



Internet Telephony Services Providers' Association

3rd February 2005

Strategic Review of Telecommunications Phase 2 Consultation

About ITSPA

The Internet Telephony Services Providers' Association ("ITSPA") was formed in 2004 to represent network operators, service providers and other businesses involved with the supply of Voice over Internet Protocol (VoIP) services to business and residential customers within the United Kingdom and across the EU. Further information on ITSPA and its members, can be found on our website here: <http://www.itspa.org.uk>.

Introduction

ITSPA welcomes the opportunity to submit its comments on Ofcom's timely and comprehensive strategic review of the UK telecommunications sector (phase 2). As the representative voice of a new and developing voice market, ITSPA believes it is crucial to convey our views on the future development of the telecommunications sector to help ensure an effective and competitive UK telecommunications market.

ITSPA agrees with Ofcom's aims to promote competition at the deepest levels of infrastructure, as far as this is sustainable and effective, and to focus on equality of access where this is not possible. ITSPA is concerned, however, that Ofcom's aims to withdraw from regulation as soon as possible may be based too much on BT's word rather than its actions. Although ITSPA believes self-regulation and minimum intervention from Ofcom are the best means of fostering competition and innovation in markets in an embryonic phase (such as the VoIP market), ITSPA urges caution when deregulating in areas where it has been proved that regulation is necessary, or where there are enduring economic bottlenecks, based on the promises of BT to deliver the building blocks for effective competition (i.e. equivalence) or to refrain from resuming anti-competitive practices. The realisation of BT's promises depends very much on its commitment to bringing about necessary and considerable organisational and cultural changes, which will take time to be fully achieved. Ofcom needs to ensure that adequate review mechanisms are in place to assess the level and quality of BT's actions to comply with its verbal assurances that it will deliver equality of access. Clear timescales and



Internet Telephony Services Providers' Association

deliverables, for example, would be necessary to ensure BT's action plan is carried out – otherwise, there is the risk that competition will not be improved, the delivery and take-up of innovative and good-value services for consumers seriously hampered, and the UK will continue to lag behind other EU countries, notably France, in the take-up of new voice services.

Hence, although ITSPA agrees that regulation should concentrate on delivering real equality of access, any future removal of regulation should only take effect where there is visible and measurable evidence of well-established, long-term equality. ITSPA concurs with Ofcom's dual test: that there should be genuine equivalence and effective competition before a relaxation of regulation is considered. Should BT renege on its promises, and, for example, BT Retail continue to receive favourable treatment from BT Wholesale, the Enterprise Act may need to be brought into play as a last resort.

ITSPA must stress that BT should not be permitted to leverage its dominance from the traditional PSTN world to the IP world. The Internet forms the basis for a communications revolution, providing a greater variety of services at more competitive prices than on traditional networks. The promise of this revolution has already been significantly realised for services over the World Wide Web and to a lesser extent for broadband access services: both are areas in which incumbent operators like BT did not have an established dominant position. The same can happen for new voice services, if BT is not able to leverage its dominance for traditional voice services into a dominant position for new voice services. The critical ingredient to making this happen is the availability of broadband "pipes" that do not favour the new voice services of BT over those of other providers. At present, the requirement that consumers pay BT's line rental in order to have access to DSL broadband produces just such favouritism.

The solution – which is already readily available as a technical matter – is for Ofcom to require BT to offer "naked DSL" at competitive prices. By this single action, Ofcom could substantially promote the development and benefits of competitive new voice services.



Internet Telephony Services Providers' Association

Answers to specific questions

5. How can real equality of access be achieved at the product level?

ITSPA agrees that equality of access at the product level coupled with fundamental changes to BT's organisational and cultural behaviour are crucial to discontinuing the status quo, whereby BT Retail has a distinct advantage over its competitors, and to ensuring and attaining a fully functioning, competitive telecoms market. The VoIP market is still in a nascent phase of development: without equality of access, the rollout of new voice services may be severely hampered to the detriment of the consumer.

ITSPA is convinced that the provision of new regulated products such as "naked DSL" is crucial to achieving real equality of access and ensuring that BT's new voice services are not favoured over those of other providers.

Furthermore, ITSPA believes that not only should there be full equivalence of inputs wherever possible to level BT's technical, product, price and processing advantage, but there must be equivalence on an "access to information level". BT Retail's clearly privileged position with regards to access to data at the disposal of BT Wholesale must be re-balanced to enable a level playing field. For instance, BT has the unique advantage of being able to cross-use its databases. In the past, BT Retail has used BT Wholesale's databases in order to ascertain which of its customers were using carrier pre-selection in order to contact these consumers regarding their decision to switch. Privileged access to this data is estimated to have resulted in new entrants losing over a hundred thousand customers in the space of 2 years before the practice was identified and stopped. There must be strict transparency obligations placed on BT to ensure that any such cross-utilisation of information across the different BT divisions can be identified from the outset. Moreover, sufficient sanctions should be in place to discourage BT from such actions – which also have serious data protection as well as competition implications – in future.

