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ENA Response to Ofcom's 2008 Business Connectivity Market Review.

Energy Networks Association (ENA) is the industry body that represents licensed electricity and gas transmission and electricity distribution companies in the United Kingdom.

ENA welcomes the opportunity to respond to Ofcom's 2008 Business Connectivity Market Review.

The main concerns of the energy industry, regarding the replacement of deterministic services (20CN) with non-deterministic services (21CN), are already well documented in previous ENA responses to Ofcom.

- Ofcom's Annual Plan, April 2004 - March 2005
- Letter from ENA Chief Executive to Ofcom Chief Executive August 05
- Phase 1 consultation on the Telecoms Review
- Next Generation Networks – Future arrangements for access and interconnection.
- Letter from ENA Chief Executive to Ofcom Chief Executive October 06
- Response to Draft Annual Plan 2008-09

Since 2004 ENA has engaged with BT, Thus, C&W, Ofcom, Ofgem and other relevant Government bodies to highlight the energy industry's concerns about the risk of service failure likely to be introduced through the migration of private wire services from the existing legacy platform (20CN) to NGN (21CN).

This active engagement has led to significant attention being given to the issues the energy industry has raised over the past 4 years. Unfortunately the risks to the energy industry's protection and control services still remain and require urgent clarification, in order that a suitable timeframe remains available, in which to mitigate those risks.

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The potential impact on the industry's ability to support the critical national infrastructure must be considered and monitored by Ofcom, as ongoing dialogue takes place.

Although BT, Ofcom and Ofgem have been receptive to the concerns expressed by ENA on behalf of the energy industry, the fundamental questions raised have still to be answered:

- Can Telcos provide private wire services compliant with energy industry specified requirements?
- How much will the services cost?
- When will the services be available?
- Can a notice period of 5 years be given from the point at which the existing services are identified as being no longer available?
- Will regulation guarantee the continued provision of compliant and cost effective leased line services from communication providers to the energy industry?
- If Ofcom are unable to secure assurances from communication providers that the existing 20CN platform and proposed 21CN platform can provide cost effective contracted services compliant with the UK energy industry specification TS 48-6-7, will Ofgem sanction spend by the utility industry on Strategic Operational Telecommunication Platforms, similar to those being developed or in use in New Zealand, France, Japan and many other countries?

Conclusion

As the present fundamental operational strategic requirement of the energy Industry is based on sub 2Mb products with analogue 4w audio interface or digital x21 / rs232 interfaces; I would ask you to consider the following points:

- Will BT continue to support UK wide, analogue (copper + exchange amplifier) leased line services from same serving exchange?
- The options for ethernet based products are not acceptable at this time because of the cost and operational complexity of replacing existing CPE.
- Are the SDH delivery components of the Next Generation MSAN's sufficiently widely deployed to support Native TDM at **all** existing locations? It should be noted that the bulk of the electricity industries TDM circuits are sub 2Mb, i.e. 64kb Data and analogue EPS25B and sites are in many cases in remote locations.

Although the 2008 Business Connectivity Market Review goes some way to address short term concerns about the leased line services used by the energy industry, the ENA is still concerned about the long term future and how the unique telecommunication needs of the Energy industry can be most cost effectively secured.

It is however comforting to note, that after four years of continued efforts by the ENA, "Latency" and "Jitter" have found a place in the consultation and that reference is also made to the fact that:

“the electricity utilities need low delay and low differential delay to support protection applications within their own electricity distribution networks”

The **2008 Business Connectivity Market Review** is comprehensive and embraces both Wholesale and Retail issues. However, as the Energy industry is a retail customer, the main focus of our response is focused on Retail issues.

Annex 4

Consultation questions

In conducting this review, we have identified 22 key questions we would like stakeholders to consider. These questions are listed below:

Question 1: Do stakeholders agree with our proposed retail market definition? In particular, do you agree that separate markets continue to exist for traditional interface and alternative interface retail leased lines?

Answer 1: No

Ofcom’s conclusion, that there is a clearly defined need for the continuation of TI (traditional interface) and AI (alternative interface) leased lines, provides some comfort to the ENA members. However, the use of ex ante regulation, voluntary undertakings and the SMP obligations imposed on BT, in the retail market for low bandwidth services, does not go far enough to offer sufficient long term guarantees to the energy industry sector.

