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Dear Nic

Review of the wholesale local access market

This response has been prepared on behalf of relevant member groups within the Federation of Communication Services, including our Fixed Service Provider and VoIP groups. FCS is the trade association for the UK communications industry representing 350 companies delivering fixed, mobile and radio products and services subject to regulation by Ofcom. FCS has more than 150 members delivering fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband including a large number of resellers. A list of our members can be found on the FCS website - www.fcs.org.uk

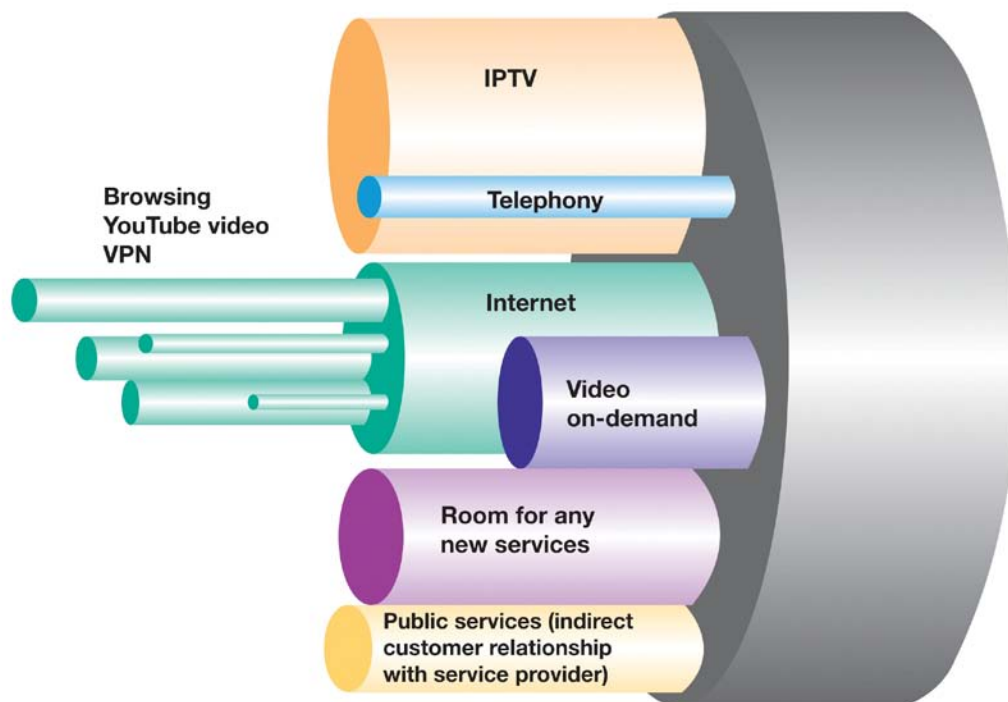
Background

FCS welcomes this market review by Ofcom as the ongoing rollout of fibre by Openreach (and others) will have a very significant “one off” impact on the fixed telecoms marketplace. It is essential, therefore, that the regulation of this key market continues to support effective competition in a mixed economy of fibre and copper.

We support Ofcom’s objective of promoting competition and choice in the delivery of fixed line telecommunication services and agree that the outcome of this review of the wholesale market will have a major effect on the price, choice and availability of retail products including voice, data and other new services.

The increased bandwidth provided by fibre connections allows the provision of a multiplicity of services provided by different service providers across a single pipe and FCS strongly supports this “multi-service pipe” model. In addition to traditional voice and broadband services, this will include new services such as IP Television and Video on Demand. This model also caters for the delivery of non-communications services such as smart metering and remote diagnostics.

The diagram below illustrates how this would work by providing a number of discrete channels operated by different service provider CPs across a single connection:



However, it is an important aspect of this model that ownership and control of the pipe should not be vested in a single “service provider” CP i.e. a CP delivering one of the services provided to the end user across the pipe. We favour a model where ownership and management of the pipe (for the BT network) remains with Openreach so that competing CPs can provide service in parallel. Openreach must be a long lived body as, in the current economic climate, it is very unlikely that new infrastructure players will enter the market.

