

Easynet's response to the Ofcom review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets.

Easynet welcomes the opportunity to respond to the Ofcom Review of the retail leased lines, symmetric broadband origination and wholesale trunk segments markets.

This document discusses markets and remedies which will have a significant influence on shaping the telecommunications competitive landscape moving forward, particularly for services aimed at businesses.

Easynet has made significant infrastructure investment in a number of areas covered by the review and is pleased to have the opportunity to comment on the key proposals.

Market Definitions

AISBOs and TISBOs

Easynet welcomes the inclusion of AISBOs within this market review. Easynet agrees with Ofcom's arguments and conclusions that AISBOs and TISBOs are in separate economic markets for the reasons its states.

Bandwidth Distinctions

Easynet strongly supports Ofcom's view that the wholesale market for AISBOs should not be subdivided by bandwidth. As Ofcom correctly state, there is little difference between a low bandwidth and a high bandwidth LES other than the equipment placed at each end of the fibre.

It would therefore be artificial to split the market depending on bandwidth when the cost base is essentially independent of bandwidth.

LES definition

One concern is over the definition of AISBOs as defined in the Glossary:

Alternative interface symmetric broadband origination (AISBO) – a form of symmetric broadband origination service providing symmetric capacity between two sites using an Ethernet IEEE 802.3 interface.

The ethernet interface is also described as a distinguishing feature of an AISBO in paragraph 1.40.

Some BT products, such as LES 155Mbit/s and 622Mbit/s are presented with an ATM interface and so fall outside this definition. Easynet would argue that the definition of a LES should be defined as to include all those products which are designed specifically to be used for carrying LAN type services across BT's network

It is worth noting that in the list of distinguishing features of an AISBO in paragraph 1.40 it is not clear that the distances quoted are radial distances.

LES Topology

The key point with LESs as far as Easynet is concerned is that they use BT fibre to which Easynet has not got access ie it is not possible for Easynet to replicate the services provided by BT without access to the BT dark fibre.

This BT fibre travels directly between the two end points and does not involve any additional switching points in BT's core network thus making the product unique.

Easynet urges Ofcom to consider mandating BT to allow operators access to this dark fibre for at least the provision of LLU Backhaul

SDSL

Easynet disagrees with Ofcom's conclusion that SDSL is in the same market as leased lines from the demand side. Easynet is strongly of the belief that leased lines and SDSL access are not in the same market as low bandwidth terminating segments as businesses are not simply concerned with bandwidth.

Easynet supports Ofcom's basic assumption that if products are substitutable then they are in the same market irrespective of technology. However the key differentiator between SDSL and leased lines is the ability to offer service level guarantees to end users.

One of the main cost elements of Leased Line is the staff employed to manage, monitor and fix the service. BT's SDSL product does not include these elements at the same level as Leased Lines.

For leased lines and SDSL to be substitutional then businesses would be willing to move from a leased line connection to an SDSL connection. However, Easynet's experience is that an SDSL product, without an SLG, is not an attractive proposition to a business consumer who is used to, and expects, the reliability of a leased line. These customers are unwilling to move to an apparently 'more risky' product from a reliability point of view, even at a lower price.

Technically, SHDSL cannot offer a diverse solution, unlike Genus circuits, and throughput/reach cannot be assured on a single pair to the same degree.

Easynet would argue that SDSL is more like an enhanced ADSL offering and so should be considered in the Broadband Market Review and not the leased line market review.

Ultimately Ofcom's decision to require cost based pricing for SDSL origination could undermine LLU operators' business plans, which often rely on a mix of products at an exchange to break even.

Significant Market Power

Easynet agrees with Ofcom's analysis and conclusions on market power.

Remedies

In general Easynet supports Ofcom's analysis and conclusions on market remedies with the exception of a few key areas:

Cost Orientation

Easynet strongly supports Ofcom's approach to regulation based on the principles of Cost Orientation where the product has little or no chance of competition against the SMP operator.

