

REVIEW OF RETAIL & WHOLESALE ISDN30 MARKETS

NONCONFIDENTIAL VERSION

15TH JUNE 2010 ✂ NON CONFIDENTIAL VERSION

Cable&Wireless
Worldwide

EXECUTIVE SUMMARY

ISDN30 remains a key product for many UK businesses and organisations. While it might not be a new product, it is clear from both our own customer feedback and Ofcom's research that it is still in demand and many businesses still choose to rely upon an ISDN30 based solution to support their operations. Cable&Wireless Worldwide supplies ISDN30 services to customers under the banner of both our *Direct Voice* and *Indirect Lines & Calls* products. Where possible we make use of our own infrastructure to serve our customers. If this is not possible then we may purchase wholesale inputs from BT such as partial private circuits (PPCs) to bridge the gap between the end customer site and the Cable&Wireless Worldwide network. Less frequently we also use Openreach's WLR ISDN30 offering, where it is commercially sensible to do so.

Cable&Wireless Worldwide supports Ofcom decision to consult on this issue. Where there is evidence of potentially ineffective remedies, then it is right and proper that Ofcom consults to determine if additional ex-ante remedies are necessary to correct market failure.

We cautiously support Ofcom's proposed market definition of including just ISDN30 services within the relevant wholesale market. We would highlight that we believe that the tipping point to include other technologies is close, with more and more customers now able to use NGN products as a direct replacement / substitute for ISDN30. The tipping point for including more services within the market may well fall within the next four years as UK purchasers seek to innovate or embrace new ways of working as the world economy heads out of recession with many commentators predicting an increase in IT spend in 2011/12¹.

We recognise the valuable insight that Ofcom's recent consumer research brings to the debate, however we believe that, as is the case with most research of this type, there is natural tendency for end users to support the status quo as it represents the known and understood quantity, potentially resulting in the research understating the pace of the adoption of new technology and its eventual impact upon the market. The research also served to highlight the variety of options available to

¹ <http://www.ciol.com/News/News/News-Reports/Global-IT-spend-to-touch-34-trillion-in-2010/134721/0/>

most consumers with 70% of those consumers who have already switched away from ISDN30 to newer technologies enjoying a cost saving as a result of doing so².

We can't endorse Ofcom's proposal to deregulate BT's retail market offering as we believe BT's retail market share remains at a sufficiently high level to warrant an SMP finding. We support Ofcom's decision to re-impose all existing remedies on wholesale ISDN30 and welcome the decision to impose a temporary safeguard cap while the issue is still subject to consultation, acknowledging the existence of high returns on BT's wholesale product and relatively static pricing in recent years.

From the information presented it not clear to us that there is in fact evidence of market failure. Ofcom point to BT's high returns in recent years and the relatively static nature of pricing in the market, however there have been no concerns expressed directly by consumers and it is not possible to say that the current pricing outcome would not be replicated in a wholesale market where market shares were more evenly spread between the competing suppliers, with Ofcom's research highlighting that lower prices are offered into the market by alternative providers.

BT's high returns may give a misleading picture of the state of competition in the market, as in recent years their returns may have been artificially high, with an unusually low Fully Allocated Cost (FAC) floor as a result of BT's decision to throttle back investment in ISDN30 in preparation for 21CN. With BT's original 21CN strategy now replaced in part by projects designed to extend the economic life of existing TDM kit and the focus now on customer led migrations to new technology rather than a network transformation program, it is possible that any recent under investment will have to be made up in part during future years, reducing returns going forward. Likewise the declining popularity of the product will have an impact on the future cost base with the fixed costs spread over far fewer customer connections.

The nature of the product itself is 'sticky' in comparison to other communication services, with customers apparently less keen to switch to a new supplier given the relative importance of the service to their businesses. This low switching rate can't be automatically attributed to market failure, but instead may stem from the characteristics and usage of the product itself, or in the case

² P28 – Ofcom's Narrowband Multi-Channels Market Research

of BT's *Featurenet* base, a large number of users might be prevented from taking advantage of a new supplier due to lack of a suitable migration process.