ITSPA also urges Ofcom to ensure safeguards are in place to verify that equality of access has been achieved at the product level and will continue before relaxing regulation in related areas. Industry as a whole should be consulted to ensure BT is fully facilitating equality of access to products, processes and prices in practice. One possible measure of the achievement of equality of access is whether BT Retail is willing to use BT's wholesale product for delivery of its own services.



Internet Telephony Services Providers' Association

ITSPA strongly believes, in line with the objectives of technology neutrality, that any BT VoIP service would automatically and necessarily be subject to SMP obligations, as BT has SMP in the call origination and call termination markets. ITSPA believes this would also result in a more consistent and transparent regulatory approach, which would provide for legal and investment security for VoIP providers. ITSPA would like to emphasise that New Voice Services (NVS) should be subject to equivalence and have equal access to Carrier Pre-Selection, Indirect Access and direct interconnection with BT and mobile operators.

6. What behavioural changes by BT do you believe would be necessary to achieve real equality of access?

ITSPA believes the current division of tasks within BT almost automatically leads to anti-competitive behaviour towards its non-BT Retail customers. Thus, as a general point, we would advocate 3 business units within BT (rather than the current two): Access (or "Loopco"), Wholesale and Retail. In the Access/Loopco business would be all the bottleneck products and services, including engineers, LLU, WLR, bitstream access, phone directories etc). ITSPA would suggest that this division of roles would help spur necessary behavioural changes within BT – it is not only important to ensure a clear *division* of tasks within BT; but also that there is a careful and appropriate *allocation* of tasks. For instance, BT engineers should be based out of BT "Access" rather than BT Retail, which is the current practice. BT Engineer performance reviews would thus be based on their servicing of all BT Access customers and not just relating to BT itself. BT employees must be given the incentive to treat all BT Access customers as being equally important to BT's business. Review and complaints mechanisms must be in place to ensure BT engineers deliver an equally high level of service and quick response time to non-BT Retail clients.

There must also be more transparency in the information flows between BT divisions (Wholesale, Retail and Access). Important information regarding product changes, technical information and price changes should be announced simultaneously to BT Retail and its competitors. Lessons should be learnt from the investment banking world where there are strictly enforced "Chinese wall rules" to prevent sharing of information between the research function and the banking function to prevent conflict of interest and to preserve the integrity of both branches. Such good practice helps foster trust within the wider community. Robust "Chinese Walls" would also help prevent market sensitive information that BT Wholesale or Access may be in possession of from filtering down to BT Retail. Ofcom must also be vigilant with regards how these Chinese Walls



Internet Telephony Services Providers' Association

will be maintained and policed: not only is transparency required, but active review and regular checks should also be carried out to ensure that BT is providing equitable treatment to all market players. Sanctions should be applied should this not be the case.

Furthermore, BT Retail should not be able to develop monopsony powers that could influence wholesale product and process investment priorities. All BT Access customers should be consulted fully during the planning and development of new products – this would, moreover, be beneficial to BT as a whole as the resultant product would be optimal for all BT Access's clients.

ITSPA recognizes that profound organizational changes will take time to develop in order to achieve equality of access. However, ITSPA urges Ofcom to ensure that strict timetables and deliverables are mapped out to ensure BT does indeed carry-out visible and quantifiable changes. These changes will significantly improve the services all telecommunications providers can offer UK consumers.

8. Do you agree with Ofcom's proposed approach to current generation broadband?

ITSPA agrees that current generation broadband is an important bridge to future services. Thus, it is important that the potential of current generation broadband is fully unlocked and optimised in order to bring about a truly competitive voice market. The fostering of strong competition today at the deepest level of infrastructure will translate into a more competitive sector delivering better services for customers in the future. Therefore, ITSPA fully supports the need for efficient and competitively priced LLU and "naked-DSL".

a) What should Ofcom's approach be to naked DSL?

ITSPA fully endorses Ofcom's considerations that BT be mandated to offer naked-DSL lines i.e. telephone subscriber lines without access to a traditional exchange line and the attached apportioning of the PSTN costs with only a connection to the ADSL DSLAM supplied. Naked-DSL should be made available if Ofcom wishes to ensure NVS flourish in the UK and bring increased competition and greater functionality to the telecommunications marketplace. Only when a product such as naked-DSL is available will the additional benefits of NVS come into fruition.



Internet Telephony Services Providers' Association

Although detailed discussions on this issue would need to take place – and as soon as possible – ITSPA would initially propose that the price for naked-DSL should be set at BT's standard retail/wholesale DSL prices plus around 40% of its retail/wholesale line rental charge. Prices being charged for naked-DSL provision in other countries and their experiences learnt in the process could offer some helpful guidance.

