

Business Connectivity Market Review

Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segment markets.

The Welsh Assembly Government is grateful for the opportunity to respond to this consultation. We agree that leased lines represent a key building block in the communications networks on which UK businesses depend and which are central to the effective functioning of the economy. We note that in some markets service availability has improved since Ofcom last reviewed the market in 2003/4, although levels of competition to deliver services, and therefore end prices, vary markedly across the UK. This issue is particularly relevant in certain parts of Wales. We note too that some markets, such as that for Ethernet-based access services, have grown rapidly since the last review. We are therefore pleased to note that Ofcom intends to act pragmatically where it now identifies that a provider has significant market power (SMP) and that it proposes a regulatory approach which is designed to protect business consumers and promote active competition between service providers to ensure services are delivered in a timely, efficient and cost-effective manner.

We will address some specific concerns related to issues raised in the consultation document below.

Retail low-bandwidth TI services

We agree with Ofcom's conclusion that BT continues to have a very strong position in the retail market for low bandwidth TI leased lines. We further agree that this continued dominance is linked to certain deficiencies in the way in which upstream wholesale services are provided to competing Communications Providers (CPs), which make it more difficult for them to replicate BT's retail offerings. Therefore deregulation should not be considered until these matters have been resolved; in the meantime, Ofcom's proposal to implement access, non-discrimination, reference offer and (notably) cost-orientation obligations seems appropriate.

We note Ofcom's view that this market should be prospectively competitive once the issue of replicability has been addressed and we therefore understand Ofcom's reasoning for imposing SMP obligations on BT for a fixed period of four years. However, given the scope for significant market changes during this period we are concerned that Ofcom has not clearly signalled any intention to review the market again once this period has elapsed, instead stating:

“Unless a further market review has been completed within that time, the proposed obligations would fall away at the end of the four year period.”

We note that the EC *currently* considers this market to be one in which ex ante regulation is unlikely to be required. However, this provides no guarantee of prevailing market conditions in the UK four years hence. Therefore in our view it would be irresponsible to allow SMP regulation in this market to lapse at that time without a further review being undertaken first. We urge Ofcom to make a

clear statement, at the earliest opportunity, of its intent to conduct such a review in four years time.

The potential withdrawal of legacy TI services

Ofcom is right to respond to the reasonable concerns it has encountered about the possibility that BT may seek to withdraw legacy services such as analogue and low bandwidth TI circuits prematurely as it rolls out new services based on its 21st century network, and that BT may increase the retail price of analogue services as it is now effectively the sole supplier.

We support Ofcom's proposal to require BT to continue to support existing analogue and low bandwidth TI circuits for the duration of the 4-year review period. Additionally, we agree with Ofcom that the following, new voluntary undertakings from BT will provide an appropriate level of assurance for consumers of legacy services:

- that BT will continue to supply new analogue and sub-2Mbit/s retail circuits until 2011 or earlier if, subject to industry agreement and consent by Ofcom, the underlying platform is closed at an earlier date;
- that BT will not increase its prices for analogue services more quickly than the rate of inflation (RPI-0%) for a period two years following the publication of the LLMR statement i.e. from 2008 to 2010; and that it will commit to a further two-year cap, the level of which would be agreed with Ofcom prior to 2011.

Wholesale low-bandwidth TI services

We agree with Ofcom's conclusion that BT remains dominant in the wholesale market for low bandwidth TI terminating segments, and with the view that such entrenched dominance warrants continued regulation. Ofcom's proposal to implement access, non-discrimination, reference offer, cost-orientation and quality of service obligations, coupled with a further 4-year period of charge controls (the details of which will be consulted upon separately) seems appropriate.

However, although we strongly agree with Ofcom that the time is right for similar charge controls to be applied to wholesale SDSL services, we do not agree with Ofcom's proposal to include SDSL within the new charge controls low-bandwidth wholesale leased line services.

In our recent response to Ofcom's "*Review of the wholesale broadband access markets 2006/07*"¹ we expressed strongly our view that wholesale SDSL should now be considered a wholesale broadband access service and regulated as such, within the context of that review. Extracts from our response to that review are provided at [Annex 1](#). These explain our rationale in more detail and discuss our view of appropriate regulation for this market, which includes separate charge controls for wholesale SDSL, to be implemented immediately.

