TELEFÓNICA UK LIMITED RESPONSE TO:

"Business Connectivity Market Review: Preliminary consultation on passive remedies"

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Telefónica UK Limited
260 Bath Road
Slough
Berkshire
SL1 4DX
T +44 (0)113 272 2000
www.telefonica.com

I. INTRODUCTION

1. Telefónica UK Limited ("Telefónica") welcomes the opportunity to respond to Ofcom's Business Connectivity Market Review: Preliminary consultation on passive remedies[1].

2. Telefónica views Ofcom's consultation as an important part of the Business Connectivity Market Review. As has been demonstrated in other EU Member States, passive remedies can be an appropriate proportionate response to incumbent SMP in active solutions and can be used to facilitate greater competition and innovation, leading to consumer benefit.

II. GENERAL COMMENTS

3. When looking at mobile coverage and capability into the future, fibre availability and economic reach in many parts of the country, remains a challenge. Telefónica seek the confidence that on-going provision of new fibre infrastructure is encouraged. It is important that appropriate incentives exist to invest further in areas of the country not presently covered. Consideration is needed to assess the revenues and competition that may ensue in areas where such investments are made.

4. At present, Telefónica believe that Dark Fibre would be more effective and accelerate adoption compared to the very market specific/labour intensive Duct Access products (assuming re-application of the very challenging PIA mechanisms for utilisation). The control of actives, independence from Openreach (active) products and their associated timeline, will broaden competition. For competition in the mobile backhaul space, passive adopters will need to develop and leverage aggregation networks, embracing wider providers who have installed evolving infrastructure.

5. Connectivity points for ducts/fibres should not be strictly allied to Openreach locations, as a flexible duct/fibre access remedy should enable connectivity at any points thus enabling cross connection with non BT CP's networks and points of presence.

6. [✂]

7. We focus the remainder of this document on our responses to Ofcom's specific consultation questions.

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr-passives/summary/BCMR_passives.pdf

III. RESPONSES TO QUESTIONS

Question 1: Do you agree with our preliminary framework for considering the case for passive remedies?

8. Telefónica welcomes the opportunity for wider competition and service evolution. The opportunity to access passive infrastructure (both ducts and fibre) will accelerate the innovative and flexible service capability that is possible from leased lines and unlock the restrictive link between data speed and cost, enabling the vision of Digital Britain for both fixed and mobile data connectivity.

Question 2: Do you agree with our preliminary views on the potential benefits of passive remedies? Please provide evidence to support your view.

9. In support of the UK's digital agenda, greater connectivity, including flexibility of connectivity (not strictly bounded to BT Exchanges or Openreach defined connectivity products) will enable Communications Providers (including BT) to evolve and deliver data services independent of active components. This could simplify Openreach's product portfolio and operational methods, being able to focus upon delivery and performance around the duct, fibre and access components of the network.

10. The Passive Infrastructure Access (PIA) initiative, whilst supporting EU regulation, showed that Passive Access can hold benefits for competition, although learning around restrictions upon technology usage (e.g. PIA prevented application for Mobile Backhaul) should be noted.

11. The UK mobile industry is moving forward very rapidly, with growing interest in new applications (e.g. broadcast), support for the emergency services via commercial mobile operators (ESN), technologies such as Cloud RAN and further spectrum auctions (e.g. TDD bands), combined with the potential market consolidation, demand for fibre connectivity and differentiation of backhaul services and capability is emerging. The benefits of passive remedies is well positioned to reduce the dependency upon BT as SMP provider in this area and allow CPs to develop and deploy services and capabilities with less dependency on the traditional Openreach service and product development driven approach (SoR).

12. The downstream impact of Dark Fibre availability, charged on a rental basis, on the ongoing Openreach's Fibre Access products should be considered, for example analysis of the operational burden of existing EAD 100/1000 products, the use of

equivalent equipment and associated differences (including pricing) that ensue. Telefónica believe that a flow through of balanced pricing (focussed on fibre cost) driven by competition and targeted to address BT's SMP is necessary and favourable for all.

Question 3: Do you agree with our preliminary views on the impacts and risks of passive remedies? Please provide evidence to support your view

13. The illustrative examples included in the consultation (Figure 2, page 29 and Figure 3, page 32) do show extremes of impact, specifically 50-100% loss of circuits. It should be noted that migration from active solutions towards passives will still see BT retaining their significant market position in delivering duct and passive fibre access due to their mature, far reaching footprint of these physical assets. With a regulated introduction to passive access, potential lost revenue from active sales would be substituted in part by revenue from Passive sales.

