

PROPOSED VARIATION & EXEMPTION TO BT'S UNDERTAKING RELATED TO FTTP AND FIRS

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Cable&Wireless

INTRODUCTION

Cable&Wireless is excited by the prospect of Next Generation Access services being rolled out across the UK. Such services bring with them great opportunity for the creation of a new generation of voice and broadband services that will benefit businesses and consumers across the UK. They also create opportunity for new models of competition in a wider range of service aspects from the customer interface to the network. But competition will be crucial; otherwise UK customers will not benefit from this potential opportunity. This consultation on a proposed variation to BT's Undertakings is an important step in the regulatory process; clearly Ofcom needs to ensure that BT is able to develop NGA products efficiently, but any variation should not allow BT to bundle competitive products in with monopoly inputs, otherwise competition will be restricted.

As Ofcom recognises, its decision on this proposed Variation needs to be taken in the context of a clear vision of how BT will provide Next Generation Access services. Ofcom has already set out a framework for Active Line Access products. Ofcom now needs to determine in more detail how these products need to be split into distinct boundaries of services which can be delivered only by BT as a natural monopoly (and therefore provided by Openreach) as opposed to service aspects which can be provided by other parties. Ofcom must firmly set the EoI demarcation points for BT in order to avoid Openreach overstepping the mark of its territory.

Regrettably, since Ofcom agreed with BT the variation for FTTC services we have seen evidence of Openreach failing to meet CP product requirements focusing its attention and resources on products which seek to exclude alternative network competition in the provision of voice services and limit the scope of alternative service design¹.

Since Ofcom has published this consultation many aspects of what Openreach is planning to deliver, CP requirements and technical capabilities have become clearer. CPs have now articulated detailed requirements, for which the technical solutions are being discussed with a view to rapid resolution. We firmly believe that Ofcom and BT now have clarity on: the product that CPs require Openreach to provide (now and in the future); the capabilities that CPs themselves have (i.e. their

¹ The VoNGA consultation process is illustrative of this : Openreach justify the prioritisation of WLR-like services on the basis that this is what all but a minority of CPs requested, but that minority of CPs actually represent the majority of the market outside BT Retail.

own network, soft switch). Consequently we firmly believe that a credible long term Eol NGA product(s) can be identified and agreed upon.

DETAILED DISCUSSION

OPENREACH VONGA PROPOSALS

Openreach proposes to develop a voice over NGA service called VoNGA. The VoNGA service essentially replicates the narrowband WLR service. As with WLR, VoNGA requires Openreach to set a common denominator of service features that all downstream SPs will be able to use. It is proposed that VoNGA is collected downstream of BT's call server. This means that SPs with their own infrastructure are unable to use that infrastructure to their best ability. The VoNGA proposal requires that CPs do not use their own local network infrastructure, and have no direct control of NGA lines from their own softswitch for voice services. This has two knock on effects. Firstly competition in the pricing (and the service features) of voice over NGA is restricted as all SP's are forced to buy a bundled access service. Secondly the removal of voice services from the competing CPs' networks raises that unit cost of their other services as voice calls would have contributed to the share of overall network costs².

At the time of the Undertakings there was a vigorous debate over the merits of including WLR in the Openreach service portfolio. It was recognised that LLU could provide an upstream input to WLR and therefore in theory WLR could be a competitive service, with the consequence that it should not be supplied out of Openreach. It was however concluded that the static cost and upheaval associated with designing an upstream input to WLR was too high to justify the potential dynamic benefits of opening up the supply of wholesale voice access to competition. This decision was made in the full knowledge that WLR would ultimately be superseded by a next generation product. It was not concluded that any future generation WLR replacement service would necessarily be offered by Openreach. The underlying principle of the Undertakings remains: that only services that are enduring bottlenecks should be provided by Openreach.

² having to pick up voice calls beyond local handover points means that alternative CPs cannot share the common costs of local equipment and backhaul over NGA voice calls

In the introduction we have discussed the potential for NGA services to bring new opportunities for consumers and businesses. Clearly a voice service is an essential part of any service offering over the new FTTP platform. We can understand that Openreach wishes to continue to serve its WLR base of customers in an FTTP scenario and hence the rationale for its development of VoNGA is clear. However NGA is a new network platform which offers Ofcom and the industry the opportunity to redefine the service boundary in Openreach with a view to excluding wholesale voice access on the grounds that it is a potentially competitive product. In our view the supply of VoNGA by Openreach continues to entrench its position of market dominance in supply of wholesale voice access services, and we do not believe that there is any reason to extend that dominance.

