

Ofcom Next Generation New Build Consultation

Response from Tiscali UK Ltd

25th June 2008

It is vitally important that Ofcom is able to deal with the regulation of next generation access networks as they are rolled out across the UK, wherever that is required. While next generation access (NGA) services are in development and very low numbers, as is the case today, end users should be protected at the same time as innovation is encouraged. Tiscali believes that existing SMP remedies (applying to copper products) should be replicated for NGA products and services for the foreseeable future to ensure service choice and integrity for the consumer and to avoid disproportionately damaging impacts on the UK service provider industry.

Responses to questions posed by Ofcom are given below. Tiscali is fully engaged with Ofcom and the rest of the industry in addressing regulatory, technical and commercial issues with NGA and believes a practical approach should be successful in dealing with all challenges arising in this area.

1 What can Ofcom do to encourage timely standards development for new build NGA wholesale access products and interfaces? Which industry body is best placed to undertake the standardisation of these products and interfaces? What action should Ofcom take if these standards fail to materialise?

It is desirable for the UK industry to develop standards that will minimise barriers to entry and maximise the benefit for consumers in the future as NGA becomes more common across the country. Ofcom is correct to encourage this vocally and in publications, without having to bear direct responsibility for it or necessarily having to enforce rules on networks and service providers.

The industry should be able to decide how to develop common standards and which body should take the lead role in doing so, especially in an environment of public and political pressure to succeed in rolling out new networks and capabilities. Standards may have some part to play in future regulation by Ofcom (if wholesale products have to be specified and deemed obligatory), but existing principles covering technology neutrality should be adhered to.

2 Do you agree with Ofcom's approach to promoting competition and consumer choice in new build fibre access deployments?

Ofcom should adhere to its existing principles and aim to ensure that the market develops without detriment to consumers or particular sectors of the industry caused by unchecked dominance or technological foreclosure.

There is very little for anyone to work with currently, as the Ebbsfleet development is only just under way with low numbers, and no true conclusions can be drawn on market or technology. It is important that Ofcom promotes consumer choice and prevents uncompetitive barriers to entry. An open mind should be kept on access solutions and potential wholesale products and Ofcom should not have to sell any

particular solution to industry or attempt to influence commercial decisions beyond taking logical and necessary regulatory action when the time is right.

3 a) Do you believe that the existing obligations must be met by replicating the existing copper products, or that an alternative approach could be satisfactory? What are the implications of replicating existing products on fibre?

Existing obligations that apply to copper products should be replicated for any relevant future NGA network, at least until scale in the market warrants any change of policy and the development of new systems and processes. This point is likely to be a significant time into the future. Regulated wholesale products that the industry and UK consumers currently rely on need to continue to be available.

b) Do you agree that SMP holders rolling out fibre do not need to roll out a copper network in parallel solely to meet their LLU obligation?

It should not be necessary for any future SMP holder to roll out a parallel copper access network and industry efforts to advance thinking on how to deal with wholesale access requirements should continue.

This is not to say that potential unbundling solutions should be rejected or ignored. Possibilities for fibre unbundling, wavelength unbundling and other forms of passive access have been discussed and should continue to be discussed. Technical solutions resulting in the design of products sold by SMP holders to wholesale customers should be arrived at after commercial negotiation, informed by regulatory action as and when appropriate.

c) Do you agree with Ofcom's approach in relation to WBA and new build areas?

Wholesale broadband access (WBA) products will be required in the absence of upstream remedies and where market regulation mandates it. The wholesale broadband access market review has just completed and BT is developing products based on fibre access for future deployment.

d) Do you believe that the WLR obligation must be met by replicating the existing copper product, or that an alternative approach based on an ALA-type product would be satisfactory?

e) Do you believe that the CPS obligation must be met by replicating the existing copper product, or that an alternative approach based on an ALA-type product would be satisfactory?

f) Do you believe that the IA obligation must be met by replicating the existing copper product, or that an alternative approach based on an ALA-type product would be satisfactory?

WLR, CPS and IA obligations should be replicated on NGA to protect the competitive market and consumer choice. Refer to the answer to 3 a) above.

g) Do you agree with our proposal to interpret GC 3.1c as being met through the provision and use of a battery backup facility to maintain uninterrupted access to emergency services in new build developments?

Tiscali is in general agreement, but acknowledges the fact that there may be some way to go before finalising technical solutions to this issue.

4 Do you think access to the duct network, including non telecoms duct, is a potentially feasible means of promoting competition in new build? If so what types of commercial and operational models could successfully support such access arrangements in the UK?

Duct access may be physically possible and theoretically able to achieve competition aims, but it is unlikely to happen in today's market. The focus for competition and regulation needs to be on solutions that would not rely so heavily on scale and concentration or require such levels of speculative investment.