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NGA regulation – ship-shape with anchor products?

Next Generation Access (NGA) networks pose challenges for regulators. Ofcom is the first regulator to suggest a creative way forward.

Late last month, Ofcom issued a consultation paper outlining how it proposed to regulate NGAs [1] and last week the European Regulators Group (ERG) provided the EU with its opinion on the same subject [2]. Both assume similar objectives and seek more NGA deployment with competition. But only Ofcom has come up with something new that is worth looking at.

Conflicting objectives

First, we all want more fibre in the loop – all the way eventually. But, it is not cheap and regulators here and at Ofcom and in the ERG do not want customers to pay more for it.

Second, extending fibre into the loop strands existing new entrant investments in DSLAMs and is incompatible with a key leg of regulation – the unbundled local loop.

But, Ofcom has thrown us a life-line, or anchor products, that reconcile both of these.

Loop bundling doomed

Unbundled local loop (ULL) has been the darling of regulators [3] but its days are numbered. With fibre to the node, only sub-loop unbundling (ie of the remaining copper between the customer and node) is possible. It is not used now and the scale economies are such that it is unlikely to be used – but the Europeans want to preserve the option anyway.

The EU is also likely to extend the definition of Market 11 (ie unbundling) to include fibre while recognising that this may be impossible depending on the fibre topology used.

Bitstream looking better

Both Ofcom and ERG acknowledge that Bitstream access will play a bigger role in NGA networks [4]. It is true that competitors currently have better control over quality with a Layer 1 (ie ULL) wholesale product but Ofcom suggests that *“the difference in innovation potential between a carefully conceived and implemented future active line access product (ie Bitstream) and an unbundling remedy may be less than today”*. For example, ERG suggests that access/handover at the Ethernet level rather than IP can facilitate more innovative services like multicast (IPTV).

This form of access may be more acceptable in an NGN world where innovation will shift from carriage to the service layers. Today, regulators emphasise the control over QOS that ULL gives to new entrants. In future, they will focus more on service competition where opportunities will open-up with NGNs.

Anchors-the-way

Ofcom has introduced the concept of “anchor products” defined and priced so that consumers are not made worse by migrating to a new broadband network. These products would consist of a basic voice service and one or more broadband products specified around DSL standards. Beyond these, the NGA operator “*has pricing and product definition flexibility over all other products deployed on the next generation access platform*”.

Ofcom says this is “*ideally suited*” to an access regime that relies more on Bitstream wholesale products. Because one of the objectives is to ensure that customers are not made worse-off, the wholesale price would have to be set on retail-minus principles. Ofcom adds that “*Consideration of the actual cost of the anchor product would not be appropriate given the large degree of common costs an NGA is likely to have across both anchor and non-anchor products*”.

Objectives reconciled!

So, the anchor product approach can guarantee continuity of existing voice and broadband services at current prices while allowing new un-regulated services to be deployed.

Second, the anchor products “*provide a discipline on potential abuse of dominance via a chain of substitution at the retail level between the anchor product, which is (wholesale) price regulated, and non-anchor products, which are not*”.

This is still work-in-progress but it seems that anchors offer a life-line in our current sea of uncertainty. Both Telstra and FANOC have hinted at similar approaches and should welcome the Ofcom way forward.

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[1] *Future broadband*, 26 September at <http://www.ofcom.org.uk/consult/condocs/nga/>

[2] *ERG Opinion on regulatory principles of NGA*, 3 October at http://erg.eu.int/whatsnew/index_en.htm

[3] Layer 1 or “passive line access” in Ofcom-speak and Market 11 in the EU.

[4] Layer 2/3 or “active line access” to Ofcom and ERG Options 1,2 and 3 in the EU’s Market 12