Comments on OFCOM Consultation
A New Pricing Framework for Openreach: Developing new charge controls for wholesale line rental, unbundled local loops and related services

1. On 30 May 2008 OFCOM published a consultation on the above. Essentially this document considered the conditions by which OFCOM will regulate prices for a number of specific telecommunications products available from BT including
    - Wholesale Line Rental ("WLR");
    - Local Loop Unbundling ("LLU") which includes fully unbundled lines (Metallic Path Facility or "MPF") and shared unbundled lines (Shared MPF or "SMPF"); and
    - Ethernet services.

2. These are products which OFCOM has determined that BT has significant market power and consequently believe they should be subject to price controls.

3. There was an initial series of agreements made between Dec 04 and Jan 06 in which prices for various products were fixed. Unfortunately no mechanism was included in those price control documents to enable variations to charges to be made to take account of prevailing market condition or whether there had been any change in SMP and the prices for four of the products has been capped as follows:

Service	Current charge ceilings for annual rental
Residential WLR	£100.68
Business WLR	£110.00
MPF	£81.69
SMPF	£15.60

4. This consultation sets out to develop such mechanisms.

5. From our perspective these are the basic wholesale telecommunications products upon which local loop unbundling business cases are developed. Consequently my initial observation is that this consultation will introduce some uncertainty into the market and possibly could postpone investment decision until the outcomes are clear.

6. OFCOM have indicated that they intend that the consultation will be held in two stages, followed by a Statement which they plan to issue before the end of 2008. The purpose of the first consultation is to obtain stakeholder views on a range of issues relating to the review, including the objectives, our proposed approach and the potential implications of different outcomes. The second consultation will set out a range of proposals for new price controls.

7. OFCOM has embarked on this consultation as a result from a request from BT Openreach to review the prices as they are experiencing pressure on their revenues and believe that they are not making fair returns on investment. OFCOM seems to agree with this position and that current pricing does not reflect the underlying structure of costs. OFCOM's objective of this review is to ensure that "the pricing framework is efficient, sustainable and drives appropriate investment."

8. In the document BT has indicated the future unit costs in providing core services up to 2011/12. These are set out below :

Service	Current charge ceilings for annual rental	2008/09 Costs	2009/10 Costs	2010/11 Costs	2011/12 Costs
Residential WLR	£100.68	£106	£114	£122	£127
Business WLR	£110.00	£99	£108	£115	£121
MPF	£81.69	£94	£103	£109	£113
SMPF	£15.60	£15	£20	£21	£23

9. The production of these figures will give some assurances to the industry and should allow them to plan for the future. However I would be concerned that these costs are based on a business as usual perspective. If it were required to make investments in upgrading infrastructure for say Next Generation Network then we could expect to see increases in these prices. OFCOM goes on to outline illustrative costs associated with each subscriber for a typical unbundled exchange to be about £160 and £225 for a marginal exchange. The difference relates directly to the number of subscribers that could be attracted on a LLU.

10. OFCOM commented that they had recently completed a market review of wholesale broadband access and that three markets had been identified. In one of these markets ('Market 3'), OFCOM found that BT does not have SMP and were deregulating this market. Market 3 is defined as those geographic areas covered by exchanges where there are currently 4 or more of the 8 mass market operators (which include BT and Virgin Media), and exchanges where there are forecast to be 4 or more of these operators but where the exchange serves 10,000 or more premises. The added that any changes in LLU charges could change the competitive conditions for some of the exchanges in Market 3. However, OFCOM think this is unlikely if any changes in LLU charges are not excessive. This comment will give comfort to other operators in that changes in costs will not be excessive.

11. One section that will concern DETI is the section on investment and the impacts changes in prices could have. They note that all operators are

investing in new technology for NGA and that few operators are looking to deploy NGA to all locations in the near term. Rather, they are looking to use a mix of technologies depending on the specific characteristics and economics of each location. This includes continued use of today's copper local loop. OFCOM do agree that regulation does have a role to play in promoting efficient investment. The manner in which the question is put suggests that the regulator does not have an investment model but it does expect that if Openreach makes investment that OFCOM will look to factor in price controls to allow other operator access to the infrastructure.

12. In conclusion there is no reason to object to the request to adopt a new charge control regime to allow for the usual inflation costs and there are several well developed models OFCOM could choose from. The most likely impact of this will be an impact on the viability of LLU especially in smaller exchanges of which there are many in Northern Ireland. There may be a call for OFCOM to regulate this more tightly if it wants to encourage further LLU and perhaps this is something we should lobby for. This could encourage the development of NGA services aimed at the business sector and not the residential user. With regard to NGA and the ability to encourage timely investment it is unlikely that OFCOM will mandate anything at this time until a viable model emerges and one that the industry is comfortable with. DETI is very aware of the costs associated with NGA investment and focus on the enabling wholesale access to infrastructure that support businesses is a strategy worth following.