

WILMER CUTLER PICKERING  
HALE AND DORR<sup>LLP</sup>



**UK Telecoms  
Strategic Review**

Investment Implications

# Agenda

- What is it?
- What happens when?
- Questions asked by Ofcom?
- Potential regulatory changes?
- Winners and losers
- Panel session and Q&A
- Drinks...

## What is the Review?

“The Review will enable us to set out a strategic agenda for our activities in relation to telecoms, and will create a new settlement between the regulator, the companies we regulate and the citizen-consumer.”

- Lord Currie  
Chairman, Ofcom

# What Happens When?

- Phase 1: Questions
  - Consultation: 28 April -22 June
- Phase 2: Options and evaluation
  - Expected: late summer / autumn
- Phase 3: Decision
  - Expected: by end of 2004 (maybe...)
- Implementation
  - 2005 onwards
  - But if primary UK legislation or EU law changes required...

# Phase 1: Fundamental Questions

1. In relation to the interests of citizen-consumers, what are the key attributes of a well-functioning telecoms market?
2. Where can effective and sustainable competition be achieved in the UK telecoms market?
3. Is there any scope for a significant reduction in regulation, or is the market power of incumbents too entrenched?
4. How can Ofcom incentivise efficient and timely investment in next generation networks?
5. At varying times since 1984, the case has been made for structural or operational separation of BT, or the delivery of full functional equivalence. Are these still relevant questions?

# Changes with Investment Impact?

- Networks v services
- Long-term v short-term
- Regulation at fewer intermediate levels
- Less voice regulation
- Less mobile regulation
- BT separation

# — Networks v Services?

- 1990 UK Duopoly review
  - Encourage network investment
  - Entry by cablecos, altnets, international resellers
- 1998 EU package
  - “Open network provision”: encourage service providers
  - Entry by domestic resellers, “virtual network operators”
- Strategic review
  - “10Mbits/s plus vision”, investment in “broaderband”, fiber to the home
  - But why invest more capital in telecom networks?
    - Remove obligations to provide / pricing constraints?
- Positive for: BT, cablecos, altnets
- Negative for: Non-network based operators

# Long-term v Short-term?

- Regulation trades-off between:
  - Allocative efficiency
    - Prices close to marginal cost
  - Productive efficiency
    - Minimisation of costs of production
  - Dynamic efficiency
    - Incentives to invest and innovate
- Under Edmonds, focus has been on short-term allocative efficiency
- Strategic review suggests decisive shift towards dynamic efficiency
- Positive for: Product innovators (differentiated)
- Negative for: Market followers (low cost)



# Less Intermediate Regulation?

- Broadband currently regulated at multiple levels:
  - LLU - copper and space
  - Datastream - ATM delivered wholesale access
  - IPStream - IP access
  - Retail DSL
- “No margin squeeze” requirement between each level
  - No benefit to vertical integration
- Strategic review
  - Withdrawal from intermediate regulation
  - Regulate only where persistent bottleneck: e.g. LLU
- Positive for: vertically integrated operators (BT, cablecos), scale buying power (big 4 ISPs)
- Negative for: altnets, smaller ISPs

# Less Voice Regulation

- Traditional fixed voice being cannibalised by mobile and voice over broadband
- If “voice” market larger, then:
  - BT’s market share may be much less
  - Regulation withdrawn
  - Difficult for resellers
- But VoIP may be subject to additional “consumer protection” regulation, raising costs
- **Positive for: BT, mobiles**
- **Negative for: CPS / WLR resellers, VoIP providers**

## Less Mobile Regulation?

- Described by Ofcom as “market where competition has delivered”
- No suggestion of further regulation
- Positive for: mobiles
- Negative for: MVNOs, Mobile SPs

## BT Separation?

- “Elephant in the corner”
- No powers to mandate
- Altnets pushing “equivalence and transactional transparency”
- In absence of BT board / shareholder decision full separation unlikely
- No real implications?

# Winners and losers?

## Winners

- BT
- Mobiles
- Cablecos
- Altnets with scale
- ISPs with scale
- Differentiated resellers (brand, service, billing - not primarily price competition)
- Innovators
  - VoIP with additional service features

## Losers

- “Me-too” resellers competing primarily on price
  - VoIP as price play
- Sub-scale altnets
- Sub-scale ISPs
- MVNOs
  - if reliant on regulation

## Over to the panel...

- Who do you see being the winners and losers?
- What do you need from a regulator
  - To invest
  - To raise money
- How important is certainty?
- Is less regulation better regulation?
- Questions from the floor

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