Verizon Enterprise Solutions response to Ofcom's Call for inputs: Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30

Non confidential version

Verizon welcomes the opportunity to respond to Ofcom's fixed access market reviews 'call for Inputs'.

Verizon Enterprise Solutions ("Verizon") is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $108 billion in annual revenue – Verizon serves 98 percent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

Verizon's approach to responding to this 'call for inputs' has been to focus on those key issues which we consider should form the primary focus for Ofcom when developing the follow-up consultation document. Accordingly, and given that Verizon does not offer LLU services, we do not offer a response to all of the questions posed by Ofcom, nor do we advocate specific outcomes for all of the policy issues and concerns raised.

Market definition and market power assessment

Q2.1 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing WLA market definitions or SMP assessments? If so, please provide reasons to support your views.

Verizon does not consider that there have been any material changes in the WLA market since Ofcom last assessed the market and that accordingly the current market definition and SMP assessments remain valid. Furthermore, we do not anticipate that the situation will change markedly over the course of the next three years.

Q2.3 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that mean would alter the existing ISDN30 market definitions or SMP assessments? If so, please provide reasons to support your views.

Verizon does not consider that this is a particularly volatile market and that as a result, the market dynamics have not changed materially since Ofcom last reviewed this market. Certainly BT still retains its dominant position and therefore there is no reason why Ofcom should consider softening or removing remedies that have been placed on BT to support competition in these services at a wholesale level. This, in our view, remains the case despite the growing popularity of NGN services. NGN services will have some impact on ISDN30 services as the demand for such services increases but there will remain a significant demand for ISDN30 over the period covered by the next market review.

Q2.4 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing ISDN2 market definitions or SMP assessments? If so, please provide reasons to support your views.

Verizon does not consider that there have been significant changes in the ISDN2 market since Ofcom last reviewed the market, nor do we anticipate significant changes over the course of the next three years. Accordingly the existing market definitions and SMP assessments remain appropriate.

Remedies

Q3.1 Have there been any significant changes since the last market review that mean we should alter our approach to general remedies assuming that such remedies continue to be required? If so, please provide reasons to support your views.

Verizon does not consider that there have been any changes which would warrant any relaxation of regulation on those providers currently subject to a finding of SMP in the markets under consideration. ✂.

Q3.2 Where there is SMP, what do you consider to be an appropriate notice period for changes to charge, terms and conditions for the services covered by this review, assuming that such a remedy is required? Please provide reasons to support your views.

Verizon considers that it is important that CPs are provided sufficient time to allow price changes to be managed through the various stages of the supply chain effectively, not only by network operators but also resellers, to ensure there is effective communication with end users. As such, Verizon does not consider that current notice periods should be reduced.

Remedies: Wholesale Local Access

Q4.1 What are your views on how well the current set of remedies for WLA has worked in combination to promote efficient and sustainable competition and what impact has this had on investment in WLA services? Please provide reasons to support your views.

Verizon has concerns over the lack of impact that the current remedies have had on efficiency and particularly the level of competition. Specifically, the remedies relating to VULA and PIA have had little if any impact on competition, certainly in relation to business markets. This is due to the way BT has been allowed to limit access to such services for business use, i.e. it has not been compelled to offer a business grade service. It is essential that BT is incentivised to offer passive access remedies for business connectivity.

Furthermore, it is vital that such access must be on a fair and reasonable (i.e. cost effective) basis, as in the absence of such an obligation, the remedy becomes worthless as BT effectively blocks such access to its competitors from a commercial perspective.

Q4.3 Have there been any significant changes since the last market review that mean we should alter our approach to regulating VULA, assuming that such a remedy continues to be required? If so, please provide reasons to support your views.

Whilst there have been developments since the last market review and VULA take up has, as Ofcom notes, increased, this has predominately been in the consumer market. VULA for the provision of business services is still not fit for purpose and is something Ofcom should review and address. As things stand, the potential benefits to end users are effectively restricted to the residential market, as there is no business-grade solution on the horizon and BT has no incentive to engage with industry in order to address this issue. This as any development of a business grade product would cannibalise BT's own leased line revenue. Regulatory intervention by Ofcom is required to drive this forward. Without such a regulatory incentive on BT, product development bottlenecks in Openreach are likely to mean that business-grade solutions will remain purely aspirational. This will ultimately have a chilling effect on investment, innovation and competition.

