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19 November 2014

Dear Calvin,

Combined response of EE, Three and MBNL to Ofcom's BCMR consultation on data analysis - Non-confidential version (Confidential redactions are marked with [X])

I write to you in relation to Ofcom's Business Connectivity Market Review ("BCMR") consultation on data analysis (The "Consultation") on behalf of EE Limited ("EE"), Mobile Broadband Network Limited ("MBNL") and Hutchison 3G UK Limited ("Three"). We welcome the opportunity to review and comment on Ofcom's data processing methodology. A clear view of Ofcom's method is essential to ensuring that stakeholders understand Ofcom's methodologies and have confidence that data has been cleaned and processed in a fair and objective way.

We set out our response to the individual consultation questions separately in the annex below. However we wish to make the following points in relation to the consultation document and process:

- We note that the consultation implies that the extensive data provided to Ofcom by the Mobile Network Operators ("MNOs") in response to the s 135 notices issued to them is captured within Ofcom's data analysis and subsequent data outputs (see e.g. the references to this data at section 1.7-1.8 of Ofcom's consultation). We were only notified that Ofcom has not included this data in the analysis and methodology on which it is presently consulting through an e-mail from Ofcom on 30 October 2014 (i.e. three weeks after the publication of the consultation). This late revelation has restricted the time in which we have been able to respond to the consultation in an informed and meaningful way.
- The fact that Ofcom has not included data provided by MNOs in its analysis and not provided a "cleaned" or "processed" version of MNOs data has meant that MNOs do not have the same visibility of the methodology that Ofcom has adopted compared to other communication providers that have received "cleaned" or "processed" versions of their data. We are therefore unfairly disadvantaged and the extent to which we are able to comment on whether Ofcom's methodology is objective and transparent is severely limited.
- As a minimum Ofcom should to use the data provided by MNOs on mobile backhaul lease lines to reconcile the data it has received from fixed line operators. We consider that Ofcom should also provide MNOs with any data that they provided, on the same basis that Ofcom provided fixed operators with their data (including an explanation on how it has been used) and provide the opportunity for stakeholders to comment.

If you have any questions please do not hesitate to contact me, Luis Lopez Jimenez (Luis.LopezJimenez@three.co.uk) or Ashish Kumar (ashish.kumar@mbnl.co.uk).

Yours Sincerely

A handwritten signature in black ink, appearing to read 'M McDermott', with a stylized flourish at the end.

Matthew McDermott
Regulatory Economist

CC: Luis Lopez Jimenez; Ashish Kumar ; Leanne Bruce

Annex: Combined response to specific questions:

Scope and Coverage of the Data

Question 1: Are you aware of any fixed network operators that have access infrastructure that Ofcom has not requested data from that are likely to have a material impact on our network reach or service share analysis?

We consider that there are a number of stakeholders, which have access to infrastructure, and that Ofcom does not appear to have requested data from. This includes Scottish and Southern Energy, Network Rail and the Waterways fibre providers. Data from these stakeholders could have a material impact on Ofcom's network reach and service shares analysis and therefore should be considered by Ofcom.

Data processing

Question 2: Are there any missing circuits in the leased line data you provided to Ofcom? If so, please provide your best estimate (together with, if possible, a lower and an upper-bound estimate) of the number (or percentage) of circuits that are potentially missing and indicate whether they are likely to be accounted for primarily by a particular set of interfaces or bandwidths.

As highlighted in our introduction, reconciliation between BT's data and the data MNOs have provided will need to be performed to enable us to make a reasonable estimate. We consider that the data we have provided is complete and reliably sourced from billing information and inventory lists.

Question 3: Are there other factors relevant to how your leased line sales and purchases are recorded that have implications for Ofcom's service share analysis?

[X]

Question 4: Do you agree with our approach to classifying circuits that are delivered using WDM technology? Have we correctly classified circuits as WDM in the data you have provided, based on our current definition?

Based on the limited information available we consider that Ofcom's approach appears sound. However, as described above, Ofcom has not provided us with the data we have submitted and therefore it is not possible to comment substantively on this question in an informed way.

Question 5: Do you agree that 'Ethernet over SDH' circuits should be classified as Ethernet circuits? If not, please explain why.

Yes.

Question 6: Do you agree that presenting a service shares range is the most appropriate way of quantifying the uncertainties involved in identifying network sites for the purposes of this review? Are there alternative methodologies for dealing with this issue?

Without an understanding of whether the data presented by MNOs impacts on the overall service share range it will be difficult to make an informed judgement.

Ofcom note in the consultation that they count MNO's as customers, and thus presumably leased lines that terminate at any MNO sites are treated as customer sites¹. Ofcom also explain that they have excluded postcodes where at least one network site of a leased line supplier is located (this forms one end of their range). This creates an issue in relation to the percentage of sites which are both customer and supplier network sites. This is because it is likely that MNOs have a number of leased circuits that have a terminating MNO site and Customer sites in the same postal code. However quantifying the scale of this problem is very difficult on a site by site basis [3&].

Question 7: Do you agree with our preferred approach of estimating the supply of wholesale leased lines by counting 'on-net' circuits only? Do you have any concerns with this approach?

In principle we do agree, because counting off-net circuits will give a distorted view of competition existing in a given geography. However we would like to have a greater understanding of how Ofcom treats leased line services which are sold to the MNOs by BT Wholesale based on the purchase by BT Wholesale of underlying circuits from Openreach.

Question 8: With respect to missing information, do you agree with our proposed approach of using uplifts for three variables and presenting ranges for two variables? Should we consider alternative methodologies for dealing with missing information?

We are concerned with this approach. Accepting relatively small datasets may disproportionately affect the competition in a particular post code. We would like to understand why Ofcom felt that it had to take the approach they have taken and not include the entire datasets that they were presented. Obviously, actually analysing and including the extensive data provided by the MNOs in relation to their purchases may also assist with any current gaps in the data provided by fixed operators.

Question 9: Do you have any views on other aspects of our data processing and cleaning, as set out in Annex 7?

Please refer to our response to question 10.

Data Outputs

Question 10: Do you have any comments on our methodology for processing data on flexibility points and business locations in light of our network reach outputs? Would you suggest alternative methods or assumptions?

Ofcom states that it has swapped from using Experian as its source of UK business information to using Market Location as the source of this data. However the fundamental flaw in this data carrying over from the last BCMR is that it still relates to the locations of "UK businesses with one or more employees". This is not a suitable criteria for determining reach to the relevant locations at which MNOs require connectivity services to be provided, as it is not compatible with the nature and underlying topology of mobile networks. Quite simply, network reach to mobile sites needs to be considered separately.

We also feel that upon reviewing figures 4 to 7 we disagree with Ofcom's interpretation that "[WECLA and surrounding] areas covered are substantially the same, suggesting that there

¹ Page 17, Ofcom, Business Connectivity Market Review: Consultation on Data Analysis, October 2013

has been no material loss of consistency”². In our view there appears to be a significance difference in results from the WECLA area, with the overlap of the two areas altered by around 20% (i.e. a material difference).

Question 11: Do you have any comments on our methodology for processing circuit data in light of our service share outputs? Would you suggest alternative methods or assumptions?

We have no additional comments at this stage. However, as described above, Ofcom has not provided us with the data we have submitted and therefore it is not possible to comment substantively on this question in an informed way. We may be able to provide further comments once Ofcom has provided us with our data.

² Para 2.32, Ofcom, Business Connectivity Market Review: Consultation on Data Analysis, October 2013