

DRAFT RESPONSE TO OFCOM CONSULTATION FUTURE BROADBAND: POLICY APPROACH TO NEXT GENERATION ACCESS

This document outlines DETI's response to OFCOM's consultation on Next Generation Access.

In recent months we have been considering what steps are likely to be required to ensure continued access to world class telecommunication services throughout Northern Ireland. The rationale for considering a further intervention is broadly two-fold. Firstly, if left to the market it is not inconceivable that investment by telecoms companies will be made only in urban areas with the most potential customers (and the most potential return) and we will see the re-emergence of an urban-rural broadband divide. Secondly, we are already seeing other regions and countries investing heavily in next generation networks and raising the bar to the extent that it is very unlikely that by 2010 NI will be able to lay claim to a world class telecoms infrastructure in terms of broadband capacity, access or cost.

Current thinking for Northern Ireland is outlined in two documents out for consultation namely the Draft Programme for Government 2008-2011 (PFG) and the Draft Investment Strategy for Northern Ireland 2008-2018 which sets out a number of strategic priorities.

The economy is the top priority for the Northern Ireland Executive and the goal of the PFG is "to pursue an innovative and productive economy and fair society". This includes growing the economy to create wealth that will lead to a dynamic innovative economy to meet the needs of today, as well as those of future generations.

The Draft Programme for Government envisages that a successful economy is "characterised by high productivity, a highly skilled and flexible workforce and employment growth." To achieve this, structural weaknesses in the economy need to be addressed such that it will grow the private sector including small and medium-sized enterprises.

Underpinning the Draft Programme for Government is the Draft Investment Strategy for Northern Ireland 2008-2018. This aims to address a legacy of underinvestment in the past and will deliver £5.6bn of new infrastructure over the next three years rising to over £18bn in the next 10 years. Within the Draft Programme for Government is the Draft Investment Strategy for Northern Ireland it is proposed that to contribute to the delivery of this it will work with the private sector to deliver widespread access for businesses to a next generation broadband network by 2011.

This will contribute directly to the delivery of an innovative economy offering new opportunities for higher value added employment. This is essential if Northern Ireland aims to retain young people, existing high skilled employees and attract the people and investment required to drive an increasingly knowledge-based economy.

In December 2005, Northern Ireland was the first region in Europe to be able to claim that broadband (of at least 512kbps) was available to 100% of the population (businesses and homes), should they wish to avail of the service – this was a result of a £9.29m EU funded intervention in the telecoms market under the Building Sustainable Prosperity programme. In addition some €7.7M was used to fund various cross border telecommunications projects under the INTERREG IIIA programme. As a result of this the number of cross border telecommunications links has risen from 4 to 9, broadband services have been provided to remote rural areas in border counties and the benefits of broadband have been promoted through an extensive marketing campaign.

These first generation broadband networks have given the region a competitive advantage, however the market continues to move on and other parts of the UK and elsewhere are increasingly investing in next generation network services. We therefore need to consider what steps are necessary to ensure that having made a sizeable investment in telecoms infrastructure we maintain a world class position, with a telecoms infrastructure that meets the requirements of the 21st Century.

We certainly concur with the statements made by both the Secretary of State for Business, Enterprise and Regulatory Reform and the Minister of State for Competitiveness at the UK Broadband Summit on 26 November that we do not want broadband to be a constraint on our (Both the UK and Northern Ireland) competitiveness in years to come.

Northern Ireland has been at the forefront of the delivery of broadband in the UK (and Europe) and we therefore believe we can provide an informed view as part of this OFCOM consultation.

It is in this context that responses are made to the specific questions raised by OFCOM.

OFCEM Question 1 - When do you consider it would be timely and efficient for next generation access to investment to take place in the UK?

We recognise that there are huge changes occurring in the telecoms industry right across the globe. We believe that we are entering a cycle of investment in new next generation networks that will replace the current technologies which the telecoms operators have relied on.

We believe that the time for investment in the UK is now especially if we want to ensure that as many people and businesses as possible can be included in taking advantage of the opportunities next generation services present.

OFCEM suggests that a next generation network is one that offers **significantly** higher speeds than those widely available today. In Northern Ireland speeds of at least 512 Kilobits per second are available to everyone. OFCEM indicates that the average access speeds are in the region of 4.6

megabytes per second (Mbps) and these speeds are becoming more readily available especially in urban areas. As a consequent this suggests that there is already a demand from consumers for these higher bandwidth products.

We conclude that the private sector has identified this demand at this time and is responding to it. We also see that they are announcing already that they intend to deploy even higher bandwidth services in the coming years, for example BT has suggested through its 21CN project services of 24 Mbps will become available; Virgin Media has announced plans to offer services of 50 megabytes per second next year. It would appear though that the main beneficiaries of these announcements will be those living and working in urban areas, those that fall within the cable footprint areas, and, in the case of 21CN, close to existing exchanges.

We can also look to the implementation of unbundling in Northern Ireland as an indicator where we might see Next Generation Network service being offered in NI. To date, as indicated in the OFCOM "Review of the wholesale broadband access markets 2006/07" there are 36 exchanges where there is some sort of LLU activity but only one exchange area in Northern Ireland where it has been deemed to be an area where no operator has significant market power. The exchanges where there is LLU are in mainly urban areas.

