

# EC accepts NGA virtual unbundling but requires regulated pricing

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Yesterday, the European Commission accepted Ofcom's proposals that BT could virtually unbundle ultrafast broadband. However, it rejected Ofcom's decision to allow unregulated pricing. This is the first time the EC has considered these issues.

In March 2010, Ofcom proposed, among other things, to:

- require BT to provide access to ducts, etc, on a cost-oriented basis;
- allow virtual unbundling over G-PON and VDSL, given the difficulty in physically unbundling fibre; and
- allow BT to set the price for virtually unbundled services, so long as competitors get the same pricing in the operational separation regime.

## Virtual unbundling

The EC has accepted virtual unbundled local access products (VULA) as:

- this is the only practical solution at present; and
- the product allows a significant measure of product differentiation and innovation (i.e. the product design is acceptable).

However, the Commission emphasised that this is only a transitional solution and that regulators:

...should, as a matter of principle, mandate unbundled access to the fibre loop irrespective of the network architecture used by the dominant operator. The Commission stressed that a VULA remedy should be just a transitory measure and should be replaced by fibre unbundling as soon as it is

technically and economically feasible. Only fibre unbundling will give alternative operators full and direct control over the product they offer to end-users.

Presumably with G-PON, such unbundling can be affected by wave length unbundling, when and if the technology becomes viable.

## NGA pricing

One of the most interesting parts of the decision is the EC's rejection of Ofcom's decision to allow BT to set the price. This in effect rejected another Ofcom view: that regulated pricing, if used, might be higher than cost-oriented pricing such as LRIC.

In March, Ofcom said:

Ofcom proposes to allow competitors to have access to a dedicated virtual link over new fibre lines laid by BT (known as virtual unbundling)\*. This would give other companies control of the lines to provide super-fast broadband services to their own customers. **But in order to promote investment, Ofcom proposes that BT should be able to set prices for these new wholesale products to enable them to make a fair rate of return. These prices will be constrained by the wider competitive market.** [highlighting added]

In rejecting unregulated pricing, the EC said:

Contrary to Ofcom's proposal, prices for VULA should be cost-oriented. According to the EU regulatory framework, such prices can be adjusted to take into account investment risk, according to the specific contractual setting, in order to drive both competition and investment in NGAs.

In its initial consultations, Ofcom had moved to the point where it considered that "traditional" cost oriented pricing was not suitable for NGA given the need for

incentives to invest. In the end it decided, as noted above, to allow unregulated prices.

The EC has rejected both (a) unregulated NGA wholesale prices and (b) pricing higher than cost-oriented.

In doing so, the EC considers that cost oriented pricing recognises investment risk.

### Conclusion

The decision on virtual unbundling is unsurprising. The big move seems to be as to pricing.

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