

RESPONSE TO OFCOM'S REVIEW OF THE WHOLESALE LOCAL ACCESS MARKET

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Cable&Wireless
Worldwide

Executive summary

- Cable&Wireless Worldwide welcomes Ofcom's proposals for the 2010 WLA market review. Ofcom has made a commendable start in the development of its policy in order to support continued LLU and NGA competition and investment.
- We support Ofcom's proactive stance in identifying in advance areas where commercial agreement is unlikely. In such situations Ofcom has set out it will make a determination or proposed the mediation of the OTA.
- NGA technology and products are still at an early stage of development and as such we are in a key period of opportunity to create the best possible wholesale products. We support Ofcom's key principles which it requires any VULA remedy to respect. Ofcom needs to put in place the appropriate framework which will achieve these goals. We regard the following steps necessary:
 - Ofcom to be more prescriptive about the VULA product¹ eg setting defined period by which wires only must be available
 - identification by Ofcom of the changes required to the GEA product to make it VULA compliant
 - a requirement on Openreach to publish a multi-year product roadmap to achieve full VULA compliance facilitated by the OTA,
- The PIA remedy, as a result of its restricted use and restricted configuration, is unworkable for Cable&Wireless Worldwide. If this remedy remains unchanged

¹ More information has come to light during the consultation period allowing Ofcom to be more definitive on certain characteristic during this market review.

PIA will not provide any assistance to NGA rollout outside of BT's own planned footprint.

- We consider that Ofcom should put in place strict pricing rules for ancillary services such as migration for NGA services. This is not counter to giving BT pricing freedom for the NGA access product.

Introduction

Cable&Wireless Worldwide provides both wholesale and retail business services. To date we have unbundled 850 local exchanges with MPF access. We are currently in the process of unbundling further exchanges.

We supply key broadband retailers who use our CGA LLU and will use our NGA service based on VULA.

We also work with independent NGA network providers in order to connect up their networks and to deliver services over the networks they deploy.

We are considering our role for wider NGA aggregation.

Responses to questions

Question 1 Do you agree with our proposed product market definition?

Summary

Theoretically the WLA market is the market upstream of all other communications markets. The products within this market go on to be used to create most downstream services. There is one considerable exception at present and that is the linkage between the WLA market and the BCMR market. Whilst there is the potential for the WLA market to provide all upstream inputs to the BCMR market technology constraints (and product design) limit this to a small proportion of the bandwidth served by the BCMR market. With the introduction of the WLA PIA remedy there is potential for greater overlap. By restricting the use of PIA Ofcom is seeking to artificially prevent PIA to emerge, in the situations where it could prove economic, as an upstream input to the BCMR market. We strongly disagree with this approach. As today (and evidenced in the last WLA market review) we see that WLA products can provide a limited range of upstream alternatives to BCMR products. In the same way that Ofcom regards VULA to be the primary NGA wholesale solution, we expect the products from the BCMR market to be the primary leased lines solution. However in limited conditions/ specific locations PIA could be used by OCPs to provide a number of services which could include leased lines. Ofcom should not restrict the use of remedies from the WLA to prevent this or tinker with the market definition to hide previous connections with the leased lines market.

Response to the question

The market review document appears to sever connections between the WLA market and the leased lines market. This happens in two places a) within the PIA remedy where PIA is explicitly prevented for use supplying leased line services and b) within the market definition. The WLA market is the most upstream market of all other communications markets. The wholesale products within the WLA market should and could be used to provide any voice, broadband or data product. To prevent certain services being supported impacts on the economies of scope that are essential to communications providers.

We explore below what appears to have happened to the product market definition.

WLA 2004

In the last market review Ofcom concluded with a product market definition of “loop based and cable based local access provision” (3.4). In addition “supply to both residential and business customers, including lines which are used for analogue, integrated services digital network (ISDN) and private circuit local ends” (3.5). In the WLA 2004 (para 3.97) Ofcom sets out that “the differences between analogue and ISDN lines (and private circuit local ends where these are delivered over copper) are concentrated in the equipment connected to either end of the local loop and in the supplementary services supplied. At the wholesale local access level, that is, in the local loop or analogous local access connection itself, there is no significant difference. Therefore Ofcom believes it is appropriate to define a single market for wholesale local access including lines which are used for analogue, ISDN and private circuit local ends.”