The energy industry has clearly defined low bandwidth requirements that are at present delivered by 20CN leased line Analogue and Digital services. Although the specific characteristics are not stated or contracted by the service provider, the required latency and symmetry has been enjoyed by the customer for the past 40 years. Ofcom’s retail market definition would require to include guaranteed availability of existing services, and the leased line characteristics at present enjoyed on 20CN for at least the next 20 years, to fulfill the expectations of the energy industry.

Question 2: Do stakeholders believe that there is evidence that might support an alternative view?

Answer 2: No response.

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Question 3: Do stakeholders agree with our proposed approach to geographic market definition?

Answer 3: No response.

Question 4: Do stakeholders agree with our proposed retail geographic market definitions?

Answer 4: No response.

Question 5: Do stakeholders agree with our proposed wholesale product market definitions? In particular, do you agree with Ofcom that: i) a separate market now exists for high bandwidth AISBOs, and ii) the very high bandwidth TISBO market now includes circuits at bandwidths above 140/ 155 Mbit/s?

Answer 5:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and communication providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers.

Question 6: Do stakeholders agree with our proposed wholesale geographic market definitions? In particular, do you agree with Ofcom that a separate market now exists in the UK for high bandwidth TISBOs in the Central and East London Area (CELA)?

Answer 6:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

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Question 7: Do stakeholders agree with our proposed approach to SMP assessment?

***Answer 7:** Yes, if Ofgem concede that the energy industry can no longer rely on telecommunications regulation mandating that appropriate and cost effective services can be obtained from Communication Providers. Concern has also been expressed that the SMP debate does not capture the issues in Northern Ireland where the BT operating model is different.*

No differential identity exists and apart from the fact that consistency in terms of product definition will exist, non-differentiation of BT staff still presents BT in a significantly advantageous position.

Competition in the UK telecommunications market now appears to be used by Ofcom as the basis of regulation, and the obligations they are able to impose under Part 2 of the 2003 Communications Act are designed to promote competition rather than safeguard corporate customers.

The powers invested in Ofcom are limited in scope and do not include being able to force operators such as BT to continue to supply a service which is uneconomic. Only those services covered by universal services obligations are free from the risk of being withdrawn from service.

Recent analyses of strategies being adopted by power utilities in New Zealand, France, Japan and many other countries, indicates that there is now a move towards building utility owned Strategic Operational Telecommunications Platforms for their critical protection, control and monitoring services.

As the majority of Power Utilities in the EU have already adopted a policy of self owned Strategic Operational Telecommunications Platforms for their critical protection, control and monitoring services, it is unlikely that “the ERG SMP Position” or indeed Ofcoms approach to SMP assessment will help resolve the UK energy utility companies concerns.

Question 8: Do stakeholders agree with our assessment of SMP in the retail low bandwidth market in the UK excluding the Hull area? In particular, do you

agree with our assessment that regulation in this market is still required for the time being?

Answer 8: Yes - regulation is still required.

The ENA would prefer to see both analogue and digital kilostream low bandwidth services subjected to regulation for the foreseeable future.

Question 9: Do stakeholders agree with our assessment of SMP in wholesale TISBO markets in the UK excluding the Hull area?

Answer 9:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

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Question 10: Do stakeholders agree with our assessment of SMP in wholesale AISBO markets in the UK excluding the Hull area?

Answer 10:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past 4 years to ensure that its members' requirements for Operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the Energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the Energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their Energy Utility customers..

Question 11: Do stakeholders agree with our assessment of SMP in the trunk wholesale segments market?

Answer 11:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past 4 years to ensure that its members' requirements for Operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers..

Question 12: Do stakeholders agree with our assessment of SMP in the retail low bandwidth market in the Hull area?

Answer 12: No response.

Question 13: Do stakeholders agree with our assessment of SMP in wholesale TISBO markets in the Hull area?

Answer 13:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers.

Question 14: Do stakeholders agree with our assessment of SMP in wholesale AISBO markets in the Hull area?