Easynet therefore supports the principle of cost orientation for PPCs and AISBOs.

SDSL Origination

Easynet disputes the requirement for cost orientation for SDSL origination.

Easynet has invested a considerable amount of time and money in rolling out infrastructure to connect directly to BT's Local Loops via the LLU process. This has enabled Easynet to offer ADSL and SDSL products to customers.

In Ofcom's Broadband Market Review, Ofcom argues most robustly that Datastream should be priced at Retail Minus because there is a strong prospect of competition more deeply in the market (notably via local loop unbundling).

The argument is that to encourage operators to compete deeper in the network the right economic signals should be put in place, and remain in place to trigger the right investment signals. Competition deeper in the network ultimately means more differentiated and innovative products for consumers as operators compete on price and quality. Easynet strongly supports these arguments and suggests that the exact same conditions should apply for SDSL origination.

To suggest that SDSL origination should be cost orientated, particularly at this stage in the market development seems premature and potentially undermines the investment that Easynet has made in LLU.

Easynet does not therefore believe the solution proposed strikes the right balance between incentives to invest and cost savings as described in

paragraph 6.94, particularly in view of the early stage of this market and the evidence that other operators are offering services in this area.

Easynet does not believe that SDSL is in the same market as Leased line for the reasons stated earlier, so would argue that the remedies being discussed are actually academic.

However, if SDSL is to be included, the remedy should be retail minus to recognise the investment and innovation that other operators can make by moving in to the local loop.

Ofcom have a duty under the Communications Act to encouraging investment and innovation in markets. Ofcom's proposals have the potential to undermine existing infrastructure investment, which would be against Ofcom's duties under the Communications Act.

CSH Interconnection Services

For similar reasons to the SDSL origination argument, Easynet would argue that CSI services should not be priced at cost orientated prices.

Easynet has a significant business providing third-party ISI products to other operators in direct competition to BT's CSI product. In this way, Easynet is exploiting its own investment in its extensive national transmission network which is interconnected with a large number of BT exchange sites (and accessible to all BT exchanges via ISH extension circuits).

In this market, the element which cannot be provided by an operator is BT's In Building wiring which arguably should be the only part which is at cost orientated pricing.

Forcing BT to offer cost orientated prices on a LRIC basis reduces the opportunities available from this investment.

The market for third party ISI is finite as it is limited to the number of operators in the UK who interconnect with BT for switched based services. Since the market is small and there is competition from operators other than BT to provide the service it seems inappropriate to Easynet for Ofcom to regulate CSHs in this way.

Again, Ofcom's proposals have the potential to undermine existing infrastructure investment, which would be a against Ofcom's duties under the Communications Act.

RBS Backhaul

As for the CSH arguments above, Easynet believes there is a potential for network operators to provide competition for a BT RBS backhaul product and therefore it is inappropriate for Ofcom for Ofcom to mandate the availability and cost orientation of this product.

This is because, unlike LLU Backhaul, the RBS location can be considered as simply a third party customer site as the customer end is not intrinsically part of BT's network.

(For LLU backhaul one end location is by definition a BT exchange to which BT has obviously got the dominance in access, and therefore a mandated cost-orientated backhaul is appropriate)

LLU Backhaul

Easynet feels that the current LLU Backhaul arrangements do not go far enough. The basic LLU concept is to allow cost based access to the lowest required network elements to deliver the service. For LLU this is of course the 'raw' copper.

It would therefore be consistent to mandate that the dark fibre as used by LESs should be made available to operators at cost based prices. Operators would then create their own backhaul LESs by installing their own terminating equipment on each end of the fibre.

Only at this point will there be a truly level playing field for LLU backhaul.

Retail Price Publication

Ofcom has chosen to address dominance at the retail level by providing remedies at the wholesale level. However, Easynet would like to see retail price publication remain on BT for retail services in markets, and adjacent markets, where it is found dominant. This would assist operators in identifying potential anti-competitive behaviour where there is obviously a strong incentive on BT to act in this way.

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