However, we also recommend that should Ofcom consider the arrangements where multiple infrastructure providers are in place. In most parts of the country this is likely to be restricted to two (BT and Virgin) but in some areas local networks have been implemented and we see a role for Openreach in facilitating interfaces to provide services to customers on these local networks.

By allowing several providers to make use of the same connection, the multi service model also offers Openreach a potentially enhanced opportunity for recovery of its investment. Income streams available from multiple service providers will drive the commercial incentives for the widest possible roll out and reduce the need for government funding intervention. However, the commercial arrangements for charging service providers need to recognise the potential for multi occupancy so that Openreach is not over-recovering on its investment in these cases.

Capacity management and access to the pipe are also key issues in making this approach work and Openreach will need to develop effective means to protect the integrity of each of the individual services provided. Industry standards to do this will need to be developed and the governance arrangements for engagement in this area, always crucial, are arguably even more

critical where the product set is unregulated. The creation of an appropriate industry forum may be helpful in this respect.

The reseller market and reseller concerns about NGA

The Wholesale Local Access consultation has a clear focus on infrastructure products but we believe that the issues highlighted in the review must be considered alongside the findings of Ofcom's 2009 review of the fixed narrowband wholesale market which was completed before BT announced its plans for the rollout of fibre.

Against this backdrop, therefore, we would like to emphasise the continuing importance of the reseller model and the need for availability of suitable (WLR type) products for resellers in the NGA world. We note that in the current market competitive services continue to be delivered very effectively using both WLR and LLU in tandem. Despite the growth of LLU, there are currently over 6 million non-BT WLR lines.

Many FCS members operate a highly successful reseller business model and have made use of WLR to bring diversity and innovation to the fixed market. We believe that it is important that this diversity is preserved. Resellers offering WLR alongside broadband, VoIP, numbering services, mobile and hardware in various combinations represent a significant proportion of the industry; results of the FCS member survey completed at the beginning of this year indicate that FCS CP and reseller members alone have about 4000 employees and representing £300-500 million per annum turnover.

Resellers continue to offer service across the whole end-user customer base. The following proportions of FCS's fixed service members are selling to the customer segments shown below indicate a highly fluid and diverse market:

- 40% to individual consumers
- 75% to small business end users
- 60% to corporate end users
- 30% via resellers and sub-resellers

As noted in the FCS response to last year's consultation on the Openreach pricing framework, WLR continues to be the most appropriate and effective way to deliver services for business (LLU has been used primarily to serve the mass residential market and does not generally provide the functionality and flexibility required by business customers).

Resellers, by purchasing from a range of wholesale providers, are able to tailor and bundle services to meet more precisely the needs of their clients. Service provision is closely managed on a day to day basis providing essential support to small businesses whose needs may change rapidly. Consolidated billing, providing charges for all the services provided on a single bill, is seen as a significant benefit by many end-user customers.

Resellers have demonstrated the ability to adopt new technology rapidly and to innovate in developing new service propositions and business models. The rapid growth and continuing success of WLR demonstrates the success and importance of the reseller sector. Customers purchase services from smaller CPs and resellers value the supportive and flexible customer care which they receive and quality of service is vitally important to business. In many ways, service is unique selling proposition for resellers.

Ofcom notes in the current consultation that “the future demand profile for NGA services is unclear” and it is therefore crucial that an appropriate range of services supporting all types of CP business model is available to serve this as yet undefined requirement.

For this reason FCS is particularly disappointed by Openreach’s decision (announced on 24 May 2010 since publication of the consultation) that it no longer intends to develop VoNGA, effectively leaving resellers with no means to provide voice services in areas where Fibre To The Premise (FTTP) is delivered.

This is important (even in the short term when Fibre To The Cabinet (FTTC) is likely to be the more prevalent means by which fibre is delivered) because in greenfield sites where FTTP will be deployed as standard, for example in a new business park or housing development, resellers will not be able to offer a combined voice and broadband service.

