

BT Comments on EC Telecoms Single Market Draft Proposals

1. Access and Connectivity:

In BT's experience in the European market place, in particular in serving pan-European clients, the greatest obstacle in serving this client base is the highly varied application of the existing regulatory framework (as demonstrated most vividly in the vastly different regulatory outcomes of market reviews and the enforcement thereof) and the consequential variation of, for example, business grade wholesale access (Ethernet) products (more detail at Annex). We therefore urge the Commission to consider its proposals in light of the underlying problem of inconsistent application of the regulatory framework and enforcement.

1.1 The potential use of delegated Acts for further detail on the specification / reference offer for "European Virtual Access Products" (VULA/Bitstream) inevitably causes business uncertainty. The eventual Acts will need to ensure due proportionality if existing virtual products need to be changed.

1.2 The veto over SMP remedies should be clarified as relating to SMP obligations for new access products in a 'home' country, which would be consumed by a "European electronic communications provider" (or "Passport" holder) from another 'home' country, rather than obligations on the European electronic communications provider itself.

1.3 Specification of a wholesale "Assured Service Quality connectivity product" will need to be subject to similar proportionality and cost-effectiveness considerations.

1.4 As the ASQ connectivity obligation is not SMP-related, the obligation to provide should be clarified to apply only to an operator in its 'home' country, and only for provision of service to a "European electronic communications provider" (or "Passport" holder).

1.5 A more explicit compliance process needs specifying, to ensure the ASQ product is fully fit for purpose, and that provision can only be required where there is genuine reciprocity (more detail at Annex). This is essential to address and prevent the kind of uneven and inconsistent application that undermines the current Framework.

1.6 A stronger compliance process is needed across the full range of access inputs necessary for *cross-border business service provision*, including leased line products which are regulated under 'Market 6' but which are in practice subject to widely differing availability and quality.

2. Passport

2.1 The 'EU passport' for the provision of Electronic Communications networks and services should reduce unnecessary operational overheads. This brings benefits to pan-EU providers but it should be noted that the resource associated with notification and compliance is not a material obstacle or to pan-European operations and does not substitute for addressing ineffective or inconsistent treatment of access remedies.

2.2 The main value of the 'passport' should be in encouraging investment in the Single Market by facilitating provision of pan-European services and reducing the unnecessary additional costs such providers currently bear compared to local operators.



2.3 There should be a stronger link between the 'passport' and the services specified under Articles 14 and 15 of the draft regulation. Only a Passport holder in compliance with its obligations (i.e. providing such services) in its 'home' country, should be entitled to expect delivery of such services in the 'host' country.

3. Rights of End-users:

3.1 Much of the considerable detail set out in this Chapter seems to impose formal, harmonized, obligations which were previously the subject of national discretion. It is not clear this reflects a full cost/benefit assessment, and we would suggest a more flexible approach. Only where existing measures have been proved ineffective, or where the Directives have not kept pace with market developments (eg on bundles) will there be a justification for such an approach.

3.2 The trend towards bundling is one of the most notable changes in the market, along with the central importance of TV content within the bundle. The existing Directive has not kept pace with this change and the Regulation will greatly boost consumer choice and lower price by introducing a consistent approach to consumer protection across the entire bundle.

3.3 Transparency and publication of information: While we support the general objective of these proposals it would be more appropriate to allow NRAs to apply them according to demand, need and market circumstances.

3.4 We question the value of the proposals on usage caps to fixed line, where most consumers purchase bundles. The legislation should provide for minimum safeguards (such as warnings), but leave more detailed options, which are also matters of commercial differentiation, to national discretion.

3.5 Contract termination should follow existing EU Consumer Law requirements.

3.6 Specific details on precisely how to compensate / address switching systems abuse should also be a national competence.

3.7 The level of 'Public interest Information' appropriate and relevant to end-users is also more likely to be a judgment national authorities can make.

