

Opening Remarks to Industry Seminar on Equality of Access 24 February 2005

Stephen Carter, Chief Executive, Ofcom

Our Phase 2 of the Strategic Review closed on 3 February, and we have had about 100 responses, pretty much the same number as we had for Phase 1. The key question for everyone is where to next and how do we get there?

The purpose of today's meeting is to talk about the practicalities and the implementation of our preferred option, which still remains Option 3, true Equality of Access. Many parties have in their submissions raised a number of interesting and detailed questions around this option, and indeed we have had a substantive response from BT.

It would not be unfair to characterise BT's response as a response of two halves. One half being perhaps an understandable and legally justifiable, denial and rejection of our analysis, and the other half being a series of positive and potentially productive proposals. The Access Services Division structural proposal, the recognition of the existence of enduring economic bottlenecks, a shared commitment to a successful unbundling of the local loop, both economically and in process terms, and an acceptance of the need to improve margins and processes particularly in WLR and LLU, are all welcome commitments.

We will be working with BT and others between now and the end of June to deliver a series of binding undertakings and detail that will seek to stress-test the public commitments that have been made to equivalence and to the prospect of fair and balanced competition. Simultaneously however, there were some decisions made by BT which could be interpreted as manipulating downstream prices either to undermine investment or potentially, competition. In my own view the geographical differentiation of pricing for IP Stream - though not necessarily its timing - was an inevitability. Not least because the current regulatory regime, being retail minus, allows the DataStream to the LLU margin to be something of a moveable feast. The commitment to no further significant price changes in the next 12 months, made by BT on 3rd February, we welcome and will be monitoring its application.

Between then and now we will be conducting the second Wholesale Broadband Access market review. We have already started the preparatory work for this critical review and the first formal consultation will be in May. The review will look at the implications of different regulatory approaches in different geographic regions, and ultimately a set of remedies designed to promote effective and sustainable competition in LLU by scale players, possibly including price/margin structures or other undertakings. Also in the next few months we will be tackling other barriers to the commercial development of LLU including migration processes and prices, backhaul prices and care packages.

Critically important as LLU is for sustainable competition in broadband, it is only one aspect of making real Equality of Access work. In the shorter term for many operators, and ultimately for the customers, issues around voice and leased lines and the design of the 21st Century Network are of equal, if not more, importance.

Our goal has always been to deliver real Equality of Access to the enduring economic

bottlenecks so the playing field upstream becomes a level one, thereby creating an opportunity for real deregulation in the downstream market.

The months of March, April and May will all be about the detail of implementation. We need this group, and others therefore to tell us in detail what the real practical, commercial and consumer priorities are. This can not be an ever-expanding shopping list or wish list. That is simply unworkable and is not the role of the sectoral regulator.

If Option 3 does not become viable it will be a source of collective failure. Not the regulator's alone, not BT's alone, not the industry's alone, but a failure nevertheless. We would need therefore to find another solution because the need for infrastructure investment, effective and sustainable competition providing products and services at competitive prices for customers of all shapes and sizes is never going to go away. We would therefore at that stage commence the internal work needed for an Enterprise Act investigation.

Ironically for everyone involved in this process, including ourselves, the closer we all get to the prospect of true Equality of Access the higher the stakes, the greater the risks of reasonable expectations being dashed, if it fails to materialise; and equally the greater the need for the industry as a whole to accept that a new settlement requires a new attitude from all parties, not just the incumbent.

So from now to the end of May what do we ask?

From BT we need the detail of how the relevant parts of Option 3 could be implemented through a series of voluntary but binding undertakings which will be co-ordinated with the regulatory and deregulatory measures that we will make in the light of real results in delivery of equality of access. These undertakings need to be durable, enforceable and measurable.

Short term from BT we also need to see the on the ground performance improvements promised by Paul Reynolds in his public statements on 3rd February. Including, but not precluding, rapid progress on right first time provision, comparative care standards, speedy progress in backhaul circuit provision, and zero evidence of on the ground obstruction behaviour at operational level and a real margin and fit for purpose WLR product.

From the rest of the industry, we ask for workable detail around the important priority needs. Not an ever expanding shopping list of desirable business advantages.

From Ofcom, we will continue to engage in broad and deep consultation.

We will use the resources we have to complete the analysis and work to a conclusion by June 2005.

Introductory Remarks to Industry Seminar on Equality of Access 24 February 2005

Ed Richards, Senior Partner, Strategy & Market Developments, Ofcom

First of all I too would also like to commend the quality and quantity of the responses that we received to Phase 2 of our Review. As Stephen said, we received nearly a hundred responses.

About a third of them came from telecoms operators but we also received many from organisations representing businesses and consumers, from telecoms equipment manufacturers, from private individuals and companies. Many of them very thoughtful and detailed - more than enough to once again demonstrate the level of interest in this area and indeed to justify the profile and timescale we have adopted for the Telecommunications Strategic Review (TSR).