¹ <http://www.ofcom.org.uk/consult/condocs/wbamr07/responsesother/wa.pdf>

Wholesale high-bandwidth TI services

We agree with Ofcom's conclusion that BT has SMP in the market for high bandwidth TI terminating segments outside CELA and the Hull area. Ofcom's proposal to implement access, non-discrimination, reference offer, cost-orientation and quality of service obligations, coupled with ongoing charge controls, seems appropriate.

Wholesale low-bandwidth AI services

We agree with Ofcom's conclusion that BT has SMP in the market (outside Hull) for low bandwidth AI terminating segments at bandwidths up to and including 1Gbit/s. Ofcom is right to note that this market has been expanding rapidly in recent years and is expected to continue growing as CPs deploy next generation networks using Ethernet technology. We agree that BT has a position of entrenched dominance in this market which is unlikely to be eroded in the foreseeable future and that effective regulation will therefore be critical to ensuring that the potential benefits of technological progress flow through to business users. Ofcom's proposal to implement access, non-discrimination, reference offer, cost-orientation and quality of service obligations, coupled with a new charge control for wholesale Ethernet services, seems appropriate.

Ofcom is right to respond to the concerns it has encountered about possible shortcomings in BT's wholesale Ethernet services which may have impeded the development of fair and effective competition in downstream markets. We are pleased to note that Ofcom has pressed BT to give firm commitments for the roll-out of Ethernet backhaul products based on a new national backhaul network using WDM technology and that Ofcom expects to consult on these commitments following the completion of this market review.

Space in exchanges

We are pleased to note that Ofcom plans to define exchange accommodation used primarily for the termination and/or aggregation of wholesale leased line products as technical areas related to the markets for terminating segments in which BT has SMP, meaning that the provision of space will be subject to the same SMP conditions as the associated leased line services, including charge controls where applicable.

Wholesale trunk services

We agree with Ofcom's conclusion that BT remains dominant in the wholesale market for trunk segments, despite expectations to the contrary which were expressed at the time of the last review and the fact that the EC now considers this market to be one in which ex ante regulation is unlikely to be required. Given that Ofcom has found little evidence that the profitability of BT's trunk services has been subject to increased competitive pressure and the fact that high trunk prices have helped to push retail charges for TI leased lines above the levels found in most other European countries, we strongly agree that such

entrenched dominance warrants continued regulation. Ofcom's proposal to implement access, non-discrimination, reference offer, cost-orientation and quality of service obligations, coupled with a new charge control on trunk services (the details of which will be consulted upon separately) seems appropriate.

Dark fibre in the access network

Ofcom is right to initiate a debate about whether BT should be required to provide dark fibre in the access network as a means of promoting more effective competition in the downstream markets for leased lines. The Welsh Assembly Government would welcome a separate market review of the upstream markets into which a dark fibre access product would fall. We agree that in several of the leased line markets under review the amount of progress made towards a more competitive market has been very limited in the past four years and that the time is therefore right to consider more radical options. As Ofcom has stated, a dark fibre access remedy would represent an intervention at the deepest layer in the infrastructure at which competition is likely to be feasible, and it would therefore be in line with the principles set out in the Telecoms Strategic Review. Furthermore, a fibre access remedy may be critical for competitive delivery of some future, high-bandwidth services.

We appreciate that such a market review will raise a number of very complex issues. Although our initial view is that the potential benefits of a dark-fibre access remedy seem compelling, we look forward to the debates about SMP and the possible trade-off between increased innovation and differentiation and any reduction in network investment by other CPs with considerable interest.

We are aware that Ofcom has encountered calls for BT to be required to provide access to ducting as well as dark fibre. In our recent response to Ofcom's "*Future Broadband: Policy Approach to Next Generation Access*"² we noted the following:

'France Telecom, after discussions with the French regulator ARCEP about the need to stimulate competition, has now agreed to open up its ducts to competitors, allowing them to deploy new fibre without the expense and inconvenience of new dig. It is clear that they have done so voluntarily to avoid the requirement being imposed by ARCEP. Ofcom should consider whether a similar position is achievable in the UK. We note Ofcom's concern that there are:

"practical problems with duct access".