4. Net Neutrality and Traffic Management

4.1 Blocking – These provisions need to ensure (a) there is an exception for legitimate blocking (eg child pornography sites, to ensure compliance with contract conditions) and (b) a more specific definition of the term 'solely or primarily', which is subjective and potentially open to abuse.

4.2 The NRA overhead in closely monitoring compliance is likely to be significant which will add to Industry costs and ultimately be paid by end-users – no cost-benefit analysis has been undertaken.

4.3 We propose giving Member States the obligation to ensure free and open internet access, but leave the mechanism to them, eg "In order to secure the exercise of these freedoms, competent national authorities/national regulatory authorities may require providers of electronic communications to the public not to employ traffic management practices to block ..." .

4.4 Transparency and Contractual information (Arts 22.2, 21.1(g)). Many of these criteria are either impossible to meet or difficult to meet in a way that would be meaningful to the majority of consumers; even were these difficulties to be overcome, the cost is likely to be disproportionate. We propose giving Member States an obligation to ensure the objective (of giving consumers appropriate information to empower them) but leaving the means to national authorities. We understand research by Ofcom will shortly be published which could provide guidance on this.

5. Roaming:

5.1 While endorsing the Commission's intention to end international roaming surcharges, this must be done in a manner which is compatible with the decoupling arrangements and competition objectives already being put in place as a result of the current EU legislation.

5.2 Greater clarification is needed on many of the newly introduced elements, but there is a risk that the new measures could significantly weaken the market position of MVNOs, driving up costs disproportionately.

5.3 More guarantees are needed for MVNOs in order to continue competing on fair and equal terms with operators that may enter into a "roaming alliance".

5.4 For example, the Regulation should allow regulated wholesale mobile roaming services price caps that are aligned to future national wholesale mobile services tariffs, and should confer rights to enter into "roaming alliances" that have already been concluded.

5.5 Finally, there is the risk that the new proposed measures may negatively impact the negotiation position of MVNOs in concluding mobile services contracts, and implementing decoupling arrangements.

6. Spectrum:

6.1 Spectrum for wireless broadband - Our concern is that extending harmonisation beyond the basic elements of spectrum designation and timing, to include many other issues, could lead to delays. The encouragement of wireless infrastructure sharing (para 2i) is pragmatic but the consequent importance of regulated wholesale access to address competition concerns should also be mentioned.

