

Serafino Abate
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Competition Division
Riverside House
2A Southwark Bridge Road
London SE1 9HA

27 March 2008

Dear Serafino

Business Connectivity Market Review

O2 (UK) Ltd ("O2") welcomes the opportunity to comment on Ofcom's Business Connectivity Market Review¹.

O2's interest in this area relates mainly to Radio Station Backhaul, a wholesale service that O2 purchases to link its radio base stations to its core network. This represents a large cost to O2, which is inevitably reflected in O2's own wholesale and retail prices.

There is much in the consultation document that O2 welcomes. We agree with Ofcom's approach on market definition. Furthermore, BT clearly has significant market power in wholesale low bandwidth traditional and alternative interface symmetric broadband origination markets, for the reasons that Ofcom states.

As regards the remedies, however, we have two main concerns:

1. Firstly, O2 believes that the suggested remedy for private partial circuits, a charge control, should also be applied to the provision by BT of RBS backhaul.

It is widely accepted that the two products are extremely similar, both technically and in the sense that they are provided in the same wholesale market. In the consultation document, Ofcom firmly rejects the option of removing charge controls in respect of PPCs². However, Ofcom goes on to consider that a cost orientation obligation is sufficient for RBS backhaul.

It is not clear to O2 why there is a different approach to PPCs and RBS backhaul. The purchasers of both are communications providers and no reason is given by Ofcom to treat each class of purchasers differently (by imposing different obligations on PPCs and RBS backhaul, which are similar BT products.)

Indeed, there is a very strong argument that a more interventionist approach would be appropriate for RBS backhaul, compared to PPCs. This is because the demand for additional RBS backhaul links is likely to continue to rise as mobile operators carry more data traffic – the point was made well by Ofcom at paragraph 8.145 of the consultation document. Mobile operators are not necessarily in a good position to judge whether the prices charged by BT for subsequent links are cost oriented – there is no real cost benchmark, as there is for initial links (that can be benchmarked against PPCs, which are generally provided on a single link basis). Such uncertainty might increase the risk

¹ Business Connectivity Market Review, Ofcom, 17 January 2008

² Paras 8.109 – 8.111 refer

of a dispute about charges being referred to Ofcom. Under the dispute resolution procedure set out in the Communications Act 2003, Ofcom would have only four months to resolve such a dispute, and it is unlikely that this would be sufficient time to determine the costs a reasonably efficient provider would incur in supplying RBS backhaul.

O2 believes that a better approach would be to impose a charge control on RBS backhaul. This would provide certainty going forwards, both for BT and for mobile operators, and would reduce greatly the scope for a subsequent dispute.

2. Secondly, O2 anticipates that BT will be offering Ethernet transmission based radio base station backhaul, in the near future. In the consultation document, Ofcom concludes that the provision by BT of RBS backhaul in the wholesale low bandwidth TISBO market should be regulated. We believe that it would be inconsistent not to have a similar regulatory regime in respect of RBS backhaul provided in the wholesale low bandwidth AISBO market. Indeed, such an approach would appear to favour one technology over another, in breach of subsection 4(6) of the Communications Act 2003.

We provide answers to some of the specific questions posed by Ofcom in the Annex attached.

I hope you find this useful. We should be happy to come in and discuss the matter further if you would find that useful.

Yours sincerely

Lawrence Wardle
Regulatory Manager
O2 (UK) Limited

Answers to specific questions raised in the consultation document

Question 9: Do stakeholders agree with our assessment of SMP in wholesale TISBO markets in the UK excluding the Hull area?

Question 10: Do stakeholders agree with our assessment of SMP in wholesale AISBO markets in the UK excluding the Hull area?

Question 11: Do stakeholders agree with our assessment of SMP in the wholesale trunk segments market?

O2 agrees that BT does have the power to behave to an appreciable extent independently of competitors and customers in the provision of RBS backhaul services to mobile operators. Accordingly, O2 agrees that BT does have significant market power in the relevant market(s).

Question 16: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale TISBO markets in the UK excluding the Hull area?

Question 18: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale trunk market?

O2 believes that the suggested remedy for private partial circuits, a charge control, should also be applied to the provision by BT of RBS backhaul.

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O2 believes that a better approach would be to impose a charge control on RBS backhaul. This would provide certainty going forwards, both for BT and for mobile operators, and would reduce greatly the scope for a subsequent dispute.

Question 17: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale low bandwidth AISBO market in the UK excluding the Hull area?

O2 anticipates that BT will be offering Ethernet transmission based radio base station backhaul, in the near future. In the consultation document, Ofcom concludes that the provision by BT of RBS backhaul in the wholesale low bandwidth TISBO market should be regulated. We believe that it would be inconsistent not to have a similar regulatory regime in respect of RBS backhaul provided in the wholesale low bandwidth AISBO market. Indeed, such an approach would appear to favour one technology over another, in breach of subsection 4(6) of the Communications Act 2003.