

## **Response by UKB Networks and Relish to Ofcom's BCMR Preliminary Consultation on Passive Remedies**

### **Introduction**

In June 2014, the UKB Group entered the UK market for residential and business broadband with the launch of broadband services under the Relish brand in central London. Relish offers a range of products including residential broadband, business broadband, and mobile broadband based on UKB's licensed 4G LTE spectrum, as well as Dedicated Business Internet using point to point microwave technology<sup>1</sup>. Take-up of Relish services has been enthusiastic, particularly in areas of London which are unable to receive BT or Virgin Media's superfast broadband services. More than 25% of customers of our LTE fixed wireless broadband service are businesses.

Building on the success of the Relish product launch in London, UKB Networks ("UKBN") intends to expand this wireless network across London and to build LTE and microwave networks in other cities and towns in Great Britain, as well as in certain rural areas. The UKB Group is offering increased choice and addressing currently unserved markets (in both geographic and demographic terms). We have set out details of the business connectivity services we offer in Relish's response to Ofcom's recent consultation on SMEs and Connectivity Services.

UKBN is a wholly-owned subsidiary of HKT, Hong Kong's premier telecommunications network provider. HKT intends, through this significant investment in UKBN's network rollout, to become a significant player in the UK market for commercial, industrial and public sector communications services.

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Unless very high capacity backhaul is available on a cost-effective basis, backhaul will increasingly become a bottleneck and will restrict growth and innovation in the market for broadband services, particularly mobile and wireless broadband. This in turn will have an adverse impact on the wider economy and affect Britain's ability to compete with countries with more advanced communications networks.

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

### **Regulatory Framework – assessment of SMP**

We are concerned that the European Regulatory Framework does not encourage Ofcom to regulate within the context of converging markets for communications services. Dark fibre and duct are not just inputs to the business connectivity market, but also underpin the markets for residential broadband, business broadband, mobile voice and data and other markets for wireless services, such

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<sup>1</sup> See Relish.net for further details.

as industrial wireless application, smart cities, Internet of Things and so on. To ignore this fact and to regulate in “silos” is to ignore the realities of investment in digital communications networks and services.

### **Civil Infrastructure Directive**

We note the introduction of the CID and that its provisions do not extend to dark fibre. We therefore urge Ofcom to introduce a dark fibre remedy irrespective of the eventual transposition of this Directive into UK law.

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

As we have mentioned above, dark fibre and other passive remedies form the basis not only of connectivity products for businesses but also of backhaul and backbone networks for all kinds of communications networks providers. We therefore believe that remedies such as dark fibre would encourage innovations in a variety of products, including the innovative mobile and fixed wireless products and services that the UKB Group offers and continues to develop. These products are differentiated from those which BT and the resellers of BT’s managed services offer today. So Ofcom’s statement in paragraph 4.22 that “even with duct access, some of the factors that affect Openreach’s quality of service would also affect CPs” does not necessarily apply on a per customer connection basis, for example where the access network is built by the alternative CP not using BT’s network.

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

We agree with Ofcom’s suggestion that introducing passive remedies is no more likely to be a disincentive to future investment as a result of regulatory uncertainty than any other new remedy is. On the contrary, we think that providing a stimulus to competition, which we think introducing effective passive remedies would do, is more likely to incentivise BT to invest than complacency brought about by continuing dominance of the retail market is. BT’s record shows that most of its product development (and concomitant capital expenditure) has come about as a result of competitive (or regulatory) pressure, rather than customer demand.

#### ***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?***

The current pricing structure for wholesale managed services imposes a constraint on the amount of backhaul capacity deployed by communications providers and therefore, ultimately, on the amount of capacity available to consumers of broadband services.

The prices offered by BT to its wholesale customers for backhaul circuits vary according to bandwidth. This does not reflect cost, as the marginal cost of adding bandwidth is relatively low. As Ofcom puts it, the “bandwidth gradient” exceeds the gradient of the incremental cost in relation to bandwidth.

Ofcom’s consultation document sets out BT’s case that a cost structure based more on the marginal/incremental cost of the capacity sold would lead to BT being unable to recover its common costs

without a degree of tariff rebalancing. We do not accept that the issue of common cost recovery should preclude BT from offering dark fibre or other passive access products. It should be possible to introduce a flatter pricing structure whilst spreading common costs appropriately across all products. In our view, any adverse impact on the pricing of BT products such as WLR and LLU will be offset by the benefits to customers of improved access to competitive services like those provided by Relish based on new, privately funded network infrastructure underpinned by unconstrained backhaul capacity.

Other operators are able to offer dark fibre products on a profitable basis without cross subsidising against other products, so we do not accept that BT, which to a large extent has had much longer to recover its sunk costs and has considerable advantage in terms of scale and scope, is unable to do the same.

We recall that BT offered up similar lines of argument when Ofcom first considered requiring it to offer wholesale interconnection products to its competitors in the 1990s. What was demonstrated then was that allowing competition to flourish, rather than stifling it, leads to market growth overall, resulting in increased overall revenues to communications providers, albeit at the expense of profit margin on certain products. We query whether BT or Ofcom has taken into account the fact that the *volume* of capacity sold by BT, including managed services volumes, will likely increase if dark fibre is made available, which will off-set reduced margins on managed services.

***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?***

We agree that mobile and fixed broadband backhaul are important and perhaps primary applications for passive remedies, particularly dark fibre, and we would point out that this would include backhaul for fixed wireless services such as those provided by Relish.

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

For increasing capacity in our backhaul network, dark fibre would be our favoured remedy.

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The risk of imposing a remedy *only* of duct access is that take-up of this service might be comparatively low due to the complexities involved and it therefore might not be deployed on a widespread basis and would not be adequate for the backhaul market.

Ideally, we would prefer to have both remedies available, as we do not think that one is necessarily a substitute for the other. In principle we see no reason why Ofcom should not introduce more than one type of passive remedy, i.e. duct access and dark fibre, at the same time. We believe that such remedies would be used by different operators for different purposes. For example, duct access would likely be used in the access network or for short connecting sections, whereas dark fibre would like to be used for longer circuits or by operators without the scale or business model for infrastructure build.

***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?***

In the East and Central London area we have been able to source circuits from a number providers, [X]

Recognising this difference in market conditions, there may be some justification for excluding WECLA (or a similarly defined competitive area) from new passive remedies.

However, we object in principle to restricting the remedies to certain product types. The PIA remedy has been widely criticised for placing restrictions on its use (preventing its use for leased lines or mobile backhaul). BT itself is subject to no such restrictions in its use of its passive infrastructure and it can only be damaging to competition, service differentiation and innovation if any usage restrictions are placed on BT's wholesale customers and retail competitors.

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

We agree with Ofcom that the most appropriate way to deal with the construction of new infrastructure would be to require BT to provide infrastructure on request, even if it is to a new location, as is currently the case with wholesale leased lines. We believe that individual circumstances will dictate whether an operator will wish to construct their own network extension segments or request that BT undertakes them. We think that both options should be made available.

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

We agree with Ofcom's suggestion that any new passive remedy should be provided on an EOI basis. This market review is taking place in the context of a planned acquisition by BT of EE<sup>2</sup>. If this acquisition were to proceed, then the conflict of interest between BT's wholesale business and its downstream retail business would be heightened and BT's market power would be strengthened. This would increase the importance of an EOI remedy.

In our view this proposed merger calls for a more thorough review of the overall electronic communications market, with a view to referring the market to the Competition and Markets Authority and potentially requiring BT to divest itself of the Openreach business.

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<sup>2</sup> <http://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=C166A667-9C87-4128-8A2C-03E2DD8E017C>