

The Bit Commons
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20-2-2013.

Fao: Tim Part, Ofcom

Sir,

Thanks for the opportunity to reply to the consultation on Ofcoms action plan for 2013/14. It is heartening to read of progress in so many areas.

I have outlined three specific areas worthy of you attention in 2013/14 actual plan.

- 1) Specific measures that support the ambitions of super-connected Cities which accelerates the transition to Fibre To The Premises access.
- 2) Specific measures to accelerate convergence of fixed, mobile and internet connectivity services.
- 3) Specific measures to assist DCMS and Local Government in gaining value for money from the c£1.4bn to be invested in rural NGA.

1 Support for Super Connected Cities and FTTP

Ofcom current WLA and WBA consultations offer very little new support for competition or indeed infrastructure sharing to support the role out of Fibre to the Premises.

While Ofcoms work supporting VULA is to be applauded, this measure on its own is insufficient to match the pro-competitive measures in terms of customer choice and price being achieved in European cities. The benchmark prices for wholesale FTTP is now 10-20 euros a month and the reliance on copper is removed. This complex matter needs significant attention by Ofcom if the UK is to support the ambitions of super-connected Cities to keep pace with their counterparts around the world.

This would suggest that the Ofcom action plan includes measures on

a) Outlining a Fibre transition plan for urban areas. The simplest justification is the 80% lower operating costs for fibre once the copper access networks are removed. The most important part of this plan is the notion of 25 year transition period between old and new. It builds on interventions in rural NGA and means policy making on things like super connected Cities can be supported more fully.

b) Infrastructure sharing which includes making PIA commercially viable for investors to use.

c) Reciprocal industry infrastructure sharing agreements, including the re-use of Local Authority duct for fibre rollout.

d) Support and test the 'builder operator' model for multi-dwelling units and rural users, where the laying and ownership of communications duct and fibre patch panels is separated from the delivery of fibre access services. This is to facilitate more than one infrastructure provider.

The Bit Commons is happy to expand on these concepts in future iteration of the detail.

2. Convergence and customer choice

While the Ofcom plan references convergence (Fixed and Mobile – Internet and non-internet) it says little as to what its contribution might actually be. The single biggest possible contribution Ofcom could make to convergence and indeed to encourage customers to try new service providers would be to take steps to secure either directly or indirectly a national numbering database which operated as part of a national infrastructure but separate from the BT OLO's and MNOs.

Such schemes work well in other markets. The national numbering database should encompass e.num so individuals and companies can merge their internet identities with their telephone tags.

The issues around naming and numbering are important sources of innovation. While Ofcom needs to proceed with care, it does need to lead if the interests of the UK consumer is to be protected.

3. Value for Money for £1.4bn investment in Rural NGA

The following was submitted to the recent Ofcom consultation on regulatory financial reporting. It has also being copied to the EFRA and Public accounts committee. It asks that Ofcom amend BT Undertakings to force more granular exposure of NGA component costs where state aid is present.

The particular change I wish to request arises from the likelihood that BT will in the next few years benefit from some £1.4bn in state aid to upgrade rural NGA networks, and may benefit even more if additional funds become available or are requested for a fibre transition activity. The latter could begin with some of the current £150m urban broadband fund and the £300m set aside from the TV licence fund in 2015-2017.

The current BT Undertakings and associated regulatory reporting do not cater for the eventuality of very large cash subsidies by the state and the need for the state to achieve value for money. Indeed BT's discretion in how it recovers its costs are, it could be argued being used by BT in the rural NGA programme to act as barrier to providing an adequate level of transparency so value for money can be established.

Ofcom will accept BT has an enduring monopoly in the local access network, hence the BT Undertakings. Ofcom through the current and the 2010 market review for WLA/WBA will confirm that the lack of demand for investing in infrastructure has meant passive infrastructure access (PIA) products are not as developed as they

might be. This is understandable as verifiable demand for PIA did not emerge in the 2010 market review process. Thus resources and energies were not fully applied to PIA development and Ofcom's conclusions based on the evidence available were reasonable. This has led to a near exclusive reliance by Ofcom and the BDUK programme on BT's FTTC/FTTP VULA based NGA solutions for the rural NGA programme.

