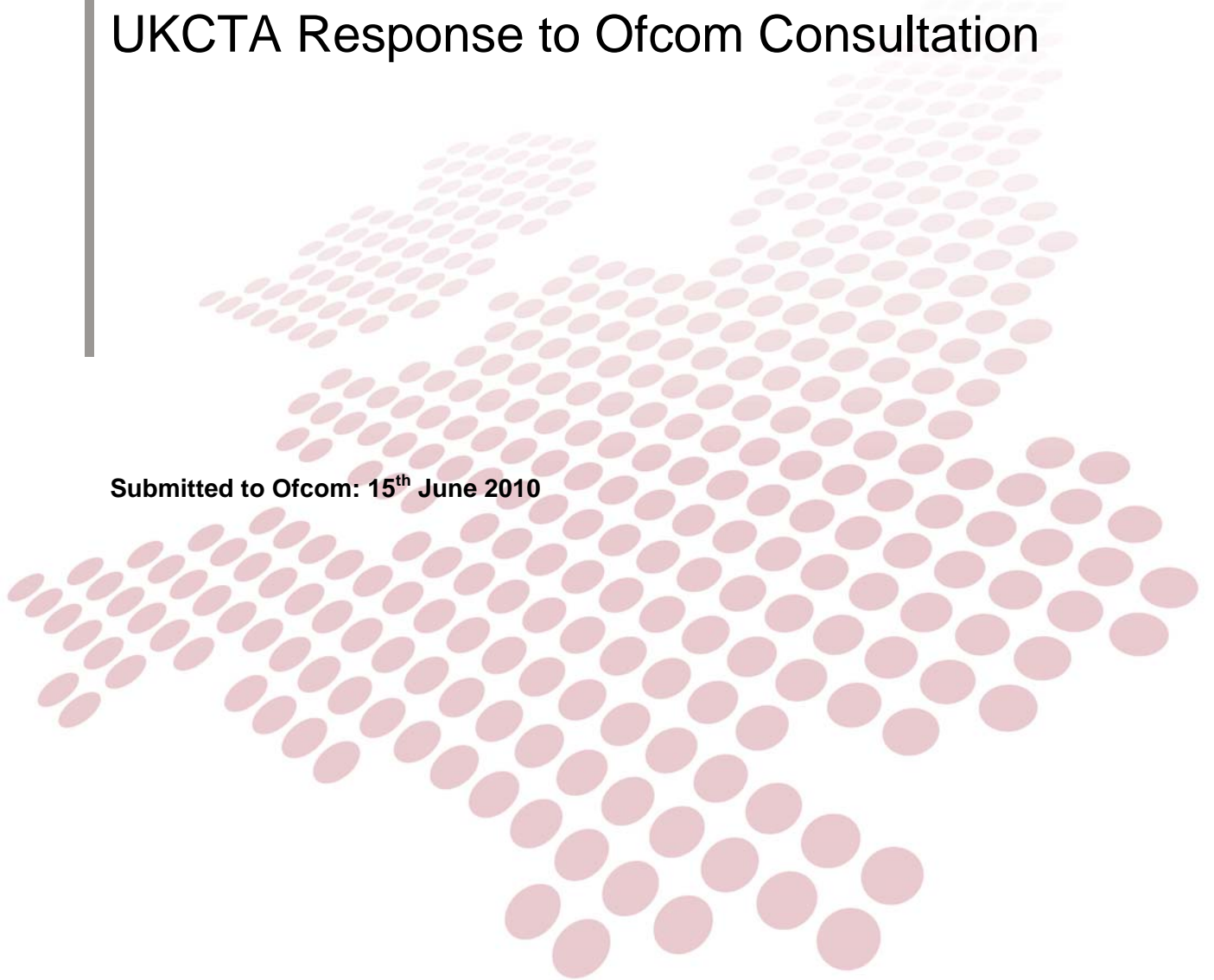


# Review of retail and wholesale ISDN30 markets

UKCTA Response to Ofcom Consultation

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UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at [www.ukcta.com](http://www.ukcta.com).

### **Introduction**

ISDN30 has been a staple communications product for many UK businesses throughout the last decade and it will remain important for some time to come. UKCTA members supply ISDN30 using their own infrastructure if it is available, or by purchasing wholesale inputs from BT such as partial private circuits (PPCs), or by using Openreach's WLR ISDN30 product.

UKCTA fully supports Ofcom's decision to consult on this important issue. It is right and proper that Ofcom takes the time to consult on and investigate any potential areas of market failure.

### **Market Definition**

Based on the evidence presented we would support the market definition proposed by Ofcom. UKCTA believes that while the underlying technology and popularity of NGN services are developing all the time, at this point in time it is right to conclude that only ISDN30 services should be considered within the relevant wholesale market.

### **Removal of Retail Regulation**

UKCTA cannot support Ofcom's proposal to deregulate the retail market for ISDN30. We believe that BT's market share is still sufficiently large to justify the continuance of retail regulation.

### **Proposed new remedies**

UKCTA fully supports Ofcom's proposal to impose an immediate safeguard cap on the Openreach wholesale price for ISDN30, preventing any price increases this financial year. Such an approach is justified when there is superficial evidence of market failure.