If it cannot be demonstrated that market pricing is currently set above competitive levels then it may be more appropriate to secure a price commitment from Openreach not to increase wholesale ISDN30 charges in monetary terms for the next four years, protecting consumers who are for whatever reason reluctant to switch away from BT, whilst not deterring other communications providers from supplying the market using their own infrastructure, or discouraging migration away from ISDN30 to newer more efficient technologies.

If it can be demonstrated that the current wholesale pricing is set at a level above which would be achievable in a competitive market and that current competition between alternative infrastructure providers is not sufficient on its own (& in combination with other existing remedies and pressures from potential substitutes such as ISDN2) to keep Openreach's Wholesale ISDN30 pricing in check, then it would be entirely reasonable for Ofcom to seek to implement an additional remedy. We must emphasise that we believe that infrastructure competition will still have an important part to play in delivering competitive pricing for consumers in the future and it is Ofcom's duty to promote competition for the longer term benefit of consumers. As an alternative infrastructure provider of ISDN30 services we compete aggressively in the market for business, making use of our own infrastructure and PPCs to provide service.

In our own business we do not recognise the level of returns reported by BT for wholesale ISDN30. Where we don't have accessible network we must make use of the BT PPC product to connect customers, this constrains our returns. 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, with the large number of concentrators made available directly as a result of BT's large analogue market share). This leads us to the conclusion that BT's cost base is set 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 basis of charges obligation and/or classic charge control (RPI-X, gliding down to BT's FAC over the term) could therefore damage our ability to compete in the market in the longer run, causing us to migrate the proportion of our base that relies on PPCs to Openreach's WLR

offering and use Openreach's WLR offering for all new orders (unless sunk infrastructure already existed at the customer site).

By failing to acknowledge other efficient infrastructure suppliers costs in a new charge control, the remedy could result in unintended consequences, increasing Openreach's market share and 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.

We 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, rather than BT's, taking account of the impact of future migration costs (to NGN based solutions) and the limited time horizon available at this stage in the product life cycle with direct mainstream NGN replacements available in the near future.

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. In 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 and undermining long term consumer welfare. We have invested in infrastructure to serve this market in good faith and Ofcom should not do anything at this point that would deny us the opportunity to recover our efficiently incurred costs.

Table of contents

Executive Summary	1
Introduction.....	6
wholesale market definition	7
Evidence of Competitive Pricing.....	9
BT's Level of Returns	10
Impact on Competitive Suppliers.....	12
Providing Consumers with the Correct Incentives.....	14
The need to impose the correct remedy.....	15
Conclusion.....	16
Answers to OFCOM's Questions	17
Annex 1 – Cost to provide ISDN30 using PPCs.....	21

INTRODUCTION

Cable&Wireless Worldwide is one of the world's leading international communications companies. On the 26th of March 2010 C&W Worldwide demerged from C&W plc, beginning an exciting new chapter in the company's history.

C&W Worldwide provides enterprise and carrier solutions to the largest users of telecom services across the UK and the globe. With experience of delivering connectivity to 153 countries – and an intention to be the first customer-defined communications service business – the focus is on delivering customers a service experience that is second to none. More information on Cable&Wireless Worldwide and the demerger can be found at: www.cwworldwide.com

Today Cable&Wireless has the necessary scale to meet the needs of UK enterprise customers and we are a strategic provider of voice services to both the UK public and private sectors, offering a range of innovative and market leading voice & data products. Our customers include most of the UK's top companies and public sector organisations, each of whom has placed its trust in Cable&Wireless Worldwide to deliver an array of business critical services. Wherever possible we try and service our customers using our own infrastructure, however in many cases we remain reliant on regulated products from BT to ensure that our customers have the connectivity that they need to do business.

Cable&Wireless Worldwide is a significant provider of ISDN30 lines on a retail basis. C&W Worldwide ISDN30 services are supplied exclusively using our own infrastructure, or by using a combination of our own infrastructure with a wholesale link product from BT such as a Partial Private Circuit, to connect the C&W Worldwide network with the end customer site. In a minority of cases, and only where it makes commercial sense we also make use of Openreach's WLR ISDN30 offering.