14. Across the Telecoms market, services such as mobile data, cloud computing, unified communications, Internet and online TV content are driving the demand for bandwidth. This has already been evidenced by the growth and adoption of fixed line fibre based broadband services for both business and residential usage, with NGA services also being applied for business and CP usage. [✂]

15. Passive remedies have been very effective in the copper-based broadband market, enabling innovation and drive of capability whilst still leveraging and facilitating the market obligations for voice communications. Telefónica acknowledge that other EU markets have opened passive access to ducts and/or fibre (e.g. Italy, France, Spain), enabling MNOs to apply a mixture of incumbent and self-build/third party provided backhaul services combining active, microwave and passive capability.

16. The unbundling of the Copper Access network carefully considered the risks and impacts of cross talk, interference and connectivity, leading to the application of frequency planning (the UK ANFP) and a managed access control to copper connectivity at various points (e.g. the MPF variants). Telefónica believes such a cautious approach to usage is less critical for passive fibre access, dark fibre usage should be speed and product/application independent with the operating CP free to innovate accordingly.

17. Products resulting from passive remedies could wisely echo the existing, proven methods for delivering active fibre products; re-using ordering, planning, processes and fulfilment. Excess charges can also be applied when and where appropriate.

18. With BT's SMP position in the active fibre based product space, care is needed when enabling passive capability to ensure smooth transition whilst ensuring the on-going availability, with maintained/improving performance of active fibre

products. The development of passive products, in themselves should be able to re-apply many of the existing (active) product processes and methods to ease introduction.

19. Telefónica also believe that passive products can also be applied to ease some of the barriers to competition presently faced. [✂]

Question 4: What are your views about the potential impact of passive remedies on the pattern of common cost recovery and the associated distributional impacts?

20. Careful consideration is needed regarding the potential impacts of passive remedies. We note the following points:

- Migration from existing active services to passive solutions would be expected to re-apply existing passive components

- Costs of components should not be based upon data speed capability.

- [✂]

- As demand for data connectivity inevitably grows Openreach fibres will need to support higher increments of data speed, with minimal increase in operational burden, consideration is needed for the converse reversal in the absence of Passive remedies. What is the expected impact on cost recovery for the accelerated demand for higher priced, 'bandwidth gradient' driven charges?

21. Due to challenges faced by competing CPs the business case for self-provision of fibre en-masse is very poor, BT already has pre-existing ducts and in many cases pre-existing fibre to key areas such as larger cell sites and communications locations. [✂]

22. In the scenario where Passive remedies are applied, careful consideration is needed for how BT is likely to invest going forward, in particular how on-going plans for active products are migrated (or not) for Passive products. We note that the physical assets and associated investments (e.g. ducts/poles/fibre cabling) should be comparable for both active and passive capabilities if similar demand is assumed.

23. Regarding BT's spare capacity, targeted at future growth, we would foresee that under current conditions, this capacity is targeted to be available for active products, growth and build out, and as such this capacity should also be available for passive usage.

24. When looking at mobile coverage and capability into the future, fibre availability and economic reach in many parts of the country remains a challenge. Telefónica

seek the confidence that on-going provision of new fibre infrastructure is encouraged. BT should still have appropriate incentives to invest further in areas of the country not presently covered, and consideration is needed to assess the revenues and competition that may ensue in areas where such investments are made.

Question 5: Do you agree with our initial view that mobile backhaul and fixed broadband backhaul are likely to be the primary applications with significant demand for passive remedies?

25. Mobile backhaul and fixed broadband backhaul are the main areas utilising higher bandwidth fibre based access services from BT, however given the broad usage of Openreach infrastructure for all manner of connectivity it could be seen as unfair to limit passive remedies to specific applications.

26. [✂]

27. We also note that the availability of 'Superfast' fixed broadband is reaching ever higher levels (78% of properties: Ofcom June 2014[2]), hence we see mobile data growth continuing, and due to the concentrated nature of architectures (focussed upon cell sites coverage population/geographic areas) this will be echoed in ever increasing demand for bandwidth to these specific sites (this is also driven by the greater usage of shared infrastructure initiatives such as the Telefónica/Vodafone Beacon partnership and the EE/'3' MBNL arrangement, increased site sharing and co-location).

Question 6: What benefits might duct access offer over dark fibre and vice versa? Is there a case for having both remedies?

