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Dear Tanja

### **Response to Strategic Review of Digital Communications**

Independent Fibre Networks Limited (IFNL) is an affiliate company of GTC. IFNL provides and operates the last mile of fibre networks to new, predominantly domestic, developments. However, many new developments are a long way from the BT Openreach (BTO) exchange. For these it is often uneconomic for us to compete with BTO to service these sites and provide a fibre network backhaul to the exchange. To make such developments viable we need access to existing BTO networks to provide backhaul between the local cabinet and the exchange.

Government has set a clear objective, which it reiterated at its party conference this week, to increase the number of homes built from the current levels of circa 130k per annum to 250k per annum. This is required to meet the current shortfall in supply, and to foster an ethos of home ownership. Also, Government has placed significant emphasis on rolling out superfast broadband across the UK to meet the requirements of the 2020 EEC digital agenda.

Our response to the Strategic Review is on the narrow, but important area of permitted access to BTO's fibre network in order to provide broadband to these new developments. We also make some limited comments on Business Separation.

GTC believes that competition based on effective access to existing incumbent passive infrastructure:

- is essential to avoid an already stretched incumbent operator from both slowing the housing rollout down; and,
- to stop perpetuating the installation of Victorian copper technology into 21<sup>st</sup> century homes.

These issues are inevitable while BTO retains a near-monopoly in the provision of last mile fibre infrastructure to connect new households in the UK. Competition based on effective access to existing incumbent passive infrastructure can play a very important part in the deployment of superfast broadband and driving forward innovation. Therefore, we believe that competition in the market for the provision and ownership of infrastructure that connects to and integrates with BTO's existing network should be opened up to the fullest extent to

allow it to fulfil the important role it is capable of doing. To achieve this, both the opportunity and the incentive for BTO to discriminate against competitors must be minimised.

We recognise that Ofcom are currently consulting on access to BTO dark fibre as part of its Business Connectivity Market Review (BCMR). We have responded to this and urge that Ofcom also considers our responses as part of its wider strategic review. In summary, whilst we welcome proposals to open up access to dark fibre, we think the proposed pricing mechanism is uneconomic and will result charges to competitors that are higher than the notional charges that BTO levies to its own downstream business for equivalent services.

### **The New Connections Market**

1. Access to high speed broadband is an essential requirement for home owners. The availability, or lack of availability, of such access plays an important role for many in deciding where to live or locate premises. The Government has made clear its goal of achieving superfast broadband for as large a proportion of the population as possible – both for its own sake and to meet the EU “Digital Agenda”. This sets the goals of fast broadband coverage at 30 Mbps available to all EU citizens; with at least 50% of European households subscribing to broadband access at 100 Mbps.
2. Solutions offered by BTO to new homes are often sub optimal in that they only comprise of fibre to the cabinet, with the ‘last mile’ of network (from the cabinet to the premises) comprising a copper connection. This means that whilst BTO “badges” its download speeds as being “up to 76 Mbps” (but only “up to” 19Mbps for upload), the more typical download speeds are circa 36 Mbps. As a consequence the broadband speeds to new homes are significantly lower than what they could be – and what Government’s target is. This approach also stores up a problem for the future because as greater and greater speeds are demanded, copper infrastructure will inevitably need to be upgraded to fibre in any event.

Additionally, developers experience poor service from BTO in the provision of connections, often facing significant delays in securing connections to their new developments. Effective competition would enable providers to compete with BTO for the provision and drive the incentives for improved customer service.

3. IFNL is a provider of superfast broadband telecommunications infrastructure via fibre all the way to the premises / home (FTTP). This offers householders download speeds of 50 Mbps as a minimum, and up to 300 Mbps for those wishing to use higher speeds. Currently over [..%..] new homes are contracted to benefit from IFNL’s FTTP network. Around [..%..] homes are already built and being served by IFNL. The early adopters of new technology amongst the house builders are satisfied customers.