We believe this consultation has very significant implications for the market and Ofcom needs to carefully consider what is in the long term interest of consumers. Any desire to counter potential consumer harm through a price control mechanism could also damage competitive supply within the

ISDN30 market, harming alternative suppliers and driving up BT's market share by holding back competition and damaging infrastructure investment, not just in the provision of ISDN30 services, but in any successor next generation products. Ofcom can't approach this project as a classic charge control, the market conditions are quite different to other markets where charge controls prevail and there is little support for a classic RPI-X charge control amongst BT's infrastructure competitors who are all too aware of the negative consequences and long term damage that could occur to competition if an RPI-X gliding to BT's FAC charge control is set. Instead Ofcom must adjust its approach in recognition of the significant investment that other players have undertaken in the market, accepting the contribution that is made by other providers in offering choice, innovation and pricing pressure.

If Ofcom concluded that these pressures alone are insufficient to constrain BT's SMP, then a new remedy must be introduced. Any new remedy should not have the effect of harming competition. Some action is required to ensure that consumers interest is protect in the short term while this consultation is ongoing so we therefore support the introduction of price cap to remove the threat of price rises. However it is important to preserve competitive infrastructure supply in the long term, recognising its ability to deliver price competition in the longer term for both ISDN30 and successor products.

WHOLESALE MARKET DEFINITION

While ISDN30 remains a popular service amongst customers and continues to be in demand, it is undoubtedly reaching the final stage of its life cycle and will soon, in the majority of cases, be replaced by newer mainstream technologies. This view is reinforced in part by Ofcom's own market research, and while we can't ignore other evidence collected in the course of the research which identifies plans by some customers to make use of ISDN30 for a prolonged period of time, we believe that this minority support for long term usage is not altogether unexpected, as there is always likely to be a natural tendency for people to voice their support for a product that they know and trust, often when they are unaware or unsure of the benefits that new products might offer.

While we would support Ofcom's proposed market definition at this point in time, we do believe that in the not too distant future and possibly within the next three to five years, that the market will have changed to such an extent that the proposed definition will no longer be appropriate and a wider scope will be required, taking a service based view by considering alternative products in the market including those based on new technologies. It is our firm belief that as these newer technologies evolve they will increasingly be substitutes for ISDN30 at the retail level and act as a constraint against BT's pricing of legacy ISDN products at the wholesale level. Indeed, in 2003 Oftel concluded that ISDN30 was subject to strong supply side competition from Ethernet services and especially 2mbit circuits and while the popularity of these technologies hasn't developed as fast as some commentators predicted, there is evidence to suggest in Ofcom's own research that momentum for these services and others is growing.

We would therefore strike a note of caution over Ofcom's assessment of the market and while we support the conclusion that ISDN30 should be considered the sole product in the market at this point in time, we don't agree that this conclusion would necessarily stand up to scrutiny three or five years from now.

Ofcom's research points to the growing popularity of new technologies in the retail market to provide voice services to businesses, such as Hosted VoIP and IP Trunking. These services are increasingly going to constrain BT's ISDN30 pricing, with Ofcom's research highlighting that 70% of users that have switched away from ISDN30 are now enjoying cost savings as a result. Unlike ISDN30, hosted solutions do not require the end-user to procure a fully-functioning PABX (although some IP Customer Premise Equipment is required) and therefore is marketed as providing the benefits of flexible/remote working. The movement from legacy technologies to IP Trunking does not necessarily have to be undertaken as part of an upgrade of a corporate network. A corporate customer could install a VoIP gateway beside the PABX and move to a SIP trunking solution. Next Generation Access (NGA), coming to some areas of the United Kingdom by the end of this year will be also present the option of purchasing a Super Fast Broadband (SFBB) or Generic Ethernet Access (GEA) service to build an alternative means of delivering voice services to business customers through access to a PABX. All these developments create pricing pressure on ISDN30, with many customers able to switch away from their existing ISDN30 solution.