Indeed experience has shown that leaving the detail of such remedies to be discussed and agreed in industry fora does not work. Instead it leads to drawn out exhaustive negotiation between industry and BT and ultimately anything other than a basic offering is consigned to endless delay and procrastination. Providers have to dedicate very significant resource to attending industry workshops and negotiating highly complex solutions. This acts as a disincentive to many CPs unless there is certainty (or at least a reasonable expectation) of a positive and concrete outcome within a reasonable period of time. To date it has proved to be nigh on impossible to progress the initiative of a business-grade VULA remedy, and we have little confidence that we will see such an offering within the period of the forthcoming market review unless Ofcom is prepared to act and consider the effectiveness of the VULA remedy from a business provider's perspective.

Q4.4 How important is the next three year period in the take-up of VULA? Please provide reasons to support your views.

The next three years are vitally important in terms of the take up of VULA for the provision of business services. Decisive intervention is required now by Ofcom to ensure that business users can benefit from access to the NGA network through greater competition and more efficient services such access brings. As indicated above Ofcom needs to be far more pro-active to ensure that this remedy is available across industry in a timely manner, and not limited simply to those CPs offering consumer-oriented services.

Q4.5 What are your views on the key characteristics of VULA, how they have been implemented by BT and other related issues (such as VULA for business and FVA)? Please provide reasons to support your views.

Q4.6 Does our general pricing approach to the pricing regulation of VULA remain appropriate, assuming that such a remedy continues to be required? If not, why? Please provide reasons to support your views.

4.7 What are your views on BT's pricing of VULA ancillary services, in relation to migration charges and any ancillary services not consumed by BT? Please provide reasons to support your views.

As currently VULA is not fit for purpose for the provision of services to businesses, Verizon has not as yet deployed the offering. Accordingly we offer no response to questions 4.5, 4.6 and 4.7 at this time.

Q4.8 Have the existing ex ante safeguards against margin squeeze in relation to VULA been effective? If not, what would be an alternative approach? Please provide reasons to support your views.

As VULA as a remedy is not fit for business use Verizon does not have any experience of using it and therefore is not in a position to address this question in any detail. However, in general terms, Verizon considers that a further review of margin squeeze measures would be justified as part of the WLA market review if there is any doubt about their effectiveness.

Q4.9 What should be the purpose of any ex ante margin squeeze safeguards in relation to VULA (for example, actively promoting expansion by non-BT retailers or simply protecting reasonably efficient retailers) where such safeguards are required? Please provide reasons to support your views.

These measures should be in place to protect all of BT's competitors from inappropriate action which results in unfair benefits to BT's own downstream business. Ultimately, anti price squeeze safeguards should uphold fair competition, ensuring choice for end-users. VULA is a reasonably new remedy, and every effort should be made to ensure that BT's competitors can use it as a credible means to compete. Margin squeeze safeguards are one crucial means of providing the necessary reassurance to competitors that it VULA is a viable option. Given this, it stands to reason that Ofcom should deploy the full range of benefits that can be realized from such safeguards.

Q4.10 Should PIA be retained as part of the set of NGA remedies assuming that such remedies continues to be required? Please provide reasons to support your views.

Verizon considers that PIA should be retained as part of the set of NGA remedies and that it should be supplemented by Regulatory rigour to ensure PIA is available and suitable for the provision of services to enterprise customers. Verizon considers that duct access may merit serious consideration during the period of the next review, as long as it is a remedy that is fit for purpose from a business provider's perspective.

Q4.14 Are there any other specific access product remedies that might help address any SMP that may be found in the WLA market? Please provide reasons to support your views.

✂.

Q4.16 Do you think we should continue to accompany any charge controls imposed in the WLA market with a cost orientation obligation? If not, what approach would be better suited instead? Please provide reasons to support your views.

Verizon strongly holds the view that where a charge control is considered necessary, it should be underpinned by a cost orientation obligation. Cost orientation is a well-established remedy and well-understood by the relevant stakeholders. Signals in recent Ofcom consultations (e.g. BCMR and LLCC) that it is moving away from imposing cost orientation obligations, even in instances where a charge control remedy is considered necessary, is

very concerning to Verizon. It is even more worrying as Ofcom has to date failed to explain adequately why it considers cost orientation is no longer appropriate.

This is a critical issue for CPs, and the non-imposition or removal of cost orientation obligations will have a very material bearing on the perception of fairness and accountability in the WLA or any other relevant markets. Ofcom must realise that it will seriously undermine confidence and trust in the regulatory regime if it continues to take regulatory decisions, such as the removal of cost orientation, without adequately explaining the rationale for such decisions to industry.

4.17 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the WLA market where we nevertheless believe that some form of price regulation is appropriate? And what form should this obligation take? If not, what approach should we use in such cases? Please provide reasons to support your views.