28. At present, Telefónica believe that Dark Fibre would be more effective and accelerate adoption compared to the very market specific/labour intensive Duct Access products (assuming they would re-apply the very challenging PIA mechanisms for utilisation). The control of actives, independence from Openreach (active) products and their associated timeline will broaden competition. For competition in the mobile backhaul space, passive adopters will need to develop and leverage aggregation networks, embracing wider providers who have installed, evolving infrastructure. It is worth considering that connectivity points for ducts/fibres should not be strictly allied to Openreach locations, as a flexible duct/fibre access remedy should enable connectivity at any points thus enabling cross connection with non BT CP's networks and points of presence.

[2] http://media.ofcom.org.uk/facts/

29. We also believe learning from the PIA initiative and subsequent BDUK deployments should be considered. [✂] There should be no limitations on the usage and application of the dark fibre.

30. Telefónica acknowledge that duct access requires the CP to have the process, mechanisms and skills to survey, select and facilitate installation of physical cables, the burden of actually achieving this may be limited to CPs who already have the capability, and may prevent new entrants and/or CPs who do not have such skills. Dark Fibre products could enable the deployment of CP's own active components using tried and trusted Openreach processes for active services (e.g. EAD), this could be seen as the most appropriate route to market for passives in the UK. [✂]

Question 7: If passive remedies were restricted to particular product types or geographic areas how might this affect the usefulness and benefits of the passive remedy?

31. When considering the current demands for data connectivity there is a blurring of access between fixed broadband, public/private Wifi, Femtocells, small cells and wide area cellular connectivity all using variants of Openreach's products underpinned via fibre/duct passive components. As such the case for restricting passives to certain product/application types is questionable and would disadvantage CPs wishing to run and operate converged offerings via a common infrastructure.

32. Telefónica acknowledge Ofcom's SMP summary table (figure 4, page 36) that shows BT has SMP in UK except WECLA and Hull.

Question 8: What arrangements would be appropriate for the supply of new infrastructure for passive remedies?

33. Ofcom's categorisation of the arrangements to apply when new infrastructure is required (i.e.: congestion (no spare capacity), blockages/damage, network extension) reflects the demands for new build and maintenance demands within the BT network. As noted, the current practice for Wholesale Leased lines for locations not currently served is to apply BT's Excess Construction Charges (ECCs). New infrastructure in the common parts of BT's network (such as new fibre flexibility points) and work to repair blockages and damage are not charged as ECCs even when work is undertaken to fulfil and order. Such an approach would seem pragmatic for passives, as long as equivalence of charges is maintained and monitored for passive and access components, with ECCs being based on fair and equitable basis.

Question 9: Do you agree with our initial views about the non-discrimination arrangements for passive remedies?

34. Telefónica strongly prefers an EOI basis for passive remedies. We also recognise that the overlap with existing on-going active services would be challenging and costly if there was a requirement for BT to consume passive remedies. Given this, Telefónica would not wish to see a disruption in the on-going provision of existing services due to the delivery and consumption of passives, likewise, care is needed to ensure no undue discrimination applies between active and passive products, and also BT's self-consumption of these capabilities.

Question 10: In light of the trade-offs identified, which broad options on pricing do you consider would be most appropriate for passive remedies and why? Please also provide details if there is another pricing approach you consider would be appropriate in light of the considerations identified in this section.

35. [✂] The value based charge control approach seems pragmatic for dark fibre (where costs are aligned to the passive components of the existing active products, where price points are based upon the capability available, ie dark fibre is not positioned at greater cost to the underlying fibre, duct and active components used to deliver existing services). The use of a single/popular reference product (to be determined) as the pricing basis is more pragmatic compared to approaches considering a basket of products or indeed, attempting to assess the downstream service being provided over the passive infrastructure, however industry discussion is needed if such a selection is to be made.

Question 11: If a value-based (active minus) approach to pricing dark fibre were adopted, what do you think would be an appropriate active wholesale product (or products) to reference?

36. Industry discussion is needed regarding the appropriate active wholesale product to reference for passive remedies, note should be taken regarding proposals that BT should not self-consume, to ensure no undue discrimination applies in the passive pricing and the active services self-consumed by BT for its own purposes.

Question 12: Do you have any other comments on the issues raised in the document or comments that might aid our consideration of the passive remedies as a whole?

37. We welcome the opportunity to comment on Ofcom's consultation and would be happy to discuss any aspects of our response with Ofcom in detail.