EVIDENCE OF COMPETITIVE PRICING

Aside from the new technological solutions available now or just around the corner, pricing pressure emanates from both competitive supply and existence of alternative legacy products. As Ofcom acknowledge, BT's own ISDN2 product can also be used instead of ISDN30 at low levels of channel utilisation. The more rigorous regulation of ISDN2 does appear to be acting as an outer boundary for ISDN30 pricing. Competition from other suppliers who offer ISDN30 based solutions does create pricing pressure, with the research presented by Ofcom indicating that alternative suppliers are providing ISDN30 services at lower prices than BT and are winning business as a result. We acknowledge that there is a section of customers who appear reluctant to switch away from BT and while we would be delighted if we could persuade them to switch to a Cable&Wireless Worldwide product, we believe their reluctance to move away from BT is more to do with the business critical nature of the services operating on their ISDN30 kit, rather than as a result of market failure due to a lack of remedies to counteract BT's SMP. Customers of BT's *Featurenet* product may effectively be locked into the product, with no opportunity to change the underlying ISDN30 provider due to the lack of a migration process. *Featurenet* is a complicated service offering and although other CPs offer similar managed solutions, the management of multi-site dial plans during the course of a migrations to a new supplier is a complex task and requires co-operation from the incumbent supplier. As there is no formal BT *Featurenet* migration solution available from BT, this could be a significant contributing factor behind the decision of many customers' not to take advantage of the more competitive pricing currently available.

WLR resellers have made some inroads in recent years in getting customers to switch from a BT retail offering to an alternative, albeit using the underlying Openreach network. Ofcom's market research suggests that majority of switching taken place between CPs using WLR, as opposed to between competing infrastructure providers. WLR migrations are a paper exercise, rather than the full cease and re-provide that would occur if service transferred between infrastructure providers.

We are persuaded by Ofcom's argument to impose a temporary remedy in the form of a price cap to safeguard consumers while the remedies in this market are still subject to consultation. From the information presented, it not apparent that there is in fact clear evidence of market failure and other

factors may be at play which have prevented consumers from switching to lower pricing. Ofcom points to BT's high returns in recent years and the relatively static nature of pricing in the market, however there has been no concerns expressed by consumers over the pricing and it is not possible to say that the current pricing outcomes would not be replicated even in a wholesale market where market shares were more evenly spread between the competing suppliers, with Ofcom's research highlighting that lower prices are offered into the market by alternative providers.

In the next section we discuss BT's returns in more detail, offering our insight into why they may have increased in recent years and why we don't believe such returns are enjoyed by other infrastructure providers. However little light has been shed by Ofcom's research as to why consumers have not chosen to take up service with other infrastructure providers, even although they could take advantage of lower pricing. We do not believe that it is safe to conclude that the pricing for wholesale ISDN30 is indeed too high unless there is better understanding as to why consumers are not switching to lower priced suppliers in greater numbers as there does seem to be better deals available than the standard BT pricing, including the issues around the use of the BT *Featurenet* product. The recent increase in the uptake of WLR based solutions may represent the start of greater price competition in the market and if a *Featurenet* migration process was introduced this might open up some sections of the market to price competition for the first time.

BT'S LEVEL OF RETURNS

We acknowledge that the level of reported returns are high, and it is right and proper that Ofcom consults on this issue, as where there is even superficial evidence of consumer harm or market failure, then Ofcom has a duty to investigate and amend the remedies if appropriate.

BT's high returns may give a misleading picture of the state of competition in the market, as in recent years their reported returns may have been artificially high, with an unusually low Fully Allocated Cost (FAC) floor as a result of BT's decision to throttle back investment in ISDN30 in preparation for 21CN.

Table 1: Extract from BT's Regulatory Financial Statements (ISDN30)

	2003/4	2008/9
Revenue	£286M	£348M
CCA Cost	£206M	£124M
MCE	£566M	£301M

Table 1 above shows that the fall in operating costs makes a significant contribution to increased ROCE. With BT's original 21CN strategy now replaced in part by projects designed to extend the economic life of existing TDM kit and the focus now on customer led migrations to new technology rather than network transformation programs, there is a possibility that any recent under investment will have to be made up in part during future years (to support the residual base of customers intending to continue using the product), reducing returns going forward. Likewise the declining popularity of the product will have an impact on the future cost base with the fixed costs spread over far fewer customer connections.

