

FCS Response to Ofcom's Consultation on its Wholesale Fixed Telecoms Market Review

Introduction

The Federation of Communication Services represents companies which provide professional communications solutions to (primarily) business users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Most FCS members operating in the fixed services space are customers of Openreach which is a critical provider to this sector.

Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest national and international private enterprises and public-sector users. FCS is the largest trade organisation in the professional communications arena in the UK, representing the interests of around 300 businesses who supply B2B services nationwide.

FCS Response

We welcome the opportunity to respond to Ofcom's consultation on its Wholesale Fixed Telecoms Market Review which is taking place at a key time in the development of telecoms provision in the UK.

We have provided a brief response, setting out our key concerns at a high level rather than responding to the consultation questions.

While we support Ofcom's stated objective of supporting the roll out of fibre to meet the needs of end customers, our overriding concern is to ensure that the regulatory environment effectively promotes competition, diversity of provision by a range of providers and ease of switching for all customers.

FCS broadly agrees with the approach adopted by Ofcom for this review (in combining wholesale markets which it previously reviewed separately) as this enables a more holistic approach to a complex system of markets and does not, for example, restrict consideration of services for business customers to the Business Connectivity market review - which essentially means Leased Lines/Ethernet.

The move from a 3 year to 5 year review period means that it is particularly important that Ofcom gets it right in this review, as the outcome will define the approach to regulation of the telecoms market for the foreseeable future.

FCS agrees with Ofcom's view that BT (i.e. Openreach) has SMP in the wholesale markets in scope of this review and therefore requires regulation. However, we believe that some consideration of the structure and respective responsibilities of BT Group and Openreach in this area should also fall within the scope of this review.

Ofcom's states that its primary aim in this review is to incentivise investment, and therefore the evolution of competition at network level, which in principle we support. Ofcom also notes the importance of competition at retail level during this period - i.e. while network competition develops. FCS would argue that there will be a continuing need for regulation to address competition at retail level as new providers emerge as a force and is wary of the re-establishment of vertically integrated providers (other than BT) in the fixed market. We believe that regulation will be required to support effective competition in this situation.

Specifically, we believe that it is important that there is open access to all networks and that Ofcom considers ways to regulate these alternative network providers - one could take the view that each of these networks have SMP in any areas where they are the only provider (i.e. new developments). On this basis, alt nets would be obliged to provide access to resellers.

We support the regulatory approach proposed by Ofcom, to define geographic regions where competition meets defined levels and vary the level of regulation on BT (Openreach) accordingly. This is a proven approach previously adopted for the regulation of wholesale broadband. However, Ofcom must ensure that any geographic variations in wholesale pricing which may arise still allow retailers to offer national pricing.

Ofcom proposes that most of the specific regulation (e.g. price caps) will be focused on the 40/10 variants of Openreach's product set (FTTP and GFast and, during the WLR withdrawal period, FTTC) which variant Ofcom regards as the "anchor" product. FCS appreciates the rationale for this approach, that regulation of the "anchor" product will exercise indirect control on the pricing of other product variants. FCS understands this approach but suggests that Ofcom should consider using a different anchor product for businesses (e.g. 80:20).

In considering its obligation to consider the interests of end customers, Ofcom specifically notes "choice, price, quality of service and value for money" as areas for consideration. FCS would add ease of switching to this list, in particular with the potential for vertically integrated providers to create barriers to switching between networks. We also believe that customer awareness of what is available in their areas or at their property is important - to promote ease of switching. FCS believes that the industry should, therefore, develop mapping of all infrastructure to enable this.

Ofcom states that it has considered whether its proposals are consistent with the provision of the new European Electronic Communications Code (EECC). FCS believes that this must include a commitment to the new rights of customers switching between networks. FCS agrees that this is important but is concerned to ensure that the new regulation is appropriately and proportionately applied in light of the new definitions of Micro Enterprise and Small Enterprise in the EECC.

Ofcom notes that it has also considered the UK Government's Statement of Strategic Priorities for telecoms: "world class digital infrastructure, furthering the interests of telecoms consumers and ensuring secure and resilient telecoms infrastructure". Fundamentally, FCS believes that telecoms should be now regarded as a utility and regulated accordingly.

Ofcom states that the new regime is also intended to support "copper retirement". FCS agrees that this is one of the most important considerations of the review and we have comments on two specific aspects of the WLR Withdrawal project.

FCS believes that this market review should ensure that the transitional pricing arrangements for the product variants designed to support a voice only service (equivalent to current WLR plus voice pricing) should be maintained beyond the withdrawal period. We note that this would be below the “anchor” pricing proposed for 40:10 products. (e.g. the new 0.5:0.5 product)

Further, FCS believes that Ofcom should provide some clarity around the cost of number porting. In particular, the risks associated with range holders and carriers creating costs for number porting which in turn could create barriers to switching. Clear principles need to be articulated by Ofcom in this area and, in particular, beyond the consumer marketplace where single numbers are the norm. FCS supports the principle of ‘free at the point of delivery’ when it comes to moving CLIs / DDIs. We are aware that range holders may levy charges of up to £11 per number for porting out numbers from their original ranges. When this charge is multiplied by the thousands of such numbers within a retail CP’s customer base it becomes a really significant barrier and is anti-competitive.

Finally, FCS believes Ofcom also needs to consider the ongoing convergence of fixed and mobile provision and the impact of current proposed mergers such as O2 and Virgin. Specifically, where 5G technology is used to deliver broadband this should be in scope of the regulation for this market and subject to the same pricing regime.

FCS hopes that these comments are helpful to Ofcom in its considerations. In light of the importance of this particular review, we are keen to discuss our response in further detail and would welcome a meeting to do this.