



Ofcom

Proposed Variation related to FTTP

TalkTalk Group Response

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TalkTalk Group (TTG) is the largest provider of broadband services to UK homes. We serve over 4 million residential and business broadband customers under the TalkTalk, AOL, Tiscali, Opal and Pipex brands. We are the UK's biggest local loop unbundler and operate the UK's largest next generation network (NGN).

The wholesale products that Openreach offers based on its FTTP deployments will have a profound impact on the services TTG and other ISPs are able to offer and the future competitiveness of broadband.

INTRODUCTION

This consultation considers whether it is appropriate to agree to a Variation of the Undertakings that would allow Openreach to control and operate transmission electronics in FTTP deployments and so allow Openreach to provide an 'active line access' (ALA) wholesale product based on these assets.

We believe that though it may be appropriate to allow Openreach to control some of these assets the inexact and wide-ranging variation will (combined with Openreach's incentives to extend itself downstream) unnecessarily diminish competition to the detriment of consumer interests.

In particular:

- There must be an explicit requirement for Openreach to allow wholesale customers maximum control over the product so that they can innovate and differentiate to the fullest extent possible
- There must be provision to amend the product(s) that Openreach provide in the future as technology evolution changes the appropriate product

Therefore, we do not believe that the Variation, as drafted, should be granted.

ACHIEVING EFFECTIVE AND SUSTAINABLE COMPETITION

Ofcom's telecoms strategy outlined in 2005 and implemented in large part through the Undertakings was aimed at increasing effective and sustainable competition. In particular it was intended to "*promote competition at the deepest level of infrastructure where it will likely be effective and sustainable*"¹ through "*focus[ing] regulation to deliver equality of access beyond those levels*"². In particular the Undertakings required that:

¹ FTTP Variation consultation §3.11

² Aside of Undertakings other measures were taken such as reductions in prices of the core products and effective margin squeeze protection between the core products and downstream products

- Openreach should offer the most upstream product that supported competition (and that Openreach operated the assets that underlied that product). We refer to this as the 'core product'
- the core product should be offered on an EOI basis
- any other assets / activities downstream of the core product should be provided by other parts of BT (rest of BT - RoBT)

For example, Openreach was required to offer SMPF (as the core product) and the RoBT consumed these on an EOI basis³ to create IPStream.

This strategy allowed competition to be as extensive (along the value chain) as possible and also to be more effective since it was on a level playing field. The extensive (or deep) competition not only exposed more of the overall cost stack to competitive pressure but more importantly it allowed competitors to innovate and differentiate their service since they controlled elements of the network that determined the product they could offer. This ability to innovate in turn makes competition more effective and sustainable.

This strategy of allowing wholesale customers access to Openreach's upstream assets and capabilities rather than pre-configured downstream products has been a success along many dimensions - in particular it has delivered:

- huge investment not only in network but also parallel investments in the services, CPE and marketing that are also necessary to drive uptake
- a massive increase in innovation and differentiation in the core access service (e.g. speed / quality), CPE, customer service and bundling
- significant reductions in retail prices including broadband being offering for free (as part of a bundle)
- significant increase in take-up resulting in the UK jumping from being a laggard in broadband take-up to a leader

EFFECTIVE AND SUSTAINABLE COMPETITION FOR FTTP

The question now for NGA and (in particular in the context of this consultation) FTTP is what assets should Openreach operate and what 'core product' should it offer in order to promote effective and sustainable competition at the deepest level. There are many potential macro options for the 'core product' such as:

- passive remedies (such as duct access, dark fibre, physical 'd-side' fibre unbundling) which are analogous to LLU
- wavelength unbundling
- active bitstream

Within each of these many sub-options such as whether active bitstream should include termination equipment (optical network termination - ONT).

³ This structure of supply and EOI was not adopted for all products. For instance, the assets that underlied co-mingling were not operated by Openreach

We agree with Ofcom's broad conclusion that the 'core product' should not be passive types remedies⁴. Passive remedies are today unlikely to provide the basis for effective and sustainable competition. However, that leaves a number of options:

- Wavelength unbundling (using wave division multiplexing - WDM) where different operators use different colours on a single shared fibre network as the basis for operating their own headend and GPON network. This would allow a large degree of innovation and differentiation since much innovation happens in the headend. However, wavelength unbundling is not technically / commercially feasible today
- Active bitstream is feasible today but would tend to limit innovation. However, with, for instance, virtualisation of the GPON⁵ and glass-only (i.e. service excludes ONT which the customer can provide themselves) active bitstream could allow valuable control of the service by wholesale customers. However, the inter-operability standards that would allow glass-only are not mature

What is clear is that the appropriate option is likely to change over time as technology evolves (e.g. wavelength unbundling, inter-operability standards).

One might hope that it would be possible that Openreach would supply the optimal core product of its own volition and would evolve this product as technology progresses. However, both theory and recent practice clearly demonstrate that it is highly unlikely that Openreach will, of its own accord, deliver the right 'core product' on an EOI basis (in accordance with the principles of the Undertakings). For example:

- There are no product-specific constraints. In the Undertakings Openreach's incentive to move downstream (in respect of current generation products) is constrained by the product it supplies. However, this constraint does not exist for FTTP products
- BT's commercial interests are best met by leveraging their upstream dominance in downstream (contestable) markets. Thus they will be incentivised to bundle in contestable activities into the product such as modems and engineer visits
- Openreach's behaviour has clearly demonstrated a desire not to provide flexibility / control in adherence with the principles of the Undertakings
 - For the digital voice service over NGA networks it is clear that voice servers (and WLR-like services) are contestable and thus the appropriate core product (prior to wires-only implementation) is an open ATA product which would allow other operators to deploy their own voice servers. However, Openreach initially proposed that they would only supply VoNGA (a WLR-like wholesale product). They have after months of pressure agreed to provide an open ATA product but there remain serious flaws - for instance Openreach will continue to provide VoNGA and open ATA will not be on an EOI basis.