However, whilst IFNL has sufficient capability and financial backing to offer FTTP to all new housing developments, it is unable to do so on an economically viable basis for a significant number of developments. This is because BTO:

- has been unwilling to provide access to its existing dark fibre network to provide back haul back to the exchange; and as a consequence,
- has used its significant market power to maintain its monopoly position to foreclose competition for providing networks to many developments.

An additional consequence of BTO's approach is that where we do provide connections, we are required to replicate BTO's assets by establishing a cable back to the BTO exchange. Such an approach is uneconomic and inefficient for both BTO and us:

- firstly it leads to BTO's existing assets being under-utilised; and
- secondly, it requires us to duplicate the investment and works carried out in the public highway by BTO.

4. Whilst we have been able to secure backhaul to exchanges for some developments through using providers other than BTO, we can only do this in a limited number of circumstances (i.e. where other providers have infrastructure in the relevant locality).

Although BTO offers an Ethernet solution, this is uneconomic for smaller developments: it is also a different, more costly, solution than that used by BTO when it provides connections to equivalent developments. Where BTO provides such connections it will connect back to the exchange utilising dark fibre installed in the cabinet. Therefore, providers are unable to compete with BTO on an equal footing.

We think that access to BTO dark fibre should be made available to parties who compete with BTO to provide the 'last mile' of networks to new developments. Such access should be provided on an equivalent basis to which BTO provides access to its own notional last mile of network. For example, access charges for backhaul should be no more than the notional charge that BTO allocates to its own last mile business.

5. Parties who compete with BTO for the provision of network to new developments should not be subject to undue restrictions in connecting its last mile of network to BT infrastructure. As is the case with developers, competing providers often experience a poor service from BTO for the provision of new connections. As a competing provider, IFNL wants to be in the position where it can differentiate itself from BTO through the services it offers to developers. However, the extent that it can do this is limited when BTO, as the monopoly incumbent, imposes itself in the connection process and mandates that it can only provide part of the connection activities.

BUUK operates in both the gas and electricity markets and has experience of monopoly incumbents who, through their interventions, constrain and compromise the ability of new competing entrants to offer improved services (e.g. through delays, through the insistence and charges for monopoly provided services). To remove such undue barriers self-connect regimes have been established to maximise the connections works that parties with appropriate accreditations can undertake in making connections to the incumbent's network (and minimise the mandated interventions by the incumbent). Such arrangements have been in place for gas connections for many years; arrangements for electricity connections are more recent and are being supported through a Competition in Connections Code of Practice. We believe that such a self-connect approach is essential to allow competition in fibre connections to develop.

## **Business Separation**

6. Ofcom's strategic review considers whether the current model of functional separation is still appropriate. We are concerned that the current framework could lead to discrimination – for example, BT developing services within one business unit that better

suit or which are better tailored to the services of other BT business units rather than the wider market. Whilst we acknowledge that there may be no intent to deliberately discriminate, it is something that is more likely to occur in an integrated businesses which, whilst having separate parts, is likely to be influenced by a common BT gestalt.

7. In the energy markets there is formal business separation between production, supply, transmission and distribution. Even so, the current CMA investigation into energy supply has had to examine whether the arrangements for separation between production (typically generation in electricity) and supply are sufficient (i.e. there is a lack of market confidence that separation within integrated businesses is effective). The EU also recognises the issues with vertically integrated companies with the EU third directive setting out the arrangements for businesses to follow in this respect. We think the incentives, opportunities and risks of discrimination are significant and that in order to minimise these, promote wider innovation, and to provide a more confident platform for the development of competition, formal separation is required.

We hope the conclusion of Ofcom's BCMR and wider strategic review will result in full access to BTO's dark fibre network at a fair price (equivalent to the price that BT notionally allocates to its own business where it provides the last mile), and that such access will be on a self-connect basis, thereby enabling wider competition to be established.

Please contact me if there are parts of our response you want to discuss further.

Yours sincerely

Mike Harding  
Head of Regulation