There is much received wisdom around this issue; for example it has been stated that ducts routinely deployed in France have a much greater diameter than ducts used in the UK, hence they have more space available within them to run new fibre. It is also suggested that our narrow ducts are full of copper, which could in theory be removed if DSL was replaced by a FTTx service, but

² <http://www.ofcom.org.uk/consult/condocs/nga/responses/WAG.pdf>

not without significant downtime as local networks are upgraded which would breach existing, legal requirements for universal provision of access to telephony services, emergency phone numbers and so on. These would be very real challenges, but we are unaware of any attempt to independently verify whether the actual situation across the UK is as bad as these claims suggest. In our view this assessment is needed urgently, to allow Ofcom and the industry to work together to promote duct sharing wherever possible.'

The proposed market review, which will serve to identify the depth to which access (and therefore competition) should be mandated by the regulator, represents an ideal opportunity for the assessment described above to be made. In fact it would seem to be crucial if Ofcom is to consult and make decisions on a well informed basis.

Flexibility of approach

In both of the recent consultation responses mentioned above we cautioned Ofcom to adopt a flexible approach to regulation going forward, given the speed with which technology is advancing, services are developing or converging and market dynamics are changing. We feel this point is especially relevant in the context of this review. So far Ofcom has only identified three geographic markets for leased lines services (i.e., CELA, the Hull area and the rest of the UK). We are unconvinced that this situation will remain unchanged beyond the short term. In our response to *"Future Broadband: Policy Approach to Next Generation Access*, we described a likely scenario where:

"... alternative, open-access backhaul infrastructures are strategically deployed across the UK. The Welsh Assembly Government's FibreSpeed project, phase 1 of which will be deployed across North Wales during 2008, will provide an open-access telecommunications infrastructure network offering a range of advanced wholesale products to service providers on an equitable, non-discriminatory and fully transparent basis. The project's initial focus is on serving key strategic business parks, but it is also expected to have a positive impact on the converged communications market and the economy by making available an alternative infrastructure that could be used by other network operators such as local loop unbundlers (LLU), fixed network operators, system integrators; wireless and mobile network operators. Ofcom makes the point [in the NGA consultation document] that:

'.. in the UK, there appears to be limited appetite for .. (NGA) investment by third parties'

Whilst this may be true at present, most accept that the main barrier to third party investment is the cost of backhaul. Projects such as FibreSpeed seek to remove this barrier by stimulating competition in provision of next generation network (NGN) services. Many are now looking to FibreSpeed for an early proof of concept that shows this model is commercially viable. It will certainly provide a useful case-study for Ofcom and if it is successful it may help to stimulate similar projects elsewhere in the UK."

The deployment of alternative backhaul networks such as FibreSpeed will stimulate greater competition in wholesale trunk services in the regions where these networks operate. Therefore the levels of competition across these markets will start to differentiate markedly and on a geographic basis. Ofcom has concluded that separate markets do not yet exist for access and backhaul wholesale leased line products. Networks like FibreSpeed may cause this conclusion to be challenged in the near future.

It should be noted that during the development of the FibreSpeed project we identified businesses with a requirement for fibre point-to-point connections from one company site to another that are as simple to use as the fibre backbones within their buildings. They want a dark fibre solution which frees them from being tied to speeds or protocols dictated by their CP. On the business parks served by FibreSpeed this solution will be achievable; the presence of an open access backhaul network may also stimulate commercial activity to deploy alternative access solutions for businesses outside the business parks with similar needs. This is one example of the way in which alternative backhaul networks also have the potential to stimulate greater competition in the markets for high-speed access services, again on a regional basis. One way of minimising the potential for geographic variance across these access markets as alternative backhaul networks are deployed would be to require BT to provide dark fibre access on a national basis. This scenario should be considered within the context of the proposed dark fibre market review.

It should be clear that there is potential for even greater change over the next four years than has been experienced since the last review. With this in mind, we urge Ofcom to reserve the right to review again any of the markets covered in this review, as and when required by changing market conditions; individually or collectively, on a national or sub-national basis, or separated into distinct backhaul and access markets if required.

Conclusion

The detailed response we have provided to the proposals contained in Ofcom's consultation document is designed to be entirely constructive and we hope it will prove useful as Ofcom moves forward.