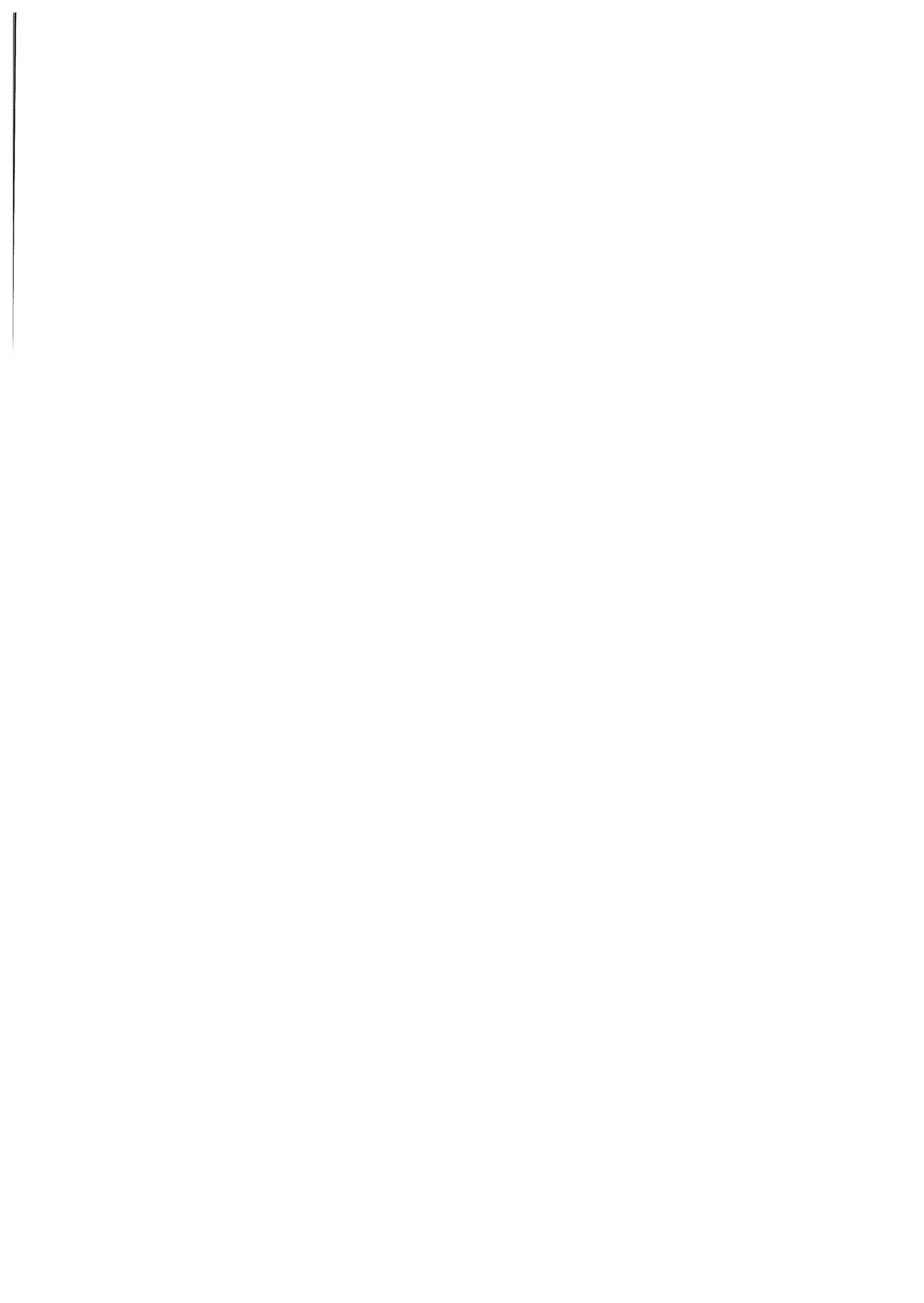
6.2 Competent national authorities should be required to impose regulated wholesale access obligations where the available infrastructure based competition fails to deliver commercially negotiated wholesale access arrangements on fair and reasonable terms.

6.3 Authorisation conditions - Our concern would be that, even with acknowledgement that different groups of countries may have different timings, this could lead to delays in spectrum release if moving at the speed of the slowest countries.

6.4 Access to RLANS - More clarity may be needed on the proposals about not restricting user rights to open WiFi to third parties.

6.5 Small-area wireless access points – clarification is needed that the objective is the removal of planning restrictions on small cell developments.

19/7/13



Annex

Access regulation - Examples of divergence in outcomes

1. The vast majority of access products mentioned below are supply are not delivered to satisfactory business grades.
2. The current range of regulation of this product set varies between: Not regulated at all, regulated only to 2 Mbs, regulated to 8 Mbs, regulated to 10 Mbs (but only on copper), regulated to 100 Mbs, regulated to 150Mbs, regulated to 1 Gbs, regulated to 10Gbs, regulated only outside some major cities, regulated only for first 35-50kms.
3. In addition to the obvious asymmetry between the aforementioned, the actual ex ante regulatory conditions applied for the services offered varies tremendously, between: Functional Separation (in the UK), cost orientation in a few locations but in others no cost orientation, differing degrees of non-discrimination and in the vast majority of cases no (published) Accounting Separation.
4. In combination with fundamentally different approaches to enforcement by different NRAs, this presents an insurmountable obstacle for operators who seek to serve pan-European clients with the efficient and competitive deployment of services this clientele seeks and requires.