WLA 2010

The retail market

In the WLA 2010 Ofcom recognises that the following services are supported over access lines: retail narrowband services, retail broadband services, retail leased lines services for businesses (3.27). This is further expanded at 3.40 to show that retail business services (under the section heading of retail leased line services) that will have increased bandwidth demand include VPNs. At 3.41 Ofcom explains how businesses use broadband access to create VPNs over the internet in place of leased line connections. This is only part of the story. Whilst home workers are able to access their corporate networks via temporary VPN connections there are in addition permanent VPN networks which are provided using broadband access either ADSL or SDSL from either LLU connections or WBA services connections. These business broadband services were subject to considerable discussion during the WBA 2008. That market review established that both WBA ADSL services and LLU ADSL services were being used by business services providers to provide broadband access lower cost alternatives to partial private circuits. (In some cases SDSL is also used to provide an alternative to SDH partial private circuits, however this is a very small proportion compared to ADSL due to a number of reasons².)

The WLA market definition (3.95) is derived from demand for retail services which require access. The retail definition on the issue of whether residential and business users fall into the same product market concludes at 3.118 “In our analysis of the relevant market we proposed that there is likely to be a broad retail market that includes local access services for both residential and business end users. However we recognise that at the retail level business users and residential

² E.g. later rollout of SDSL, higher prices with out higher service levels, less coverage

users can demand significantly different services to be provided over their access lines. For example, business users might demand higher specification broadband services, e.g. in terms of contention, service management and repair times. They might also demand different retail services to be supported such as ISDN 30 or retail leased lines services. “

The wholesale market

The above narration of Ofcom’s thinking continues at 3.118 “however, at the wholesale level, such distinctions do not exist: the loop and cable connections used for residential applications are essentially identical to those used for business use, even if they support different retail applications. In this respect, provision of the local access product is different to provision of retail services, where business and residential customers might be expected to have different demands for supplementary services.”

For the WLA 2010 Ofcom concludes (3.122) that “we propose to define the scope of the relevant WLA market as including loop based, cable based and fibre based local access at a fixed location. It excludes mobile based, fixed wireless based and satellite based WLA. In addition we propose to include self supply in this definition, and have a single market for WLA lines which are used for business and residential use.

There is no discussion within the consultation of how the inputs to ISDN and partial private circuits feature within the WLA 2010 definition. We believe that Ofcom by the omission of explicit mention of ISDN and leased lines is attempting to redefine the WLA market (without consultation) a market that is upstream to broadband and consumer voice only. We strongly disagree with such an approach or analysis.

The market has not changed between 2004 and 2010. As NGA networks are rolled out the capability for the supply of leased lines services from WLA inputs increases. The market definition should therefore state (as before) “including lines which are used for analogue integrated services digital network (ISDN) and private circuit local ends”.

Question 2 Do you agree with our proposed geographic market definition?

Yes, we agree that a national market exists.

We also note Ofcom comments at 3.195 “It is our view that a common pricing constraint would exist in the WLA market and that a national market can be defined on this basis. Consequently we do not consider that it is necessary for us to conduct a detailed geographic analysis based on identifying areas of competitive homogeneity. However that said it is important to recognize that VM is present in the market and that its presence (and any corresponding competitive constraints arising from its presence) is on a sub national basis, i.e. its cable footprint. Therefore, while we consider that the market is national in scope, it nevertheless exhibits local characteristics. This should be borne in mind when we assess whether any operator has SMP in the market and when we consider which remedies, if any, are necessary to address any identified SMP”. It is not clear to Cable&Wireless Worldwide how Ofcom plans to apply the existence of “local characteristics” when determining remedies within this market review (or subsequently in future market reviews). Further explanation is required in order to clarify what may be an investment risk.

Question 3 Do you agree with our proposals that BT and KCOM have SMP in their respective geographic markets?

Yes, Ofcom has estimated that BT has 85% market share of active lines in the UK (excluding Hull) and KCOM has 100% market share in Hull.

Question 4 Do you agree with our proposals for the general access requirements that should apply to BT and KCOM respectively?

Yes.

Question 5 Do you agree that Ofcom should impose a new network access obligation on KCOM, that would require it to follow a statement of requirements process to handle requests for new network access in this market?

Yes.

Question 6 In relation to LLU do you agree with the assessment and options set out?

Yes, LLU is presently the key WLA product. Existing LLU regulation must be retained as Ofcom proposes. Purchasers of LLU continue to invest in unbundling additional exchanges and upgrading the services they provide as Ofcom notes at 7.20 “We are now seeing a move from shared access to full access as CPs look to provide an increased range of bundled voice, broadband and even triple play services over their own infrastructure”.

Ofcom must continue to remain focused on all aspects of LLU. We note Ofcom's statistic on broadband switching (32% in Q2 2009). Switching costs and processes therefore must remain under regulatory focus.