If Ofcom determines that a charge control is not appropriate but that an alternative form of price regulation is necessary, then Verizon would consider that a cost orientation obligation would still be justified and indeed necessary to provide some degree of confidence and visibility to industry that prices are being set at an appropriate level.

As for the form of alternative price regulation, in the BCMR consultation, Ofcom was proposing sub caps. However, it remains unclear precisely how sub caps will provide sufficient constraint to ensure charges are set appropriately on a per product basis. Indeed, in its response to the June BCMR consultation, UKCTA provided economic analysis which set out in detail why it is not realistic to expect the prices for each and every product to be constrained under Ofcom’s sub cap proposals.

Accordingly, in the absence of any compelling evidence to the contrary from Ofcom, Verizon retains the view that a charge control in conjunction with a cost orientation obligation is the correct and appropriate regulatory response to a finding of SMP where price regulation is deemed necessary. Charge controls and cost orientation are complementary remedies, and are most effective when used in tandem with each other. Each performs an important function in regulating prices, providing certainty and stability to industry. We are therefore concerned that Ofcom appears to be signalling an intention to consider shifting to an “either or” approach. This would have a highly detrimental effect on regulatory certainty. It would also herald an undue relaxing of regulation on BT, and significantly increase the likelihood of an adverse effect on competition (and ultimately consumers).

Remedies: Wholesale Fixed Analogue Exchange Lines

Q5.1 Have there been any significant changes since the last market review that might impact on our approach to regulating the current WLR remedies (including for Ancillary services), assuming that such a remedy continues to be required? If so, please provide reasons to support your views.

Verizon does not consider that there have been any material changes in the WFAEL market since the last market review that should impact Ofcom’s approach to regulating this market.

Q5.2 Do you think we should continue to accompany any charge controls imposed in the WFAEL market with a cost orientation obligation? If not, what approach would be better suited instead? Please provide reasons to support your views.

Yes, this is very important. See response to questions 4.16. ✂.

Q5.3 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the WFAEL market where we nevertheless believe that some form of price regulation is appropriate? And what form should this obligation take? If not, what approach should we use in such cases? Please provide reasons to support your views.

We consider that it is essential to impose both a charge control and a cost orientation remedy in order to maintain certainty and appropriately competitive conditions in the market. See response to questions 4.17.

Q6.1 Do you think that an approach to the pricing of wholesale access services based on an ongoing copper network is appropriate? Please give reasons for your answer.

Verizon agrees with Ofcom that regulated charges for current generation access (CGA) services should be set based on an on-going copper network, given the limited deployment and adoption of NGA services. To adopt an MEA approach in the prevailing market situation would not only be difficult and time consuming but would result in an uncertain, unreliable, outcome.

Q6.2 In an ongoing copper network cost model, would it be appropriate to assume the same common cost allocation per line, across all lines, whether in practice the lines were copper-based, fibre-based or a hybrid of the two? Please give reasons for your answer.

In principle, Verizon holds the view that common costs should only be allocated, and at an appropriate proportion, to a service to which they actually apply. However, given the reliance on duct assets of copper and fibre lines, and Ofcom's view that the common costs for MPF, WLR and GEA over FTTP are likely to be very similar, then Verizon would agree that it seems reasonable to use the same common cost allocation per line across all lines, irrespective of whether the lines are copper or fibre based.

Q6.3 Should we seek to implement a new cost model for the connection and rental charges of the core access products which relies less on disaggregated BT management accounting data and instead is based on BT's RFS network components and CVEs and AVEs (along the lines described in this section)? Please give reasons for your answer.

Given our response to question 6.1, Verizon tends to agree that the continued reliance on BT Openreach's forecast data, which will reflect deployment of NGA services, would not be appropriate. Coupled with the perceived confidentiality issues associated with the data underpinning the model, which has limited disclosure of populated models in the past, Verizon would tend to agree with Ofcom's proposal to move to a model based on BT's RFS network components and CVEs and AVEs.

Verizon does however have reservations about supporting a move to a model based on BT's RFS components when there remains uncertainty as to the final composition of the RFS and the extent of its disclosure to industry. This as Ofcom is still considering its position following the Regulatory Financial Reporting consultation, which we consider lacked the detail necessary to provide a fully informed view on Ofcom's proposals and suggestions for improving the regime. However there does appear to be a significant risk of less disclosure rather than more, which could have a knock on effect on the disclosure of the modelling.

Remedies: Wholesale ISDN30

Q7.1 Have there been any significant changes since the last market review that mean we should alter our approach to regulating ISDN30 where we find SMP for BT? If so, please provide reasons to support your views.

