



COLT Telecommunications

Response to

Ofcom's Next Generation Networks (NGN) – Responding to recent developments to protect consumers, promote effective competition and secure efficient investment consultation, dated 31 July 2009

24 September 2009

INTRODUCTION

This is the response of COLT Telecommunications (COLT) to Ofcom's Next Generation Networks (NGN) consultation of 31 July 2009.

COLT is a leading European provider of business communications to major enterprises, SMEs and wholesale customers, offering a broad portfolio of data, voice and managed services. COLT owns and operates one of Europe's most advanced communications networks in 13 countries, through its 20,000km fibre network connecting around 100 cities, with metropolitan area networks in 34 cities and 18 integrated data centres. COLT complements its own network by the use of off-net connectivity and local loop unbundling (LLU).

We have focused this response on those areas which are of strategic importance to COLT.

RECOGNITION OF BUSINESS MARKET REQUIREMENTS

Ofcom's regulatory priorities ignore the needs of business customers. As businesses are the key drivers of economic benefits and improved UK competitiveness, it is critical that fit for purpose access and other wholesale products are available to support the specific needs of enterprise customers. Business customers typically require enhanced product offerings when compared to the needs of consumers. In the Netherlands for example, the NRA has recognised this issue and defined separate wholesale markets for the provision of services for non-residential customers. In the UK, Ofcom has assumed that a standardised generic conveyance network will meet the needs of all customers, thus incurring the significant risk that NGN products will fail to meet the technical, quality and service level requirements of enterprise customers.

Within the scope of the current consultation, it is apparent that BT's Wholesale Line Rental 3 (WLR) product offering is not fit for purpose for many parts of the business sector because its service levels are generally inadequate to meet the needs of certain customers. In addition, LLU as a service is not suitable in the UK for business customers because of its service profile (being non-contended and offering inadequate service levels) and because it is priced at a level which is designed only to be cost-effective for densely populated residential areas, not for more widely spread business customers. Neither MPF nor SMPF therefore provide any suitable solution for CPs wishing to serve business customers.

REGULATORY CERTAINTY AND FAIRNESS

As a result of BT fundamentally changing its plans for 21CN, there is significant uncertainty for other CPs investing in their own NGNs and developing plans to interconnect / interface with BT's 21CN. For example, some CPs have already built out their networks to interconnect with BT at new locations to utilise the 21CN voice products that are no longer planned. While BT clearly wishes to retain freedom to manage its own network development, its position as the dominant incumbent should also impose on BT the requirement to take due account of the impact of any changes to its previously announced plans on the rest of industry. Ofcom can not allow BT to exploit first mover advantage and deliver capabilities that unfairly benefit its own downstream business.

Furthermore, BT must not be permitted to rely upon its dominant position to disrupt any IP interconnect and NGN initiatives established by competing CPs in the absence of BT progress in this area. The fact that BT has decided to delay its 21CN investment makes it more likely that other industry players will now set the initiative for such market developments. BT must be prevented from (at a later date) abusing its dominant position to disrupt any such initiatives by seeking to establish its own (future) proprietary approach to NGNs as the new de facto industry standard – otherwise BT's decision to delay will bear the very substantial risk of delaying NGN development throughout the whole UK communications industry.

MIGRATION AND TRANSITION ISSUES

The changes in BT's 21CN plans and the knock-on impact on other players in the industry highlights the need for greater transparency from BT and for regulatory oversight of BT's provision of information on its 21CN plans. In addition to being required to provide minimum timescales within which it must announce the removal or replacement of existing wholesale services, BT should also be required to ensure that truly equivalent wholesale products are available before it is permitted to close down these existing services.

BT should be required to provide IP interconnection as soon as possible and, in any event, before the end of 2010. Other EU countries are already moving ahead more quickly than the UK in terms of providing IP interconnection and it is clear that BT's failure to provide an IP interconnection capability will delay the UK's progress in this area.

While the discussion of the appropriate regime for interconnection charges in the NGN world is a complex one, there should be no assumption of continued reciprocity in charges in a mixed TDM/IP environment since the definition of what constitutes an efficient operator will become significantly less clear, as will prevailing assumptions on the causation of additional costs for call termination.

CONCLUSION

Ofcom should do more to recognise and address the needs of business users of communications services in the context of NGN. In addition, Ofcom needs to exercise its regulatory powers to prevent BT from abusing its dominant position or enjoying any unfair competitive advantage in respect of the transition to NGN and the development of BT's 21CN.