

INTELLECT RESPONSE TO THE OFCOM CONSULTATION “FUTURE BROADBAND – POLICY APPROACH TO NEXT GENERATION ACCESS” OF 26TH SEPTEMBER 2007

Introduction

Intellect welcomes the opportunity to respond to Ofcom’s public discussion document on the regulatory challenges posed by next generation access networks.

This response has been derived via a consultation process among Intellect members.

In general, Intellect is supportive of the approach outlined in the consultation document, however, we note that the proposals are currently rather abstract and high level. We believe the main issues will only really emerge at a more detailed level. We would encourage Ofcom to progress to this level as soon as possible.

Answers to specific questions

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

Much of the argument in the consultation rests on the notion of “efficient investment” which is defined as “the right technology at the right time in the right location”. Whilst it is difficult to argue with this in the abstract, in practice it is not clear how anyone would know if the technology being deployed was “right or wrong”, or if the timing was “right or wrong” or if the location was “right or wrong” – in general the investor would aim to make the “right” investment but the final judgement can only ever be made in retrospect.

There is also the issue of the level of aggregation; it is possible that “timely and efficient” investment for any individual player may be much later than for the UK as a whole, with significant implications for future efficiency and competitiveness.

Deployment of NGA in the UK will represent a very significant level of investment - much of the discussion and analysis so far has addressed the potential implications of investing “too late” in NGA, however, the implications of investing too soon should also be considered.

It would be a poor outcome for the UK if there were to be very substantial investment in fixed infrastructure in a particular generation of NGA technology only to find that it relatively quickly becomes obsolete in terms of the bandwidth that can be delivered.

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

The principles outlined for regulating next generation access seem to be reasonable. However, whilst agreeing with the principles in the abstract, there is a concern that, in practical application, they may prove to be either mutually conflicting or possibly inappropriate in the light of later market developments. Also, the consultation and these principles seem to have been derived with a single NGA network structure in mind, rather than giving serious consideration to a patchwork of multiple networks using a range of technologies, or a single network consisting of a range of differing technologies. Intellect also believes that encouraging the deployment of

multiple networks and network technologies not only promotes competition but also delivers improved network resilience.

To some extent the consultation is based on an extension of the current “equal access” approach where the bottleneck is assumed to be the access infrastructure itself. However, the advent of NGN/NGA could result in the emergence of new bottlenecks that are not addressed by this approach – e.g. local caching or backhaul could become a significant issue. Also Intellect consider it inappropriate to assume the access link is one technology or even one provider, given the current mix of technologies for delivering broadband in the UK (OECD figures for UK broadband lines list 4.9 million cable modem lines and 14.9 million DSL lines).

Question 3: How should Ofcom reflect risk in regulated access terms?

Levels of risk involved with NGA investment will clearly be variable – early investment will carry more risk than later investments, investments in densely populated areas will carry less risk than investments in areas of sparse population. Investment in green field sites probably carries the lowest risk of all at least in terms of take-up of existing services over the new infrastructure.

In principle the option of allowing the owner of access infrastructure to set access terms on a non-discriminatory basis seems attractive but may need additional actions in order to guard against margin squeeze and may not be appropriate for an “access infrastructure only” operator.

The idea of combining this approach with an “anchor product” is interesting but Intellect would wish to see much more detail and consideration of how this would work in practice– for example, what happens if the anchor product becomes obsolete? Intellect would be interested in participating in such work.

Question 4: Do you agree with the need for both passive and active access remedies to promote competition?

It is unlikely that NGAs in the UK will be homogeneous. In terms of technology there is likely to be a mix of copper, fibre, co-ax, radio and satellite, in terms of topography there will be widely differing population distributions served with radically different implications for the level of competition that can be supported.

Also, given the rapid rate of technology innovation and the lengthy timescales involved in the deployment of fixed infrastructure, it would seem unlikely that any particular fixed network will be built entirely using a single technology, although this may not be the case for a network based on radio technology.

Within this diversity it seems clear that a “one size fits all” approach to regulation is inappropriate – the regulatory framework must be sufficiently flexible to cater for multi-technology, multi-topology networks, for which regulatory measures to remove barriers or create inducement may differ.

Ofcom’s observation that NGAs may offer the ability for greater differentiation for service providers using active wholesale products is an attractive notion, but is as yet unproven.

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

It seems to be very doubtful that the market alone will result in the deployment of NGAs that give full UK coverage. Also, market forces will result in deployment to the most attractive areas in advance of those offering lower returns. Also the sheer scale of the engineering project to deploy NGA technology across the UK will inevitably mean that the services are delivered to some areas later than others. So with or without some form of intervention, there will be some people who get access to NGA later, possibly very much later, than others and without intervention there will be those who never get access to NGA.

The issue then is one of inclusion and the extent to which a digital divide, temporary or long term, is acceptable. This is really a policy rather than regulatory matter.

However it seems reasonable to conclude that, if a digital divide is not accepted, then intervention will be needed at some point.

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