

Copper Retirement Team
Office of Communications
Riverside House
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06 Sept 2019

By e-mail

Reference: Promoting competition and investment in fibre networks. Measures to support Openreach's proposed trial in Salisbury – migrating customers to full fibre and withdrawing copper services (the "Consultation")

NON CONFIDENTIAL VERSION [ indicates redactions]

Dear Sirs,

Gamma Telecom Holdings Limited ("**Gamma**") welcomes the opportunity to respond to the Consultation published on 24 July 2019; our confidential response is appended.

Introduction

Gamma is a Public Electronic Communications Network that provides wholesale fixed and mobile telephony and data services, to some 1,100 resellers. Two of these resellers are wholly owned subsidiaries and represent themselves over 20% of our business. In all cases, our partners and subsidiaries sell almost exclusively to businesses throughout the UK and increasingly to various European Union member states. Gamma has a turnover c£245m per annum and is ultimately owned by Gamma Communications plc, a company listed on the Alternative Investment Market with a market capitalisation of *one billion* pounds.

This response relates to Gamma Telecom Holdings Limited and its subsidiaries.

Any conflict between the implied position of Gamma in any UK Competitive Telecommunications Association (UKCTA), Internet Telephony Services Providers Association (ITSPA) or Federation of Communication Services (FCS) responses or that of any other association in which Gamma is involved, is accidental and we consider that our views in this response should prevail.

Gamma trusts that this response addresses the questions posed by the Office of Communications (“Ofcom”) and would welcome the opportunity to elaborate on any points in more detail if required. Please don’t hesitate to contact me, [✉], address as per letter head), for further detail in the first instance.

General Comments

1. Whilst we welcome the proposed trial, we do perceive some shortcomings both within the trial scope and the Ofcom proposals within the Consultation.
2. The Openreach deployment of fibre-based connectivity has to date been primarily focused on the residential market. As the trial is targeting a complete geographic exchange area we would expect equal treatment of business and residential subscribers with regards to fibre availability and ease of consumption.
3. The legacy business communications market does not just rely on Wholesale Line Rental (“WLR”) and its product derivatives such as ISDN2 and ISDN30. Products such as Ethernet First Mile (“EFM”) are widely used to provide business grade communications when broadband products do not provide sufficient speed or leased line alternatives are too expensive. Openreach do not recognise EFM as a product and only view the installation as a number of Metallic Path Facility (“MPF”) lines being delivered to the same premise or location. This lack of recognition and identification of EFM deployments within the Openreach systems has the potential to cause significant disruption to business users at both the provision and repair stage.
4. Openreach do appear in their WLR withdrawal industry meetings to be somewhat glossing over the implications for both business providers and their end-users, and there is some concern that business communication services will be negatively impacted by these oversights. For example, critical leased line infrastructure is monitored via ADSL lines and whilst Openreach recognises the situation, they have given little or no feedback at industry on how they intend to migrate these management services with minimal disruption. Additionally, we are interested in how Openreach intend to split number blocks for



business users to allow the migration of a selected part of a business users number inventory. BT's inability to be able to split blocks despite the regulation clearly requiring porting by number, not arbitrary decades old grouped allocation, will need to be addressed for the proposed trial. Whilst BT has introduced a process to split number blocks, this is very much a manual process, strictly limited in availability and certainly not scalable for a large-scale deployment. With Gamma having over 100 channel partners supplying business services in the proposed trial area the support by Gamma of its partners will require significant resource, and we expect the same attention to be paid by Openreach to the business market to maintain the high level of support our partners expect.

5. As we will expand on further in our response, the transposition of the European Electronic Communications Code ("**EECC**") by December 2020 clearly obligates a level of protection for users of legacy communications services when legacy infrastructure migrated is being carried out by an entity with Significant Market Power ("**SMP**"), and we are of the opinion that this should be addressed by Ofcom as part of the Consultation and resulting statement.

6. Gamma has significant concerns around the Consultation being exclusively focused on Openreach and the obligations and requirements placed on them. Openreach do not own the network assets or systems, nor do they hold the contractual relationship for interconnection. Whilst the Consultation obligates Openreach to provide a WLR based service for those who require it, there is neither the obligation or corresponding commitment from BT Enterprise ("**BTE**") with respect to the integrity of voice media from the interface between the Openreach infrastructure and the BTE switching layer. For example, The Standard Interconnect Agreement ("**SIA**") obligates BTE to give a seven month notice period for changes to its network that will impact the integrity of Voice Band Data ("**VBD**"). VBD is utilised in many applications from fax machines, of which the NHS is still a significant user, through to telemetry systems for vulnerable users including 'red cord' services. it should be demonstrably clear that for Ofcom to secure its desired objective regarding vulnerable users, the Consultation's scope is inadequate and should be widened and modified to include BTE. In addition, Gamma has customers that supply niche services aimed at vulnerable users with such services primarily reliant on an exchange powered lines, and exchange based routing to support these services. Any changes to the BTE network configuration could have a significant impact both on these services and the service provider's business model.