Verizon does not consider there have been any significant changes since the last market review, so does not consider a change of regulatory approach is appropriate.

Q7.2 Which, if any, price control remedy do you believe would be appropriate for ISDN30 where we find SMP for BT? Please provide evidence to support your views.

Verizon considers that, given the state of the ISDN30 market, it is not necessary for Ofcom to conduct a detailed cost modelling exercise; such a task would require a disproportionate amount of resource for any material gain that results. As such, Verizon would suggest that a charge control based on the current level but adjusted to take account of current rates of RPI would be appropriate.

However, for clarity, if this market were less mature, we would take a different view and would support a detailed modelling approach (see the response to question 7.3 below).

Q7.3 Do you think we should continue to accompany any charge controls imposed in the wholesale ISDN30 market with a cost orientation obligation? And what form should this take? If not, what approach would be better suited instead? Please provide reasons to support your views.

Yes. For the reasons highlighted earlier in this response (response to Q4.16) Verizon considers this to be essential. None of the economic analysis we have seen supports Ofcom's view that sub caps are an adequate constraint to prevent excessive charges. Indeed Ofcom has already been provided with a wealth of independent expert economic analysis setting out why cost orientation is so important.[1]

Q7.4 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the wholesale ISDN30 market where we nevertheless believe that some form of price regulation is appropriate? If not, what approach should we use in such cases? Please provide reasons to support your views.

[1] See UKCTA's response to the BCMR and LLCC consultations.

Verizon considers there is no basis for Ofcom reaching such a conclusion. However if it does, then it would still be appropriate in such a situation to impose a cost orientation obligation. It is vitally important for industry to have a high degree of confidence that charges for regulated services are based on only those costs that are associated with the cost of provision of a service. The basis of charges obligation is very clear in its meaning and has been subject to extensive consideration by Ofcom and the courts, so it is fully understood by all CPs and does not allow for any ambiguity. Indeed, it provides necessary regulatory certainty to the industry.

Remedies: Retail and Wholesale ISDN2

Q8.1 Have there been any significant changes since the last market review that mean we should alter our approach to regulating ISDN2? If so, please provide reasons to support your views.

Verizon does not consider there have been any significant changes since the last market review. Accordingly Verizon does not consider a change of regulatory approach is warranted or necessary.

Q8.2 Which, if any, pricing remedy do you believe would be appropriate for ISDN2 where we find SMP for BT? Please provide reasons to support your views.

Verizon considers that a similar approach to that recommended for ISDN30 would be appropriate (as outlined earlier in the response).

Q8.3 If you consider that a cost orientation obligation remains appropriate for products in the wholesale ISDN2 market, what form should this obligation take? Please provide reasons to support your views.

Verizon does consider that a cost orientation obligation remains appropriate for similar reasons as those outlined in our response to Q7.3. ✂. We see no reason at all to alter the current cost orientation obligation that BT is subject to in this market.

Indeed ✂. The sheer extent of BT's over-charging of regulated services is a major concern for industry and we would also expect Ofcom to be very concerned about this. Accordingly, Verizon sees no justification for any relaxation of charge control remedies. Indeed as indicated above there is a strong case for Ofcom to open an own-initiative investigation into BT's compliance with its cost orientation obligation in markets which have not yet already been investigated following formal disputes.

Openreach's quality of service

Q10.1 What is your experience of the quality of Openreach's access services delivery? If there are quality and timeliness concerns, how do these affect your activities/customers? Please provide reasons to support your views.

Openreach's (OR) service delivery for Ethernet products has been in a poor state for some time, with long running issues and little to suggest there is any desire by OR to address the

problems. Without meaningful interaction with industry, backed by appropriate regulatory engagement, Verizon does not see how the situation will improve. A major issue for Verizon in relation to Ethernet provision, an issue shared by the wider industry as a whole, is the use of deemed consent by OR. A review of OR's statistics for provision would suggest that provisioning is not an issue and that OR is performing well and certainly in line with their service level agreement (SLA). However, OR's stated provisioning statistics are severely distorted by OR's use of 'deemed consent', which they use as a 'get out of jail free card' and this totally masks their shortcomings. OR invoke 'deemed consent' to suit their needs and as a result, SLA/SLG payments from them are almost non-existent.

Although the above issue is being discussed at great length with OR at various industry forums, Verizon considers that a more forceful approach from Ofcom would be welcomed to ensure OR move this forward with more urgency.

Verizon also considers that Ofcom should look at the DSO process, as this is a clear example of a process that does not work and provides a clear example of the inefficient processes which exist to manage the interface between OR and the rest of industry.