⁴ For instance see FTTP Variation §3.20. It does not follow that since Openreach offer a product downstream of passive product then Openreach should not provide passive products

⁵ Where a wholesale customer can monitor and to some degree control the service

- On wires only on FTTC Openreach recently said that they will not only not provide a wires-only GEA product but they will not even discuss providing one for three years! This is even though the necessary interoperability standards will be available in less than 6 months
- On virtualisation on FTTC, Openreach though having agreed to some aspects they are limiting control and limiting the speed that the service will offer⁶. Furthermore, they are making this an optional add on rather than making part of the core EOI product.

Thus it is clear to us that Openreach / BT will not voluntarily implement the core product in a way that is consistent with the Undertakings principles and so absent regulatory intervention effective and sustainable competition will be unnecessarily diminished.

Therefore, it is clear to us that Ofcom must intervene to achieve the right outcome. This must be based on several principles:

- Openreach must offer, on an EOI basis, the most upstream product that will support effective and sustainable competition. Any activities downstream from this (and by definition contestable) must be provided by RoBT
- This core product should be designed to allow wholesale customers the maximum level of control over the assets
- The core product (and thus assets and activities of Openreach) should evolve as technology feasibility changes

REGULATION OF FTTP SERVICES

This FTTP variation is one mechanism to ensure that these principles are applied in relation to the wholesale product. However, other intervention will also be required.

Ofcom conclude that in respect of the proposed Variation

In our view the proposed variation does not depart from the principles that led to BT's Undertakings because it would promote competition at the deepest level of the infrastructure where it is likely to be effective and sustainable, while ensuring that Openreach is responsible for providing the inputs to that competition on the basis of Eol.

We fundamentally disagree with this conclusion - the Variation will not "*promote competition at the deepest level of the infrastructure where it is likely to be effective and sustainable*". The Variation will unnecessarily inhibit effective and sustainable competition.

In particular, the proposed Variation is inappropriate in two ways.

⁶ For instance, they will not allow wholesale customers the ability to select from 3 pre-configured profiles. Within each of these a wholesale customer can select one of 766 speeds. Further, irrespective of line capability speed will be capped at 40Mbps

First, there is no effective requirement for Openreach to design the product in such a way that it allows the maximum degree of control for wholesale customers (e.g. virtualisation). Though there are requirements (e.g. Undertakings §§5.54 - 5.55) that require consultation and compliance with the ALA standard these requirements have been wholly ineffective (in the context of FTTC) at making Openreach design a product that allows wholesale customers control.

Second, there is no mechanism or requirement for Openreach to relinquish the operation of 'transmission layer' assets (such as ONT and GPON headend) as and when it becomes technically possible for these to be provided competitively (through modern inter-operability standards or wavelength division multiplexing). Instead the variation effectively permits Openreach to operate all transmission layer assets in perpetuity.

There must be a mechanism whereby certain assets can be removed from the list of assets that Openreach operate when certain technology criteria are met. In addition it may be valuable to include a more general provision allowing Ofcom to modify the assets that Openreach operates (and thus the product it provides) as technology and other circumstances evolve.

Therefore, we do not believe that the Variation, as drafted, should be granted. If it is it will be bad for UK consumers. It will restrict innovation and parallel investment by wholesale customers reducing demand, viability and roll-out of NGA.

OTHER ISSUES

In this section we pick up on a number of other issues that although not directly relevant to the conclusion we have reached regarding the efficacy of the Variation are worthy of note - on voice services and the cost analysis.

First, on the issue of voice services over NGA (in both FTTP and in FTTC where the analogue baseband is not used). As we alluded to above the approach proposed by Openreach for the provision of these services will unnecessarily inhibit competition. Openreach / BT's proposal is that Openreach provide a WLR-like service (VoNGA) which includes voice servers. Openreach at some undefined point will provide an open ATA product which will allow other operators to provide a voice service using their own voice servers but Openreach's VoNGA product will not consume the open ATA product on an EOI basis. This creates wholly unnecessary barriers to effective and sustainable competition.

The optimal solution given the contestability of voice servers and WLR-like services is that Openreach provide an open ATA product on an EOI basis and RoBT operate the voice servers and provide the VoNGA product.

We recognise that this consultation or Variation is necessarily the right place to consider this issue. However, it is disappointing that Ofcom has not given a clearer steer as to the correct approach. In particular,

- Ofcom is putting no brake on Openreach's approach

- Ofcom seemingly gives large and unwarranted weight to BT's spurious arguments. For instance, the issue of relationship continuity for smaller providers though relevant is relatively trivial and can (and should) be addressed by these customers buying VoNGA from BTW (they buy other services from today (such as CPS, wholesale calls and IPStream). Also Ofcom run the common cost recovery argument which seems at best an attempt by BT to 'muddy the waters'

Second is the cost impact analysis that is contained in the consultation document e.g. §§3.26-3.33. There are a number of problems with this

- Ofcom seems to have used the cost analysis as one of the reasons to come to its conclusion to grant the Variation yet, by its own admission, it has not analysed BT's cost estimates in detail
- The cost estimates seem implausible at best and wrong at worse. The separation of many of the activities are similar to that which would occur in current generation networks which, as we know, results in very little added cost
- It is very unclear what the numbers are trying to demonstrate - for instance what are the factuals and counterfactual and therefore what are the implications

In any case, none of this analysis in anyway demonstrates that the that the two suggested changes to the Variation are not necessary (though of course the costs involved must be considered).