Ofcom rightly proposes to put in place a LLU charge control when the current one expires in March 2011. The forthcoming charge control must be fully comprehensive and focus upon all the key services including ancillary services.

Question 7 In relation to fibre access, do you agree with the potential unbundling arrangements for the different fibre architectures and the positions/options set out given the current and expected future availability of fibre within BT's access network?

Cable&Wireless Worldwide is keen to ensure that the current preliminary conclusions about NGA fibre unbundling do not bring premature (final) closure to this issue.

It is not clear how NGA networks will develop over time.

It is not clear how consumer requirements will develop over time.

And it is not clear how technology and associated costs will evolve over time.

A change in each of these categories of uncertainty could promote a greater interest in NGA fibre unbundling.

We concede that for the period of this market review NGA fibre unbundling will not have (a least any wide scale) relevance. We agree that an appropriate solution would be for NGA fibre access to be available under the general access obligations. Ofcom must be careful not to inadvertently condemn NGA fibre unbundling by any statements made in the current environment. It is likely that next generation GPON and WDM PON families could lead to an upgrade path that enables fibre unbundling and point to point solutions. The ability for CPs to request it under the current general access obligations provide an important signal of regulatory intent to support its availability when and if demand arises.

Question 8 In relation to SLU do you agree with the assessment and options set out?

Cable&Wireless Worldwide agrees with Ofcom's proposal to retain the current SLU provisions. In the event that CPs require a modified SLU product that should reasonably be provided we expect Ofcom to take necessary and swift action to ensure its availability.

Question 9 In relation to PIA do you agree with the proposed PIA obligation structure and the proposed implementation arrangements?

Cable&Wireless Worldwide welcomes the proposal to make available physical network infrastructure – duct and poles. However we have serious concerns with respect to Ofcom's proposals to limit the use of the PIA services to a defined set of end uses. In addition Ofcom is restricting alternative CPs network architecture for NGA services when using PIA to BT's existing CGA network architecture. We see no good reason to restrict the potential economies of scope that CPs can drive

from the PIA product, and we note that BT will suffer no such restriction itself. To the extent that these restrictions remain in place Cable&Wireless Worldwide will struggle to make the investment case stack up. The sections below are drafted to illustrate to Ofcom how we would use the PIA solution in the absence of the current restrictions.

Benefits of the availability of PIA

What we can do with it?

We can use duct and poles to create all or part of network routes to:

- supply end users directly
- supply local community networks with backhaul between their communities and the integrator ISPs
- provide higher capacity links to mobile operator base stations to allow 3G coverage increase for rural areas
- supply businesses with leased-line services on long term contracts to underpin the revenue needed to run the PIA network
- provide Critical National Infrastructure customers such as utilities with services based on fibre that meet their key performance and separacy requirements.

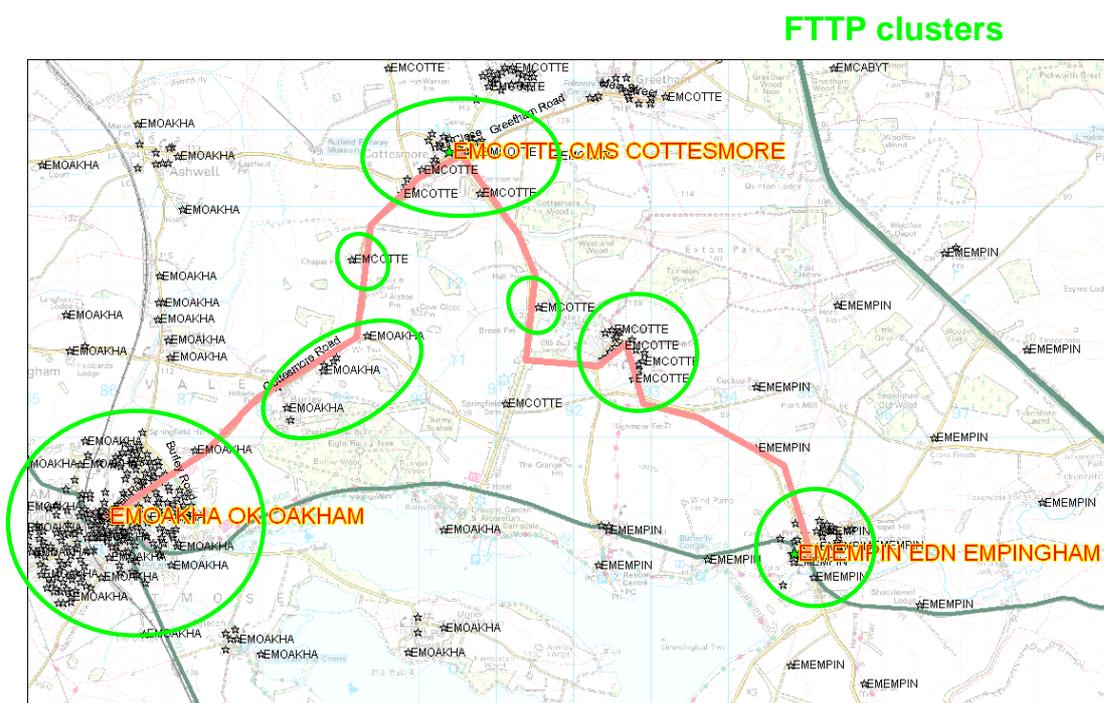
How we might do it?

