

CWU RESPONSE TO OFCOM CONSULTATION ON PROPOSALS FOR WHOLESALE BROADBAND ACCESS (WBA) CHARGE CONTROL

Overview

1. In principle the CWU agrees with Ofcom's goal of the effective provision of broadband access in rural areas and in reducing Wholesale Broadband Access (WBA) costs where appropriate. However, we are not convinced that a WBA charge control is appropriate at this stage, and we have concerns about the impact that such a control would have on broadband investment in rural and remote parts of the country.
2. We would envisage it being appropriate to introduce a charge control where there are barriers to entry of effective consumer choice or where there is evidence of anti-competitive practice. However, we believe that in most areas situated within 'Market 1' these problems are not manifest and our assessment is that potential alternative providers have not found the business case compelling nor have they presented the case of a restrictive pricing policy. On that basis, we believe that Ofcom should refrain from setting a WBA charge control in Market 1.
3. If Ofcom does continue with its proposal to introduce a WBA charge control, then it must remain mindful of striking the right balance between the degree of a competitive market and the level of investment required. If BT is forced to reduce its WBA prices too far it could have the negative effect on the reciprocal level of investment BT provides to rural areas in particular. Such hard to reach areas could then end up being worse off as there would be little incentive for BT, or any other Communication Provider (CP), to invest as charges would not be cost-effective to roll-out broadband to rural areas.
4. The UK Parliamentary Welsh Affairs Committee acknowledged this when it stated in 2009 that:

“...others, including commercial providers and central government, share responsibility for what must be an integrated and joined up approach...[and that the NGA Fund be used]...“to subsidise network development in less commercially economic areas so as to ensure that disadvantaged and rural communities can share the economic benefits.”¹

5. Failure to build a universal broadband network for the United Kingdom in the short-term creates a greater threat to the nation's economy and the financial security of the communications sector than any risk posed to competition by public funding. We are already lagging behind our European neighbours as their Governments are pro-actively investing in their broadband networks (e.g. Portugal, France & Spain), and there is a very real danger that our economic competitiveness will suffer as a result. The benefits of higher productivity, increased innovation, improved access to new markets and new business opportunities would all be lost. In addition it has been estimated by the London School of Economics and the Information Technology Innovation Foundation in their report *'The UK's Digital Road to Recovery'*², that the impact on employment from investment in superfast broadband is that 280,000 jobs would be created by the roll-out of broadband.
6. In its *'Delivering Super-fast Broadband in the UK'* Statement, 3rd March 2009³, Ofcom estimated that the deployment of the passive physical infrastructure (ducts, poles, etc.) represents between 50-70% of the costs of building out the broadband infrastructure. If this is the case then a persuasive business model and case will have to be constructed for telecoms providers to make the necessary investment to meet such major costs. This was underlined by Ofcom in its Statement when it remarked:

“The business case for investment continues to be uncertain. There is still little evidence on how many customers will be prepared to pay for access to super-fast broadband services and how much they will pay. As a result, the potential rate of return for investors may need to be higher to encourage efficient investment. This

¹ *'Digital Inclusion in Wales'* – Welsh Affairs Parliamentary Select Committee Report, 4th August 2009

² *'The UK's Digital Road to Recovery'* - London School of Economics and The Information Technology and Innovation Foundation, April 2009

³ *'Review of the Wholesale Local Market Access Market'* – page 9, Ofcom, 23rd March 2010

uncertainty is compounded by questions on how far existing business models may be able to support the case for substantial investment in new networks.”⁴

7. This is not an argument against competition as the CWU supports in principle the introduction of lower prices, innovation and consumer choice but if Ofcom’s WBA charge control acts as a disincentive to investment it would be extremely prejudicial in the longer-term to the consumers. This would be particularly true in relation to economic rewards, social cohesion and environmental benefits.
8. Ofcom’s own comments were supported by further remarks made in July last year in the BIS Discussion Paper ‘Superfast broadband deployment and sharing other utilities’ infrastructure’. This paper stated that:

“...investment in superfast broadband involves higher costs, longer pay back periods and continuing uncertainty about consumer demand. These factors together may contribute to reduced incentives and willingness to carry out further investment, thus delaying further increases in the reach and coverage of superfast broadband to the rest of the country”. ⁵

The CWU would also like to reiterate its belief that the most likely way to ensure the quickest and most effective deployment of the superfast broadband network in the UK is through a mixed public/private investment approach. The previous Labour Government, after two lengthy reviews, committed itself to investing £1.2 billion of public money in the roll-out of the superfast broadband network in order to deliver socio-economic benefits to the UK. A major element of this proposal was to fundamentally bridge the ‘digital divide’ that exists in our society between those with IT skills and access and those without, mainly from vulnerable and marginal groups, that are socially excluded as a consequence.

9. This must also include a consideration of educational, language, ability, social and cultural barriers to the roll-out of broadband as well as the technological and physical ones. The stated aims of the previous ‘Digital

⁴ ‘Delivering Super-fast Broadband in the UK’ Statement - page 23, Ofcom, 3rd March 2009

⁵ ‘Superfast broadband deployment and sharing other utilities’ infrastructure’ – page 6, BIS, July 2010

Britain' report included the benefits of increased democratic participation, cultural understanding and social inclusion, as well as meeting environmental objectives such as carbon abatement and reduced energy consumption. For instance if isolated, rural communities are left without a superfast broadband service they will be placed at a serious disadvantage leading to a greater detachment from the rest of society, especially in terms of tele-working, utilising improved education and health care services and exploitation of new market opportunities.

10. In conclusion, the CWU's position is that Ofcom should refrain from setting a WBA charge control in Market 1 on the basis that in most areas where an absence of choice and competition exists, this situation is caused by the lack of a business case and is not down to a restrictive pricing policy.
11. The CWU would point to concerns raised by Ofcom itself, including the following in paragraph 3.3 of the consultation document: *'The economic conditions which have led to little competing investment in WBA in Market 1 (such as small exchange size and geographical remoteness) also mean that the economics of investing in new technology could be more challenging than in Markets 2 and 3....BT has indicated that it will consider investing in rolling out ADSL2+ in Market 1 in the period covered by the charge control, provided that the expected return on its investment is sufficient'*
12. Clearly then, there is a danger that if prices are set too high, those parts of the country situated within Market 1 exchange areas will be left behind as broadband speeds continue to increase in parts of the country where competition is greater. If Ofcom does go ahead with its proposals, any cost controls on BT's WBA charges must be balanced with consideration that in rural areas especially, reducing BT's WBA charges too much could threaten BT's ability to invest in modern digital networks in those areas.

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