There may be another reason for Openreach's insistence of developing VoNGA. BT's downstream divisions rely on WLR and SMPF for the supply of double play retail services, in contrast to some of its biggest competitors who use MPF. We have already expressed our concern informally to Ofcom over this 'parallel equivalence'; regrettably the VoNGA issues shows that these concerns are well founded.

This Variation is therefore crucial. If Ofcom agrees to BT's proposed Variation, Openreach will put the VoNGA service on to its EMP platform. Existing WLR resellers will buy it and we risk creating a fait accompli where Openreach will be able to argue that the dynamic benefits associated with change will be trumped by the static cost of moving VoNGA out of Openreach. In addition a chorus of reseller CPs will be complaining that they don't want to buy an established VoNGA product from BT Wholesale. In so doing, network operators like Cable&Wireless will be prevented from competing with Openreach effectively for the supply of a wholesale voice service, and UK consumers and businesses will suffer as a result.

But there is another way. We recognise that Ofcom needs to permit the Variation at least to the extent that Openreach can supply the GEA product over FTTP as it currently does over FTTC. But we do not see the need for Ofcom to permit Openreach to use active electronics for the supply of wholesale voice access. We set out in more detail our proposal to this effect later in this document.

UPDATE ON C&W PRODUCT REQUIREMENTS

Cable&Wireless' long term vision / product requirement for an NGA input is a wires-only fibre connection, to which we can add our own chosen NTE and provide our choice of broadband, voice, TV services. It is well understood that wires-only is not yet viable but a timetable of events is underway to ensure this in the not too distant future, our expectation being 18 months.

In the interim we have identified a viable solution which can be clear stepping stone to the ultimate wires-only solution – open ATA. A key benefit of this interim stepping stone is that it enables all parties so wishing, to start to develop their own packages of voice and broadband services and innovate packages suited to their particular target markets. Investment in product development can be commenced immediately, there is no need to delay competitive action until a wires-only product variant is made available. Clearly the key benefit for consumers will be the immediate availability of varied service products, packages/ bundles and unique price points devised by multiple service providers. The benefits of an NGA outcome in line with this vision outstrips the extra regulatory work required to achieve more than a simple rebranding of a vanilla Openreach / BT wholesale product.

UPDATE ON INDUSTRY PROGRESS ON OPEN ATA

The availability of an open ATA input has emerged in response to the Openreach VoNGA proposal. VoNGA simply does not meet the product requirements of CPs with their own network and own soft switch who wish to be responsible for all of the service aspects, innovation, package creation, pricing and have direct control of associate costs.

Recent activity has included:

- C&W, Sky and Carphone have had several meetings to share commonality of requirements
- C&W, Sky and Carphone meetings with Ofcom at working level and senior level
- C&W, Sky and Carphone meetings with Openreach Regulatory team

- 13th Nov Openreach session on VoNGA
- Multilateral (the above named CPs with Openreach) next week 23rd or 25th Nov
- NICC commence work on the SIP UIN requirements at the scheduled meeting 2nd December (timing to be agreed, but we consider it realistic to conclude Easter 2010)

UPDATE ON INDUSTRY PROGRESS ON WIRES ONLY

NICC Ethernet Access working group has started a specification of wires-only interface.

OTHER INDUSTRY REQUIREMENTS THAT C&W SUPPORTS

C&W supports the requirement for open DLM.

C&W supports the requirements for chassis virtualisation.

OFCOM ACTION

Ofcom now needs to determine, in line with its duties, whether it agrees with CPs that the ideal consumer outcome is a solution which encourages alternative network competition. CPs have proposed that the NGA service would ultimately be provided on a wires-only basis. The standards for wires-only is currently being developed consequently an intermediate product is required. CPs regard open ATA as being a suitable intermediate product. Any NGA product developed by Openreach must be limited to the provision of components that are enduring bottleneck components. Openreach is clearly carrying out a land-grab exercise with its VoNGA proposals by bundling components that it is obvious alternative CPs could supply. Industry members have proposed a credible EoI input that Openreach could develop in the alternative. This would allow BT downstream to develop VoNGA and alternative CPs to develop their own versions of VoNGA. Immediate action is required to prevent Openreach from proceeding with its VoNGA proposal.