In order for naked-DSL to be successful, there must also be a smooth porting process in place to facilitate the new primary line service that will be offered with naked-DSL.

ITSPA would also like to stress here that, in addition to the provision of naked-DSL, efficient and cost-effective LLU must be further facilitated. LLU will only sufficiently develop and become viable when the incumbent provider is compelled to provide access at a realistic "cost based" price. Naked-DSL and LLU are both crucial to the development of a competitive new voice services market that offers a varied palette of value-added services for the consumer.

9. Do you agree with Ofcom's proposed approach to deregulation of voice services?

ITSPA tentatively agrees with Ofcom's proposed approach to deregulation of voice services. We urge Ofcom to be cautious in its deregulatory approach to ensure competition and equality of access is truly functioning before withdrawing regulatory safeguards. Ofcom needs to ensure its triggers for withdrawal of regulation are clearly delineated. For instance, even where an equivalent WLR product is in place, it must be ensured that BT is then prepared and ready to ensure these are operated in a way that does not favour BT Retail. In light of the challenging task ahead regarding the necessary changes to BT's organisational behaviour – which cannot be expected to occur overnight – coupled with the need for Ofcom to determine that there is effective and sustainable competition at the retail level – Ofcom's 2005 projection for moves to assess withdrawal from the regulation of fixed retail services may be somewhat optimistic.

In order for increased competition in voice services using broadband access products to truly emerge, it is of paramount importance that "naked DSL" and effective LLU are provided. LLU is essential to allow VoIP providers to offer integral packages of services (i.e. line rental, internet access and voice calls) with a high-quality of service. These services are in high-demand from consumers, and unless VoIP providers are able to offer them, consumers will be less willing to switch to and adopt NVS. Countries in the Far East, such as Japan, and even in some countries in Europe, e.g. France, have much higher residential VoIP penetration because LLU is far more advanced, and competition



Internet Telephony Services Providers' Association

increasingly effective. The LLU case studies of Japan and France thus provide the evidence of effective LLU being a prerequisite for the provisioning of competitive VoIP services.

ITSPA welcomes Ofcom's proposal to examine the case for a capacity-based charging regime for termination as opposed to a pence-per-minute regime, which does not necessarily reflect the true costs accrued.

13. What should Ofcom's regulatory approach be to next generation access networks?

ITSPA believes Ofcom's regulatory approach should focus on the provision of equality of access and be technology neutral. Lessons learnt from current networks should be translated to NGN access networks in order to pave the way for effective competition from the outset. It is essential that equal access be facilitated from the beginning to enable market entry by alternative providers and to ensure BT's monopolistic tendencies do not transfer to the new environment.

17. What approaches should Ofcom adopt to reducing search and switching costs in telecoms?

ITSPA members are committed to ensuring consumers are provided with a wide range of innovative services at competitive prices and that they are fully protected from rogue traders and empowered to select the best service to meet their cost and functionality needs. ITSPA's main priority at present is to develop a comprehensive Code of Practice (which covers, amongst other things, sales and marketing rules, availability of emergency services, spam and data protection, and complaints procedures) to which all ITSPA members must adhere; members who fail to comply with the code of practice will face appropriate sanctions. The ITSPA logo will thus be synonymous with industry best practice and be a clear marker for residential and business consumers alike of a reliable service provider. ITSPA believes its enforceable code of practice – accompanied by a concise "clear English" version of the document to help consumer comprehension – will further consumers' abilities and confidence in selecting the most appropriate and valuable VoIP provider.

ITSPA does not believe Ofcom should restrict the range of tariff packages and structures in the market, as this will stifle innovation and ultimately limit consumer choice. Instead, VoIP providers, who are closer to the market, should be free to design appropriate tariff



Internet Telephony Services Providers' Association

packages and structures. After all, ITSPA's members are committed to continuing to provide clear and comprehensive information to consumers regarding their services and prices. On the other hand, Ofcom's suggestion of providing comparable pricing information for consumers is welcome.

ITSPA also urges Ofcom to further inform and encourage consumers to consider alternative service providers – or to choose another service provider for certain services – for cost, customer service and functionality reasons. Many consumers may not be aware of the ease with which this switching can be achieved and the benefits that can be had. By informing consumers on how to switch provider and encouraging them to do so, as well as maintaining the commitment to remove barriers to switching (e.g. ensuring there is no excessive charging for switching processes and to promote simplified switching procedures), consumers will be more likely to consider switching, which will ultimately facilitate market entry for new providers, due to a wider pool of consumers in search of a more competitive service.

18. What should be the arrangements for funding the USO in future?

19. How could competition for the delivery of the USO be organised in future?

20. Should mobile technologies be used to help address the existing USO?

ITSPA will consider questions relating to USO in its response to Ofcom's consultation on the issue, due in March.