Detailed response

*Question 1: Do you agree with our proposal to enable a stop sell for the Salisbury trial?
Please provide reasons for your answer.*

Question 2: Do you agree with the impacts of our proposals we have identified? Are there any further impacts that you consider we should be aware of?

7. Whilst we understand the requirement for a stop sell of legacy services, we do not feel that the implications of such a stop sell are fully understood, particularly for business services utilising legacy infrastructure.

8. As previously stated, the EFM product utilises multiple MPF copper pairs known as ‘bonded copper’. The purpose of EFM is to provide a lower cost, lower bandwidth synchronous Ethernet service as compared to, for instance, Ethernet Access Direct (“EAD”). The ability to use existing copper duct access into a building removes in many cases the need for excess construction and wayleaves. This is particularly relevant for business parks whereby wayleave permissions may take an inordinate amount of time or be exorbitantly costly. Openreach are proposing the introduction of a Fibre to the Premise (“FTTP”) product for business, but the proposals to date for deployment in business parks and locations away from dense population areas are that the fibre node will terminate some distance from the individual premises, not dissimilar to the EAD T-Node deployment. Such a deployment design would result in potentially large excess construction charges (“ECCs”) and in some cases the need for wayleaves. If the successful replacement of EFM is to be achieved, then the trial must ensure that the cost of provision to business of full fibre services should be similar to that of the residential market. This does not preclude a higher connection cost and rental for a business grade product but should prevent Openreach being able to charge high ECCs or the provision being significantly delayed due to wayleave issues. We suggest that for the trial areas that the fibre deployment model be consistent between residential and business deployment regardless of location. We would expect that the obligation to provide WLR for voice services¹ if requested be extended to MPF provision for EFM if Openreach does not provide business with the same FTTP deployment model as that for residential premises.

¹ §3.23 of the Consultation

9. The repair of legacy infrastructure also must be protected. Openreach were questioned at an industry meeting as to whether the repair of a WLR line would be carried out in all cases within the trial area. The response was that if the copper was found to be seriously damaged and fibre was available to the premises then they would most probably provision a new fibre installation than repair the copper asset. This raises several issues. If the copper asset forms part of an EFM bonded copper installation, then the Ethernet service will be degraded and will most probably be running under the contracted Service Level Agreement bandwidth agreed between the end-user and the supplying communications provider. We would expect in this case that, regardless of the cost, Openreach would be obligated to carry out the repair of that line. Any change of the existing service would also incur additional charges for replacement of equipment and possibly a higher rental charge. If the subscriber is within a contract term these charges may not be able to be passed on. We would expect Openreach to charge for the service in contract at the contracted price between Openreach and their customer.

Question 3: Do you agree with our proposed approach to the protection of vulnerable consumers within the trial? Please provide reasons for your answer.

10. We agree with Ofcom's approach with regards to vulnerable customers but would go further with the safeguards.
11. It is especially important to ensure that applications running over VBD continue to operate during the Trial. VBD applications aren't just limited to things like fax machines², but are also deployed in point of sale devices (which includes Paypoint, relied upon by vulnerable users to secure their energy supply for heating etc.) and in various telemetry and alarm systems, including "red cord" devices used by the vulnerable and disabled in their homes.
12. Ofcom must not only acknowledge, but actively ensure that it takes steps to secure, that the most vulnerable in society are protected from a blinkered desire to achieve politically expedient headlines regarding percentage deployment or download speeds.

² As of December 2018, there were 9,000 still operating in the National Health Service alone (<https://www.bbc.com/news/uk-46497526> [accessed 22nd August 2019]) and we assume some in the trust that is responsible for Salisbury.

It is therefore imperative that in any change to the conditions incumbent upon BT that the services relied upon by the most vulnerable are ring-fenced and guaranteed. To that end, the proposal to enable stop-sell requires qualification to ensure that an appropriate product remains available to these users.