From a rational economic perspective it is reasonable for a supplier to enjoy higher returns at this stage in the product lifecycle, as the capital associated with the product has declines the ROCE will rise. BT has stated that it has, as a rational business, slowed its investment in the product as reflected in the declining Mean Capital Employed. In addition, the underlying assets have been depreciated.

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 as such increases always provide much more pain to CPs and end users.

BT and other infrastructure suppliers are likely to have to put up with much lower returns when the number of products sold declines following migration, but the fixed cost of maintaining the platform will remain constant, yet will have to be recovered over a significantly smaller base. We have seen

this phenomenon occur elsewhere in the narrowband market (basic call conveyance) and in the business connectivity market, where sub-2Mbit/s pricing has increased significantly due to declining volumes. BT and other suppliers will also need to meet future shut down and migration costs, which would not typically be considered as part of a classic charge control.

IMPACT ON COMPETITIVE SUPPLIERS

In Ofcom's impact assessment of the new remedy it must consider any negative consequences that would flow from such an obligation on BT. As an alternative provider of ISDN30 services, Cable&Wireless Worldwide tries where possible to make use of its own network to connect customers, where this isn't feasible we may use Partial Private Circuits (PPCs) provided by BTWholesale to link our network to the customer site. Only where it makes commercial sense would we opt for a WLR based solution.

In common with the findings from Ofcom's evidence on alternative supplier pricing, we offer a price competitive ISDN30 service and compete to win market share from BT on the basis of our pricing and service excellence and innovation. We consider ourselves an efficient provider of ISDN30 services, however due to the sheer scale of BT's customer base and the product synergies BT enjoys from its incumbent analogue exchange line base, our cost to provide ISDN30 (through no fault of our own), is typically greater than BT's. As a consequence we don't experience the level of returns reported in BT's Regulatory Financial Statements, as in order to offer lower prices than BT we have to endure lower product margins.

The imposition of a charge control (gliding to FAC) is likely to complicate our competitive environment significantly, as if prices drift down to BT's FAC cost base we are likely to find our margin squeezed, making us uncompetitive thus removing our ability to satisfy new demand and limiting our success at retaining our existing customers.

In table 2 below we set out our costs to supply using PPC delivery and contrast that with the current WLR market price of £141 per channel. We don't believe we are alone, as other infrastructure

competitors to BT will also find themselves in a similar predicament, unable to compete in a market which is drifting down towards to BT's unachievable FAC base.



While we have no doubt that the imposition of a classic charge control would ultimately boost market share for Openreach's WLR ISDN30 variant, this will be at the expense of other infrastructure providers, with the pain of the charge control being first felt by alternative suppliers rather than BT, pushing CPs to switch back to supplying their service using WLR rather than their own infrastructure and stranding previous investment. CPs that have provided ISDN30 using PPCs are likely to find themselves squeezed between increasing PPC prices and decreasing WLR prices.

Openreach's SMP will be strengthened and market share is likely to grow as other CPs cease to be competitive. A charge control obligation could artificially extend the lifecycle for ISDN30, thereby undermining alternative technologies that are competing with it and requiring infrastructure suppliers to incur additional costs in meeting unanticipated demand over an extended period.

While the product itself may be reaching the end of its lifecycle, the potential exodus of customers from alternative infrastructure will make it far harder to reach the critical mass of customers required to support NGN products on alternative networks. While BT may see its margins for ISDN30 cut and consumers will benefit through lower pricing, in the longer term BT's wholesale market share is likely to increase, delivering them a larger base of customer to sell wholesale NGA products whilst they are likely to encounter weakened competition and thus perpetuating the need to regulate this sector of the market for the foreseeable future.

There is a real risk that if prices are pushed down too low by means of a charge control, that it may provide a short term boost to consumers, reducing the profitability of BT's product, but in the long run it may damage alternative infrastructure providers' ability to compete, resulting in a more dominant BT in the long run. The creation of a new remedy should not act to weaken the impact of any natural competitive constraints that currently exist, even if on their own these constraints are ultimately judged to be insufficient to address the negative consequences of BT's SMP.

