RDAs Response to Ofcom's consultation document "Delivering super-fast broadband in the UK - Setting the right policy framework"

This submission from RDAs is consistent with the submission on the 30th November 2007 to Ofcom's consultation "Future Broadband: Policy Approach to Next Generation Broadband". Ofcom have interpreted the previous submission in paragraph A7.46 of the latest consultation:

> *A7.46 A joint submission by the RDAs question whether existing market-led model, regulating competition over what is an existing infrastructure, can effectively promote or indeed trigger investment in an entirely new infrastructure. In their view, as next generation access is a completely new access infrastructure, to provide a truly ubiquitous next generation access network a step-change in policy and regulation is required. If the market-led approach is maintained there is a risk that a good deal for the end-users is may be lost.*

Consultation questions

What will super-fast broadband mean for consumers and businesses?

> Question1 - Is there further evidence available on the applications and services or consumer benefits that may be supported by next generation access?
>
> Question 2 - Who should lead on defining and implementing a process for migrations to and from next generation access networks? What roles should industry, Ofcom and other bodies play?

Response to Question 1

There is no one application that currently depends on NGA but the use of multiple applications at the same time in a single business or household is already proving to be a challenge to existing access technologies, especially in areas where speeds are low.

The prediction of applications and services that may evolve to take advantage of improved telecommunications infrastructure is not an exact science. Attempts in the past have tended to exaggerate the benefits of services that could be predicted on the basis of current knowledge whilst it was often the changes that were unforeseen, that went on to have the most impact. Some examples are SMS texting in the mobile market, and catch-up TV delivered by the broadband network. What we do know is that applications and services will develop in those countries that invest in improvements to the underlying infrastructure and, that if we do not invest in the UK, we will not be able to take advantage of the economic and social value of the new services. Applications that have come to the fore since the last consultation target the need to reduce carbon emissions by, for example, reducing travel.

Innovation driven by NGA providing better symmetrical services is vital for both businesses and consumers. The assumption that we should be passive consumers of the connectivity is simply not true. The reality is that many connections are still incapable of supporting video uploads, video conferencing etc and hence consumers are currently unable to be proactive - 'prosumers'.

Response to Question 2

Whoever leads needs to define the migration process from a consumers' point of view, not for the convenience of the service provider. For example, since we are talking computer connections to the internet why is it not possible for the choice of service provider for individual services to be an online process? The replication of the current slow and cumbersome MAC code process needs avoiding. There is a role for consumer organisations defining what is required from a consumer point of view, the industry to understand the requirement and determine how it to achieve it and perhaps Ofcom to facilitate the process.

Our vision for the future and the role regulation should play

> Question 3- What role is there for Ofcom in the ongoing debate on next generation access versus industry's role in progressing this debate through multi-lateral and bi-lateral discussion?
>
> Question 4 - How far does current regulation, including market definitions, equivalence and the BT's Undertakings, need to evolve as result of next generation access deployment?

Response to Questions 3 and 4

RDA's believe that the fundamentals have not changed since 30th November 2007 when they responded to Ofcom's consultation "Future Broadband: Policy Approach to Next Generation Broadband". The RDAs believe that the following points in their previous response still apply as far as the future role regulation should play.

> *NGA is a completely new access infrastructure. RDAs believe that to provide a truly ubiquitous NGA network a step-change in policy and regulation is required. If the market-led approach is dogmatically applied to brand new NGA infrastructure this could lead to different NGA scenarios in different places with a resulting regulatory complexity and overhead that detracts from the objective of securing a good deal for the end-users.*
>
> *With the existing market-led policy, RDAs understand the rationale of Ofcom's light touch regulation style. However, RDAs believe that a policy debate must now take place and that a regulation method such as "utility style" needs serious consideration to ensure that investment takes place in a new NGA network to provide the same access and benefits to all citizens wherever they reside.*
>
> *The RDAs believe that the way to maintain an NGA infrastructure once built is through the creation of a separate "Infrastructure Company" with utility style regulation and a Universal Service Obligation.*

The UK suffers from limited competition at infrastructure level and RDAs believe that it is in businesses and consumers' interest to have the access network(s) provided and regulated separately from service providers. Access network regulation should aim at promoting investment in the networks. Market forces would then incentivise the network operator(s) to open the infrastructure to as many competing service providers as possible, to maximise their revenues.

Competition remains key to delivering the benefits of next generation access

Question 5 - How important are passive products such as forms of sub-loop unbundling and duct access? Can the economics of these products support the promotion of effective and sustainable competition at this level? Which passive products should Ofcom pursue?

Question 6 - What are the characteristics of high quality, fit for purpose active wholesale products? How far can active products with these characteristics support effective and sustainable competition?

Question 7 - Are there other options for promoting competition through regulated access that have not been considered here?

Question 8 - How far may options for joint investment provide greater opportunities for competition based on passive inputs? Are there lessons that can be learned from similar ventures in other industries? What are the risks and advantages of such approaches?

Question 9 - What should be the respective roles of Ofcom and industry in defining and implementing product standards?

Response to Questions 5 - 8

RDAs understand the need to show consideration of all options but feel that these questions are best responded to by the telecommunications industry. However, our responses repeated below of 30th November 2007 on the need for both passive and active remedies to promote competition still applies:

> ***Ofcom question 4 – Do you agree with the need for both passive and active access remedies to promote competition?***
>
> *Yes. However, RDAs believe that many of the options currently listed are unlikely ever to happen in practice and we would not wish extended consideration of such "dead" options to delay regulation.*
>
> *Regulated access products at the passive and active levels must be fit for purpose and allow interoperability of equipment. This will lead to lower equipment and operating costs, all of which will benefit the consumer and promote innovation.*

Response to Question 9

This question is similar to those in the Next Generation New Build consultation to which the RDAs responded on the 18th June 2008. The questions and RDA response, which still applies, is below:

> ***Ofcom question 1 – What can Ofcom do to encourage timely standards development for new build NGA wholesale access products and interfaces?***

Which industry body is best placed to undertake the standardisation of these products and interfaces?