Ofcom states in its consideration of the relationship between GEA/VULA and downstream services (paragraph 8.74 that VoNGA is likely to be required to enable BT to meet the SMP requirements set out in the 2009 fixed narrowband statement and we are unclear how the BT Equivalence of Inputs principle set out in the Undertakings is served by the current proposals

While welcoming the roll out of fibre, FCS members have expressed a general concern that, depending on the method of delivery, the introduction of the new technology may break the current market structure and allow monopolies to be created.

Specifically, there is fear of a “land grab” by the Openreach NGA trialists as they currently have better access to information on roll out and product development. This would be exacerbated by high customer migration prices which may be set during the trial and early roll out period which are not suitable for the wider reseller market, thus introducing obstacles to customer switching and the effective functioning of competition in the market.

The trials may also enshrine services and commercial arrangements which are suitable only for large companies with similar market models. Openreach must ensure a mix of customer types are involved in discussions on these arrangements during the trial period, must consult more widely on pricing and ensure that in-life prices are suitable for resellers. We feel that BT’s view on return on investment may be shorter term than necessary, Openreach should be a long lived entity supporting the development of UK infrastructure.

Resellers need to be accepted and involved as contributors to all aspects of the development process. This should include migration processes, care levels, ordering process and fault experience, guaranteed uplink and downlink speeds. A specific aspect of customer migration which needs to be resolved is the problem of number portability. There is also a greater need for visibility of the delivery programme at a much more detailed level – for example, how long will it take for a street cabinet to be activated following enablement of the exchange? Are there planning problems which need to be factored in?

There is also a danger that there will be an unwarranted focus on the residential consumer perspective and that on-demand HDTV will be seen as the “killer application” which may lead to roll out in residential areas but not business parks. Service levels generally may orientate towards residential customer requirements.

Not every home or premise in the country will have fibre so Openreach must continue to develop the provision of high speed broadband services via copper where this is more appropriate.

Ofcom's proposed remedies

We believe that the maintenance of existing remedies such as Local Loop Unbundling (LLU) and Sub Loop Unbundling (SLU) alongside the introduction of new products such as Virtual Unbundled Local Access (VULA) and Physical Infrastructure Access (PIA) will serve to promote choice and competition. However, we have reservations about some aspects of how these services may be provided

In general, regulation must ensure that new technology does not allow new monopolies or walled gardens to be created on the back of, for example, the wires only model, introducing new barriers to switching and thus effectively reducing consumer choice. It is fundamental that effective two way migration processes are developed. Industry needs to be guided to self regulate with a governance process akin to the energy sector

We also believe there is a strong case for the regulation of wholesale prices in NGA. The infrastructure competition model is limited and competition is more likely to thrive if it is based on the consumption of appropriately specified and priced wholesale products. There is also a need to re-focus competition policy at the retail level.

Virtual Unbundled Line Access (VULA)

The consultation proposes some of the key characteristics which VULA will need to meet its objectives. We have a concern that the interpretation of some of these such as, "Uncontended access", "Control of access" and "Control of CPE" may effectively prevent other CPs from providing service on a connection where VULA is present.

We believe that there must be a clearly defined role for Openreach in managing the line and the capacity available to any CPs who wish to provide service on the line. Specifically, other CPs must not be prevented from providing competitive services on the line and capacity must be protected to enable this. We believe that the multi-service pipe model allows the widest range of service provision models.

Migrations processes are also important and migrating back to other more active products should be managed via soft switching processes to keep down the cost of customer migrations

Physical Infrastructure Access (PIA)

We have doubts about the likely take up of PIA and question whether Openreach should be putting resource into this area until demand is more clearly established.

We are also concerned that the potential fragmentation of the access network could lead to more expensive and complex migration processes which will reduce ease of customer switching, which is essential for sustaining competition.

Please find our responses to the specific consultation questions below:

Question 1 *Do you agree with our proposed product market definition? If not, please explain why.*

We broadly agree with the technologies defined in scope. We suggest that there may be a case for residential and business to be considered as separate markets.