Ofcom's impact assessment needs to include an evaluation of any new remedies on competing infrastructure providers. In our view the threat of weakened competition, delayed customer migrations, the increasing investment demands resulting from temporary increase in demand for a legacy service and the likely spill over reduction in Altnet competitiveness in the market for next generation competition is sufficiently concerning for Ofcom to make the impact on Openreach's competitors a key factor in its decision making.

PROVIDING CONSUMERS WITH THE CORRECT INCENTIVES

A sudden reduction in ISDN30 retail charges will naturally result in a pick up in demand³. Existing market share evidence would lead us to believe that this surge in demand will likely be picked up in the main by BT, through Openreach's WLR offering (as CPs reselling a commodity ISDN30 product using BT infrastructure are likely to pass on any wholesale price reductions to new customers as they happen), however other infrastructure providers would also expect to pick up some additional customers (at least in the period where they are still able to reduce their own retail pricing in an attempt to remain competitive). This in turn will drive the need to purchase additional legacy equipment and artificially delay the take up of next generation replacement services which would, in the absence of further regulatory intervention become the products of choice for the majority of ISDN30 users. In the longer term as BT's pricing tended towards FAC we would expect a number of alternative infrastructure suppliers to drop out the supply chain for new providers (unless they are 100% on net and don't require the use of a PPC), or revert to using Openreach's WLR product, recognising it to be a more sustainable way to meet customer demand.

³ P23 of Ofcom's Narrowband Multi-Channels Market Research – stated that 33% of those considering switching could reconsider if faced with a 10% price reduction.

The upsurge in demand for a legacy product will not only deter or delay consumers from switching to new products, but will also prove to be a setback for alternative infrastructure providers aiming to achieve the critical scale necessary to supply a wide portfolio of NGA products to both new and existing customers.

The intervention planned by Ofcom should not in anyway delay the natural demise of a legacy product, instead Ofcom should stick with its sound principle of maintaining a technology neutral approach and let the market itself set the pace of migration to the next generation of products.

THE NEED TO IMPOSE THE CORRECT REMEDY

Cable&Wireless Worldwide's preference is that wherever possible prices are constrained by competition. If Ofcom concludes that price are not set above competitive levels (and there are other factors at play which have limited price reductions in the market such as a reluctance to switch, even although lower prices are available) then it would be appropriate not to pursue a charge control but instead opt for the continuance of the temporary price ceiling, thus striking the appropriate balance between the short and long term consumer interest, by protecting the interest of consumers in the short term, while not putting in place any barriers to future competition or NGN development. Such an approach is both technology neutral and in the spirit of promoting long term sustainable competition in both the market for ISDN30 and successor markets.

However, if ultimately Ofcom conclude that the current ISDN30 price is too high (i.e. materially higher than that which would be available in a fully competitive market), then it is Ofcom's duty impose a suitable remedy.

Any remedy needs to be sensitive to other infrastructure suppliers in the market, recognising their efficient cost base. 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. If Ofcom believe that a charge control is an appropriate remedy then it cannot follow the previous RPI-X glide path down to a target of BT FAC, instead a different target should be set, recognising the costs of an efficient competitor.

As we have previously highlighted, the cost base of alternative infrastructure providers is greater than BT's for a variety of technical, scale and synergy reasons which can't be replicated by an efficient alternative supplier. Add to this the fact the complication that alternative infrastructure providers' assets might not be fully depreciated and that future migrations to NGA services might cause a jump in costs as fixed costs are spread over few circuits.

A classic charge control remedy is too blunt an instrument for this market and if Ofcom wish to pursue an additional remedy then time needs to be devoted to understanding the appropriate level to set the charge control target price, as setting it at BT's FAC will distort the market resulting in adverse long term consequence for consumers in both the ISDN30 market and successor NGA markets.

