

Next Generation Access

Tiscali UK response to Ofcom consultation

What follows is the response of Tiscali UK to the Ofcom consultation on Next Generation Access published on 26th September 2007. Key points that Tiscali wishes to make are presented below, followed by answers to the questions posed by Ofcom in the consultation document.

- There is no current delay or failure in technological and market development in the UK relating to this subject. The potential of the copper access network is not exhausted and LLU operators are delivering innovative services and product bundles to UK consumers across the full range of service types.
- Regardless of the above and in view of the fact that BT is now planning to deploy fibre to the home in new developments, regulatory certainty as promoted by Ofcom is a desirable objective that the industry should support.
- There is currently no case for regulatory forbearance or public intervention or investment to stimulate next generation access network deployment in the UK.
- As the subjects of this debate are networks, products and markets that do not exist, Ofcom should aim to clearly describe scenarios that may transpire in future to aid understanding of it's thinking and proposals. This would be to go further than what is in the consultation document and take a very simple, practical view of the purpose of the current debate.
- Ofcom should clearly state any aims or tolerances that it has for the UK industry in terms of infrastructure competition, regulatory bottlenecks and eventual outcomes for consumers (in a way similar to the commitment to LLU made during the strategic review and undertakings process). If Ofcom does not have any such aims, it should make that clear and then address potential impacts on previous commitments demonstrated in the scenario approach suggested above.

Further brief comments and observations are organised under headings below.

Risk returns

Ofcom's approach to regulated risk returns is irrelevant if no investment in next generation access networks is made. It is also irrelevant if no investment creates an SMP situation requiring regulatory intervention. Ofcom should not be concerned with devising an approach that gives an investment incentive (there is no problem to address), but should aim to achieve clarity of views and the simplest policy possible. It is very unlikely that anchor product regulation would meet these criteria, as it would bring enough potential for margin squeeze and continuous industry dispute to render it inoperable.

Wholesale remedies

If next generation access networks were to exist that were owned by organisations with SMP, a complete and workable solution to the issue of wholesale supply to enable competition would have to be found. This would involve the design of high quality active line access products as well as infrastructure/unbundling products that may be feasible and required. It is far too early to draw negative conclusions on

unbundling of fibre access, as other countries are pursuing developments in this area (Japan, for example) that challenge current thinking in the UK on the viability of fibre and wavelength unbundling. The equivalence of inputs product stack would have to be redesigned to take account of new wholesale products and absolute clarity achieved on what Openreach would sell and BT Wholesale/Retail would buy.

Sub-loop unbundling

Ofcom is correct to suggest that this is one of the remedies that will prove necessary and that it is in need of further development. A workable business case is required to give a sensible view of what might be done with SLU, but this will depend on answers to questions about backhaul products and capabilities (to both exchange and street cabinet) and whether or not SLU is to be an equivalence of input product sold by Openreach to downstream BT divisions.

Transition plans

Although this will be very much theoretical thinking, there must be strong protection for business models based on current regulation and commitments, focused on LLU. If Ofcom needs to adapt the regulatory environment to take account of new access networks in the future, it must also adapt commitments made to investment models that have been implemented by industry members in good faith. Measures necessary would have to take account of the potential for stranded assets and recovered network investment costs and may include elements of financial compensation.

Network issues

There is currently an issue in the UK market, caused by third party video distribution across the Internet, that creates capacity and cost problems that need to be addressed by all parties across the industry. If access network speeds and capacities were boosted, this type of application would be encouraged, but current backhaul products available from Openreach would be even less appropriate to the situation than they are now. These products are not cheap or scalable enough to suit next generation demands and this will need to be addressed alongside any consideration of regulatory approaches to next generation access. Ofcom acknowledges this in the consultation document, but much more detail and examination will be needed to ensure that both things are dealt with at once.

Answers to questions contained within the consultation document are set out below.

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

Although the UK may be later to begin deploying fibre access than other developed countries, this is not evidence of any problem or deficiency in the UK industry. Relative timing is affected mainly by issues to do with established technology (DSL versus cable, quality of DSL etc), geography (population density, cable footprint) and penetration of different platforms (such as satellite TV). Therefore, there is no reason to conclude that there is a delay to investment or implementation in the UK.

Ofcom should provide clarity on regulatory factors that would affect any future investment in next generation access, especially as BT has begun the trial of FTTH at Ebbsfleet, but should not be tasked with ensuring that any investment actually occurs.

The market will take care of investment decisions, led by consumer demand as Ofcom suggests, and they will be made easier by the absence of confusion about regulatory environmental aspects.

It may be the case that next generation access investments take place that are not timely or efficient, but they will occur because of the market and this is not under the control of Ofcom. The question above is impossible to answer, but Tiscali will always be interested to optimise the use of access technologies to achieve the best possible combination of cost efficiency and service functionality to the benefit of end users.