Assured Quality of Service – Implementation and Reciprocity

1. An operator who provides the ASQ service in its 'home' country should be entitled to expect the efficient and competitive delivery of the same in the 'host' country unless the local SMP operator is objectively unable to provide such service (and does not sell a retail, downstream, service which would be in competition with the passport operator's service should it have received the refused ASQ service).
2. Additionally, in the event the 'host' operator refuses supply of the ASQ service, but procures, directly or indirectly, the ASQ service in the requesting operator's 'home' country, the 'home' country operator should be entitled to refuse supply, unconstrained by other SMP obligations that would otherwise apply to the 'home' operator'.



Supplementary Comments on Draft Telecoms Single Market Regulation

(Follow-up to paper of 19 July 2013).

In our previous comments we emphasized the key importance of business grade wholesale access (Ethernet) products, and highlighted the highly varied application of the existing regulatory framework as the greatest obstacle in serving pan-European clients. This additional paper provides further detail to illustrate the nature and scale of the problem.

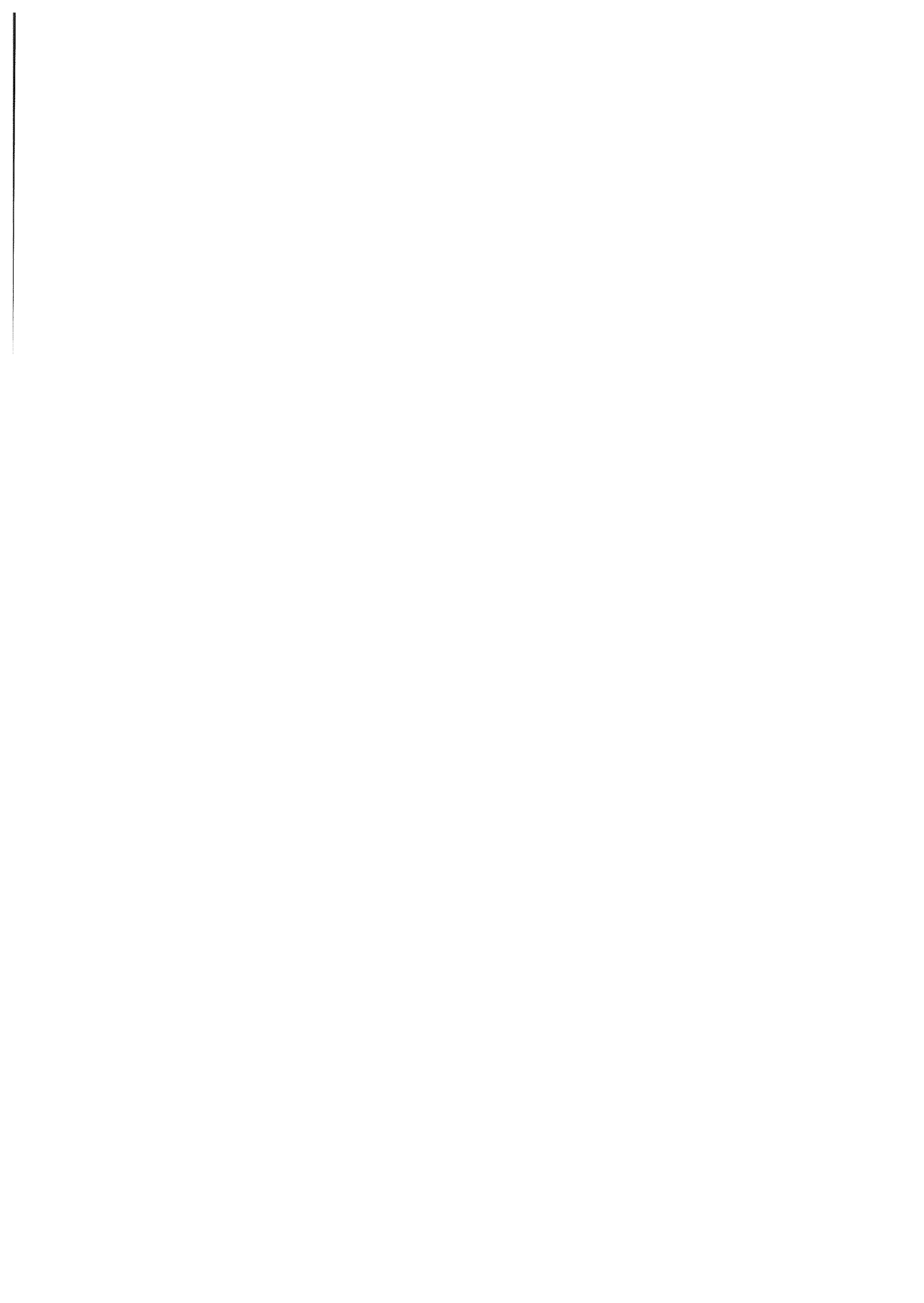
Several recitals to the Draft Regulation make references to the creation of a 'true single market for electronic communications' and 'provide electronic communications services and networks across borders'. The concrete proposals in the draft relate to wholesale VULA/bitstream services (Market 5), the Authorisations passport, and the ASQ connectivity product.