CONCLUSION

In this response we have set out our understanding of the market, gained from our own experience as a supplier/retailer and from the extensive research that Ofcom has conducted and shared. We have also set out our concerns about the consequences of not reaching the right conclusion. We want to win market share from BT in the wholesale & retail ISDN30 markets, as this will provide benefits to our business in the short term through increased revenue and stand us in good stead in the longer term as we migrate our customers over to next generation products, however we don't believe a classic charge control remedy is the best way to help promote greater competition, as price reductions that are too great will have the unwanted side effect of weakened wholesale competition, perpetuating the need for regulation.

We want to gain a better understanding of what the correct price in the market should be at this point in time, as even with price competition there does appear to be some reluctance amongst end users to take up service with suppliers who could save them money, including those customers who

may be unable to migrate as a result of using BT's *Featurenet* product. If Ofcom are satisfied that the market has not delivered competitive pricing and there is an issue of consumer harm then it is appropriate to introduce a new remedy.

Any new remedy must not undermine competition, so if Ofcom believe a charge control is the most effective way to proceed then the control should have a glide path target set at the fully allocated cost of an efficient competitor to BT, to do otherwise would harm infrastructure competition, hand market share to BT's wholesale product and perpetuate regulation in this and successor markets.

ANSWERS TO OFCOM'S QUESTIONS

Question 4.1: Do you agree or disagree with our market definition? Please give reasons for your view.

A 4.1: We agree with Ofcom's Market Definition as things stand at present, however do believe that Ofcom may have underestimated the pace of change in the market and therefore believe that the definition may not be appropriate in three or four years hence.

Question 5.1 Do you agree or disagree with our analysis in which we have provisionally concluded that BT does not have SMP in the retail ISDN30 exchange line services market in the UK excluding the Hull area? Please give reasons for your view.

A 5.1: We have concerns around Ofcom's proposals for full deregulation of the retail market and we do not believe that the market is sufficiently competitive to conclude that BT no longer has significant market power (SMP). BT's market share remains high. Following on from the deregulation of the retail narrowband market in 2009 we see the deregulation of the retail ISDN30 market as inevitable.

Question 5.2 Do you agree or disagree with our analysis in which we have provisionally concluded that KCOM has SMP in the provision of retail ISDN30 exchange line services in the Hull area? Please give reasons for your view.

A5.2: Yes. Sufficient evidence has been presented to confirm KCOM's SMP in the retail ISDN30 market for Hull.

Question 6.1 Do you agree or disagree with our market definition? Please give reasons for your view.

A 6.1: C&W Worldwide agrees with the market definition proposed. It is the most appropriate definition based on the information available.

Question 7.1 Do you agree or disagree with our analysis in which we have provisionally concluded that Openreach has SMP in the provision of wholesale ISDN30 exchange line services in the UK excluding the Hull area? Please give reasons for your view.

A7.1: Yes. Please see the main body of our response.

Question 7.2 Do you agree or disagree with our analysis assessment in which we have provisionally concluded that KCOM has SMP in the provision of wholesale ISDN30 exchange line services in the Hull area? Please give reasons for your view.

A7.2: Yes. The based on the evidence available we agree with Ofcom's conclusion.

Question 8.1 Do you agree or disagree with our continued imposition of retail price publication and no undue discrimination remedies on KCOM in Hull. Please give reasons for your view.

A8.1: Yes. It is both appropriate for consumer welfare and proportionate.

Question 9.1 Do you agree or disagree that Ofcom should impose a requirement to provide network access on reasonable request on Openreach and KCOM in the markets for wholesale provision of ISDN30 services? Please give reasons for your view.

A9.1: Yes. At this point in time it is essential to preserve this remedy.

Question 9.2 Do you agree or disagree that Ofcom should impose a requirement not to unduly discriminate on Openreach and KCOM in the markets for wholesale provision of ISDN30 services? Please give reasons for your view.

A9.2: Yes. At this point in time it is essential to preserve this remedy.

Question 9.3 Do you agree or disagree that Ofcom should impose a requirement to publish a reference offer on Openreach and KCOM in the markets for wholesale provision of ISDN30 services? Please give reasons for your view.

A9.3: At this point in time it is important to preserve this remedy.