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

Tiscali does generally agree with principles outlined by Ofcom.

As mentioned above, Tiscali does not accept that Ofcom has any duty to secure investment of any specific type, size or timing. Therefore, relevant principles should be framed with this in mind. Ofcom does have a duty to ensure that regulatory clarity is provided where possible and that markets and investments are contestable.

The principles for promoting competition are good ones and Ofcom is correct to remain true to those established during the Strategic Review and to adopt a pragmatic approach to the transition from existing regulation, as and when that becomes necessary.

3 How should Ofcom reflect risk in regulated access terms?

While Tiscali agrees that a sensible approach to risk returns should be taken to ensure that regulatory factors are not disincentives to investment, there are major issues to address with the more complex solutions discussed in the consultation document. Some aspects of anchor product price regulation may be usable in practical solutions, but the many problems and drawbacks with this untested regulatory technique render it inappropriate for Ofcom consideration currently. It is unlikely that industry could agree on products and prices to begin with and very likely that the need for review would be onerous and continuous thereafter. There is no good precedent for regulatory measures requiring constant update by Ofcom and Tiscali does not believe that Ofcom is organised or motivated to enter into such an arrangement.

Of course, simply allowing the monopoly access network owner to charge whatever it likes for next generation access products is not feasible and that would represent a lack of regulation rather than a regulatory approach. Ofcom has always been correct to stand firm against regulatory forbearance in such examples.

A solution to the need to reflect risk in access terms will probably lie in the development of risk assessment for price regulation developing out of principles with which the UK is very well acquainted. Although calculations may be complex and somewhat onerous to complete and update going forward, such a method would at least guarantee a level of fairness and transparency that is based on established principles and methods and should work adequately for both sides of the commercial equation.

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

Tiscali does agree with this and generally supports Ofcom's conclusions within the consultation document. Although the landscape will be changed, it will remain essential to maintain the commitment to overall principles such as equivalence and deepest level infrastructure competition when next generation access becomes a reality.

It does appear that FTTH deployments will be based on GPON technology and therefore an active access remedy will be appropriate and viable. This is already being discussed with BT in relation to Ebbsfleet and one hopes that good precedents will be set for any future scale deployment of FTTH. It is vital that Ofcom is prepared to play an active role in this process as the danger of wholesale products being sub-standard or tailored to suit BT downstream businesses is very real. It should also be acknowledged that there could be a geographical aspect to SMP in the future, where localised fibre access networks create localised dominance, so remedies may need to be applied to a number of different access network owners.

Sub-loop unbundling and active access are desirable remedies for FTTC deployment scenarios. There are many outstanding issues to be resolved with sub-loop unbundling as a viable product and the industry group is addressing these. Tiscali believes that this effort should continue and also that no passive access remedies should be definitively excluded at this theoretical stage. It may be that duct access becomes economically viable at some future stage or that fibre unbundling benefits from technological developments that make it more feasible as a solution. Ofcom is correct to acknowledge the historical commitment to infrastructure competition and this commitment should be maintained, to both existing platforms like LLU and future ones like wholesale fibre access.

As Ofcom suggests, the availability of appropriate backhaul services is critical. Where control of bottleneck assets extends into backhaul, it will be necessary to ensure that new high-performance backhaul products are made available. These are likely to include new dark fibre products as well as Ethernet products similar to those offered by BT today. Current solutions will not be adequate in a world of high capacity fibre access networks and services that rely on them and they are proving inadequate even today when faced with demands created by new applications. Strong regulatory action will be necessary to produce a backhaul outcome that is significantly better than the expensive and inefficient one that CPs suffer currently.

The Strategic Review and BT undertakings promote LLU as the central solution to competition problems and the UK industry has responded to this commitment by making LLU a success. Next generation access may change the network fundamentals, but the commitment to principles should remain. Where passive access is not viable, flexibility on active access specifications should be a key focus. Thus, there is likely to be the need for versions of new bitstream products that allow interconnection at exchange level as well as core node level. This should allow CPs to continue to choose how to configure technologies and services and optimise innovation potential in the UK market.

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?

Tiscali does not believe there is any case for regulatory or state intervention of any kind to stimulate earlier investment in next generation access.

Tiscali generally agrees with Ofcom's analysis and conclusions on this subject. The UK communications market is innovative and competitive and consumer demand would lead to investment in and commercial development of new fibre-based access deployments, where it existed. There is still some way to go to achieve full exploitation of network technologies that already exist and reason to believe that the copper network may have more to offer. Demand for new or improved retail services, such as HD IPTV or very high speed Internet access, will need much more than high capacity access networks anyway. Issues with backhaul networks, including product design and cost and network capacity, would have to be resolved to enable such improvements to be made and this is being demonstrated by new challenges arising from the proliferation of third party video offerings that are creating load and congestion problems for CP networks in the UK.