

Markham Sivak  
Ofcom  
Competition Policy Group  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

4th June 2009

Dear Markham

**Fixed narrowband wholesale market review**

This response to Ofcom's consultation has been prepared on behalf of the Fixed Service Providers Group of the Federation of Communications Services, which represents more than 140 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband. A list of our members can be found on the FCS website - [www.fcs.org.uk](http://www.fcs.org.uk)

We are pleased to have the opportunity to respond this consultation which concludes that BT retains SMP in the relevant markets and proposes regulation and remedies which will allow other CPs to compete effectively with BT's downstream divisions. We are not in a position to comment on the detailed economic analysis on which the consultation questions largely focus but we do have some major concerns and some general comments to make which are set out below.

We agree with Ofcom's decision that BT (and Kingston) have SMP in the relevant markets and in general approve the decision to maintain the existing remedies (primarily WLR, CPS and IA).

We note that the requirement for BTR to provide CPS and IA on lines for which they provide rental will be maintained.

With regard to specific statements and proposals:

We dispute the unqualified statement at 3.25 that the additional functionality to be delivered in July (i.e. R11000) will deliver parity between WLR2 and WLR3. Specifically, with regard to retention of special directory entries, partial renumber processes and aspects of ISDN order processing.

Ofcom needs to recognise the potential dangers associated with the introduction of NGA products (FTTC and FTTP) and specifically that these may create "walled gardens" where migration to other products may be difficult. Ofcom needs to address these migration issues

quickly before roll out. There have been Ofcom consultations and policy papers on this fundamentally important issue in the past – but we have seen no substantial document or proposals from Ofcom on this since the workshop in February 2008.

We agree that BT and Kinston must be required to provide interconnection circuits (section 10). The principle is that competition can only be sustained where there is appropriate regulation covering all elements of the network end-to-end.

We are cautious about the proposal to reduce the period for notification of price changes from 90 to 28 days (section 11). We accept that in a mature market, this may be beneficial but appropriate safeguards must be maintained to prevent abuse or undesirable outcomes. Ideally, we would wish to retain the 90 day period for increases to enable CPs to carry out the necessary analysis and systems work and to meet contractual obligations with their own customers.

We agree in principle with the rationalisation of the requirements on publication of KPIs (section 11). We also welcome the implementation of KPI Online. However, we believe that continued publication of KPIs for the whole industry is important as a reference point and to provide the means to monitor and engage with BT on service performance via the relevant industry fora.

We agree with the proposal for all CPs providing call termination on their own networks to provide access (on the basis that they have SMP in this area). This is essential for the functioning of a competitive market. There have been problems in this area in the mobile sector.

We agree with the proposal to remove the requirement to provide WLR in accordance with a functional spec published by Ofcom. However, we suggest that Openreach needs to be kept under pressure to manage the development of the product in conjunction with industry more effectively. Delivery of WLR3 has been disappointing with publication of roadmaps significantly delayed, frequent de-scoping of releases at short notice and delays and changes to promised functionality. This area needs to be more tightly controlled by the relevant industry groups e.g. Commercial Group and the OTA2.

We believe that the pricing of value added features should continue to be cost oriented with a requirement for transparency which would provide an incentive for efficiency in the provision of these services.

We agree that KCOM should be required to provide WLR where there is demand from CPs and agree with Ofcom's view that the demonstration of such demand to date may be due to non-availability of the product.

We strongly agree that WLR must be provided on 21CN "that replicates wherever technically possible, the current WLR products unless agreed otherwise with industry. We also note that the development of WVC, which is referenced by Ofcom as a possible way forward for voice services has been indefinitely suspended which makes provision of a fit-for-purpose WLR on 21CN even more important.

AS with WLR, we agree with the proposal to drop the requirement for adherence to the functional spec for CPS.

We note in connection with the section on NTS services (section 15). That the effect of Ofcom's intervention in this area and its impact in the reduced demand for these services is significantly underplayed.

We trust that the above comments are helpful and would welcome the opportunity to discuss any of the issues further with Ofcom.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Eagle". The signature is written in a cursive style with a large, stylized 'M' and 'E'.

Michael Eagle  
General Manager