Everyone who sent us a response has been invited here today, as well as a number of others with a particular interest in the telecoms sector.

Our Review covers a range of issues in telecoms regulation:

- How different groups of consumers are able to engage with telecoms markets.
- How universal services should evolve.
- How to approach next generation broadband access.
- Where and when it would be appropriate to deregulate - and how that is related to change elsewhere, as Stephen suggested, effective upstream measures which might enable deregulation downstream.
- And, of course, the terms of access to BT's network, as the dominant provider in many markets.

The Review considers all of these together because it needs to address how telecoms regulation in the round can best serve the interests of consumers - it needs to draw together the threads that connect one part of the industry to another and to reflect the critical themes which are significant beyond any single economic market.

Now that we have a full set of responses to the second phase of our consultation, we'll be holding a number of seminars to move the debate forwards in some of these areas. These will include:

- What our approach to consumer information should be in light of the importance of timely and reliable information to effective competition in telecoms markets.
- They will include a session on the scope for deregulation once equality of access is in place upstream and how we might apply different remedies in different geographic areas.
- And what our approach should be towards next generation access networks - how we can facilitate both investment and competition.

But today's seminar is all about one part of the overall package: the terms of access to BT's network.

We want to concentrate on how our preferred option, Real Equality of Access, can be made to work.

But we shouldn't lose sight of the fact that this is all about delivering a policy

framework that is in the consumer interest. The reason that Real Equality of Access is important is that it could underpin effective competition and that is the best way to serve the consumer interest in the first instance.

We need to keep this upper most in our minds during the course of today when much of the discussion might seem like an arcane debate between people who care about something a very long way removed from the sorts of things that consumers live and breathe.

It's worth reflecting briefly upon where we are in the TSR journey. We're in the middle of a long and complex process, more complex than we imagined when we began.

It is taking longer than we thought. And although it's important for everyone that we arrive at a clear and stable regulatory approach as quickly as possible, it's also important that we get it absolutely right. And 'getting it right' in telecoms regulation involves sorting out as many of the details as possible. So even though we all want this process to finish as quickly as possible, we think it's worth taking the time to work out the details.

We have come a long way already:

- We have a better understanding of what a well functioning telecoms market would deliver. Businesses and consumers want more than just reliable services at low prices; they want fast innovation, a good choice of services, and the means to be able to make good choices between different suppliers.
- We have, judging from the responses, a clear consensus that the current regulatory approach is unsustainable. That the huge mesh of complex regulation that we have today isn't effective - for competitors, for BT or, therefore, for consumers.
- And we've worked with the industry to define, in some detail, general concepts such as equivalence; different ways they could be applied, and how they might work in practice.

Much of the debate has been about how other telecoms companies access BT's network. We asked about this in our Phase 2 responses give us chapter and verse on whether people think Equality of Access might be made to work, and if so how.

All of these responses are important, and we are spending a lot of time understanding exactly what people have set out. But in a sense BT's response was particularly significant. That's because we posed BT a unique question in Phase 2: we asked BT's management to provide prompt and clear proposals for the organisational and behavioural changes within BT that we considered necessary for Equality of Access to work.

And I think we should recognise that in this area we have received a constructive response by BT, which sets out a number of steps which could go some way to resolving this issue. To our knowledge, BT's proposed Access Services Division is the first time this kind of structural regulatory solution has been put on the table by an incumbent in a developed economy.

We know that the devil is in the detail. We need to spend time reflecting on BT's response and working with BT to understand that detail. Until then, we make no conclusions.

Similarly, we need to understand everyone else's position, and exactly what the operators who connect to BT's network are going to need, if they're going to have confidence that Real Equality of Access works.

So how do we get from where we are now, to a regulatory settlement at the end of this Review?

As we've said all along, we would prefer a settlement for which there is some significant consensus within the industry - we will never have everyone in total agreement and we don't expect to achieve that - but we need a consensus that a set of measures exists, that can be made to work, and that will deliver Real Equality of Access. We're genuinely optimistic that this can be achieved and I make no bones about that - we have covered a lot of ground, we do have richer collective understanding of the issues and we have a shared desire to achieve a better outcome than the status quo.

So we're considerably nearer than we were six months ago. But you have significant concerns and we also have significant concerns. We know that.

But as Stephen set out, from here on in the stakes are going to get higher, as are the risks that reasonable expectations on different sides may be disappointed. There remains a real danger of collective failure in this process.

So how do we move forward effectively?

We need to understand what really matters to each of you. What are your absolute priorities? What in contrast, is less essential? We need to begin to have real definition in your respective positions, definition of substance and meaning. Only then can we judge whether a consensus is achievable and what it might look like.