If significant parts of Northern Ireland are to be part of the next generation network economy then due to its rural nature it is important that we start to make our investments in next generation networks now. In its Communications Market report for 2007, OFCOM reported that 35% of the NI population are rural based compared with 12% for the whole of the UK.

It is clear that to deliver such networks could take 3 to 5 years to roll out widely. If there is any hesitancy in deciding not to invest at this time, it will further delay the widespread availability of these networks and consequently the NI Executive's ambition to deliver an innovative economy which will put us behind other regions of the UK and Europe. In addition the costs of deploying these networks at a later date are likely to incur greater costs as the most significant cost will be the associated labour costs which generally increase over time.

OFCOM Question 2 - Do you agree with the principles outlined for regulating next generation access?

We believe that in order to ensure the development of a next generation access network across Northern Ireland it is important that there is regulatory certainty both for Government and for the Telecoms sector. We welcome OFCOM's debate on this matter. We encourage OFCOM to reach a decision on the approaches to be adopted quickly. This we believe will enable investment decisions to be made sooner.

We agree that regulation should be clear and transparent. We agree that competition will be a key lever in timely and efficient investment. However

these decisions will be more easily made in relation to certain markets than others e.g. in urban areas compared to rural areas.

We support the concept of contestability i.e. making the opportunity for entering the market accessible to a wide range of companies; however when third parties decide to make investments it will be beneficial to suppliers and consumers that these can be completed in as quick a time as is reasonable. We believe that a useful starting point to this could be the development of codes of practice for this segment of the industry. We believe that some areas will be more contestable than others. It would be helpful if guidelines could be developed that present greater clarity on the indicators that could be used to identify contestable markets.

We believe that innovation and the ability of both communication providers and other organisations to develop, market and distribute products in an NGA environment will be important. For innovation that is beneficial to the consumer an appropriate range of wholesale services should be developed and made available in a clear equitable basis. These could take a number of forms in both the passive and active inputs and it may take several attempts to develop products the wholesale market widely accepts. Again certainty assists in the development of innovation and competition.

We are comforted that OFCOM recognise that the deployment of Next Generation Access may be variable across regions and the risk is the emergence of a digital divide. However we believe that OFCOM should consider specific policies to address this sooner to ensure that a wide range of communications services are available throughout the UK.

OFCOM Question 3 - How should OFCOM regulate risk in regulated access terms?

We believe that any regulation introduced should be simple and transparent to those operating in the environment. We believe that current schemes are very complex however they reflect the evolution of the telecoms market in the UK.

With the upgrade of the main core infrastructure in the UK to an IP standard an opportunity exists to radically overhaul the marketplace. One opportunity is to produce more standardised products which should make it easier for third parties to use, adapt and design more innovative products for their customers. We hope that OFCOM seize the opportunity.

We also believe that operators should get a reasonable return on their investment. We also caution that any regulatory reform should not be about regulating the incumbent operator in a way that does not prevent it from making a reasonable return on its investment. It would be helpful if the parameters for defining significant market power are well defined. We recognise that this could be difficult depending on the markets that are examined and again goes back to the debates circling round the nature of the markets and the factors that impact on them. We believe it may be useful to

consider if a regional regulation approach could encourage investment more widely on next generation access networks.

We are particularly interested in some of the options presented in paragraph 5.24 which suggests flexibility in pricing and the introduction of variable pricing based on geographical variables. Paragraph 5.26 we believe offers some interesting concepts including the proposition of anchor product pricing. This we believe could be the most attractive option which could allow for a degree of flexibility for innovators to devise their own products for sale to consumers on the next generation network.

We note OFCOM's extensive discussion on anchor product regulation. Our observation on the use of this method is that it seems attractive. However like any product it requires continued resource applied to maintain, design, and refresh the product during its life cycle. There will also be resource required for research and development of product through time. The overheads involved are not trivial, so questions arise as to how to manage this process. Ultimately though, it will not be the regulator who will decide on the technical specification of the product, but equipment manufacturers. The regulator's role could be restricted to product approval, issuing pricing notifications and commenting on the suitability of service level agreements.

OFCOM Question 5 - Do you consider there to be a role of direct regulatory or public policy intervention to create artificial incentives for early investment in next generation access?

We believe that the current situation will not meet the investment required for the needs of Northern Ireland. A new form of regulation needs to be developed that is clear and understood by the market in advance of investment. By developing regulatory certainty it will encourage longer term investment in NGA that is timely and efficient. However for this to occur the current **short term** returns that telecoms companies have come to expect need to be refocused to look in the **longer term**. This could be achieved by insisting on an examination of long term investments by operators. OFCOM may wish to consider the development of a universal service obligation for broadband.

Should public policy intervention be deemed appropriate then it would be assisted by OFCOM's support. This could be given in the form of guidance as to how intervention can occur. It would be helpful if a basket of indicators could be developed that act as a checklist to enable public policy makers to decide when it is acceptable to make an intervention in the access market. It would also be helpful if a range of access options acceptable to OFCOM and EU (with particular relevance to State Aids) were developed to allow any intervention to happen speedily and with the minimum of administrative burden.