The Welsh Assembly Government is committed to working with and supporting Ofcom in order to achieve the right regulatory approach for Wales and for the UK as a whole. We would be pleased to discuss further with Ofcom any of the issues we have raised in this consultation response.

Considering wholesale SDSL as a wholesale broadband access service

The following is taken from the Welsh Assembly Government's response to Ofcom's "Review of the wholesale broadband access markets 2006/07"³:

'... Ofcom has defined the retail broadband markets which are relevant downstream markets to wholesale broadband access as follows:

"asymmetric broadband internet access which as a minimum provides an always on capability, allows both voice and data services to be used simultaneously and provides data at speeds greater than a dial up connection. This market includes both business and residential customers."

We have a number of concerns relating to this definition:

- *Simultaneous use of voice and data services*
We acknowledge that most existing, asymmetric broadband services, regardless of technology, allow simultaneous use of voice and data services. This is a basic expectation of many business and residential consumers and is likely to remain so. For these consumers a choice of products already exists and we would expect many of the new services which might enter the market during the lifetime of this Review (i.e., by the end of 2010) to deliver identical functionality.

However, several, affordable alternatives to standard, fixed-line telephony services are now widely available to consumers (e.g., 2G or 3G mobile, VOIP telephony). Many consumers view these as complimentary to standard telephony services; however, a growing number of business and residential consumers already view these services as acceptable (or even superior) replacements for standard telephony. For such consumers, a broadband product which best suits their requirements need *not* include a facility to allow simultaneous use of voice and data services. Retail broadband products which could be considered within this market are already excluded, regardless of any other, more important characteristics, because of this condition. Therefore, we believe that a requirement for simultaneous use of voice and data services should no longer be included within any definition of retail markets downstream to wholesale broadband access.

- *Symmetric services*
Many respondents to the November consultation expressed concern at the exclusion of symmetric services from Ofcom's definition, including several, competing communications providers. Typical of these, BT stated⁴:

³ <http://www.ofcom.org.uk/consult/condocs/wbamr07/responsesother/wa.pdf>

⁴ <http://www.ofcom.org.uk/consult/condocs/wbamr/responses/bt.pdf>

“We note that separate regulation of different services using the same access technology leads to ambiguous regulation and uncertainty for investment. This is especially the case with baseband voice, asymmetric broadband and symmetric broadband. In our view, this has unintended consequences in the choice of technology and creates a considerable barrier to investment in access technology convergence.”

Ofcom responded to such concerns by re-iterating its view that symmetric services should not be included within the same market, noting that:

“This conclusion is based on the evidence from relative charges and costs and from consumer surveys. Ofcom considers that symmetric broadband internet access does not constrain the price of asymmetric broadband internet access... “

From arguments made within the consultation document it seems clear that Ofcom considers the connectivity requirements of Small to Medium sized Enterprises (SMEs) and residential consumers are best served by mass-market, asymmetric products (i.e., the services currently within the scope of this Review), whilst symmetric services of all kinds, regardless of technology and delivery cost, remain more appropriate for larger, corporate businesses and should remain entirely within the scope of Ofcom’s Business Connectivity Market Review⁵.

We disagree with this conclusion. Ofcom notes in the consultation document, whilst considering the residential market, that:

“... current internet access usage patterns will change over time, with more end-users demanding increasingly symmetric internet access. This is because of the growth in end-users placing their own content on the internet, including video and music content. These demand trends may mean that over time there is a dilution of the boundary between asymmetric and symmetric broadband internet access. However, there are currently significant technical challenges associated with the large scale delivery of symmetric services to end-users and consequently they are unlikely to be deployed significantly within the period covered by this review. Thus, these issues are more likely to be relevant for future market reviews.”

The technical challenges Ofcom refers to are the inherently asymmetric nature of cable networks, which we accept, plus a requirement for either a second phone line or significant network re-engineering to allow SDSL products to facilitate simultaneous use of voice and data services. However, as we have already acknowledged, increasing numbers of both business and residential consumers either have replaced, or would be content to replace, their fixed line telephony service with a suitable, alternative product. With this in mind we believe that the technical challenges identified in relation to DSL as a delivery mechanism for symmetric services are no longer relevant.