We will build on the work done in preparing the PISWG duct sharing specification to help establish a sound industry process for selecting, using and maintaining PIA routes, so creating duct routes for cabling with a single high fibre count cable to meet the topology needed for the customer services.

How it might benefit geographies of the UK where BT are not currently planning to rollout NGA upgrades?

Where BT choose to not deploy NGA, we can help provide the connectivity to communities and customer clusters by providing the infrastructure fibre and PON devices, providing NGA and business services via our own equipment or via parties such as IFNL.

Map of example deployment



Explanation of what the map above illustrates

The above is a hypothetical representation of how PIA could be used by companies such as Cable&Wireless Worldwide. The red line represents a PIA duct route.

Cable&Wireless Worldwide could locate a point of presence at Oakham. The POP will contain equipment for:

- local customers to the Oakham exchange, both fibre and copper
- to feed along the route to the hamlets for GPON customers, plus backhaul to connect LLU/GPON at the 2 other BT exchanges, and Sub-Loop cabinets
- and feds for other commercial traffic such as cell-site backhaul for 3G and/or WiMAX services.

The PoP could serve the more populous Oakham area but vitally in order to achieve sufficient economies of scope serve all customers with all services along and within short distances off the red duct route.

Restricted use

Ofcom proposes at 7.148 “The purpose of the proposed remedy is to promote competition and infrastructure investment in the deployment of both FTTC and FTTP NGA access networks. We therefore propose that the geographic scope and the allowed uses of the remedy should be limited to this purpose.”

We appreciate that Ofcom’s proposals in this area may be driven by the conclusions of the Business Connectivity Market Review. But we are concerned that this appears to have resulted in a restriction which makes no sense from a commercial perspective. Ofcom’s expectation is that PIA “looks to be a much more attractive option for areas where BT has not developed an NGA network” (see 7.138). BT has published its planned NGA rollout. BT has presumably selected the areas for which the economics justify the rollout of NGA services (with BT being the key retailer and wholesaler). Ofcom itself identifies that Communications

Networks experience significant economies of scope³. By restricting the number of services that CPs (alternative to BT) can deploy when using PIA artificially reduces the potential economies of scope. PIA may also be offered by others than CPs – other utility industry players such as Electricity and Water companies, for example – and the basis for use of ducts may be cheaper services for the utility such as dark fibre between their substations. Restrictions on the types of services on one element, i.e. BT, may not allow schemes to proceed.

This has two effects:

- 1) it raises CPs costs to serve geographies of the UK which are already high cost and possibly uneconomic to provide NGA product to (if they were easily justifiable then BT would be in the best position to make that investment). As a consequence Ofcom ought to be permitting potential providers of NGA services to these geographies of the UK to be as innovative as possible in terms of network design and in obtaining optimal economies of scope.
- 2) it raises the concern that should BT decide at a later date to extend its NGA coverage to these areas its own cost base could be far lower than alternative CPs as it is not restricted from achieving the fullest economies of scope.

If it is Ofcom's desire to ensure that PIA is used in the first instance for the provision of NGA (FTTP/C) services, then a better policy proposal would be one that allows users of PIA to offer other services as well as NGA broadband services, (even if that means backhaul on behalf of others from FTTC cabinets). We hope that Ofcom will reconsider its proposals on this point.

³ As Ofcom identifies in the WBA market review para 5.60

Network design

Within its own NGA deployment BT has moved away from its CGA network architecture. BT's product proposal outlines that the total number of NGA PoH will be 850 to 1000. This is because under the NGA design a POH will cover a much wider geographic area than typical exchanges do today (and so the cabinet to exchange fibre will reach further than the typical E side copper connections today). It is likely that alternative providers of NGA networks will have their own visions of the optimal NGA design – dependant upon their own network topology, technology choice, potential end users, NGA build area and requirements to interconnect with other communications providers.