It is no surprise therefore that BT has come to dominate the BDUK competitive dialogue process and subsequent Local Government call off process. Neither should it be a surprise that given the discretion BT has in recovering costs it remains challenging to secure value for money. The evidence given by the Minister Vaizey to the EFRA committee examining on November 28th confirmed that the search for Value for Money was a work in progress. He should be congratulated for his candour.

The press releases announcing the BDUK supported projects are suggesting a public subsidy in excess of £200 per premise passed for a largely FTTC based solution. This contrasts with circa £70 public subsidy per premise passed for a near same solution for the BT Northern Ireland NGA project.

My concern was enhanced on December 16th, when on a BBC Radio 4 broadcast a representative of Openreach stated a VDSL Cabinet/Path costs £100,000 each and every BT exchange would cost millions of pounds each to upgrade. I cannot find any publicly available data to suggest the costs are anything like the numbers used in the broadcast. In line with BT 21C announcements, possibly only one in five exchanges in rural areas will act as handover points requiring a fibre rack and layer Ethernet switch will be installed. These data transport facilities have a bill of materials a fraction of £1m let alone millions. In terms of VDSL cabinet costs, fully equipped single cabinets can be purchased for circa £15,000 before industry discounts. If there is the remotest chance that BT's cost recovery for NGA rural is informed by the numbers in the BBC broadcast or significant fractions of those numbers, and the press announcements for the Local Authority projects suggest this is a possibility, then Ofcom given their statutory duties need to act.

It should be noted that in evidence to the House of Lords in the summer of 2012, Rory Stewart MP provided evidence of a per path and VDSL cabinet costs of £90k for three or £30,000 each for three very rural communities in Cumbria. This provided a very useful upper cost bound for a single community served by a cabinet in late 2011 early 2012. Since then BT estimates appeared to have accelerated upwards as Fujitsu's interest began to fade. It is the disappearance of a sensible upper bound on a cost per fibre path/cabinet and the lack of verifiable rate card for the kit and labour that makes it difficult or not impossible to establish value for money. Yet all of these costs are readily available to BT from their commercial roll and the public funded rollouts in Northern Ireland and Cornwall.

Temporary changes in the regulatory accounts aimed at highlighting the key incremental costs would provide a quick and easy way to create the correct level of transparency so value for money can be secured. This would permit Government if it wishes, to apply additional resources to assist in a fibre transition plan. The current lack of cost transparency and BT's reliance on pernicious confidentiality agreements

to prevent these costs being revealed will act as a deterrent to future public investment in the UK's communications market.

The measures aimed at achieving value for money outlined in the state aid approval SJ33671, over rely on benchmarking one BT project against another, and on clawback. Given the four year case on Ethernet pricing, and the exhaustive work Ofcom has done on this case which is still likely to be challenged by BT, then it is unlikely clawback will prove a useful measure in containing BT cost allocations.

In the light of the above, I have a drafted and attached a simple spreadsheet which I am proposing BT should complete as a part of its legal responsibilities in generating its regulatory accounts. It is meant to clearly identify incremental costs, BT's 'up to £1bn investment (be it cash, capitalised labour, SGA, depreciation) in rural and the proportion paid by the combined public funding pots. The draft is not complete and will need peer review. It is primarily produced as reference point to begin a discussion.

This does not replace any of the BDUK Framework, which is essential to a rapid roll-out but seeks to ensure the Framework contracts are reconciled on actual incremental costs consistent with what state aid is intended to achieve. This action will allow NGA solutions to be delivered well into the final 10% and indeed 5% of most rural areas, while creating the conditions for more public investment in a critical national resource should that be deemed necessary. Clawback and the benchmarking proposed in SJ33671 are insufficient measures to secure value for money given the cost escalations identified above, BT's discretion in allocating costs; BT's lack of transparency and it's use of confidentiality agreements for what is publicly subsidised work suggest BT is treating this as a wholly commercial negotiation rather than the receipt of a possible £1.4bn subsidy on assets with BT will manage and own.

I do hope Ofcom recognise the need to protect the needs of rural users and assist BDUK and local authorities in securing value for money. A competitive dialogue with a monopoly access provider and a framework constructed to comply with state aid approval cannot of themselves assure value for money.

Given this is a matter of public interest and the BDUK funding is the first major public investment in networking since BT's privatisation, I will also include this request in consultations on Ofcom's annual action plan while copying to EFRA and PAC in the House of Commons in the hope the matter can be addressed between you.

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Mike Kiely,

Founder, The Bit Commons.