Today's seminar is an important step in that process. We hope that it will be a constructive debate - it needs to be a constructive debate. The key questions we would like to make most progress on begin with product level equivalence:

- Should BT devote its resources into making current wholesale products fit-for-purpose, putting in place quick-fix improvements while developing equivalence of input for next generation products?
- Or should it devote its resources into speeding up the introduction of equivalence of input even if, realistically, the task is going to take some time?

And secondly on behaviour and governance:

- What's the right scope for the Access Services Division? What products should be in it, and how can its governance arrangements give Altnets and Service Providers the confidence they need for fair competition to flourish?

Many of the responses to Phase 2 stressed the need for a settlement to be enforceable; for it to be backed up by clear sanctions that would make it more painful for anyone to break the settlement than to comply.

It's obviously critical that we come up with arrangements that give all players the confidence and certainty they need to compete, and to invest. Our strong preference is to proceed by way of a set of arrangements that are broadly agreed by the

industry, backed up, of course, by regulatory measures taken by Ofcom.

Well our starting point must be that at present we remain consulting on three options: full deregulation; a reference under the Enterprise Act; and our preferred option, Real Equality of Access. We're still trying to see if Real Equality of Access can be made to work. Because if it can't, we have made clear on a number of occasions, this will lead us to the conclusion that a combination of features of the market is preventing or distorting competition, and we will consider opening an investigation prior to making a reference to the Competition Commission under the Enterprise Act. That most likely means years of intrusive investigation and detailed process with associated costs and burdens for everyone.

Obviously, there will be challenges to face in implementing and enforcing our preferred option. But for now, we need to concentrate on whether the option itself is viable and will garner the required support. In Phase 3, we will, of course, need to consult on the proposed approach to implementation.

The challenge now is to make progress. So I want to set out briefly what we see as the process and timescales up to publication of our Phase 3 statement.

First of all, through the spring we will be publishing consultations or statements on a number of areas that follow on from the Telecoms Review; for example:

- On BT's regulatory cost of capital
- We published in January, the consultation closes in March and we will publish a statement in April.
- On Network Charge Controls and the valuation of BT's copper local loop
- We will publish statements on 16 March followed by a 10 week consultation and a statement in June or July
- On the principles of access to next generation networks
- We will publish a statement in April

We hope these will provide an increasingly certain background against which we can discuss how Equality of Access could be achieved.

How do we see that discussion taking place? The first thing we need to do, today and through other seminars, is to allow people to respond to other peoples' positions.

Then, we need some constructive dialogue, but a dialogue with a deadline, a line in the sand.

We believe that we need to have established whether or not Real Equality of Access is a sustainable approach by the end of June. We would then expect to publish our Phase 3 statement in the summer.

If in June we concluded that Real Equality of Access was in fact not viable, we envisage that we would at that stage commence an internal Enterprise Act investigation. Should that investigation recommend a reference to the Competition Commission, we expect the timetable for such a reference to be towards the end of the year.

ECITA Reference Committee
Inquiry into the performance of the
Australian Telecommunications
regulatory regime

Supplementary submission

May 2005

Managing Director

Inquiry into the performance of the Australian telecommunications regulatory regime

(1) Whether the current telecommunications regulatory regime promotes competition, encourages investment in the sector and protects consumers to the fullest extent practicable, with particular reference to:

(a) whether Part XIB of the Trade Practices Act 1974 deals effectively with instances of the abuse of market power by participants in the Australian Telecommunications sector, and, if not, the implications of any inadequacy for participants, consumers and the competitive process;

ATUG does not believe that Part XIB deals effectively with instance of anti-competitive conduct as the recent Broadband Competition Notice demonstrates. While understanding the ACCC's reasoning, ATUG is of the view that this example points to inadequacy in the legislation.

ATUG would suggest:

1) the monetary incentive should be used to encourage fast compliance given the safeguards that are in place PRIOR to a notice being issued. The fine should be applied immediately and return of same could be the subject of negotiation on proof that anti-competitive conduct has ceased. Part XIB is not designed to support the negotiation of access prices. That is the role of Part XIC. Part XIB is designed to penalize anti-competitive conduct.

2) The Accounting Separation regime is ineffective and not likely to work, as it is based only on notional data and does not reflect actual prices/transactions between Telstra Wholesale and Telstra Retail. This will only happen when Operational Separation is put in place. One of the outcomes of any move to Operational Separation must be explicitly agreed contracts between Telstra wholesale and Retail which can be mirrored with competitors to ensure equivalent access (price and non-price) is being provided and to ensure that the behavioural and incentive changes that are needed in Telstra for competition to be effective can occur. A critical part of implementation of operational separation will be the introduction of information systems to provide a high degree of confidence that equivalent access is being delivered.

