THUS plc
1-2 Berkeley Square T 0141 567 1234
99 Berkeley Street
Glasgow G3 7HR www.thus.net

Chinyelu Onwurah
Floor 2
Dept: Strategy and Market Developments
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

By email: chinyelu.onwurah@ofcom.org.uk

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Dear Chinyelu

Next Generation New Build: Promoting higher speed broadband in new build housing developments, Ofcom consultation dated 16 April 2008

THUS is pleased to respond to the above consultation. We answer the questions posed by Ofcom below.

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

We agree with Ofcom that timely standards development will be important if the opportunities for competition are to be maximised. Without standardised products and interfaces, there is a risk that service providers will consider it uneconomic to offer services in new-build developments, particularly in the early years when there are relatively few such developments.

We would strongly favour use of standards developed at a European or international level, to ensure that the equipment market benefits from economies of scale and competition between vendors. The DSL Forum recommendations on GPON architecture and CPE/management should be given careful consideration.

If it proves necessary to standardise aspects which are specific to the UK, we would hope that this could be done in a modular way, so that the core product/interface is covered by a generic European/international standard, and UK-specials are covered by add-ons. The obvious body to lead on this would be NICC.

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

We agree with Ofcom's view that the prospect of regulatory access obligations should not act as a disincentive to investment. We believe there is a strong 'ladder of investment' case for

mandating both active and passive access. Without an active access product, it will be difficult for service providers to gain a critical mass of customers sufficient to justify a deeper level of investment using passive access. Without the possibility of such deeper level investment, there is a risk that at some point in the future innovation will be stifled through an absence of competition. Even if today's active access product is designed in a way that appears future-proofed, it is impossible to know whether this will remain the case in 10 or 20 years time. A requirement to offer passive duct access should not add significantly to the cost of new build developments since it can be designed in from the start.

Question 3(a): Do you 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?

We believe it is essential that BT's existing SMP/USO obligations are met by replicating the existing copper products, at least for voice. For WLR, CPS and Indirect Access, service providers must be able to use the same electronic interfaces and gateways for provisioning, order management, fault reporting etc. Furthermore, the technical characteristics of the products, both analogue and ISDN should replicate as far as possible the characteristics of copper equivalents, to avoid equipment compatibility issues. The same applies to 21CN product variants such as Voice Line Access (VLA)/Wholesale Voice Connect (WVC).

Given that the majority of new build deployments covered by this consultation are likely to occur several years from now, it would be sensible for the "basic product" to be akin to VLA/WVC. More traditional products such as WLR/CPS could then be built upon it without any need to have a different product to copper areas.

Although we see some attraction in principle in a more 'basic' ALA-type product which allowed greater scope for innovation, CPs are unlikely to be in a position to invest significant amounts in the necessary innovation until there is a sufficiently large addressable market. This would require wider scale roll out of NGA than simply new build. Hence, the requirement to replicate copper products.

Question 3(b): Do you agree that SMP holders rolling out fibre do not need to roll out a copper network in parallel solely to meet their LLU obligation?

Yes. To require SMP holders to roll out copper network in parallel would be highly inefficient and contrary to Ofcom's duties under the Communications Act.

Question 3(c): Do you agree with Ofcom's approach in relation to WBA and new build areas?

Ofcom appears to be suggesting that, absent constraints from upstream competitive access, ex ante regulation should be imposed to ensure that a suitable wholesale broadband access service is made available on fair and reasonable terms.

We agree with this suggestion, and would note that the ex ante obligation should apply to any CP (not just BT) which deploys new build fibre in circumstances where there is no meaningful competitive constraint. However, it may be necessary to define some restrictions on the size and nature of deployments so that, for example, if a CP deploys fibre to a new business premise, this would not be caught by the regulation.

It is unclear how Ofcom envisages that this would be achieved within the context of the current market review framework. Arguably, deployments by BT in Markets 1 and 2 would already be

subject to appropriate ex ante conditions – and also EoI obligations. But deployments by non-BT CPs in Markets 1 and 2, and deployments by any CP in Market 3 would not be covered. If the answer, as Ofcom suggests, is for Ofcom to re-review the market following each new build, a more streamlined process for the market review would need to be found.

Question 3(d) Do you 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?

Yes, where BT is deploying new-build fibre, it should meet its WLR obligation by replicating the existing copper product (both analogue and ISDN). Given the relatively small size of the new build market, at least in the early years, it would be highly inefficient to require downstream CPs to develop new interfaces or product variants to cope with a different wholesale input. It would be more efficient for BT to invest in one-off development of a copper replication product. As noted above, we would suggest that the "basic product" should be akin to VLA/WVC, with WLR derived from it.

It is unclear to us what Ofcom has in mind for new-build developments served by CPs other than BT. If, as Ofcom implies, BT's SMP and USO obligations would remain unchanged, does this mean that BT would be obliged to provide a competing copper/fibre overlay network in order to discharge its obligations? Or does Ofcom anticipate that BT would reach some commercial arrangement with the fibre owner to 'outsource' provision of the required wholesale and retail services? Or would Ofcom conduct a 'snap' market review to amend BT's (and the new CP's) SMP obligations? It is important that Ofcom provides clarity on these issues, since if BT's SMP obligations remained and it were obliged to rollout an overlay copper network (with a return on capital guaranteed by cost-orientation conditions), this could be extremely inefficient, and could also act as a disincentive to non-BT investment.

Question 3(e): Do you 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?

Yes, our answer is the same as for Question 3(d).

Question 3(f): Do you believe that the indirect access obligation must be met by replicating the existing copper product or that an alternative approach based on an ALA type product would be satisfactory?

Yes, our answer is the same as for Question 3(d).

Question 3(g): Do you 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, we agree in principle that battery backup should be regarded as an acceptable alternative to powering via the copper line. However, the rules should be framed in a way that responsibility for installing and maintaining the batteries is clear, and with sufficient flexibility to avoid unnecessary duplication.

For example, if Openreach has to provide batteries as part of its installation, it should not be necessary for downstream service providers to duplicate these batteries unnecessarily (or vice versa). To do so would be inefficient and inconvenient for the householder. Equally, supposing

landlords were in future to provide backup power supplies as a common service to multiple dwelling units, householders should be able make use of this as an alternative to CP-supplied battery backup.

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?

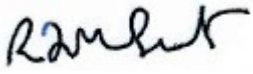
Yes, we believe some form of passive access, whether dark fibre or access to one or more existing duct networks will be a vital element of future competition. As noted above, we believe it is likely that a 'ladder of investment' model may apply in many locations, such that utilisation of passive infrastructure lags active access. Even if passive infrastructure is not used for a while, the long lifetime of the duct infrastructure and the prohibitive costs of digging new ducts from scratch mean that it would be prudent to build in the necessary facilities (extra duct capacity, extra fibres, breakout chambers etc) from the outset.

Any regulatory obligation on BT should make it clear that BT is obliged to build in the necessary capacity to support passive remedies from the outset, regardless of whether there is any demand on day 1. In the alternative, if BT fails to provide such capacity from the outset and has to retro-fit the capacity, the wholesale price that BT is allowed to charge should reflect only the efficiently incurred costs, which it is likely would be the costs of providing the capacity from the outset.

We are not convinced that access to ducts is preferable to access to dark fibre as a passive remedy, and believe that further analysis is required of the pros and cons of duct versus dark fibre.

With regard to use of other utilities' ducts, we believe access to telecoms ducts would be the most logical option for new build (where such ducts can be appropriately dimensioned from the outset) but there may be a case for retaining the flexibility to use other utilities' ducts.

Yours sincerely



Richard Sweet
Director of Government Affairs