

Cover sheet for response to an Ofcom Consultation

BASIC DETAILS

Consultation Title "Next Generation New Build Promoting higher speed broadband in new build housing developments"

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Deadline: 25th June 2008

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CONFIDENTIALITY

What do you want Ofcom to keep confidential? - Nothing.

DECLARATION

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Consultation Response by CMA -

“Next Generation New Build Promoting higher speed broadband in new build housing developments”

Summary

Ofcom will have seen that CMA was unhappy with the initial attitude to NGA as evidenced in the consultation “Future Broadband – Policy Approach to Next Generation Access.” CMA finds much greater common cause with this “New Build” consultation, though it reads as an over complicated approach. We welcome, however, the strong focus on competitive, alternative infrastructures (in defined, bounded locations) as an alternative to a national model based on fibre deployment by a single provider. However, we recognise the danger that the Balkanisation of infrastructure provision might lead to a geographically-segmented approach to regulation and we warn that this would not sit well with those customers operating national businesses. CMA’s existing doubts over the wisdom of clinging to a policy of infrastructure competition have been reinforced by this consultation. Moreover, we thoroughly endorse Ofcom’s sentiment that: “the key test for effective competition is the level of choice customers face in the services on offer to them.” We therefore agree that an early gelling on a minimum set of standards is critical to progress.

Our overall approach can be summed up as a strong preference for the encouragement of the carrier-neutral, open access model, and if that means the growth of “islands of fibre”, then so be it.

Some Quick Wins?

It is recognised that in an uncertain, hesitant, political and economic climate it is difficult for the regulator to take a proactive stance, but if Ofcom wishes to make an immediate and significant impact on NG New Build then some steps should be possible:

- 1) Resolve the deadlock in the confused UK rating system for duct. We would like Ofcom to take a clear lead and press for responses from government departments on this topic to be made public. In some other countries there is no rating at all in this area, and if we wish to stimulate convergence – especially since we are starting later than some of our competitors - speedy resolution to remove imbalances in the duct rating system would serve to encourage investment.
- 2) A policy based on “Housing Estate by Housing Estate,” is attractive in times of plenty for developers, but its weaknesses begin to show when the housing sector is in the doldrums. We are also worried that a “new build” niche philosophy is likely to be focused on the needs of the citizen-consumer and will overlook the demands of SMEs and larger enterprises. Ofcom is asked to include appropriate reassurances to business customers in any final Statement.
- 3) Focus strongly on the adoption, and especially on the *delivery*, of a minimum set of national standards (rather than rely on the lengthy delays that the attainment of regional standards would entail) that will ensure the “user experience”, (eg: a guaranteed QoS), on deployed infrastructure. As isolated

broadband localities begin to be realised it is essential that they are fully interoperable: if standards supporting open access to all SPs are not available then there will be insufficient traffic to sustain individual business cases.

- 4) Consider the re-use of the CATV auction strategy (including negative bids). It is unlikely that Ofcom can do anything to improve margins for operators and so the next generation local loop is equally unlikely to prove profitable at the residential level today. In such situations, the European Commission might look favourably on a request to allow short-term monopoly or Government supported provision of fibre infrastructure provided certain pricing safeguards for consumers were met. This is akin to the Swedish model (see <http://www.ssnf.org/upload/01%20SSNf%20material/08%20Om%20SSNf/SSNf%20folder.pdf>). We are beginning to see its adoption in the UK, such as the approach by Southwark Council to the issue of digital switchover. See http://www.southwark.gov.uk/uploads/file_35069.pdf. Ofcom could, with DCLG, adopt a policy of actively encouraging such local initiatives.
- 5) Reappraise, with a view to sweeping away any outdated restrictions, the “guidance notes” contained in the 2006 document that sought to apply “copper regulation” to developers wishing to provide new infrastructure - <http://www.ofcom.org.uk/telecoms/ioi/orp/fibreaccess/fibreaccessguidance.pdf>
- 6) Dust off and reappraise the 2003 ODPM proposals to implement fibre termination and ducting in all new buildings. Although not part of the current Ofcom consultation, we believe that we would all benefit if this approach was resurrected. <http://www.planningportal.gov.uk/england/professionals/en/1115314117957.html>

Contestability and Islands of Fibre

It is almost certainly true that nobody will be anxious to dig up the streets more than once, or to lay fibre in duplication of existing provision to compete in a geographically-limited market. In this context it is not clear (despite 4.5) what Ofcom means by “contestability” – it seems very unlikely that competing fibres could generate enough traffic to return an acceptable RoI. It follows that Ofcom’s “copper era commitment” to the concept of infrastructure competition is suspect. On the other hand, it is also clear that nobody wants to see the creation of a national, near-monopoly in the access network. One promising solution to these competing considerations is to encourage mini-monopolies at the local community level, delivering point-to-point fibre to the premises which is carrier-neutral and offers open access to any and all service providers. Contestability then reduces to bidding for the infrastructure franchise. The concept has been called “islands of fibre”. We understand Ofcom’s reluctance to consider the Balkanisation of infrastructure provision that this would entail, and those CMA members who rely on a single market for telecoms services across the UK are anxious to avoid any danger of “tailored regulatory approaches” based on micro enclaves. However, if the UK is ever to be fully fibred, yet avoid the danger of a new national bottleneck emerging, then the end probably justifies the means in this case. The bottom line is that we could put up with islands of fibre operated by many providers, but look to Ofcom to maintain regulatory conformity across the country.