(b) whether Part XIC of the Trade Practices Act 1974 allows access providers to receive a sufficient return on investment and access seekers to obtain commercially viable access to declared services in practice, and whether there are any flaws in the operation of this regime;

Delay

Part XIC is not working effectively as demonstrated by the number of access disputes currently in train and the lack of competitive outcomes or indeed consumer outcomes e.g. the regulatory game playing around the ACCC's mobile termination decisions. There seems to ATUG to be not sufficient commitment by industry players with market power to the role of an independent regulator. After public consultation, ACCC decisions ought to take effect. Parties who wish to pursue their rights to higher legal authorities should do so subsequent to implementation of ACCC decisions. The current system provides all parties with incentives to use legal process to delay ACCC decisions as long as possible.

Implementation

Administrative tools should be put in place to support effective implementation of access decisions. In a number of European countries the regulator facilitates discussion between the incumbent and

competitors to ensure that access decisions are implemented quickly and effectively - not lost keys, sick technicians, mysterious IT glitches. The UK Office of The Telecommunications Adjudicator (for ULL implementation) is one such model www.offta.org.uk .

Regional operators

Part XIC does not effectively address the costs to small operators, such as rural wireless operators, of managing a bi-lateral price and non-price negotiation with Telstra. Consideration should be given to the availability of Reference Interconnect Offers that could be used by small operators in non-urban locations. Such offers would differ from the undertakings process that has not proved successful. They would result from negotiation between Telstra and the ACCC based on currently available data from sources including Accounting Separation reports.

(c) whether there are any structural issues in the Australian telecommunications sector inhibiting the effectiveness of the current regulatory regime;

Price Caps

The degree of vertical integration of Telstra and the ACCC's self reported inability to manage the consequent market power effectively suggests that structural separation of Telstra into network and services businesses is the only effective solution to the industry structure question.

Unlike the UK, the Australian Government has repeatedly refused to seriously contemplate the structural solution. The Government's shareholding in Telstra is an explicit conflict of interest in developing policy options for the telecommunications sector and its consumers. The clearest statement of this conflict is evidenced in by the Government's failure to implement the ACCC recent final report on Price Caps based on anecdotal evidence that "competition is effective". ATUG prefers the robust, evidence based, open process adopted by ACCC consultations to behind-closed-door decisions on Price Caps.

Delay in the implementation of the new Price Cap regime may well provide the opportunity to further raise line rentals for consumer. The ACCC recent reports on Prices Paid for telecommunications services by Consumers indicate that the last round of Price Controls resulted in line rentals going up but price reductions of other services slowing dramatically.

Operational Separation

Attachments

- Speech by Steven Carter, Chief Executive office Ofcom on Equivalent Access February 2005
- Speech by Ed Richards, Senior Partner, Strategy & Market Developments, Ofcom on Equivalent Access February 2005
- Presentation by BT on Equivalent Access February 2005

Early discussion in Australia on the UK's developing model for Operational Separation seems to ATUG to miss the core decision underpinning this work in the UK - namely that the local access network is an ENDURING BOTTLENECK and that the current regulatory model is ineffective to deal with this.

What is being proposed in the discussion between OFCOM and BT is not an easy to implement bit of fine tuning or tweaking but a complicated and necessarily costly introduction of a separate access services division with an Equivalence Access Board, a new IT and a separate human resources system to support the behavioural and governance changes which are seen to be critical to a successful outcome.

The regulator sees this as an opportunity to stop playing "catch up" in an area of regulation that will be central for some time to come; to provide incentives for investment and innovation and to promote

increased competition and choice for consumers.

BT sees the opportunity to reduce its version of regulatory spaghetti, to secure a regulatory settlement with reduction of retail price regulation and forbearance of regulation in new areas of product development.

Importantly though, BT is not seeking an access holiday for its next generation network, and understands that fair access arrangements need to be part of the equation. The other win for BT will be in support for the business case to re-invest in the copper network to support innovation and competition. BT's objective is to build an access service division with all the operational support tools it needs so that the unit can be indifferent as to who is buying access services - BT Retail or BT Retail competitors.

The Australian debate does not evidence this degree of commitment to changing the model for the benefit of all parties - the industry, the consumer, the regulator.

The UK context has strong incentives for the parties to agree an outcome - including, importantly, the ability of OFCOM to make a reference under the Enterprise Act to the Competition Commission for an assessment of appropriate remedies (de-merger) in the face of intractable market power arising from an enduring bottleneck in the local access area.

ATUG has attached summary information of the OFCOM and BT positions to date (the final model will not be available until end June) for the Committee's information.

(d) whether consumer protection safeguards in the current regime provide effective and comprehensive protection for users of services;

ATUG believes it is critical for the Government to take continued interest in the consumer protection aspects of telecommunications policy. ATUG supports the approach taken by the ACCC Deputy Chairman that empowered consumers are an important part of an effectively competitive market. ATUG would not support lessening of the ACCC role in consumer protection matters.