Verizon offers two clear reasons for calling for such a review. Firstly, the escalation process itself is ineffective and time-consuming for both OR and CPs; particularly so for CPs who need significant addition resources to engage with OR and the end-user, who make significant demands at such times. Secondly, the fact that such a process exists is itself reflective of the issues around the poor service delivery process and the significant problems around delivery timescales. Data from the DSO process should provide clear documented evidence of where the service delivery process is failing and why. However, this is not the case as the broad and rather vague escalation reasons prescribed in the DSO process are not helpful in providing such analysis.

For example, one reason for escalation is described as 'brand damage'; which for business customers could equate to situations where premises are not able to open without the timely installation of a line. However, it is difficult based on the reason flag to determine why intervention is required as there is no clear link between reason, responsibility and impact.

Accordingly, Verizon would urge Ofcom to investigate OR's actual motivations for implementing DSO and not place any reliance on the reasons indicated by the flag. Verizon considers that in many instances OR use DSO as a smoke screen to mask their deficiencies and to protect their own interests, due to the fact that they are unable to provide service in a timely manner.

Q10.2 Do you consider that the current contractual SLAs including SLGs relating to Openreach's quality of service are adequate? If not, what are the current shortcomings? Please provide reasons to support your views.

Verizon's primary concern is not directly related to the actual contractual SLAs and SLGs but is rather with OR's underlying process which triggers SLG payments to compensate for poor performance. The current process is too open to manipulation by OR, which leads to a distortion of the reported performance. The outcome being that a fraction of the compensation payments due to industry are paid by OR and more importantly, competition is negatively impacted as the responsibility for poor delivery performance is blurred, certainly from an end-user perspective.

Furthermore, there is a suspicion that the current SLGs are not set at a level that incentivises OR to address some of the shortcomings in performance, so there is limited prospect for significant improvements. This as under certain circumstances it is easier and cheaper for OR to pay compensation in line with the contractual SLGs than to ensure they have sufficient resources to meet their contractual obligations. This lends support to the view that contractual obligations and penalties may not be the most appropriate way to address concerns with service delivery.

Q10.3 If you consider that there are shortcomings in the current service quality arrangements, what aspects do you consider to be solely within Openreach' s control, what aspects do you consider are impacted on by the actions Openreach' s customers and what aspects do you consider are solely within Openreach' s customers' control? Please provide reasons to support your views.

An issue that is frequently a source of delay and frustration to customers relates to the requirement, particularly for business customers, to be advised, in advance, of the name of the engineer who will be arriving to install or repair a service. This is needed from a security perspective as access to a communications room is rightly restricted. However, unfortunately BT is not willing to provide such information, certainly in advance, with the frequent outcome that engineers are refused access by security. This results in frustration for customers, who see the failure as being the responsibility of the CP for failing to manage their contractors rather than being as a result of OR failing to properly manage and control their workforce, either direct or contracted. Despite customer perception, this issue is fully under the control of OR and it is as a result of their inadequate resource planning and controls that such issues occur. Despite the seriousness of the issue, OR have proved to be unable or unwilling to address this issue.

Q10.4 If you consider that there are aspects of service quality that cannot adequately be dealt with by contractual arrangements (including but not limited to SLAs and SLGs), what aspects are these and what framework do you think should apply to deal with these? Please provide reasons to support your views.

As mentioned above, SLA/SLG contractual arrangements are not necessarily the best way to address concerns associated with service quality. There needs to be a way to adequately incentivise OR to address underlying service issues, irrespective of how unpalatable the solution may be. Of course, it must be understood that any solution must be cost effective in terms of the detriment caused against the cost of the fix.

Another issue relates to the frequency that OR claim exceptional circumstances to avoid paying penalties due to adverse weather. Whilst flooded ducts for example, may well be a legitimate cause for setting aside SLG payments, such occurrences should be viewed against a backdrop of ORs failure to take appropriate preventative measures. The excessive use that OR makes of excusing its poor performance due to adverse weather should not be accepted as a legitimate excuse in all such circumstances. One solution would be to factor in previous occurrences of flooding so that first occurrences of flooding can legitimately be cited as a reason for setting aside SLG payments, whereas any further claims for an area on an annual basis should not unless OR can demonstrate that they have undertaken suitable measures to try to address the flood risk.

There is also an associated issue of OR using flooding as an excuse for subsequent delays in other, unaffected areas due to shifting resources from unaffected areas to the affected

areas to tackle problems. This is another example of ORs poor resource planning, management and insufficient resource levels; issues that OR alone can tackle and resolve by introducing and adopting adequate resource planning procedures.

Verizon Enterprise Solutions
December 2012