

Representing the Communication Services Industry



Wholesale Broadband Access Market Review –call for inputs
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Introduction

The [Federation of Communication Services](#) represents over 300 businesses delivering products and services via wireless, copper and fibre technology. Over 50% of FCS members provide services in the fixed markets and many of these are smaller CPs or new entrants. These FCS members deliver telephony services into both the residential and business markets, but most specialise in serving business customers, a sector which is continuing to grow. This response has been prepared on behalf of the Fixed Service Providers Group within the Federation.

Overview

We welcome the opportunity of responding to this call for inputs to Ofcom's forthcoming review of the Wholesale Broadband Access (WBA) market. The remedies mandated by Ofcom following findings of SMP in earlier market reviews have been essential in supporting effective competition in the sector, providing clear benefits to end-user customers.

We believe the WBA review should be integrally linked to the reviews of the Fixed Access markets. FCS will be responding separately to the call for inputs for the fixed access review. But our key observation, relevant to both reviews, relates to a change in the model for provision of voice and broadband services which significantly blurs the distinction between wholesale access and broadband provision.

As we have noted in previous FCS responses, the key development affecting the fixed voice and broadband markets since the last review is the ongoing roll out of Openreach's fibre network. This continues apace and there is a concern among FCS members about the impact on competition of Openreach's new NGA products and the associated pricing model.

In the traditional copper environment, broadband has been provided as an optional service over a fixed voice connection - which is effectively the prerequisite for consumption of broadband. The product set being delivered by Openreach for its fibre network, however, is based on default consumption of Generic Ethernet Access (GEA). GEA has been developed by Openreach to meet Ofcom's requirements for Virtual Unbundled Local Access (VULA) and is a wholesale input product for the delivery of broadband services. Nonetheless, its centrality in the fibre world effectively makes GEA the mandatory access product, with voice being provided as an application over the broadband connection.

This reversal of the delivery model has significant repercussions for how voice and broadband services are consumed and priced. FCS believes that ensuring that this change does not damage or restrict competition and diversity should be central to Ofcom's thinking in the forthcoming reviews. With regard to Broadband, we also believe that Ofcom may need to change the current geographic markets model which it uses to determine appropriate remedies to accommodate the new reality.

FCS supports the concept, particularly relevant to the higher bandwidth fibre networks, of a "Multi-Service Pipe" model which prevents any single provider from owning the connection to the customer premises or blocking access to competitors - as this will allow competing service providers to offer a range of services over a single connection. We also believe that the commercial arrangements for such a model should reflect the reality that service providers are

buying access to or renting a VLAN or a portion of the total available bandwidth rather than the whole connection.

FCS would also like to stress the importance of the wholesale markets considered in the current round of reviews (including WBA) for CPs providing services to business customers (particularly SMEs). The Federation of Small Businesses estimates that there are 4.8 million small businesses in the UK, employing 23.9 million people, and with a combined turnover of £3,100 billion. The importance of this sector to the UK economy means that it is critical that it receives a good service from its telecoms suppliers. In its market reviews, Ofcom equates "Business Connectivity" with leased line type services whereas the vast majority of SME businesses will rely on services in these markets, including broadband.

Ofcom consultation questions

Question 1: In light of our proposed approach for this review, have there been any changes since the last market review, or do you see any developments over the period of this review, which affect whether the WBA product market definition used in the last market review is still appropriate? If so, please give reasons.

As noted above, the default consumption model for broadband consumption in fibre areas is via Openreach's GEA product. Effectively, there is now a single supplier of wholesale broadband for CPs and any intermediary wholesale providers are bound by Openreach's pricing structure around which there is currently no regulation.

We do not agree with Ofcom's view that current and next generation broadband services are in the same market as the current generation products do not necessarily offer a viable alternative to the higher speeds which can be obtained via the next generation products, speeds which are essential for some applications.

Question 2: In our 2010 WBA Statement, we defined geographic markets by grouping together local exchanges with sufficiently homogenous competitive conditions, primarily by reference to the number of POs present or forecast to be present in the exchanges. Do you agree that we should follow the same approach in this Review?

We are not convinced that this model, which is based on the number of "unbundlers" present at each local exchange, is appropriate as the market moves increasingly to services based on fibre networks of which Openreach is the dominant provider.

Question 3: In the last WBA market review we identified four geographic markets in the UK. Is it still appropriate to identify four geographic markets using the same criteria as in the last market review? Or have there been changes since the last market review, or are any developments foreseen over the period of the next market review, that mean the number of geographic markets or the criteria used to distinguish the geographic markets may have changed? If so, please give reasons for your views.