ATUG endorses the new approach taken by ACIF to the development of the Consumer Contracts Code and believes this is an effective model for consumer participation in the development of ACIF codes. However, this approach requires expertise, time and funding. ATUG is not convinced the industry will provide the level of support needed for future issues. Indeed only a small percentage of the industry are members of ACIF and there would be nothing to stop existing members leaving the ACIF process, as it is voluntary. ATUG believes an industry licence fee should be levied to pay for consumer participation at ACIF and the TIO. The amount of this levy should be offset by reductions in fees paid by industry to Government agencies.

(e) whether regulators of the Australian telecommunications sector are currently provided with the powers and resources required in order to perform their role in the regulatory regime;

ATUG is concerned about the inadequate level of resourcing for the ACCC Telecommunications Division given our central focus on the importance of competition in driving positive outcomes for end users.

One particular difficulty for the ACCC is the lack of a peer group of regulators. ATUG observes that in the EU context it is easier for regulators to be aware of the impacts of various remedies where they are needed to support competition by participation in the European Regulators Group. It is also interesting to note that the UK's OFCOM includes the competition aspects of telecommunications while they are sector specific. Matters which are handled under general competition law are referred to the Competition Commission. ATUG believes the

issue of expansion of ACMA to include sector specific competition powers should be revisited. When there is no longer need for sector specific legislation the responsibilities can be handled by the ACCC.

(f) the impact that the potential privatisation of Telstra would have on the effectiveness of the current regulatory regime;

The issue for ATUG is whether the current regime could handle one of the biggest companies in Australia with control over an enduring bottleneck which is essential to competition in telecommunications. It is difficult to see that, under Australian Corporations Law, such an entity could focus on anything other than its shareholders' interests, within the bounds of the law. The existing regulatory framework is not delivering maximum outcome because of the current reality that a half-privatized Telstra focuses on its shareholders very keenly and that the Government, being one of these shareholders focuses on its financial interests in parallel with, and often in conflict with, concern for wider competition and consumer policy issues. The terms of reference of the Government's existing inquiry into Telecommunications are very limited in their scope due to this conflict of interest.

(g) whether the Universal Service Obligation (USO) is effectively ensuring that all Australians have access to reasonable telecommunications services and, in particular, whether the USO needs to be amended in order to ensure that all Australians receive access to adequate telecommunications services reflective of changes in technology requirements;

The Universal Service Obligation may need to be adjusted over time to reflect updated technologies such as broadband if the market does not deliver these.

For ATUG the more relevant question at the moment is whether the USO funding model supports accelerated rollout of new services to end users.

ATUG supports a new USO funding model which would require Telstra to both provide and fund the USO and require competing carriers to use previously USO allocated funds to support the development of competitive infrastructure in USO areas.

ATUG previously provided input to the DCITA USO Review in February 2004. The following is an extract from that submission:

1. The ACA Telecommunications Report 2002-2003 at page 177 makes the point that 94 participating persons will fund the USO costs for 2002-03 but that AAPT, Optus Mobile, Optus networks, Telstra Corporation and Vodafone are expected to contribute 95.4% of the total cost - about \$57 million of the levy receivable of \$68 million. Telstra itself contributes \$166 million of the \$234 million USO costs. (ACA Table 10.11). ATUG believes the costs and complexity of this funding scheme outweigh the benefits.
2. The central funding question is whether there is a net cost. From a financial perspective, ATUG believes that the Access Rebalancing strategies endorsed in the Price Control Regime, recent information from the ACCC Initial Reports Relating to the Accounting Separation of Telstra, growing revenues from new services such as narrowband Internet and broadband raise fundamental questions about the existence of a "net cost".
3. From a market perspective, ATUG's research into the Corporate market shows "For most top 100 companies the number of carriers they are prepared to use is small, often only two or three; sometimes they say there is no real choice at all. Underlying this outcome is a strong preference to use larger carriers operating their own networks." The key criteria for the sample studied were coverage, product range and technical depth. This study suggests

that there is significant commercial value in owning ubiquitous infrastructure.