Serving pan European businesses in today's technical environment and with the quality requirements this clientele demands, Market 4/5 (wholesale bitstream and VULA) services can and will only serve a very small subsection of the overall business demand. In BT's experience, Market 4/5 type services can only meet demand from very small offices (with no capacity intense applications) or home offices. Larger sites, be that locations of production, datacentres, governmental offices (local, ministries or hospitals for example) as well as medium to large private sphere offices, all demand services built based on Market 6 wholesale access services. Yet these are seemingly not captured by the Draft Regulation. This appears to be a serious omission, given the importance of this clientele to the EU economy.

It is also important to clarify that while the Passport and ASQ proposals may fulfil certain Single Market needs, they cannot be seen as addressing the core issue for business service provision, which is the divergent application and enforcement of the existing regulatory framework, resulting in divergent and uneven regulation of critical wholesale access bottlenecks. Specifically, BT notes the absence of any new regulatory treatment of those services actually used by pan European business operators' to serve pan European business clients': Market 6 wholesale leased lines, in particular uncontended, symmetrical wholesale Ethernet access services.

BT has collated a snapshot illustrating the enormous variability of wholesale Ethernet access services (falling under market 6) covering the majority of the EU28 countries, this is provided in Annex 1 to this submission. (We are aware that the Commission itself regards Market 6 to have significant competitive concerns¹.) This snapshot is not intended to provide an exhaustive view of market 6 (Ethernet) regulations, but rather to demonstrate how differently NRAs regulate this crucial business access service and the extent of variation that the current 'Article 7' process has permitted. In the vast majority of cases, business grade SLA / KPI are NOT provided and true and effective competition with and against the local incumbent is not possible.

¹ https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Market_overview_25_february_2013.pdf



