, Sky considers that there would also be merit in Ofcom considering whether it would be appropriate and proportionate to require BT to provide a FTTP product that is more unbundled than the currently offered GEA, to facilitate competition deeper in the network. Given that BT is rolling out a GPON FTTP network, consideration needs to be given to the provision of CP access to running wavelengths over the optical distribution network from the exchange to the customer premise. This is referred to as GPON unbundling.
24. Such a wholesale service would be need to be made available by BT with full technical and commercial information sufficiently far in advance of any BT Retail offering of GPON-based services such that CPs can work with BT to test and trial the service in time to be able to similarly launch a competing retail product.

Sky

20 December 2012