4. ATUG's research into SME customers reveals strong preference to source all communications services from a single supplier. The fixed phone and fax services are still regarded as the most important communications services. This study also suggests that there is significant commercial value in owning ubiquitous telephony infrastructure.
5. The ineffectiveness of the contestability pilots indicates that there is no role for the USO scheme in developing competitive infrastructure.
6. Over the last few years, it has become clear that competitive infrastructure outside urban areas and inter-capital routes develops only when there are new technologies with significantly lower cost structures and/or Government funding (Federal and State) is provided as part of the capital requirements.
7. Targeted funding support will continue to be required in the future to support the rollout of new generations of technology. Government support for extending mobile coverage, for untimed local call access to the internet in extended zones and the range of Broadband Funding Programs for regional Australia are current examples of such programs.
8. Given the requirement for Government funding for many of these projects and general agreement that the USO should not be extended to mobiles or broadband provision, ATUG believes carriers building competing infrastructure should not be required to contribute to the USO funding scheme.
9. As well as the development of targeted funding models over the last few years, the regulatory framework has been appropriately adjusted to reflect the unfolding reality that "one size fits all" regulation is not the best way to develop competition for example The National Reliability Framework and the Accounting Separation regime. The ACA report, *Review of the Telecommunications Customer Service Guarantee Arrangements*, found that blanket application of the CSG may be a barrier to entry into the fixed phone market and can reduce potential consumer benefits including price, quality, choice and innovation. An exemption scheme was introduced which only applies to telephone companies with a small share of the market in a specified geographic area. Telstra, as universal service provider for the whole of Australia, is not eligible for an exemption under the changes.
10. ATUG believes it is timely to reconsider the funding of the USO in view of increased direct government support for remote areas and newer technologies, the need to support the development of competing infrastructure in commercially marginal areas and user feedback which indicates that a high value is placed on ubiquitous infrastructure. ATUG supports a much simpler system and believe this will deliver benefits to competition and end users.

(h) whether the current regulatory environment provides participants with adequate certainty to promote investment, most particularly in infrastructure such as optical fibre cable networks;

ATUG would also like to see adjustment of the current regulatory framework to support the role of State and Local Government in infrastructure development and deployment. As ATUG understands it the requirement that owners of network unit are required to hold carrier licences and to fulfil the obligations there under is stifling the contribution that State Government infrastructure such as rail fibre and electricity fibre could play in providing wholesale platforms for infrastructure competition in both local and backhaul access networks. ATUG believes Online Council should convene a taskforce

with State and local government to explore ways of using infrastructure assets to providing competitive impetus and what regulatory changes may be needed - for example the development of a Class Licence for Government authorities under which they could make their infrastructure available without the full set of obligations applying to them.

The Nominated Carrier Declaration regulation also needs review as it limits access to just one other carrier rather than supporting open access for competing carriers.

Given the amount of investment e.g. 3G, ADSL2+, wireless broadband that we have seen over the last 2 years in telecommunications it does not seem to ATUG that the regulatory regime is stifling investment through lack of certainty. The problem with the regime is gaming by participants, its inability to deal with anti-competitive conduct quickly and effectively and the adversarial approach to resolving problems.

The undertaking process which was designed to support innovation and new investment has been used to subvert ACCC access decisions instead.

In ATUG's view what drives investment is competition - witness the accelerated rollout of DSL enabled exchanges in the face of wireless and other operators in regional Australia.

A significant problem in regard to investment will arise from the government attempting to dispose of its Telstra shareholding as it is likely that equity market appetite for telecommunications sector will be satisfied by the size of this offer for some time to come, leaving funds for competing investments very limited.

In this context, it is important that the focus of the regulatory regime needs to stay on promoting and supporting competition.

Claims that new infrastructure needs "access holidays" ought to be dismissed where there are existing problems with market power. ATUG would not want to see a re-run of the cable network rollout where an opportunity for infrastructure competition was missed because anti-competitive over build was permitted.

It is important that nay claims re US forbearance form regulation of fibre networks is seen in the context of very effective competition form cable networks in that country.

ATUG believes that the saga of cable networks in Australia provides an important background to claims about "access holidays":

Australia is still languishing at around 20 lowest out of 30 OECD countries, when we ought to be well ahead - we should have had access to cable modem broadband since the late 1990's. Do we really think Australians have suddenly lost their appetite for useful, affordable technologies?

The degree to which we have sustainable competition at all in the broadband market is currently being achieved by the ACCC - imposing a Competition Notice on Telstra in April 2004, which was in force until March 2005 and resulted in a negotiated settlement of \$6.5 million in lieu of the penalty of \$10million plus \$1million per day until the Competition Notice is lifted.

The OECD's conclusion on ownership of cable and copper networks and competition in broadband is clear, "... the broadband markets in one third of OECD countries are being held back where the cable networks are not providing independent competition with the PSTN. This is evident in the difference in level of service, pricing and take-up of service. In these cases all options need to be considered to increase the level of competitive provision of broadband access

including separating cable networks from incumbent PSTN operators."

On just what the difference in competition is, "The ownership of cable television networks by incumbent telecommunications carriers has had quantifiable impacts on the development of broadband access. The average take-up rate for cable modems on networks owned by telecommunications carriers is just 2.6%. By way of contrast, the average for independently owned cable networks is 10.7%. In other words, if their home is passed by an independently owned cable company, users are FOUR TIMES more likely to take the cable modem service.

