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Ofcom

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Ofcom

By email only

23 February 2015

Dear Philip and Marina,

**Request from BT for an exemption from the Undertakings for the Microconnect Distributed Antenna Service – Submission**

1. We act on behalf of the Passive Access Group (“PAG”). The PAG is a group of the UK’s major alternative communications providers, comprising Colt Technology Services, Sky, TalkTalk, Three UK and Vodafone. The PAG has come together to emphasise the clear and unequivocal case that it sees for introducing passive access in business connectivity markets in the UK.
2. The PAG is pleased to provide this short submission in relation to the above consultation relating to BT’s request for an exemption from the equivalence of inputs requirements of the Undertakings. The PAG sees some important corollaries with Ofcom’s consideration of and the PAG’s views in relation to passive remedies, since the microconnect distributed antenna (“MDA”) service represents exactly the type of innovation that PAG members would be able to develop themselves with access to an appropriate dark fibre product.
3. In summary, the PAG notes that the existing exemption permits BT to offer the MDA service to one MNO. BT has requested that this exemption be extended to enable BT Wholesale to provide the same service to all MNO’s using dark fibre from Openreach supplied on a non Equivalence of Inputs (“EOI”) basis.
4. The PAG agrees that the MDA service should be available to all MNOs. The PAG therefore supports the limited exemption request. However, in considering whether to grant the requested exemption

from EOI, it is important for Ofcom to take into account the implications for the broader policy context and in particular its relevance to Ofcom's current consideration of passive remedies.

5. BT clearly envisages that there is significant demand for the MDA service, given its previous trials with other MNOs and its request to expand the existing MDA exemption in order to enable it to provide the service to additional MNOs on a commercial basis. We would further note that interest in this service may well indicate that CPs would be interested in developing their own MDA services (or variants of such a service) were they able. We also note there is no apparent reason why the only demand for such a service would be in Westminster.
6. Ofcom notes in the consultation paper that, according to BT, the MDA service *"cannot be easily replicated using EOI inputs (specifically Ethernet)"* because of the size of the active electronics required, and that no suitable replacements exist. Accordingly, BT takes the view that an internal supply of dark fibre is required.
7. However, we note that BT's justification for the exemption runs contrary to its recent submission to Ofcom's preliminary consultation on passive remedies in the business connectivity market. In its submission, BT rejected suggestions that it should be required to offer dark fibre products to other CPs. It claimed that:

*"There are very limited potential innovation benefits from increased flexibility arising from use of passive products. ... Introducing such a remedy would be disproportionate, especially since the potential benefits available from dark fibre for, example to handle 4G access services, could be more easily be addressed by development of the active portfolio".*<sup>1</sup>
8. BT also stated that:

*"the reality is that MNOs already have a range of possible solutions to meet their LTE/4G backhaul capacity and coverage challenges, as well as maintaining existing voice, 2G and 3G services".*<sup>2</sup>
9. Further, BT's claims that access to dark fibre should not be granted to CPs due to the lack of benefits or identifiable market failure, uncertainty, stranded assets, cost to BT and that investment will be undermined are difficult to reconcile with BT's proposals for further supply to itself in consequence of an MDA service EOI exemption.
10. In addition, given demonstrable demand for the MDA service and that the evolution of mobile/LTE networks was obviously not present in 2005 when the first exemption was granted, this clearly illustrates the PAG's point:

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<sup>1</sup> BT, *BT's Response to Ofcom's consultation document: Business Connectivity Market Review: Preliminary Consultation on Passive Remedies* (5 January 2015) para 5.2.

<sup>2</sup> *Ibid*, para 5.22.

*“Demand for passive remedies is likely to arise from the experimentation and resulting innovation that would be facilitated by the introduction of passive remedies. By its nature, the level of such demand may not be predictable.”<sup>3</sup>*

11. The further exemption being sought by BT demonstrates that BT’s claims cannot be supported – and that a dark fibre product will promote significant new CP mobile and fixed infrastructure investments and technological developments.
12. The deployment of LTE-Advanced networks over the coming years means that demand for solutions similar to the MDA service, to deliver high-capacity, low-coverage mobile services, is likely to grow exponentially. However, CPs’ ability to deploy these installations relies on having access to appropriate and competing mobile backhaul that dark fibre access would provide above BT’s current suite of active products. Accordingly, in the PAG’s view, the MDA service provides a clear example of the compelling need for a dark fibre product in a particular controlled geographic and product section of the market.
13. In fact, given that demand to expand high capacity networks is not limited to such specific particular market sections and that the relationship between Openreach and BT Wholesale should map external relationships and competitive supply conditions, the MDA service should be understood to be a strong indicator of broader demand for dark fibre, which could be enjoyed by the broader industry.
14. The PAG has also provided clear and compelling evidence that an existing commercial case is not necessary to require BT to productise a service where demand is nascent and, in any case, that dark fibre could be productised quite simply by reference to the active products cost stack.<sup>4</sup>
15. The PAG is strongly of the view that it would be proportionate to impose an obligation on Openreach to provide dark fibre on an EOI basis. Indeed, such an obligation would allow alternative providers to provide competing MDA type services in addition to BT Wholesale (if, Ofcom is minded to grant the exemption). Notwithstanding this, for the narrow case of MDA in its current geographic scope of Westminster, we support the exemption. We do believe it should be provided in conjunction with Openreach offering dark fibre on an EOI basis to other CPs.
16. A further concern is that, in light of BT’s pending acquisition of EE, BT may have specific incentives to deliver the MDA service to its affiliated mobile business on terms or with service quality that is more favourable than BT offers to other MNOs. In this context, there is a far greater risk of anti-competitive harm unless BT is required to offer dark fibre, as an essential input to enable other CPs to deploy similar solutions, on an EOI basis.

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<sup>3</sup> PAG, Joint submission in response to Ofcom’s BCMR passive remedies consultation, Annex A – Towerhouse report, paragraph 5.17.

<sup>4</sup> Ibid, Annex A – Towerhouse report and Annex B – Frontier report.

17. Should you have any questions in relation to this submission, please feel free to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L. Ford', is written over a faint, light-colored rectangular stamp or watermark.

Lucas Ford