

Geo Briefing Paper: Duct and Pole Access

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The Dedicated Fibre Network Company
7th in the Sunday Times Tech Track 100 list for 2009
20th in Deloitte 2010 Tech Fast 50
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1. The UK is behind many parts of the world and Europe in super-fast broadband deployment. The Government has set itself a stretching ambition to have the best super-fast broadband in Europe and be up there with the very best in the world by 2015.
2. The Government has committed to remove the barriers to private sector investment, in particular working with BT to allow the use of its assets to deliver super-fast broadband. (DCMS Business Plan)¹ (HM Treasury, National Infrastructure Plan).²
3. This is welcome as it has become a well established feature of the UK's telecoms market post-privatisation of BT in 1984 that new data networking technologies and the infrastructure that supports them are always delivered faster and more effectively across the country when multiple players are competing at the infrastructure level, based upon regulatory intervention as to how appropriate elements of BT's network can be used by its competitors, rather than just leaving the market to one player. SDH services for corporates in the 1990s; first generation dial-up internet using number translation services and current generation DSL-based broadband following the creation of copper loop unbundling are all great examples of how the UK's economy benefited from competition.
4. It is also timely given the Government's announcement of 20 October 2010 to invest up to £830m by 2017 in subsidising rural super-fast broadband deployment, starting with the four BDUK pilots being procured in 2011 in Cumbria, Herefordshire, North Yorkshire and the Highlands and Islands.
5. In such large geographic areas with low population density, the cost of deploying new infrastructure to carry optical fibre cables is prohibitive (between £50 - £110 per metre to dig new underground ducts depending on the terrain) whereas the cost of putting new cables on to the existing pole system is around £2 - £3 per metre. Given the vital importance of optical fibre in the backhaul and access layer of new network roll-outs, it is clear that any public procurement processes to deploy new super-fast broadband networks will be won by whoever has effective access to this system and fully understands the costs and terms of using it.

¹ Business Plan 2011-2015, Department for Culture, Media and Sport November 2010
http://www.culture.gov.uk/images/publications/DCMS-Business-Plan_2010-15.pdf

² HM Treasury Infrastructure UK National Infrastructure Plan 2010 <http://www.hm-treasury.gov.uk/d/nationalinfrastructureplan251010.pdf>

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6. However, a significant problem has emerged. In its Wholesale Local Access Market Review of 7 October 2010, the UK's regulator, Ofcom, has only given industry a very limited right to use BT's ducts and poles.

7. Ofcom states operators cannot use BT's ducts and poles for:
 - (a) Fixed wireless access broadband³ (no fibre to the mast solutions permitted, eg WiMax)
 - (b) Mobile broadband⁴ (not for 3G or 4G mobile broadband)
 - (c) Satellite⁵
 - (d) Backhaul connectivity⁶ (not available for ISP network expansion)
 - (e) Leased lines⁷ (will exclude large and small businesses, and severely limit both passive and active open access networks)
 - (f) Single or one off connections⁸ (not for one off new customer procurements).

Further, despite the creation of Openreach having been founded on the evidence of its Significant Market Power in the UK's local access market which endures today, there is no obligation on it to offer access to its ducts and poles on an equivalent basis to that enjoyed by its own downstream retail businesses. Just as with LLU, this Equivalence of Inputs (EOI) is essential if the market is to invest in network deployments based on this new product set with certainty. Despite earlier commitments to EOI, Ofcom has not imposed this obligation on Openreach in respect of duct and pole access.

8. The limitations on duct and pole access will severely harm investment and limit returns to public and private investors. It is short sighted to restrict an investor from exploiting the full capabilities of the access network in this manner. Further, it perpetuates BT's monopoly, gives it an unfair advantage over other operators, as it is not subject to these restrictions, and it is free to fully commercialise its network.

9. The restrictions will be particularly detrimental in rural and remote areas where wireless and mobile technologies will be, or form part of, an effective broadband solution, together with VDSL

³ Ofcom Review of the wholesale local access market . Statement on market definition, market power determinations and remedies, paragraph 1.18

⁴ Ibid paragraph 1.18

⁵ Ibid paragraph 1.18

⁶ Ibid paragraph 7.49

⁷ Ibid paragraph 1.23, 3rd bullet point

⁸ Ibid paragraph 10.58

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and fibre roll-outs. By excluding these technologies it will eliminate any “village pump” investment models or hybrid fibre/wireless or mobile deployments.

10. Any new deployment could not use duct and pole access if a model of either fibre unbundling and / or wholesale provision of service to downstream service providers is adopted (as required by the European Commission’s State Aid Guidelines⁹). This is due to the probability of these products being classed as ‘leased lines’, or alternatively that the products supplied by downstream service providers (for example to home workers or small businesses) could be classed as ‘leased lines’.
11. With the imposed restrictions on duct and pole access, the market will not be contestable. Pilots and new public procurements will not be competitive if operators have limited duct and pole access but BT has unrestricted use. This creates an uneven playing field and an environment where only BT will be in a position to win and build new projects.
12. The Government’s and Ofcom’s position on duct and pole access are clearly at odds. The conflict must be addressed otherwise the proposed BDUK pilots and other public procurements to address the “Final Third” will suffer.
13. What We Need:
 - Short-term fix to drop the above restrictions for duct and pole access by agreement with BT and a clear LRIC-based reference offer which can be used for BDUK pilots and other current procurements;
 - Ofcom’s commitment to complete the Business Connectivity Market Review by end June 2011 with reference offers agreed by end September 2011 rather than end 2012 as currently indicated, and/or to use the powers available under Article 12 of the Amended Framework Directive due to come into force in late May 2011 to remove the current service/market driven restrictions.

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⁹ Community Guidelines for the Application of State Aid Rules in Relation to Rapid Deployment of Broadband Networks (2009/C 235/04).