Wholesale Ethernet Service (market 6)			
	Available as regulated supply	Limitations	Main regulatory conditions
Austria	Yes (New market review proposal)	Geo-deregulation (12 municipalities not covered) All speeds.	Access obligation (traditional and ethernet based), price cap obligation for different product baskets, price squeeze tests, non discrimination, reference offer, transparency, key performance indicators, accounting separation
Belgium	No	N/A	N/A
Bulgaria	Yes (New market review proposal). Uncertain if Ethernet is <i>de facto</i> offered	8 Mbs max	access to and use of specific network facilities, transparency, non discrimination, price control based on retail minus
Czech Republic	Yes (note limitations)	2 Mbs max	access, non discrimination, transparency, accounting separation
Denmark	Yes (note limitations)	Some regulatory conditions only apply for up to 2Mbs	Obligations applicable regardless of capacity offered: Access, including collocation, backhaul and migration between different wholesale products and technology platforms (incl. LLU and fiber), transparency, incl. KPIs and SLA, non-discrimination. Obligations applicable to low capacity segment only (below and equal to 2Mbit/s): price control based on modified historic costs (with collocation and migration prices based on LRAIC), cost accounting, publication of reference offer.
Estonia	No (Ethernet expressly excluded)	N/A	N/A
Finland	Yes (note limitations)	50 Km max length	Provision, reference offer and non discrimination
France	No	Only 10 Mbs copper Ethernet available	N/A
Germany	Yes (note limitations)	100 Mbs max	Access, non discrimination, ex ante price control (LRIC), RIO
Greece	Yes (New market review proposal)	200 Mbs max (proposed)	Access and collocation, non discrimination, Transparency, AS and Cost Accounting
Hungary	Yes (note limitations)	2 Mbs max	Access, non discrimination, transparency, AS
Ireland	Yes (note limitations)	Up to 10 Gbs (Reg remedy of Transparency does not apply above 10Mbs)	Access, non discrimination, transparency (below 10 Mbs), AS cost accounting
Italy	Yes (note limitations)	150 Mbs max (ethernet over SDH)	Access, non discrimination, transparency, AS cost accounting (FDC HCA)
Lithuania	New market review proposal. Ethernet offered?	2 Mbs max	access, non discrimination, transparency, price control and cost accounting, accounting separation
Netherlands	Yes (under Market 5)	1 Gbs max (distance limitation)	access, non discrimination, transparency, price control and cost accounting, accounting separation
Portugal	Yes (New market review proposal)	Speed not know to BT at this stage	access, non discrimination, transparency, including the publication of a reference offer, price control and cost accounting obligations (retail minus for ethernet)
Romania	New market review proposal. Ethernet offered?	2 Mbs max	access, non discrimination, transparency, price control and cost accounting, accounting separation
Slovakia	New market review proposal. Ethernet offered?	2Mbs max	access, non discrimination, transparency, price control and cost accounting (FDC HCA for access / LRIC for collocation), accounting separation
Spain	Yes	35 Km reach limit, 1 Pdl per province, Up to 1 Gigabit. (From May 3rd 2013, (1). Ethernet above 35 km provided both on (a) Ethernet over SDH technology and (b) a level 2 service and (2) speeds above 1 Gigabit provided upon reasonable requests.)	Cost orientation, Non-discrimination, Cost accounting + Accounting separation, Transparency + RIO + KPI.
Sweden	Yes (New market review proposal)	No speed limitations	access, non discrimination, transparency, No price / cost obligations, accounting separation
United Kingdom	Yes	1 Gbs (ethernet) 10 Gbs optical	Functional Separation: EoI / EAB, cost accounting, internal / external RIO, published AS, SLAs / KPI (internal / external) etc

The above snapshot of regulated availability of Wholesale Ethernet Access (market 6), though already providing a strong indication of a fundamentally fragmented 'single market', especially for pan European corporates who rely upon services based on wholesale Ethernet access services, is still painting a too positive view of the challenges encountered and experienced by pan European business providers. For example:

1. In many instances the 'availability' of above shown wholesale Ethernet services, is yet to materialise. Where indicated, some of the statements of availability are merely proposals of incomplete market reviews and in some cases, where the market review has been formally concluded, has not yet been implemented by the local SMP and even less subject to regulatory enforcement.
2. Concerning the 'enforcement' of regulated remedies, both those summarised above and in general: there is no 'EU standard of acceptable regulatory enforcement'. Far too many times BT has experienced lacklustre regulatory ambition when it comes to enforcement on the European continent. NRAs, who have the necessary powers to collect information and data to verify conformity of the SMP operators obligations and to proactively enforce its SMP findings, exceptionally seldom do so. As it is very rare (though it has happened) for BT to get hold of 'smoking guns' - unequivocally showing a breach of regulatory obligations / competition law obligations – the NRAs non-use of its investigative powers and lack of proactive enforcement does create an insurmountable burden for new entrants like BT to challenge the local SMP provider, not even when shown 'smoking guns' evidence.
3. Leaving aside formal enforcement / litigious enforcement, the variability of imposed regulatory remedies throughout the EU28 is very wide and the true interpretation and effect of the various remedies varies tremendously.
4. In the vast majority of the countries listed on summary above, business grade SLAs /KPIs are not provided (in general or for the wholesale Ethernet access service) or enforced. For the business clientele that wholesale operators serve with these services, this is simply not workable.
5. Finally, as a concluding and summarising point, the aggregated effect on Single Market communications services caused by the non-availability of wholesale Ethernet services or poor/insufficient or discriminatory prices and SLAs/KPIs combined with lacklustre regulatory enforcement, is an unfair competitive advantage for the local SMP provider where regulation is delayed, poor and effectively unenforced. By way of demonstrating, in many European member states, BT has made a commercial principle of not responding to customer enquiries unless more than 80% of the services requested are outside the corporate customers home continental EU member state; from experience we know that even if a relatively low number of access sites (say 25%) are in the client's home country, the wider wholesale access problems, including the application of the current regulatory framework and the enforcement thereof, means we can not compete with the local SMP provider for the whole transaction. As such, we withdraw our bid and the corporate client is forced to continue to purchase VPN services on a piecemeal basis.

Regarding the ASQ service reference.

We would like to stress that whilst there may very well be possible benefits to this project, the ASQ connectivity concept would benefit from greater clarification, and should not be seen as addressing the problems of competitive supply for pan European business operators or pan European business clients.

Specifically, there exist at present a large number of trans-border IP networks covering the EU28. BT has never experienced that the lack of regulated core to core IP interconnection is holding back competition. In fact, BT would strongly oppose any regulatory intervention in the international / trans-border core IP layer as this not only moves regulatory focus away from the true bottleneck (national wholesale access services) but it regulates a section of the market which truly is competitive.

In the same way, the availability of ASQ service should not be seen as a reason for regulatory focus to drift from true access bottlenecks - this would perpetuate the competitive concerns in the current market place and not drive any macro economic benefits of seamless pan European corporate VPN networks (which, as expressed above, require Market 6 type wholesale access services). There are enough commercial players on the trans-border EU28 core IP market to drive real customer focussed competition without the need for ex ante regulation at this level.

Conclusion:

BT does not oppose the regulatory vision of more uniform roll out of non-discriminatory Bitstream/VULA services and in principle refer to our earlier submission with regards to our Article 14 considerations. However, we stress that any service mandated or otherwise offered under Article 14 (recommended relevant market 5) will not improve access options for pan European business operators and ultimately pan-European corporates'. Market 5 type services, even at higher bandwidths (VULA), are only suited for residential end users and very small offices as they lack the symmetrical speeds, quality, and SLAs / KPIs that a dedicated fibre connection only offers. (In fact, the ASQ document itself refers to inter alia 'gaming'.) BT consumes very low numbers of bitstream/VULA in the EU28 and do not expect any increased use of this service type as our clients would never entrust their business critical services to bitstream / VULA.

In light of the aforementioned, BT would strongly welcome the Commission to take the opportunity to review the availability of market 6 Wholesale Ethernet Access as this service is the *de facto* input for all new corporate VPN networks (old / legacy networks are still using market 6 wholesale leased lines, PDH/SDH). At present, there is no consistency of application of the regulatory framework and uniformity on the enforcement thereof; this has driven a fundamentally fragmented market which prevents BT from responding to client needs, resulting in lack of efficiency for the clients and a break down of the single market for communications services.