(i) whether the current regulatory regime promotes the emergence of innovative technologies;

ATUG believes a more effective access regime would assist the emergence of new technologies - reference interconnect offers to deal with resource and information asymmetry, a practical problem solving forum like the UK Office of the Telecommunications Adjudicator, implementation of ACCC decisions without the opportunity for further behind the scenes lobbying by participants and effective regulatory independence from Government.

(j) whether it is possible to achieve the objectives of the current regulatory regime in a way that does not require the scale and scope of regulation currently present in the sector; and

This will only be possible if the structural issues reported by the ACCC for many years are dealt with.

Record keeping rules such as Accounting Separation are ineffective, and Operational Separation is a concept untried anywhere in the world as yet and with significant problems even at concept stage. For example, under Australia Corporations Law ATUG is not sure whether an access services division, within Telstra, could ever be sufficiently independent of Telstra's overriding corporate responsibilities to grow and run the wholesale business effectively. It may be that we require separate company structures at a minimum for Operational Separation to be effective.

ATUG's focus is on effective competition - the more of these we have the less regulation and regulatory intervention is needed. ATUG would not be prepared to see the regulatory regime dismantled on the basis of promises about better outcomes. The last two series of amendments to the Trade Practices Act started with much fanfare and have failed to deliver.

(k) whether there are any other changes that could be made to the current regulatory regime in order to better promote competition, encourage investment or protect consumers.

Suggested above.



BT unveils proposals to stimulate the UK telecoms industry

“Formula for world class services and value for everyone”

Analyst briefing
8 February 2005



Strategic Review timetable

- Strategic Review announced in December 2003
- Phase 1 document published on 28 April 2004
- Phase 2 document published on 18 November
- Deadline for responses 3 February 2005
- Phase 3 Final Statement published in June 2005
- Implementation is outside the scope of the Strategic Review

Current state of the Market

- Consumer prices among the lowest in the world -OECD (*National Residential Basket 2004*)
- “the telecommunications sector has delivered for the residential and business consumer. UK call prices...are among the lowest in the world” (Ofcom, Phase 2 document, November 2004)
- Most competitive broadband retail market in the EU - ECTA (*Broadband Scorecard 2004*)
- UK is already top of the European regulatory effectiveness table – ECTA (*Regulatory Scorecard 2004*)
- Lowest shared LLU prices in Europe - Lehman Brothers (*“Local Loop Unbundling: new threat to Incumbents? 3/8/04*)

BT's principles for a new regulatory strategy:

- Increase transparency, focus regulation on bottlenecks, reduce regulation elsewhere
- Encourage infrastructure-based competition
- Ensure successful investment in next generation networks is rewarded
- Provide companies with the confidence to innovate
- Ensure regulation benefits the consumer
- Enable BT to compete fairly and on a level playing field

Commit to creating a climate of confidence for infrastructure competition, investment and innovation

Key BT proposals

- BT to set up an Access Services division to provide transparent and equal access to BT's local network
- BT to cut a range of wholesale broadband prices and introduce faster services
- BT reaffirms its commitment to LLU and proposes a further price cut (subject to the completion of other consultations)
- BT to increase the commercial attractiveness of WLR
- BT to offer fair access to 21CN

Access Services Division

- Responsible for assets and services relating to the local loop
- To demonstrate equality of access for all parties
- This division to be “fenced off” and subject to high levels of regulation and governance whilst remaining inside BT
- Revenues of c.£3bn, assets of c.£8bn and c.26k staff
- Aligned incentives to deliver equality of access

Equality of Access Board

- To oversee the delivery of equal access
- Oversight and reporting, including KPIs
- Two independent members, appointed in consultation with Ofcom (potentially one from Ofcom)

Wholesale Access Price Cuts

- Approx 8% cut in prices for IPStream customers in areas where there is high demand, high take-up and lower costs
- Cut in Datastream prices to ensure continued compliance with the regulatory margin rule
- Price cuts for Full LLU customers of a similar percentage to IPStream (subject to the conclusion of other Ofcom consultations and normal regulatory processes)
- Price cuts to ensure service providers can sell competitive services in all parts of the UK through a variety of routes to market
- BT committed to ensuring LLU is a success