⁵ <http://www.ofcom.org.uk/consult/condocs/bcmr/>

It is therefore possible that residential demand for *deliverable* symmetric services may increase significantly during the lifetime of this Review. However, we perceive a more pressing, existing requirement from within the SME community. Since the November consultation, the Welsh Assembly Government has been contacted by a number of SMEs raising consistent concerns, namely:

- that they require an affordable, symmetric broadband solution for their business;
- they require good quality of service but *not* ultra-high bandwidth;
- they have identified SDSL products available nationally as potential, affordable solutions (taking additional telephony costs into consideration), but these are unavailable locally;
- the cost of leased line products is prohibitive.

These businesses are left with little alternative but to accept an asymmetric product which they do not view as appropriate for their existing business needs or scalable enough to support their plans for growth.

This demonstrates that demand for symmetric products delivering mass-markets speeds is increasingly coming from SMEs; also demand is likely to emerge from residential customers during the lifetime of this Review. With this in mind it is clear that symmetric broadband internet access is becoming less and less analogous to “traditional” leased-line products targeted at larger businesses. Ofcom’s point that symmetric broadband internet access does not currently constrain the price of asymmetric broadband internet is a function of the clear lack of provision in the marketplace, despite evidence of growing demand from many consumers who currently purchase asymmetric broadband. We discuss the likely reasons for current under-provision later. In our view Ofcom could and should address these issues - by accepting that symmetric services delivered via the same access technology as asymmetric products should similarly be considered as a retail market downstream to wholesale broadband access and by regulating to encourage provision and competition in this market across the UK. We note that other European regulators have already considered this issue and would draw particular attention to France, where symmetric services have already been moved into the Wholesale Broadband Market review. It is our understanding that prices for symmetric services have dropped by as much as 50% since this occurred.’

The full response also details other concerns about the definition retail broadband markets which are relevant downstream markets to wholesale broadband access. These are not reproduced here as they are less relevant in the context of this review.

Our response also discusses appropriate regulatory principles which should be adopted:

‘... Where exchange areas are found in which one or no Principal Operators are delivering symmetric services we would expect a finding that BT has SMP

and would accept implementation of access, non-discrimination and quality of service obligations as described in paragraph 5.198 of the [wholesale broadband access] consultation document as a starting point. However, it seems clear that these measures alone will not stimulate competition in delivery of symmetric services.'

We have already discussed our rationale for recommending that Ofcom include symmetric services delivered via the same access technology as asymmetric products within this [the wholesale broadband access] Review. Currently Ofcom considers such services within its Business Connectivity Market Review, even though services such as wholesale SDSL are technically similar and are delivered over the same infrastructure as corresponding asymmetric services. Ofcom acknowledges a key constraint to provision of competitive service in paragraph 8.170 of the Business Connectivity Market Review and proposes a potential solution:

"... several CPs have argued that BT has failed to make available wholesale SDSL services that would enable them to compete effectively in downstream markets. In particular, there has been dissatisfaction with the pricing regime, which, some OCPs have argued, is not reflective of the underlying cost of provision. In view of the concerns that have been raised, we propose to review the charge controls going forward after the current one expires in September 2008 and consider the possibility of extending it to wholesale SDSL."

We believe Ofcom is right to consider charge controls for wholesale SDSL, but we would urge Ofcom to make these considerations now, within the context of this [the wholesale broadband access] Review. We have already made the case that SMEs constitute much of the growing market for these services, as opposed to the corporate nature of demand for "traditional" interface circuits such as leased lines. Ofcom has noted that demand for symmetric services from residential consumers will also rise. The divergence of these markets is set to continue, so it would seem unwise to bundle regulation of wholesale SDSL with regulation of leased line products for a further 4 years, as currently proposed. Crucially however, consideration within this Review would allow Ofcom to act now. Current charge controls set within the previous Business Connectivity Market Review do not cover wholesale SDSL, so their continuance until September 2008 will not prevent Ofcom from implementing charge controls on wholesale SDSL products immediately within this Review, if deemed appropriate. In our view, given evidence of rising demand and of constraints that may be preventing a competitive market response, Ofcom should consider this proposal as a matter of urgency.'