Historical Considerations

Oftel and the Independent Television Commission, when granting the Local Delivery Operator Franchises to Cable Television and Telephone Operators in the 1980's and 1990's, ensured that consumers saw the benefit of this first wave of the infrastructure revolution by including a clause in all licenses requiring the network to be built past a certain number of homes each year. Though that regulatory route to facilitating new build is no longer automatically open (though it *might* be possible), the focus on ensuring that residential and small business consumers, regardless of location, saw the benefits of real competition in telecoms must not be forgotten.

In hindsight the process of Local Loop Unbundling is seen as an interim solution based on an interim technique to a problem caused by yesterday's technology. It now exerts significant legacy-drag on progress to an all-fibre future. The concept has only limited relevance in forward thinking based on ALA.

Question 1: (a) *What can Ofcom do to encourage timely standards development for new build NGA wholesale access products and interfaces?* (b) *Which industry body is best placed to undertake the standardisation of these products and interfaces?* (c) *What action should Ofcom take if these standards fail to materialise?*

CMA welcomes Ofcom's lead in this area. A clear statement of the requirement issued to the UK standards bodies, with parallel notification to external authorities such as ETSI, CEPT and ITU seems to be indicated. However, CMA has limited expertise in the processes and inter-relationships of the standards industry. Support from ETSI via the Commission might be useful if national standards fail to materialise, even though ETSI is not noted for its ability to produce timely, regional standards if its members find reason not to do so.

Question 2: *Do you agree with Ofcom's approach to promoting competition and consumer choice in new build fibre access deployments?*

The concluding sentences of para 4.9 sum up the situation and effectively make redundant the preceding discussion on competing infrastructure.

"We do not, however, see a competitive downstream market on a nationwide basis. Ofcom believes that the key test for effective competition is not simply the availability of the remedy but the level of choice customers face in the services on offer to them."

Exactly. So why worry about whether there are 1 or 101 fibres to the premises?

CMA can see no alternative to the active promotion of carrier-neutral, open access networks.

However, we note that where the developer is the investor then he will control an "essential facility" access to space for duct. There is case law at European level covering such situations and what is then expected of the Parties. To alleviate this problem, Ofcom might have to liaise with different Government departments to resolve issues like rating anomalies where some operators pay more rates than others for the same duct, where different authorities have different rating regimes, and where copper, fibre and coax can all be rated differently.

Question 3: *Do you (a) believe that the existing obligations must be met by replicating the existing copper products, or that an alternative approach could be satisfactory? What are the implications of replicating existing products on fibre?*

It would seem somewhat surreal to imagine a scenario in a competitive market in which businesses could not obtain from someone the services they required configured in the way they wanted. Yet the example of the negative impact of 21CN on utility low-data-rate protection circuits suggests otherwise. But nobody is suggesting that 21CN should be abandoned because of that failing. In other words, a “best efforts” approach would seem appropriate.

(b): agree that SMP holders rolling out fibre do not need to roll out a copper network in parallel solely to meet their LLU obligation?

We can see no reason whatsoever why this should be a requirement. It would be a massive deterrent to investment and if ALA products are available then the concept of LLU can be relegated to the copper era. But in the case where fibre is owned and operated by a single provider, that provider has SMP within his franchise area and, as addressed at 5.11 of the condoc, and in Ofcom’s 2006 guidance note to developers, there are universal service issues that must be resolved.

(c): agree with Ofcom’s approach in relation to WBA and new build areas?

Yes. However, we wish to add a note reminding that we have previously expressed our reservations on Ofcom’s decision to segment the regulation of WBA based on geography. It was a valid approach in the context of the domestic consumer, but it eats away at the principle of national, regulatory conformity and business users do not want to see it extended.

(d): believe that the WLR obligation must be met by replicating the existing copper product, or that an alternative approach based on an ALA type product would be satisfactory?

We prefer an ALA approach.

(e): believe that the CPS obligation must be met by replicating the existing copper product or that an alternative approach based on an ALA type product would be satisfactory?

We prefer an ALA approach.

(f): believe that the IA obligation must be met by replicating the existing copper product or that an alternative approach based on an ALA type product would be satisfactory?

We prefer an ALA approach.

(g): agree with our proposal to interpret GC 3.1 (c) as being met through the provision and use of a battery backup facility to maintain uninterrupted access to emergency services in new build developments?

Yes.

Question 4: *Do you think access to the duct network, including non telecoms duct, is a potentially feasible means of promoting competition in new build? If so what types of commercial and operational models could successfully support such access arrangements in the UK?*

Yes – but since we seem to agree (para 4.9) that competition at the service level is the over-riding aim, and that mandating open access is the regulatory key to this, then the question doesn't seem all that important.

End

CMA, 24 June 2008

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (condoc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman and CEO are also members of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc. Note: if the condoc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

The draft response is sent to all 1500+ user members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board).

The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chief Executive and Chairman.