Faster broadband services announced February 3, 2005

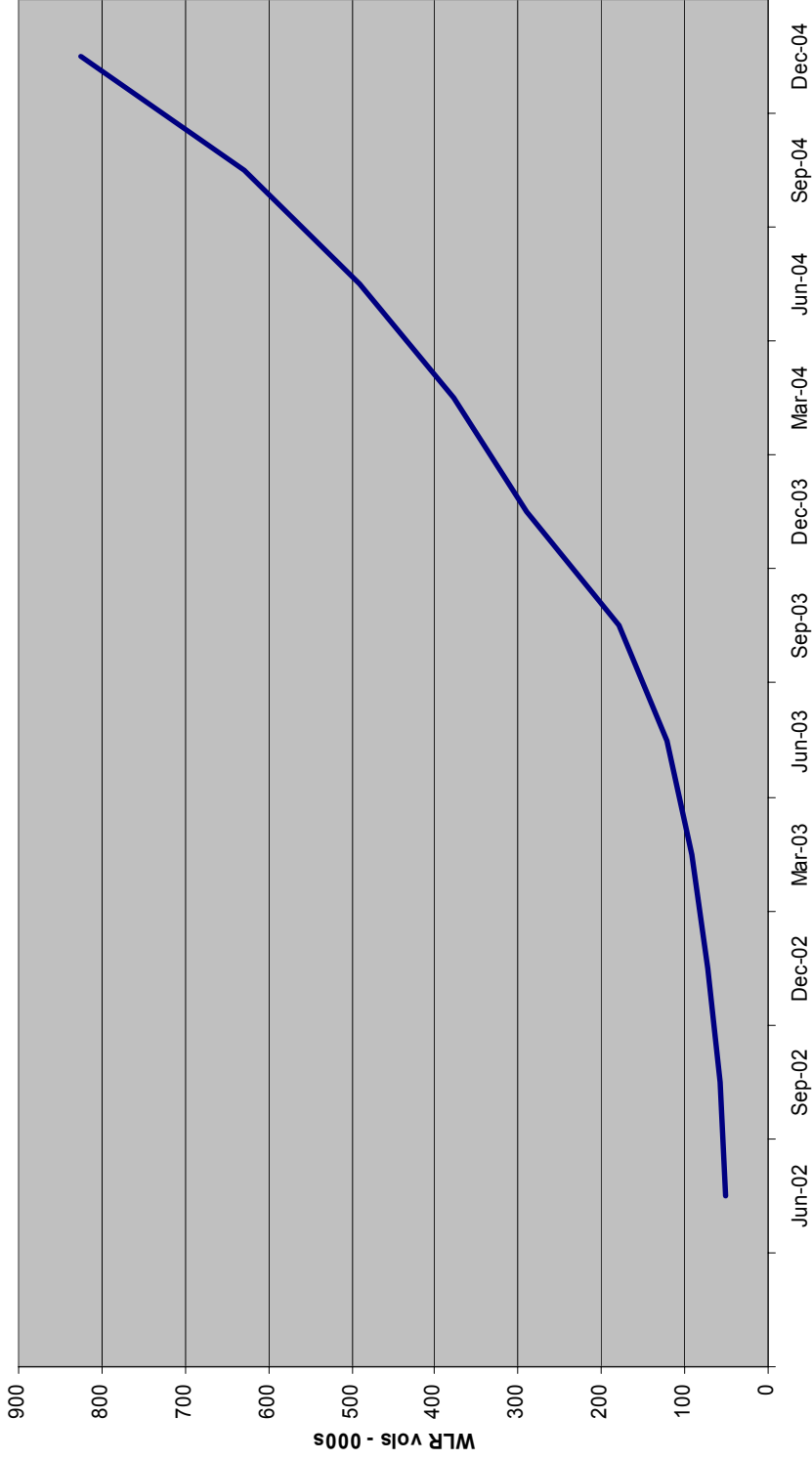
- Higher broadband speeds in order to meet increasing demand for more bandwidth hungry applications such as video
- Trials for speeds of up to 8Mbits begin in April
- Higher speed services expected nationally in the Autumn
- Trials of ADSL 2+ technology to test even higher speed services – up to 18Mbit/s

Wholesale Line Rental

- BT to increase the margins that WLR operators will have between what they pay for line rental and BT Retail's market price to customers (beyond that originally agreed with Oftel)
- BT to continue to develop the systems and processes around WLR to support expected demand

Rapid growth in WLR

Analogue lines / ISDN Channels base



Ofcom needs to play its part

- Focus regulation on BT's local loop through its Access Service Division
- Roll back other regulation on a progressive and rapid basis to simplify the complex mesh of regulation built up over the last twenty years
- Ensure successful investment in next generation networks by all is properly rewarded
- Recognise BT's investment in 21CN depends on BT receiving assurances it can generate appropriate economic returns

What the future should not be

- A new patchwork of regulation
- Regulation that prevents BT from competing effectively
- Continued uncertainty inhibiting investment and innovation
- Rules that harm citizen-consumers

What should the future look like ?

- Successful WLR and LLU – a thriving market
- CPS already successful
- Transparency of governance around bottlenecks
- Market confidence in the industry and BT
- Substantial investment programmes
- Many markets freed from red tape
- Better value and more services for customers