WHOLESALE ISDN30 PRICE CONTROL – FURTHER CONSULTATION

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Cable&Wireless Worldwide

INTRODUCTION

We welcome this opportunity to comment on Ofcom's revised proposals for an ISDN30 Wholesale Charge Control. Cable&Wireless Worldwide is a significant provider of ISDN30 services to customers under the banner of our *Direct Voice* and *Indirect Lines & Calls* products. Where possible we try and utilise our own infrastructure, or in the alternative make use of a combination of our own infrastructure with a wholesale link product from BT such as a Partial Private Circuit to connect to the end customer site. Where neither outcome is viable we would make use of Openreach's WLR ISDN30 offering, but only where it makes commercial sense.

In July 2011 we responded to the original charge control consultation and in this response we will try and avoid any repetition by focusing on the changes proposed to the previously outlined charge control structure.

ISDN30 continues to be valued by customers, maintaining its reputation for reliability and ease of use. The advent of new technology and products means ISDN30 services are gradually being replaced with more feature rich offerings, provided at competitive prices.

While we have acknowledge the case for a charge control, we remain concerned that reducing prices too steeply & too suddenly would undermine other forms of access provision and remove choice from consumers. It would also place an unfair burden on alternative infrastructure providers who are faced with the prospect of managing a product in decline, having rising unit costs over the years ahead, with potentially a sizable minority of consumers still hoping to remain with the product until it is declared end of life and mandatory migration occurs.

Although Ofcom is clear in this most recent consultation that they do not favour setting lower starting charges to make up for the delay to the start of the charge control, the alternative option of setting a very high value of X (somewhere between 11 – 17%) would lead to rapid and significant price reductions. In our view this approach would have a similar negative impact to setting immediately lower starting charges and we would urge Ofcom to think again before proceeding on this basis. It would be worthwhile for Ofcom to look again at moving the end date of the control (we still believe this remains a viable option) or waiting for a subsequent market review to fine tune the target end point of the control(s) with the benefit of up to date market information 2 years hence, rather than rush through a potentially destabilising rapid price reduction.

In this particular situation, with alternative infrastructure providers also having to manage the consequences of any charge control, it is crucial to have a regulatory approach that is both understood and predictable, providing the certainty that comes from a clear and well signposted charge control structure. A control of less than 2 years does not provide for that, with price reductions of 25% or 30% in less than 24 months a distinct possibility. Alternative providers are more sensitive to price reductions than BT as a result of their higher costs to provision and partial reliance on other access products like PPCs (where prices are tracking upwards and are expected to continue to do so).

It would be far better to introduce a longer charge control, allowing sufficient time to meet the end target price or indeed in this particular case, given the risk of an adverse impact on competitive supply, to wait until any subsequent control (with the benefit of refreshed market data) before reaching the target price, rather than risk destabilising alternative infrastructure investment. Of particular concern is the possibility that sharp decreases in price now could be followed by price increases in the follow on charge control driven by reduced demand and increased costs in five years time (the expected end point for any such control).

While the consultation stresses the mitigating factors of these new proposals, i.e. that prices will be higher for longer than previously intended and migrations away from PPC based infrastructure is predicted to be less than before, we don't believe Ofcom's model takes any account of the impact that rapid price movements may have on consumer switching behaviour.

In our view ISDN30 users are more likely to take notice of and act upon substantial and sudden pricing movements, than more graduated reductions, regardless of the shared pricing end point. While we remain keen supporters of competitive market outcomes, believing that this artificial regulatory pricing pressure could have a damaging impact on competitive supply, leading to an outcome that gives consumers lower prices in the short term but actually increases BT's wholesale market share, weakening competitive pressure in the medium term. It would be far better to adopt an approach that enables decisive graduated action to be taken that safeguards the interest of consumers, while at the same time preserves competitive supply arrangements.

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The best way to achieve this is to stick to the original values of X and either extend the control or delay reaching the target price until the after the next market review. It would not be in the long term interests of United Kingdom consumers if the wholesale supply arrangements were to be concentrated in the hands of just one regulated supplier. Underlying Infrastructure competition should remain the primary consideration for Ofcom in order to preserve consumer welfare in the longer term.

We would repeat our call for Ofcom to impose a remedy on BT that provides customers of their *Featurenet* product with a means to migrate to another supplier, as under the current arrangement many find themselves locked into the product, with no opportunity to change the underlying ISDN30 provider due to the lack of a migration process.

In the remainder of this response we focus upon the specific questions posted by Ofcom.

Q&A

Question 1: *Do you agree that we should adopt a price control based on a 2 year period and align the process of ISDN30 core services with their underlying costs of provision?*

As we stated in our previous response, we believe that in the case of ISDN30 services that three years should be the minimum duration for any charge control. It is far better to give the best possible advanced signals to Communication Providers with a longer period to adjust. Shorter duration controls risk pushing pricing changes through too quickly and not giving the market sufficient time to react, with steep price reductions potentially undermining market confidence.

In July 2011 we said that there may even be case to introduce a longer control (of 4 years), seeking approval from the Commission for a longer control in recognition of the stage that the product has reached in its lifecycle and the uncertainty over the need for any future controls with demand expected to fall away. While we understand the case for a four year control was more finely balanced, there is a clear case under the current circumstance to permit a 3 year control, as previously planned, allowing for a smother pricing transition than would be possible under a shorter control.

Question 2: *Do you agree that in this case we should adopt Option 3 should be preferred to Option2?*

We agree that option 3 (two year glide path to target, no one off adjustment) is preferable to Option 2 (one-off adjustment, followed by glide path to target) and have consistently argued throughout this process that any charge control of wholesale ISDN30 charges should be done using a glide path rather than an adjustment to starting charges.

We believe the unique set of circumstances that exist in this case would support the adoption of Option 1 (previous glide path, with target reached in subsequent period). 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 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 fewer circuits. This means it is alternative suppliers and not BT who are impacted most by a charge control.

We also believe that consumer behaviour is influenced by both the speed and extent of price reductions, as consumers often will not take immediate action if there is only a modest gap between what they are paying and the best price achievable (particularly if they are happy with the service they receive) and will often wait for their own pricing to catch up, taking action only if a material gap emerges. If a charge control forces a significant pricing gap to open up (in a way that is unlikely to occur in a competitive market setting), then there may well be a significant move off alternative infrastructure on to a BT based solution.

Ofcom's modelling fails to take this phenomenon into account when it considered the extent of any migrations away from the competitive supply base, so while from a pure cost perspective migrations away from competitive supply solutions may be modelled to be less significant than previously thought as prices are higher for longer under Option 2, if some allowance is made to take into account the impact of steep sudden reductions on consumer switching behaviour, then the scale of migrations to BT based solutions may be more significant than previously modelled. We would urge Ofcom to include the impact of consumer behaviour in their modelling.

Question 3: *Do you agree with our assessment that there has been material change in the wholesale ISDN30 exchange lines market since our determination that Openreach had SMP in the MR statement? If not, please explain why.*

We agree. Given the very short interval between this most recent consultation and the Market Review Statement that confirmed that Openreach had SMP, we don't believe anything material has changed.

END