We understand that Ofcom will be reviewing the WLA market in the New Year. Ofcom views the conclusion of the WLA market review and resulting SMP obligations as an appropriate vehicle for

addressing NGA product specifications. We agree that the market reviews will create the opportunity to determine the detail of NGA products but we disagree that the market review process will present the opportunity to define the boundaries of services offered by Openreach and other BT businesses. (That may be possible once functional separation is included in the regulatory 'toolkit' but this obligation will only become available once the new EC framework has been transposed into UK law, and is therefore not relevant for the current market review.)

The requirement for, and the breakpoint of, EoI services is determined within the Undertakings. BT has requested a variation to the Undertakings in order to permit Openreach to develop the GEA product. It is therefore crucial that Ofcom makes the most of the opportunity presented by BT's request to drive the right competitive framework for NGA services.

It is clear to C&W what action Ofcom ought to take:

- Ofcom should allow the variation only insofar as is necessary to permit Openreach to develop, trial and offer GEA on FTTP.
- Ofcom should not (at this stage anyway) permit Openreach control over the active electronics necessary to develop VoNGA. Instead, Openreach should be directed to develop open ATA as the EoI input to be supplied by Openreach. We recognise that open ATA is at an early stage of development but already it is a credible option that will enable far greater competition and the potential for greater innovation. In reality the issue really is one of timing. The open ATA specification could be resolved by Easter 2010. Openreach is planning to trial VoNGA in Oct 2010. Despite being tight it remains feasible that open ATA could provide the relevant EoI product to input to VoNGA. In absence of that linkage, it is clear that there will be less incentive for Openreach to develop an open ATA capability in a timely manner, because it will benefit only non-BT Group companies at the expense of its own VoNGA service.
- Ofcom needs to specify in the Variation of the Undertakings that Openreach must limit its products on the most upstream EoI input. Specifically as it becomes feasible for Openreach to offer a wires-only product, the Undertakings need to cater for that. This would also provide clarity that VoNGA does not meet this criteria.

- Ofcom must instruct Openreach to add wires-only NGA to its roadmap along with mandated timescales for availability (in order to get Openreach to take this seriously and work toward its availability). Openreach has rejected Sky's SoR for wires-only access. Without regulatory intervention the UK will needlessly become behind other countries for the availability of this NGA access option.

RESPONSES TO QUESTIONS

QUESTION 1 DO YOU HAVE ANY COMMENTS ON OUR ANALYSIS AS SET OUT IN THIS DOCUMENT AND DO YOU AGREE WITH OUR PROVISIONAL CONCLUSION THAT WE SHOULD AGREE TO THIS VARIATION AS PROPOSED IN THE LEGAL TEXT IN ANNEX 5?

C&W does not agree to the variation as proposed.

Ofcom should allow the variation only insofar as is necessary to permit Openreach to develop, trial and offer GEA on FTTP.

Ofcom must couch the variation, if given, in such a manner which makes it contingent upon Openreach delivering an open ATA capability that is acceptable to industry and which is the EoI input supplied by Openreach, with VoNGA supplied downstream by BT Wholesale.

Ofcom needs to specify in the Variation of the Undertakings that Openreach must limit its products on the most upstream EoI input. Specifically as it becomes feasible for Openreach to offer a wires-only product, the Undertakings need to cater for that. This would also provide clarity that VoNGA does not meet this criteria.

In absence of this, the competitive marketplace for voice in FTTP areas will revert to BT Group call servers having control of customer lines, negating the benefits that have accrued from [full] MPF LLU in the last few years.

- Ofcom must instruct Openreach to add wires-only NGA to its roadmap along with mandated timescales for availability. Without regulatory intervention the UK will needlessly become behind other countries for the availability of this NGA access option.

QUESTION 2 DO YOU HAVE ANY COMMENTS ON OUR ANALYSIS OF THE PROPOSED EXEMPTION SET OUT IN THIS DOCUMENT, AND DO YOU AGREE WITH OUR PROVISIONAL CONCLUSION THAT WE SHOULD AGREE TO THIS EXEMPTION AS PROPOSED IN THE LEGAL TEXT IN ANNEX 6?

We are not opposed to this exemption.