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8th October 2015

Dear Tanja

Strategic Review of Digital Communications

This response has been prepared on behalf of Nine Group. Nine Group provides a wide range of communications services to business customers, mainly SMEs in the UK. Nine Group offers its services directly to end user customers through its Nine Telecom division and via resellers through the Nine Wholesale operation. Nine has in excess of 500 reseller partners of all sizes located throughout the UK.

We welcome this opportunity to respond to this consultation. We anticipate major changes in the relevant markets over the next few years and it is crucial that Ofcom anticipates these changes in its approach to regulation.

We agree with the main points of Ofcom's market analysis over the period since the last strategic review.. In particular we agree that competitive markets are the foundation for delivering good customer outcomes. However, it seems clear that this needs to be underpinned by appropriate regulatory intervention. We are supportive of many (if not all) of Ofcom's interventions over this period, which we believe have been generally successful in promoting competition.

It is important, however, to note that there are fundamental differences in the business and consumer markets and businesses have different needs to consumers. Accordingly, we support Ofcom's recent work to understand the needs of SMEs and the implicit recognition of the potential need for different remedies in these markets. The UK has a more diverse supply chain than elsewhere in Europe and we believe that this has been central to delivering good outcomes, for business customers in particular. Ofcom must ensure that this diversity is protected as technologies evolve and converge.

We do believe that there should be effective competition at all levels of the supply chain but would contend that vertically integrated companies are not the most effective way of delivering this.

We also strongly believe that smaller and niche CPs (who are mainly resellers of wholesale services) are more agile, creative and more responsive to customer needs and, therefore, meet the needs of small business customers better than the large national players, who are mainly focused on the consumer market. This has been clearly demonstrated in the past by research carried out by the Federation of Communication Services. As noted above, vertically integrated companies are not always best placed to deliver good service for this type of customer so it is essential to protect access to appropriate wholesale inputs for the reseller community.

With regard to access to high speed broadband by SMEs, we agree that this is likely to be delivered by a combination of technologies provided by a combination of public and private sector investment. We are aware of recent alternatives to the Openreach route for local deployment of BDUK funding and note that this approach (based on local fibre networks delivered by specialist providers) appears to deliver better value for money and a higher level of service. However, a key issue will be to ensure that, where local networks are deployed in this way, customers are able to move easily to new providers across different platforms. Switching will inevitably become more complex in a world where this “mixed economy” applies to infrastructure and we strongly support Ofcom’s work to ensure a good customer experience in these areas.

Number porting remains a specific problem area in the fixed sector. An increasing number of switches now involve a number port and this is a trend that is likely to continue. The number of CPs generating number ports has increased dramatically and the traditional approach involving bilateral agreements between CPs is no longer appropriate.

Many CPs use BT Wholesale’s IP Exchange service as an alternative to seeking bilateral agreements. As a result, the industry is becoming increasingly dependent on what is effectively a commercial service. Ofcom needs to monitor the situation to ensure that service levels and appropriate commercial arrangements are maintained. IP Exchange now effectively represents a potential single point of failure for porting and Ofcom must be ready to intervene if problems develop which cannot be resolved commercially.

Openreach is and will remain the key provider of access in the fixed service sector. It is critical, therefore, to ensure that Openreach is focused on delivering for its CP customers (and their end user customers). We believe that its current status as part of BT Group dilutes and compromises this focus, as its objectives are ultimately aligned with the rest of the group. The need to generate a surplus (Openreach currently contributes in excess of £1 billion surplus to the group) has in our view led to cost cutting (and underinvestment in engineering resource and the network) which has seriously compromised service performance. We also question whether its strategy for network investment reflects the needs of BT Group rather than the duties of a national utility provider.

Ofcom must act decisively to address the current poor levels of performance. We believe that Openreach is likely to perform better as an independent organisation outside BT. In any case, Ofcom must provide incentives on Openreach to perform better and reduce the influence of BT Group on its priorities. The whole of UK plc is impacted by Openreach’s poor levels of performance.

We would support a review and recasting of the Undertakings in parallel with this Digital Communications Review, to ensure that EOI is protected as the products which were the subject of the original agreement are retired. As voice services migrate to new IP based products provided over broadband, the scope of the Undertakings might also be considered. Smaller CPs are generally only able to consume GEA (and indeed other critical broadband products) via BT Wholesale.

In the mobile sector, we strongly believe that consolidation of the mobile network providers will reduce choice at both retail and wholesale level. We believe that it is very important to ensure that access to appropriate wholesale services is protected by Ofcom.

Coverage is also important (SMEs based in rural and remote areas experience the same issues of unreliability of mobile signal as consumers). Intervention may be the best way forward to mandate national roaming and plugging of “not spots”.

There is an increasing trend for home working which allows flexible working for those who may struggle to find employment on a more traditional basis and, by reducing the need for travel, is also supportive of the green agenda. Non availability of acceptable levels of mobile service (and high speed broadband) are effectively slowing the progress of this important development.

On a more general note, SMP is likely to be increasingly limited as an effective tool, in both the mobile and fixed space (it is arguable, however, that local fibre providers have SMP on their own networks – as is the case with call termination in other areas). We feel that an effective form of regulation of oligopolies is required. We understand that this is an issue which is currently being considered by BEREK, which is likely to be relevant to this review.

The trend for over the top provision (of e.g. call services) identified by Ofcom in the consumer market is also emerging in the form of apps for business users. Regulation needs to reflect the protections offered to users with regard to access to emergency services and resilience etc (as set out in GC14). In this respect, a review of the General Conditions and related guidance as a whole may also be appropriate at this stage.

BT has flagged up the switch off of its copper network and, separately, there is already a move to provision of voice services via VoIP, especially for businesses. The precise meaning of “switching off the copper network” and the implications of doing so are currently far from clear. Ofcom should ensure that much greater detail and clarity on BT’s plans is published to enable the rest of the industry to plan effectively.

Current Openreach development appears to be focused on anticipating the trend to VoIP provision (e.g. its plans for developing Single Order GEA). The consumption model for these new wholesale services must ensure that the diverse value chain in the UK is able to consume these products on an equivalent basis. A new generation of regulated products may be required to do this and to ensure that there is a commercially level playing field. We note that BT’s current fibre products are already becoming mass market and regulatory intervention may be desirable for the same reasons – care must be taken, however, not to damage widespread availability and take up of these fibre products.

Our responses to Ofcom’s specific consultation questions are set out in Annex 1 to this response.

We trust that the above response is helpful and would be happy to discuss any of the issues raised with the Ofcom team in further detail.

Kind regards

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