### **Market Pricing**

UKCTA would like to see Ofcom gather more evidence to aid its understanding of what the correct market price should be for wholesale ISDN30, thus determining whether the current market pricing is in fact too high. From the information presented it is not clear to us if this is indeed the case. Ofcom's research highlights that alternative providers are able to offer more competitive pricing than BT, but there seems to be a reluctance amongst some consumers to take up this pricing. UKCTA would like to understand what factors are preventing consumers from taking advantage of lower pricing before any conclusions over the appropriate level of pricing in the market can be drawn. The nature of the product itself may be a factor, with consumers reluctant to switch away for fear of disrupting a previously reliable business critical service. Other barriers to switching may also exist which might help explain consumer behaviour. For example the lack of a formal migration solution from BT's Featurenet product could prevent some customers from taking advantage of a new supplier.

BT's high returns in recent years and its relatively inert pricing have been highlighted by Ofcom as a cause for concern. UKCTA members share these concerns, but are keen to see more context given to the information presented. BT's high returns may give a deceptive picture of the state of competition in the market, as in recent years their returns may have been artificially boosted, with an unusually low Fully Allocated Cost (FAC) floor as a result of BT's decision to reduce investment in the ISDN30 product in preparation for 21CN.

With BT's 21CN plans now subject to change, we may see BT having to make good previous underinvestment to keep the product viable in the remaining phase of its lifecycle, so returns may fall going forward. Likewise, with more customers migrating to new technologies, returns are likely to fall as fixed costs are spread over an increasingly small number of connections.

### **Achieving the correct long term Remedy**

If Ofcom do conclude that current market pricing is in fact too high and that a new remedy is required then Ofcom must make sure that the new remedy is suited to the market and helps to promote long term competition to benefit consumers. UKCTA is committed to infrastructure competition and we believe that competing infrastructure suppliers have a long term role to play in delivering competitive ISDN30 prices for consumers in the future.

Ofcom has a duty to promote competition, so any new remedy should not do anything to compromise infrastructure competition. If a charge control is required then it should be set with the aim of reducing pricing to a level capable of retaining infrastructure competition. There is a danger that if pricing is set at too low a level it will compromise infrastructure competitors' ability to compete in this market.

It is fair to say that UKCTA members do not enjoy the level of returns that BT report for this market. Openreach's large economies of scale & scope are also reflected within its cost base (the infrastructure Openreach uses for ISDN30 is used to support a variety of other products such as BT's volume analogue exchange line product). This leads us to the conclusion that in this particular case BT's cost base is at a level below that of a hypothetical efficient operator in a competitive market.

Negative consequences are likely to flow if the wholesale price of ISDN30 is pushed down too low. The imposition of a classic charge control (RPI-X, gliding down to BT's FAC over the time) could therefore damage some UKCTA members' ability to compete in the market in the longer run, possibly causing members to migrate their

ISDN30 delivered over PPCs to Openreach's WLR offering and use Openreach's WLR product for all new orders (unless the order could be provided entirely on-net).

By failing to acknowledge other efficient infrastructure suppliers' costs in a new charge control, the remedy could increase Openreach's market share, damaging infrastructure competition. We note at this stage that Ofcom hasn't completed an impact assessment of any proposed remedies on alternative infrastructure suppliers or considered the corresponding impact on long term consumer welfare.

UKCTA would urge Ofcom to look into this issue before concluding what action to take. At the very least a new charge control should not take the form of a classic glide path down to BT's FAC, instead it should be based on a glide path down to the FAC of a hypothetical efficient operator in a competitive market. It should also consider taking account of the impact of future migration costs (to NGN based solutions), un-depreciated assets and the limited time available at this stage in the product life cycle to recover any remain costs, as direct NGN replacement products are expected to replace the bulk of existing services in the next few years

### **Importance of Technology Neutrality**

We would also ask Ofcom to take into consideration the impact that falling retail pricing might have for a product at the end of its life. There is a danger that the wrong pricing signals at this point in time could drive inefficient investment in legacy equipment by fuelling demand thus discouraging investment in new technology and artificially prolonging the life of a legacy product. Such a move positively discourages consumers switching to new technologies and is likely to drive up BT's wholesale market share at the expense of legitimate efficient infrastructure suppliers.

Any increase in BT's wholesale market share will also further benefit its NGN product roll out as customers are more likely to move to the next generation of services in partnership with their current supplier, rather than move to a new supplier. This will undermine other infrastructure suppliers, while boosting BT's WLR sales for ISDN30

and potentially give a boost to any future wholesale BT NGN products that might be made available, making it unlikely that consumers will benefit from infrastructure competition in the longer term.

### **Conclusion**

When reaching its conclusions on this issue Ofcom needs to strike an appropriate balance between protecting consumer welfare in the short term, while not discouraging alternative infrastructure suppliers who have risked their capital to invest in alternative networks. To do so would undermine long term consumer welfare.

The worst outcome for all concerned would be price reductions in the short term only for the prices to increase again in a few years time since such increases always provide much more pain to Communication Providers and end users.

If a new charge control is deemed appropriate, then it can't follow the classic charge control RPI-X gliding to FAC methodology. Instead it must be sensitive to the economics of alternative infrastructure suppliers, doing nothing to compromise their ability to compete. There is a real danger that setting too low a price will damage other suppliers and undermine any existing competitive pressures in the market, by harming alternative suppliers culminating in greater market share for BT.

Infrastructure competition still has an important role to play in constraining BT's pricing. Nothing should be done that compromises competition as this will impact consumers in the longer term and perpetuate the need for regulation in this market.

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