In seeking to ensure that NGA investment reaches all parts of the UK, an important aspect will be the ability for NGA investors to be able to innovate with their network design. We understand that the proposal for PIA is that it is available between the end user and the first CGA exchange. If this is the case then PIA becomes an irrelevant and unusable regulatory remedy. This is also entirely at odds with the recognition that NGA networks will result in topology changes⁴.

Even today in the CGA network fibre services such as leased lines do not necessarily *contain active functionality* at the first exchange site. This is clear as whilst there are 5548 exchange sites, only 1790 are fibre sites with active SDH equipment. This means even with in the CGA network that fibre circuits are long lined to a smaller number of active fibre sites.

⁴ indeed much of the EU focus is on the stranding of LLU investment due to changes on NGA topology

We would expect that PIA be permitted along BT ducts to create workable networks for rural communities, and for rural back to urban. One possibility is to tie in PIA with the locations where cheapest Openreach backhaul services are made available – such as back to the 1100 or so Access Serving Nodes (ASNs) on Openreach’s EBD footprint.

In order to bring NGA networks and services to less economic areas (i.e. areas where PIA is most likely to be required) companies require flexibility and the capability to innovate with regard to network design. This needs to be underpinned with like minded regulation.

Question 10 In relation to VULA, do you agree that VULA may be a necessary access remedy in the WLA market and if so, do you agree with the key characteristics identified and how these currently relate to BT’s GEA products?

Cable&Wireless Worldwide welcomes Ofcom’s proposals to regulate a new NGA access product- the VULA product. We fully support the attributes that Ofcom assess the VULA product must offer:

- localness
- service agnostic
- uncontended
- control of access
- control of CPE

The following comments are made in support of Ofcom's decision to date. We also seek to provide Ofcom with the additional information that has developed over the course of the 10 week consultation period (and since Ofcom drafted its market review). As a consequence of this additional supporting information we believe that Ofcom is able to make more definitive conclusions on aspects of the VULA product.

Cable&Wireless Worldwide has worked together with a number of other CPs all of whom are key investors in the WLA market and in providing broadband services. The work of this group has culminated in a detailed technical discussion of Ofcom's proposals and BT's current GEA product. This is attached as an annex to our response.

Control of CPE – Wires-only

Wires-only is fundamental to a VULA product which fulfils the key characteristic of control of CPE.

Cable&Wireless Worldwide believes that the level of CGA competition can only be replicated in the NGA environment when wires-only NGA becomes available. As Ofcom notes "LLU provides CPs with greater control of their communications services, providing them with a significant ability to innovate and differentiate their products from BT. This enables CPs to potentially support a broader range of applications, products and services than if they had less control over characteristics of those services. It is the additional control and flexibility provided by LLU that has increased benefits over resale products "(7.11).

We believe the evidence is already there to support Ofcom concluding that a wires only version of VULA will have superior consumer benefit than one tied to BT's CPE or limited CPE options. Current broadband products are illustrative of the benefits. IPStream is a wires only product. This product comes without the need for two boxes which is a superior solution for numerous reasons, not least; less cost for the CP and therefore the overall service, less space, power and cable requirements for the user, simpler fault diagnosis (a fuller analysis is in Table 1 below). Ofcom clearly understands and acknowledges these points that we make in paras 7.246 to 7.248. But we take issue with Ofcom's conclusion that wires only presentation is not ready to be implemented today on VDSL/FTTC and that it may take time to adopt this interface. Ofcom consequently leaves the case to be reassessed in the future. Cable&Wireless Worldwide works within the NICC to resolve issues such as these. We acknowledge that the timescales for FTTC and FTTP will differ, however wires only FTTC is expected to be established in a 6 to 9 month timetable for fully stable and proven interoperability. The FTTP timeline is less certain presently. It is therefore clear that by the time that Ofcom concludes this market review that the necessary standards work for VULA wires-only (FTTC) will be wrapping up. We therefore do not consider it necessary to reassess or wait and see. We believe that Ofcom, will during the course of this market review consultation period, have obtained the information it may require necessary in order to determine the requirement for VULA wires-only within its final statement, at least for VDSL/FTTC. We recognise that for FTTP, 'glass only' is further away, hence the importance of Ofcom requiring Openreach to maintain a roadmap with clarity as to the likely timeframe in which such functionality can be introduced in FTTP.

