RESPONSE TO ERG CONSULTATION – REGULATORY PRINCIPLES OF NGA

Cable&Wireless

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1. INTRODUCTION

Cable&Wireless Europe, Asia and USA provides services to corporate, government and wholesale customers across the world. The C&W European network is made up of extensive network (including local fibre and LLU rollout) in the UK and metropolitan rings within several European countries. C&W serves directly large corporate and government users and wholesale customers (resellers and ISPs) who in turn serve SMEs and residential customers.

In the UK, C&W has invested in the unbundling of circa 800 local exchanges, as well as investment direct fibre connections to business sites. We continue to invest in further points of connection to pick up business connectivity services such as wholesale leased lines (PPCs) and wholesale Ethernet (WES). Consequently today we are able to serve large parts of the UK using our own network infrastructure and infill where this is uneconomic with downstream aggregated wholesale services. Our future capability of connecting to customers economically with high service level standards drives our regulatory agenda.

The deployment of NGA networks raises for us concerns regarding our capability to access our customers' sites in a manner which gives us and our customers control over the services used and our ability to innovate in the services and quality features our customers need. Regulation must be focused on regulating as deeply as possible in the network, however the arrival of NGA networks may expand the access bottleneck again, with the result that regulation may need to be applied more robustly on bitstream services, and not just unbundled access to the local loop. In locations where it would have been economic to connect to customers locally under the current network technology but uneconomic in an NGA scenario (at least for the short to medium term where customer volumes per communications provider are low) this would be a considerable step back for competition and the consumer. In conclusion C&W supports ERG in its finding that NGA extend the economies of scale in access networks and thus implies that NRAs need to be ready to adjust the bottleneck regulation to the new technologies. In many cases this may mean redefining the bottleneck boundary deeper into the network away from the customer site.

2. QUESTIONS FROM THE CONSULTATION

2.1 Do you agree / disagree with the general approach?

The ERG consultation looks to examine the EU regulatory framework, regulatory remedies and the potential need for revision due to the rollout of next generation access networks. This is a good starting point. It is critical that potential builders and buyers of NGA have a clear understanding of the legal situation.

C&W believes that the ERG could further assist the sector by adopting best practice procedures / guidelines for incumbent builders of NGAs in order to smooth interaction with competitor / buyer stakeholders. For example: the manner in which NGA builders consult with potential buyers; the manner in which technology decisions are made; perhaps the requirement upon NGA builders to define how current regulated services will be supplied over the new infrastructure.

In the UK there has been consultation. But this public consultation has come after the FTTP technology choice had been made internally and unilaterally by BT Openreach. BT Openreach's consultation has also been somewhat mis-leading as the consultation reference was to roll out FTTP in "Greenfield sites" but FTTP rollout will also occur in "Brownfield developments". The consultation process has however given the opportunity for potential buyers to influence the characteristics of the overlying FTTP services and offer input as to how services may be economically handed over. It would not be too difficult to build upon this approach and deliver improvements to the process.

2.2 Do the scenarios describe the relevant roll-out alternatives for NGA?

The scenarios do not cover point to point fibre NGA. Whilst this solution does not appear to be a chosen NGA solution for incumbent NGA builders it has proven a valid solution for new entrant builders. In deciding on the optimal roll-out scenario, it is necessary to balance any static efficiency loss which might arise from the implementation of a more expensive network architecture and technical solution, with the dynamic efficiency gains that might be captured if that solution was capable of offering greater opportunity for differentiation and innovation by competitors.

2.3 Do you agree / disagree with regard to the conclusions on economic and business case studies?

The business case analysis illustrates worrying scenarios for other (many) European countries. Should these fully play out regulatory focus on the *entire* ladder of investment is critical. Downstream wholesale services, such as bitstream and leased lines, will become far more important mechanisms for obtain customer access and driving competition. Historically service feature development and pricing reductions have been driven by competition / threat of competition. Future wholesale services will therefore need to be feature rich and sufficiently unbundled to enable the repackaging of tailored and targeted solutions. Intermediary wholesale services such as those offered via ATM aggregation to eventually offer IP services will need to be evaluated as to how they fit into a NGN IP core network.

In the UK where it is planned that FTTP GPON systems will terminate at existing local exchanges (where LLU currently, and will continue to co, exist) the critical aspect will be the assurances that LLUOs will be able to utilise LLU space for the collection of FTTP lines; that FTTP handover and aggregation is efficient as feasible; and that where ever possible costs are shared over the population of lines or all FTTP lines.

2.4 What is your opinion on the regulatory implications and on the evolution of the ladder of investment? Additionally please provide more specific comments regard the issue of multicast capabilities and their regulatory treatment.

The ladder of investment illustrates the variety of mechanisms that Altnets can obtain access to end customers. Primary focus has been on the availability of LLU and its terms and conditions. Regulators have also considered downstream wholesale services due to their requirement to infill geographic areas where LLU cannot be economically provided.

Our expectation is that LLU will continue to exist in economic geographies. Downstream wholesale bitstream services will be available. Pockets of FTTP provisioned customers will start to emerge. Where economic these FTTP connected customers will be connected to C&W at the local exchange level and where not we will continue to obtain access to these customers via the downstream wholesale bitstream service. As time passes and greater numbers of FTTP customers are

connected in given local exchange areas we will require simple migration mechanisms to switch from the wholesale service to the upstream service.

With respect to multicast a regulated bitstream service must include the capability to opt for multicast otherwise the provision of IPTV services will be restricted to NGA builders or those with sufficient market share to connect at the local exchange.

2.5 Do you agree / disagree with the conclusions?

We do not agree with the proposition that FTTP/H will cause regulatory disruption. The EC framework is intentionally technologically neutral. FTTP/H is simply an additional mechanism of connecting - end-users to communications networks. FTTP/H lines must be counted and evaluated when conducting market analysis in order to determine whether regulated remedies should be applied. It is likely that further barriers to market entry will occur due to the development of FTTP/H as outlined in the documentation. Regulators must pass back the onus to the SMP (FTTP/H) builder as to how compliance with ex ante obligations will be assured, for example to provide unbundling, wholesale lines and calls over the new access infrastructure. Regulators must not concede or waive regulatory obligations to supply SMP services in situations where continuing to fulfil these obligations becomes difficult as a direct result of the choice by the FTTP/H builder of technologies that do not facilitate the breakout or provision of these regulated services.