See our response to question 2.

Question 4: What is the most appropriate way to capture changes in competition that may arise from future roll-out by POs? If we continue to use forecast roll-out plans provided by POs, how should we take account of the possibility that such plans may change in the future?

See our response to question 2.

Question 5: Have there been any changes since the last market review that would impact our SMP assessment in the WBA markets identified in this Review? If so, please give reasons for your views.

The assessment of SMP is obviously based on the geographic markets model. Clearly, where this model does not continue to reflect the reality on the ground, a new method of assessment will need to be found.

Question 6: What are your views on how well the current remedies have worked in promoting downstream competition? Please provide evidence or give reasons for your views.

We agree that to date the current remedies have worked well in supporting competition. General access, non-discrimination, cost orientation and pricing transparency are all remedies which are fundamental to effective regulation of these types of wholesale service. A charge control is also effective where there is a finding of SMP.

We believe that as the adoption of fibre based products at retail level grows, it will be necessary to introduce regulation on Openreach's NGA products. These remedies should, therefore, form the basis of Ofcom's approach.

Question 7: How effective have the current remedies been in addressing the market failures identified in the 2010 WBA Statement and in supporting competition and market entry? Please elaborate with examples.

No comment.

Question 8: If the current remedies have not been effective, in the event we find one or more CPs has SMP, what remedies do you consider we should we apply and why?

No comment

Question 9: Do you consider that the scope of the charge control was correct in terms of the products and services subject to the control? Has the charge control been effective? Looking ahead do you consider that a charge control is an appropriate remedy in the event that we find one or more CPs has SMP in the WBA market? If so, why?

For the reasons set out above, we believe that Ofcom should consider a charge control for Openreach's NGA products.

Specifically, there is concern about a potential "land grab" by larger CPs which is exacerbated by the high cost of migration. This concern is triggered by the intense current activity by several larger CPs offering very attractive deals to move customers onto fibre based products. Migration fees for fibre are very high (the current fee of £50 compares with a comparable transfer fee of about £3 for WLR) which will make the cost of gaining customers on fibre products who wish to switch to a new provider later extremely difficult to sustain commercially .

We understand that that the current £50 fee for transfers is not cost orientated and was set by Openreach to limit the number of transfers during the bedding in period for the new product. We are advised that the level of the charge will be reviewed by Openreach when its criteria on the number of CPs established for NGA products and lines in service have been met. However, no date for such a change has been advised and we would like to see a firm public commitment from Openreach on a change to this charge with decisive intervention from Ofcom if the promised change is not forthcoming.

We do not have access to detailed cost data which would allow us to comment specifically on "margin squeeze" but discounting or rebate offers from Openreach based on volume consumption of GEA is also a concern in the NGA arena. We would wish to be assured that the arrangements for discounting do not breach any obligation on BT to price products above cost. Similarly, we are concerned that setting such discount thresholds, which effectively exclude the vast majority of CPs from benefitting are discriminatory. The pricing of retail fibre products by BT's downstream divisions, who are currently most active in the market, is already very keen and the ability to reduce this further would make it difficult for other CPs to compete. We believe that Ofcom should consider the introduction of some regulation on pricing in this area.

Question 10: Are there any particular problems or issues in the WBA markets that this review should address? Where you identify a problem, please explain whether you believe regulation to be an appropriate response.

In a "fibre only" area, i.e. where no copper overlay is provided by Openreach (as distinct from its current Fibre to the Premise (FTTP) deployment policy which does include such a copper overlay), CPs will not be able to use WLR to service customers who wish to take a voice only service. This could occur, for example, in Openreach's Fibre Only Exchange trial in Deddington or at some point in the future at New Sites when current FTTP deployment policy is changed.

In these circumstances, voice only customers will need to pay for a GEA connection and then a voice service provided using either Openreach's Fibre Voice Access service or an "over the top" VoIP service. Based on Openreach's NGA pricing structure, this would be significantly more expensive than current WLR based services. Within the lifetime of this review, it is quite possible that we shall see the provision of pure FTTP (ie with no copper overlay) to some consumers. For this reason, we argue a regulatory response should be explored, essentially along the lines of creating a fibre-only equivalent of WLR, "WLR4", to guarantee consumers choice and price-competitiveness.

We hope that the above feedback is helpful and would be happy to discuss any of the issues raised in the FCS response in more detail with the Ofcom team.