Answer 14:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for Operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers.

Question 15: For those markets where we have found no SMP and propose to

deregulate, do you agree with Ofcom that the available evidence supports the finding of no SMP?

Answer 15: No response.

Question 16: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale TISBO markets in the UK excluding the Hull area?

Answer 16:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past 4 years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

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Question 17: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale low bandwidth AISBO market in the UK excluding the Hull area?

Answer 17:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers.

Question 18: Do stakeholders agree with our assessment of the appropriate

regulatory option and our proposed remedies for the wholesale trunk market?

Answer 18:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers..

Question 19: Do stakeholders agree with Ofcom's assessment about the appropriate regulatory option and our proposed remedies for the retail low bandwidth traditional interface market in the UK? In particular, do you think that Ofcom should accept BT's proposed voluntary undertakings that it will continue to supply new analogue and sub-2Mbit/s retail circuits until 2011 or earlier if, subject to industry agreement and consent by Ofcom, the underlying platform is closed at an earlier date; that it will not increase its prices for analogue services more quickly than the rate of inflation (RPI- 0%) for a period two years following the publication of the LLMR statement i.e. from 2008 to 2010; and that it will commit to a further two-year cap, the level of which would be agreed with Ofcom prior to 2011?

Answer 19: No

The energy industry's requirements are unlikely to be met by this voluntary undertakings compromise. It is disappointing to note that the RPI proposals only relate to analogue services and do not include the many variants of digital kilostream used for strategic operational needs by the energy industry. Price rises on TI KiloStream services are not regulated to the same extent as analogue services. BT are the dominant market power for High Speed and Low Speed KiloStreams, ENA would welcome BT making a voluntary agreement to restrict price increases to RPI. It is worrying that on 31st Jan 2008 BT increased prices by 8.5% - what will happen in future years?

Until BT provides a credible alternative, to which customers can migrate, it is difficult to accept such high price rises. BT stated a few years ago that they were being allowed (by Ofcom) to spend money on 21CN, on the basis that the new equivalent service products would be cheaper than current offerings and/or offer more functionality at same cost. As energy industry leased line equivalent service products on 21CN are now likely to costs significantly more than was originally anticipated, one might be tempted to conclude that the only way of complying with the original commitment to Ofcom would be to make the original product more expensive before it is withdrawn. Could this be the reason for significant increases in the cost of digital legacy kilostream leased line services over the past three years?

Question 20: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the ~~wholesale~~ TISBO markets in the Hull area? In particular, do you think Ofcom should accept KCOM's proposed voluntary undertaking not to increase the prices of its wholesale TISBO services by more than RPI+0% over the next four years?

Answer 20:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their energy utility customers.

Question 21: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the ~~wholesale~~ AISBO markets in the Hull area?

Answer 21:

The ENA is not in a position to comment on the assessment of SMP in the wholesale market, but we have engaged with Ofcom and Communication Providers (CPs) over the past four years to ensure that its members' requirements for operational leased line services are clearly defined and understood.

Having achieved this goal through significant effort and expenditure the ENA are now confident that CPs engaged in the provision of retail services to the Energy industry are now well enough briefed to ensure that any wholesale issue, likely to impact on their ability to meet the needs of the Energy industry, will be addressed to maintain the long term availability of cost effective and compliant retail services to their Energy Utility customers.

Question 22: Should Ofcom investigate further the case for introducing a dark fibre remedy by undertaking a market review of the relevant market? If such a review were to be undertaken, is it likely that BT or any other CP would be found to have SMP in that market? And if SMP were to be found, what would be the pros and cons of requiring the dominant provider to make dark fibre in the access network available to third parties?

Answer 22: YES

BT Openreach is not at present forthcoming with access products, which CPs can use to deliver services that meet the energy industry Cat 1 specification and indeed it is unclear as to whether such products will be available in the

future. In order to progress this situation Ofcom should facilitate through regulation, access to Openreach and other SMP asset owners dark fibre.

In that way there may be a remote chance of the energy industry procuring services which meet the ENA required specification at an acceptable cost and in a timely fashion to mitigate the potential risk with which UK plc is currently faced.