Question 2 *Do you agree with our proposed geographic market definition? If not, please explain why.*

We agree that WLA is essentially a national market, with the exception of the Hull area.

Question 3 *Do you agree with our proposals that BT and KCOM have SMP in their respective geographic markets? If not, please explain why.*

We agree.

Question 4 *Do you agree with our proposals for the general access requirements that should apply to BT and KCOM respectively? If not, please explain why.*

We broadly agree with the general remedies proposed. We do believe that prices for new products such as VULA should be subject to a “basis of charges” requirement.

Question 5 *Do you agree that Ofcom should impose a new network access obligation on KCOM, that would require it to follow a statement of requirements process to handle requests for new network access in this market? If not, please explain why.*

This seems to be a sensible approach.

Question 6 *In relation to LLU, do you agree with the assessment and options set out?*

We agree with the analysis of the options set out in section 7.

Question 7 *In relation to fibre access, do you agree with the potential unbundling arrangements for the different fibre architectures and the positions/options set out given the current and expected future availability of fibre within BT's access network?*

The analysis seems logical.

Question 8 *In relation to SLU, do you agree with the assessment and options set out?*

We agree.

Question 9 *In relation to PIA, do you agree with the proposed PIA obligation structure and the proposed implementation arrangements?*

In principle, we agree with the proposal but, as noted above, we do not believe that there will be significant take up of this form of access. We also have concerns that where PIA is adopted that this may create more complex migrations scenarios which may create barriers to switching. We believe that it is important that this concern is addressed and migration away from PIA is clearly defined before introduction of this product.

Question 10 *In relation to VULA, do you agree that VULA may be a necessary access remedy in the WLA market and if so, do you agree with the key characteristics identified and how these currently relate to BT's GEA products?*

We agree that a virtual unbundling product is likely to be the most practical and cost effective option in the context of the characteristics of fibre and Openreach's use of GPON technology.

As noted above, our main concerns are that,

- i) the form of VULA adopted should allow easy migration back to other more active access products such as VoNGA.
- ii) a CP providing VULA should not be able to take control of the connection and prevent other CPs from providing service on the pipe.

Question 11 *Do you agree with the framework for considering specific access remedies on BT?*

We agree that a range of remedies will be required during a transitional period which will need to support competition in both the NGA and CGA worlds (It is worth noting that the legacy CGA infrastructure will not be present across the whole UK (e.g. in greenfield sites) and that NGA must therefore support all the broadest range of CP business models.

Linked to this point, we do not believe that sufficient emphasis has been given to the success of reseller based competition and provision. The number of WLR and LLU lines in the current CGA market is broadly equivalent at 6 million each. As noted above, the new regulatory regime must provide effective support for CPs operating the reseller model.

However, we are particularly concerned by suggestions that BT downstream companies may not be required to consume the same product as other resellers. In these circumstances, the concept of "equivalence of inputs" (EOI) would be significantly weakened and the reseller model in general would be damaged as there will be little incentive on BT to provide a competitive fit-for-purpose reseller product such as VoNGA. Ofcom itself notes in paragraph 8.74 that it is likely that the SMP obligations imposed on BT in the wholesale narrowband exchange line market review will require BT to do produce such a product but the concern is that this would not create a level playing field between BT downstream companies and other resellers.

Question 12 *Do you agree that there is a need to have a complementary set of access remedies and if so, do you agree with the proposed set of remedies on BT?*

We believe that this is the right approach as there will be an extended transitional period when both CGA and NGA remedies will be required. As explained above, the key requirement is that appropriate services are provided for all CP models including resellers.

Question 13 *Do you agree that no specific access remedies should be imposed on KCOM in the WLA market at this time? Could any remedies on KCOM at the WLA market level address the competition issues that we have identified?*

No comment.

Question 14 *Do you agree with our assessment against the legal tests for each specific remedy, as set out in Section 9?*

No comment

We trust that the above comments are helpful. Our members would be happy to meet with Ofcom to discuss any of the issues raised in greater detail.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Eagle". The signature is written in a cursive, flowing style.

Michael Eagle
General Manager