We agree that a common standard for the interfaces between service providers and network operators is important, but cannot comment on the development of the standards, or who should oversee it, as we do not have the necessary technical expertise.

However, we believe that Ofcom should not devolve this technically complex task to an appropriate industry body without first setting out the ground rules, as the technical aspects of the standard should not takeover from the regulatory objectives.

What action should Ofcom take if these standards fail to materialise?

Ofcom should take no action apart from ensuring that anti-competitive motives do not delay or distort the standards. If a standard fails to emerge at the Active Line Access (ALA) level, alternatives exist that will be used if there is an economic case.

Key to delivering effective competition and investment is pricing

Question 10 - How far do stakeholders consider the pricing approach outlined here of pricing flexibility for active products and cost orientation plus considerations for risk is appropriate at this stage of market development?

Question 11 - Will indirect constraints allow for an approach based on more price flexibility for active products? How will such an approach affect the incentives of different operators to invest and deliver super-fast broadband services to end customers?

Question 12 - What period of time would be appropriate for such an approach to ensure a balance between the need for longer term regulatory certainty with the inherent demand and supply side uncertainty in super-fast broadband and next generation access?

Question 13 - What are the key factors that could make a review of any pricing approach necessary?

Response to Questions 10 – 13

This part of the consultation is for the industry to respond to in detail.

RDAs note that these questions seek to drill down into the detail around the principles outlined in previous consultations and believe that the continuation of these kinds of complex considerations does nothing to enable timely progress towards securing an NGA network.

Businesses and consumers need a choice of services from the basic telephone and internet services that are available today to new services not yet identified. From their point of view, the delivery mechanism is irrelevant and duplication of access networks seems to be an inefficient use of resources.

RDAs believe that policy makers should accept this by pursuing a course that completely separates the access network owner from the service provider.

This is consistent with our response to questions 3 and 4, repeated again here:

> *The UK suffers from limited competition at infrastructure level and RDAs believe that it is in businesses and consumers' interest to have the access network(s) provided and regulated separately from service providers. Access network regulation should aim at promoting investment in the networks. Market forces would then incentivise the network operator(s) to open the infrastructure to as many competing service providers as possible, to maximise their revenues*

Eventually there will be a transition from copper to fibre

Question 14 - How far can the generic model for transition outlined here deliver both incentives to invest in next generation access while ensuring existing competition is not undermined?

Question 15 - What triggers would be appropriate for the commencement of any transition process?

Question 16 - Once triggers or circumstances for transition are achieved, what would be an appropriate period for the various phases of transition (consultation, notice period, transition)?

Question 17 - Over what geographic area should any process of transition be managed, for example region by region or nationally?

Response to Questions 14 – 17

RDAs believe that this part of the consultation is mainly for the industry to respond to in detail.

However, we note that in the past, before functional separation, BT managed the operation of demand registration and set trigger levels (after instigation of demand registration schemes by some RDAs). Now, that functional separation is in place the responsibility for the operation of demand registration and setting trigger levels is unclear. Investment in NGA by BT would depend on there being sufficient wholesale demand from communication providers, which in turn would depend on there being sufficient demand from their retail customers. So should CPs (including BT retail) each run a demand registration scheme or should some other authority have this responsibility? A public sector authority would not be able to operate a scheme for just one CP.

Regulation can play a smaller role in increasing revenues

Question 18 - What actions, if any, should, Ofcom undertake to support new revenue models from next generation access?

No comments

What role can the public sector play in next generation access deployment?

> Question 19 - What role should public sector intervention have in delivering next generation access?

RDAs generally agree with points made in the consultation document and can work with local authorities and others to contribute in three main areas:

1. In new build areas - by encouraging housing developers to work with fibre to the premises network providers.

2. In urban areas – coordination to ensuring that region's economic strategy priority areas are aware of what they have to do to secure early consideration in the NGA deployment plans of the telecommunication companies.

3. In rural areas and remote locations where business telecommunication costs are relatively high – by encouraging aggregation of public sector IT services to provide backhaul networks and where possible utilising these to facilitate competition among service providers to provide high-speed business and residential broadband services.

A proposed framework for action

Question 20 - Are these the right actions for Ofcom and other stakeholders to be undertaking at this time? What other actions need to be taken or co-ordinated by Ofcom?

There seem to be two paths for the NGA deployment process, top down and bottom up.

1. **Top-down**

   The consultation is mainly about this approach. RDAs are concerned that the diversity, thoroughness, and number of organisations involved towards defining the perfect top down solution will further delay any real progress towards significant NGA deployment based on achieving nationwide NGA coverage based on a single coherent model.

2. **Bottom-up**

   Meanwhile, practical deployments of NGA utilising de-facto standards will emerge that may detract from the top down aim.

Therefore should more effort be put into addressing the pulling together of the practical solutions as they are deployed? For example, by defining a roadmap that shows how to move from the provision of services via a single provider using existing connection standards to a solution that enables other service providers to connect and deliver their services. These standards may be the same for top-down and bottom-up, but basing the effort on practical need rather than theoretical discussion may help to speed up the overall progress.