Table 1 Key business and customer benefits of wires only

<i>Wires only benefit</i>	<i>Explanation</i>
More environmental	A single device is greener. It requires fewer materials and power consumption than a 2 box solution
More cost effective	A single device is cheaper due to consolidation of casing, power, electronics and peripherals.
Lower operational costs	A single device means there is only a single point of failure. This reduces Openreach and CP operational costs and result in simpler support processes, quicker diagnostics and improved CP performance monitoring
Service innovation	A single device supplied by the CP will enable CPs to innovate with the end user hardware they provide
Consistent with CGA broadband	A single device solution is the current operating model for broadband delivered over BT's CGA network.
CP can brand	CP is able to brand the home equipment

	rather than present BT branded or unbranded hardware.
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Control of access - Virtualisation / service functionality

Non discrimination / EOI needs to apply equally to service functionality such as multicast and other add-ons. Wherever possible control of service functionality must be given to downstream providers rather than sitting with Openreach. This is consistent with Ofcom's VULA requirements of giving control of access. Control of the service functionality will give the CP control of QoS and other service parameters to enable differentiation and modify services as customer demand warrants.

Systems interfaces

It is expected that NGA services will be available via Openreach's EMP. We advocate an OTA management / co-ordination (as per WLR and LLU) of the EMP release program.

Discussion at other NGA forums have included the replication of Openreach's EMP systems for the aggregation and integration of smaller NGA networks.

Cable&Wireless Worldwide agrees that this is a pragmatic and cost efficient solution to wider NGA network aggregation. We encourage Ofcom to work with Openreach in order to share widely with industry standards groups as becomes relevant, EMP documentation to make EMP the standard industry interface.

Service agnostic access - Business and higher quality requirements

To be compliant with the capability of service agnostic access in the context of market segments served rather than service supplied the service wrap of VULA needs to extend to the greater requirements of business customers and indeed higher quality demands of some residential customers.

Cable&Wireless Worldwide retails directly to the business users. It is important that we are able to understand how NGA products may fit with the needs of our business customers. We wish to avoid the trend of business services being “tacked” to products that are predominantly created for residential customers. We expect Openreach to make available NGA products that meet broader requirements of business customers for example business grade and business orientated repair times and process, SLA/G commitments, no contention or bandwidth sharing and service bandwidth symmetry (which we believe is part of the VULA requirement that Ofcom proposes anyway).

The core characteristics of the VULA product allows VULA to be used for both residential and business services alike. The service features / wrap that transforms a residential service into one fit for a business user is not reliant upon the NGA technology or the NGA investment. There is therefore no reason why there would be any pricing differential between the network component of the residential or business service. We would expect higher charges to result from the take up of enhanced service levels. There is no reason for the cost of these enhanced service levels to differ to those offered for CGA services especially when the systems and processes used are the same as those for CGA services.

Un-contended access - Removal of bandwidth constraints and contention

In order to meet the key characteristic of providing uncontended access and in line of the SMP condition VULA definition we expect the supply of a single VULA (virtual) access connection which we in turn will apply our own service design to.

Openreach's GEA products are restricted to 40Mbits downstream and 10Mbits upstream. In order to fulfil the requirements of uncontended access (7.242 the availability of an uncontended access connection, alongside the control options discussed below, would ensure that the full innovation benefits can be realised) and control of access (7.244 CPs would need freedom of control to provide different types of service and potentially also vary the QoS parameters in delivering those services to enable them to effectively compete with other providers). Therefore the VULA product that Openreach offers should only have its symmetry and contention limited by the technical capacity of the network⁵. Cable&Wireless Worldwide understand that to be compliant with VULA obligation that the NGA product Openreach supplies would be entirely unrestricted. Each end user connection should be uncontended and offered as a single access product to the service provider. Such an approach is consistent with the LLU proposition that has seen innovative service offerings prosper and drive up consumer choice. There has been much debate during the course of the consultation regarding whether the existing / planned Openreach products are uncontended. With respect to FTTC the conclusion appears to be that Openreach will dimension its backhaul capacity as such that FTTC will be uncontended. The situation for FTTP is less clear. Ofcom

⁵ genuine limitations rather than commercially / competitive imposed design limitations

could very usefully outline in the final statement that uncontended access means the availability of sufficient backhaul to ensure the service remains uncontended.

The second aspect of contention is the restriction of the line speed by Openreach. The pre VULA product GEA has restricted upstream and downstream limitations. Our understanding of uncontended means that such restrictions cannot be imposed or alternatively can only be imposed at the minimum necessary as supported by differences in cost of provision. The creation of a VULA product with multiple pre defined bandwidths prevents the downstream CP from innovating its own service packages. Within the final statement Ofcom must be more definitive as to how Openreach's existing product specifications meet or fail to meet the VULA requirements.

