

MEMO

To: [REDACTED], [REDACTED]
cc: Kip Meek, Sean Williams, Consumer Panel
From: [REDACTED]
Date: 8 June 2005
Ref / Subject: Promoting LLU by protecting the margin available to LLU operators

[REDACTED], [REDACTED],

1. As was indicated to you at the May Panel meeting, Panel members firmly believe that the issues surrounding LLU have significant and direct implications for consumers. They have reviewed the background briefing document "*Promoting LLU by protecting the margin available to LLU operators*" which was circulated to them on 25 May and have asked me to relay the following opinion to you for consideration and onward circulation to the Board.
2. The Panel's primary observation on the issue as described by your paper is that it propounds a particular regulatory approach – protecting the LLU margin – without either seeming to consider possible flaws or weak points or fully exploring the downstream impact on consumers. In particular, the Panel were unable to accept the bald statement "setting a margin is pro-competition" when one possible effect of setting the margin may well be to simply replace a monopoly with an oligopoly. (Whilst we may accept that one is better than the other – surely that can't be an objective in itself?)
3. Without sight of the background evidence or analysis the Panel cannot be confident that Ofcom has considered this outcome or whether protecting the margin is genuinely in the interests of consumers. This lack of evidence also leads the Panel to question the key empirical proposition in the paper i.e. that any barrier to short-term wholesale price reductions by BT created by setting a margin will be off-set by innovation and lower prices in "the medium term". Where is the impact assessment of this proposition from which we can establish both the time-scale and the magnitude of any benefits/detriment likely to be experienced by consumers as a result?
4. In their response to the briefing paper, and also in the Panel meeting on 17 May, the Panel also questioned who Ofcom judges to be on the 'brink

of major investment'. Without an appreciation of the size and nature of any potential new entrants it is difficult to assess whether setting a margin is a proportionate or appropriate remedy to promote competition.

5. Finally, and more generally, the Panel raises the following questions:
 - a. Is it appropriate for the regulator to back LLU as the broadband channel; are there other channels that Ofcom should be investigated/promoting with equal commitment?
 - b. Are there other methods Ofcom can use to stimulate the LLU market e.g. an insistence that BT offers 'naked DSL'?
6. We understand that the LLU issue is due to be discussed at the Board on 14 June and the Panel have asked that their comments be presented to the Board alongside your paper. In the meantime, if there is any additional information you would like to send to the Panel, or if you have any points of clarification, please let me know.
7. We look forward to hearing the outcome of the Board deliberations.



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