Question 9.4 Do you agree or disagree that Ofcom should impose a requirement to notify charges, terms and conditions on Openreach and KCOM in the markets for wholesale provision of ISDN30 services? Please give reasons for your view.

A9.4: At this point in time it is important to preserve this remedy.

Question 9.5 Do you agree or disagree that Ofcom should impose a requirement to notify technical information on Openreach and KCOM in the markets for wholesale provision of ISDN30 services? Please give reasons for your view.

A9.5: Yes.

Question 9.6 Do you agree or disagree that Ofcom should impose a requirement to provide transparency as to quality of service on Openreach in the markets for wholesale provision of ISDN30 services, consistent with other WLR services? Please give reasons for your view.

A9.7: We agree with the proposal to impose a requirement to provide transparency as to quality of service on Openreach in the markets for wholesale provision of ISDN30 service.

Question 9.7 Do you agree or disagree with Ofcom that it is appropriate to extend the current KPI reporting requirement for other exchange line services to ISDN30? Please give reasons for your view.

A9.7: Yes. In order to safeguard quality we believe this is both appropriate and proportionate.

Question 9.8 Do you agree or disagree that Ofcom should impose an obligation on Openreach to comply with obligations governing accounting separation as set out by Ofcom in the market for provision of wholesale ISDN30 in the UK except the Hull area? Please give reasons for your view.

A9.8: We agree that Ofcom should impose an obligation on Openreach to comply with obligations governing accounting separation.

Question 9.9 Do you agree or disagree that Ofcom should impose an obligation on Openreach to provide WLR products in the ISDN30 exchange line market? Please give reasons for your view.

A9.9: Yes, Ofcom should impose an obligation on Openreach to provide WLR products in the ISDN30 exchange line market. Many consumers now rely upon WLR based solutions.

Question 9.10 Do you agree or disagree that Ofcom does not need to impose an obligation on Openreach to comply with a functional specification for ISDN30? Please give reasons for your view.

A9.10: We believe the obligation to comply with a functional specification should be retained. It is not an onerous obligation and remains relevant to prevent BT making changing to the specification without industry consent.

Question 9.11 Do you agree or disagree that Ofcom should impose an obligation on Openreach to follow a statement of requirements process to handle new requests for network access in the

market for provision of wholesale ISDN30 in the UK except the Hull area? Please give reasons for your view.

A9.11: We believe that the obligation to follow a SoR process is still relevant and it isn't onerous and must be retained.

Question 9.12 Do you agree or disagree that the condition should allow changes to be made to the current SOR process if agreed by Openreach with industry? Please give reasons for your view.

A9.12: Providing industry agreement is sought and obtained over any changes we would agree with this proposal.

Question 9.13 Do you agree or disagree that Ofcom should impose an obligation on Openreach to comply with obligations governing cost accounting systems and processes as set out by Ofcom in the market for provision of wholesale ISDN30 in the UK except the Hull area? Please give reasons for your view.

A9.13: Yes.

Question 10.1 Do you agree or disagree that, based on Openreach's reported returns, Ofcom should impose a charge cap on Openreach's charges for ISDN30 services? Please give reasons for your view.

A10.1: Yes. Please see the main body of our response for further details.

Question 10.2 Do you agree or disagree that, in order to manage consistency in the setting of charge caps for Openreach services, the proposed charge cap for ISDN30 should be developed and set alongside the reviews of existing controls for other Openreach services, scheduled to complete in 2011? Please give reasons for your view.

A10.2: If Ofcom are satisfied that a charge control is required (and based on the evidence presented we are not clear that this is the case), then it would make sense to consider the issue alongside other Openreach charge controls. Ofcom must however be mindful that a traditional RPI-X glide path charge control down to BT's FAC is not the correct approach and any charge control should take into account the costs incurred by other CPs in providing ISDN30.

Question 10.3 Do you agree or disagree that a charge ceiling set at the current level of charges should be applied to wholesale WLR ISDN30 services provided by Openreach to prevent increases to charges in the period between the ending of the market review and setting of the charge cap? Please give reasons for your view.

A10.3: Yes. Please see the main body of response for more details.

ANNEX 1 – COST TO PROVIDE ISDN30 USING PPCS