13. We welcome Ofcom's thinking in Annex 4 of the Consultation and at §3.31, but to merely say "we expect [operators] to implement the following measures [..]" is inadequate.
14. There is an expectation of compliance that relies upon nothing more than the goodwill of the dominant provider to enable the Public Electronic Communications Service to discharge the duty of care Ofcom expects it to. If Ofcom truly wants to secure the right outcomes for the most vulnerable, then it would impose relevant regulatory obligations.
15. In addition, Ofcom have completely ignored the role of the rest of BT. As stated above, the ability to be able to provide VBD services is dependent as much on BTE as it is on Openreach. As BTE upgrade its switching infrastructure from TDM to IP, there is a risk that the new technology will compromise the integrity of the media such that VBD does not function. Openreach reverting a vulnerable user to a copper path to an IP exchange that does not support the service is not a solution.
16. It is our position that BTE is obligated under the Network Charge Control SIA to provide 7 months' notice of any change in its network that may affect the integrity of VBD.

From the Main Body of the SIA –

4.1 A Party wishing to make a System Alteration shall give to the other Party not less than 7 months written notice prior to the date of the anticipated System Alteration. The notice shall specify the technical details of the System Alteration and the date of the anticipated System Alteration. Following such notification each Party shall supply to the other such information as the other may reasonably request including in the case of the Party giving the notice, to the extent reasonably practicable, the potential impact on the other Party's System.

From Annex D

"Act" Communications Act 2003;

“Call” a transmission path through Telecommunication Systems for the sending of Signals, and a reference to conveyance of a Call by a Party means the establishment by that Party of a transmission path through that Party’s System and the conveyance by that Party in accordance with this Agreement of a Signal (if any) over such transmission path;

“Signal” has the meaning in section 32 of the Act;

“System Alteration” a change (other than a Data Management Amendment) to a Party’s System, which requires a change to be made to the other Party’s System to allow the continuance of the conveyance of Calls across a Point of Connection pursuant to this Agreement;

From Section 32(10) of the Communications Act 2003;

In this section “signal” includes—

(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

17. We say that any change in the BTE network that requires a change to its interconnection partners network to continue to support signals comprising data (noting that the CA2003 definition of signals covers VBD) from VBD applications, then it is a System Alteration requiring the appropriate notice. Additionally, other provisions of paragraph 4 of the SIA would suggest that BT would become liable for the other party’s costs, which would include the replacement cost of any Customer Premises Equipment rendered obsolete by the change.
18. In any event, it should be demonstrably clear that for Ofcom to secure its desired objective regarding vulnerable users, the Consultation’s scope is inadequate and should be widened and modified to include BTE.
19. Given the timescales of the proposed transposition of the new EECC³, which has a transposition deadline of December 2020, and noting that the Government may try to have it coming into force on 1st

³ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code

October 2020⁴, both dates are within the trial period for Salisbury and Mildenhall, we say Ofcom should have due regard for the construction of Article 81 of the EECC. This clearly lays down an obligation to safeguard the users of legacy services where the entity with SMP (BT) is decommissioning its copper infrastructure.

20. As briefly mentioned in the summary, Gamma has a customer that supplies a niche service to vulnerable user that may not be immediately identifiable as such. [X] supplies [X] services at over [X] locations within the UK, typically in [X]. The typical users of this service are the elderly, economically disadvantaged and disabled customer who either have no access to a mobile service or are not capable of using one. The placement of the handset is typically in the entrance to the premise and relies on exchange powered WLR voice only lines. The removal of exchange powered lines will probably result in the closure of the customer's company, and the removal of these services to vulnerable users. The [X] do not provide a mains power point as standard and, in the case of [X], require a payment of around £[X] to provide each power point. With [X] lines this is not a viable proposition for the company. In July 2019 [X] calls were placed on the service, showing the scale of utilisation of this service. The replacement with mobile devices or similar will still require mains power, or similar power source. As [X] has services installed within the trial area we would welcome investigation by Openreach on alternative solutions to this problem so that vulnerable users can continue to receive what is, judging by the call volumes, a much needed and utilised service.

Question 4: Do you think the monitoring data we are proposing Openreach provide to Ofcom is appropriate and sufficient? Is there any other information we should be collecting? Please provide reasons for your answer.

21. We reiterate our previous comments that the trial scope and monitoring must be widened to include BT, particularly BT Enterprise. It is vital that industry is kept informed of any network configuration changes are made by BTE that may impact legacy services.

Please do not hesitate to contact me if you wish to discuss anything further.

Yours faithfully,

⁴ §2.31 *HM Government's Transposition Guidance: How to implement European Directives effectively (February 2018)* establishes two dates for the coming into force of new transposed legislation each year.

[X]