Control of CPE - Open ATA (CP controlled ATA CPCA)

In order to comply with the key characteristic of control of CPE, CPs must be able to provide service using their choice of vendor and technology.

Openreach has incorporated an ATA into its NTE hardware. Cable&Wireless Worldwide has already responded in the context of the FTTP variation consultation of the risks of such a product adoption. VULA services will be available (in particular for FTTP services) with Openreach provided NTE for a period of time. Cable&Wireless Worldwide wants to have the capability to use its own call server for the provision of voice calls. Whilst we welcome the progress being made in NICC towards standardisation of the interfaces, there is a need for ongoing

vigilance to ensure that any standards are as near as possible to those agreed internationally.

While we welcome the decision that Openreach will not develop VoNGA, Cable&Wireless Worldwide is particularly concerned about the scope for margin squeeze between the Openreach-provided CPCA product and any capability provided by BT Group which encompasses greater functionality, in particular the callserver. For example, it is difficult to see how the trial pricing at £3/yr/line incremental price over GEA that was proposed for VoNGA - which provided a WLR-like service - could possibly cover the fixed costs of a callserver. There is a danger that costs that should rightly fall only in the cost stack for a "value-add" voice product (such as a VoNGA-like service offered by a downstream BT line of business) are instead incorporated into the pricing of CPCA or VULA, meaning that CPs providing their own callserver subsidise the provision of BT's, making it impossible to compete. In this situation, rationally CPs would subscribe to BT's value-add service as it would not be possible to meet the cost of self-provision from the price differential of the value-add service versus CPCA. Measures such as CPCA being provided on an EoI basis are insufficient to address this issue.

VULA on a stand alone basis

We fully support Ofcom's proposal that VULA must not be tied / bundled with other services.

Pricing

Ofcom has decided not to impose pricing regulation for VULA. This is to ensure that BT is not discouraged from rolling out its NGA network and so that BT has maximum pricing flexibility.

Cable&Wireless Worldwide believes that there are a number of related pricing issues that warrant intervention from Ofcom and a different approach. While it may be correct for Ofcom to resist price regulation of the core VULA product i.e. the connection and rental charges, there are arguments for a more interventionist approach for areas which have been identified as competitive inhibitors in the past. For example we do not agree that price setting by Ofcom of migration charges would affect BT's NGA rollout decisions. Yet migration charges have proven problematic within the history of LLU. We request that Ofcom sets migration charges for VULA and that such charges be required on a cost orientated basis. .We have already observed situations whereby pricing issues have arisen for ancillary services for example accredited install (where the CP installs the modem and face plate instead of Openreach) again this is not a NGA rollout issue but one of pricing to the detriment of competition.

Cable&Wireless Worldwide believes that Ofcom should offer BT up front guidance on Ofcom's approach to margin squeeze for VULA and downstream services. We have set out in the section on Open ATA our concerns about cost allocation and the potential for margin squeeze between VULA and VoNGA-like and CP's voice services). Such guidance would importantly identify:

- what is the input cost – the VULA price as per the regulated accounts

- FL – LRIC costs
- that costs will be adjusted to reflect an efficient new entrant's scale
- that a margin squeeze assessment will combine connection and rental charges together

The first steps necessary in order to transition from Openreach' current NGA portfolio to a VULA compliant portfolio is:

- Ofcom to be more prescriptive about the VULA product e.g. setting defined period by which wires only must be available
- identification by Ofcom of the changes required to the GEA product to make it VULA compliant

In order to achieve a controlled and open transformation of Openreach's existing GEA product to a fully VULA compliant product we propose that Ofcom should put in place a requirement on Openreach to publish a multi-year product roadmap which complies with those principles. We think this will create better incentives on Openreach to reflect technological and product developments in its VULA product in real time, rather than delaying until the next WLA market review. The development of this 'regulated roadmap' could perhaps be facilitated by the OTA with Ofcom oversight, so that Openreach customers have a better opportunity to influence the Openreach roadmap.

Question 11 Do you agree with the framework for considering specific access remedies on BT?

Yes, Cable&Wireless Worldwide agrees with the “framework” for considering the specific access remedies on BT. Throughout this response we have made representation as to how remedies (VULA and PIA) require small change.

In response to this specific question we draw attention to our comments on the restricted use of PIA in particular as in 8.9 Ofcom sets out that WLA regulation should “lower barriers to entry, so that alternative CPs have opportunities to make their own investments in NGA.” We disagree that the PIA remedy as currently restricted enables CPs to invest in NGA outside of VULA areas as intended by the regulation. This is explained in response to the PIA remedy question.

Question 12 Do you agree that there is a need to have a complementary set of access remedies and if so do you agree with the proposed set of remedies on BT?

Yes, Cable&Wireless Worldwide fully supports the proposal for the following remedies:

- LLU
- SLU
- VULA
- PIA

We have some concerns around the nuances of the remedies (discussed in earlier sections), which we trust Ofcom will agree with and modify in its final decision.

Question 13 Do you agree that no specific access remedies should be imposed on KCOM in the WLA market at this time? Could any remedies on KCOM at the WLA market level address the competition issues that we have identified?

Demand for WLA services from BT have been stimulated after a competitive market for WBA services was established. Providers first tested the market using the WBA services. In our view Ofcom needs to first remove any barriers to competitive entry within the WBA market. We make proposals within the WBA market review. Ultimately the size of the market, the costs of accessing the market, and the existence of an incumbent retailer have to date not created a compelling business case for Cable&Wireless Worldwide to enter the Hull market.

Question 14 Do you agree with our assessment against the legal tests for each specific remedy as set out in Section 9?

VULA

The SMP condition text for VULA provides the following definition – network access comprising of a virtual circuit between a point of connection at the local serving exchange and a network termination point, which circuit provides such specified capacity as is agreed between BT and the OCP for the OCPs exclusive use.

Ofcom has decided not to specify any of the detail required for the VULA reference offer. Ofcom does not give any reasoning for this other than “In contrast to the proposed LLU remedy, but similar to the SLU above, we are not proposing that BT should be required to include some minimum specific requirements in the RO in relation to VULA”. Ofcom does set out the RO detail for LLU and PIA. As the condition sets out the minimum requirements we do not understand why Ofcom does not proceed on this basis for VULA.

PIA

PIA is defined as network access comprising predominately the provision of space, anchorage, attachment facilities and / or such other facilities as may be reasonably necessary to permit an OCP to occupy parts of BT’s physical infrastructure located between NTP and MDF sites serving these NTP, sufficient to facilitate the establishment, installation, operation and maintenance of the OCPs electronic communications network at that location. By physical infrastructure, we propose that this includes any conduit, tunnel, subway, pipe, structure, pole or other thing in, on, by or from which an electronic communications network is or may be installed, supported, carried or suspended.

Within its discussions of the legal tests Ofcom presents its PIA remedy restriction 9.48 “We propose that the PIA obligation is subject to an important limitation. Namely, BT should be required to provide PIA, together with such ancillary services as may be reasonably necessary for the use of that access, if and only if, such access and services are to be used by OCPs for the purpose of deployment of broadband access networks serving multiple residential and business customers.” Within the section on legal tests there is no discussion about the restriction, why Ofcom require the restriction, on what basis the restriction is justified. We disagree

with the conclusion that Ofcom reaches that Ofcom has taken account of the factors set out in section 87(4) of the Act. While Ofcom consider the feasibility and the technical and economic viability for BT to provide PIA services we do not believe that the assessment is correct when viewed in the context (d) the need to secure effective competition in the long term 87 (4) Communications Act. This is for the reasons set out in response to question 9.

Comments on the SMP conditions text

FAA12.1 limits the use "for deployment of broadband access networks serving multiple residential and business Customers." We would like this to be relaxed to allow leased-line services for key customers such as mobile networks and Critical National Infrastructure utilities, and to allow us to offer wholesalers backhaul on their installations offering broadband access (so we may not offer services direct to residential customers, but enable others to do so).

FAA12.2 - Charges for use of duct - Ofcom need to stipulate conditions for pass-through of wayleaves or easements BT must abide by. If BT has an easement for duct and we wish to install cable, then we would usually require our own wayleave for installation and maintenance access. Openreach could offer an ancillary service for installation and supply of fibre cables though, and we see it as a managed service which removes need for our own wayleave.

FAA12.4 (d) - NTP - can this say "including, but not limited to, connections to street furniture and CP equipment cabins", to provide fibre connectivity for them, as opposed to FAA11 which talks of "Relevant Subscribers" which says

(i) "Relevant Subscriber" means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such Services;

FAA12.4 (e) - "PIA and MDF sites serving those NTPS" - this is the geographic limit which is not relevant for Optical services, and needs to be wider – Cable&Wireless Worldwide proposes to the nearest 2 ASNs on the Openreach EBD network.