Representing the Communication Services Industry

FCS
Federation of Communication Services

Fixed Market Reviews –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 reviews of the fixed markets, which includes Wholesale Local Access (WLA), Wholesale Fixed Analogue Exchange Lines (WFAEL), Wholesale and Retail ISDN2, Wholesale ISDN30 and additional markets in Hull. The remedies mandated by Ofcom following findings of SMP in earlier market reviews areas have been essential in supporting effective competition in the fixed sector, providing clear benefits to end-user customers. The obligation on BT to provide WLR, for example, has been critical in bringing diversity, innovation and choice into the market and we are keen to ensure that this is maintained.

We support Ofcom's approach in reviewing the specified markets in parallel. However, we believe the scope of the overall project should also be closely linked to reviews of the Wholesale Broadband Access (WBA) market and the mobile markets. FCS will be responding separately to the call for inputs for the WBA 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.

In the traditional copper environment, broadband has been provided as an optional service over a fixed voice connection - which is effectively the perquisite 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. There is no direct equivalent to WLR being provided by BT for fibre which allows service providers and reseller CPs, which do not have access to their own infrastructure and voice servers, to provide an "off the peg" PATS compliant voice service. We strongly believe that provision of such a "Next Generation WLR" product by BT is essential.

This reversal of the voice and broadband delivery model has significant repercussions for how these 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. As we have noted in previous FCS responses, the key development in the fixed 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 a "land grab" by the bigger players. We expand further on this concern in our response under the "Remedies – Wholesale Local Access" section below

Our rationale for proposing consideration of the mobile markets alongside the fixed market reviews is based on the already significant, and growing, presence of the Mobile Network Operators (MNOs) in the fixed market. Our concern is that this enables the MNOs to offer fixed/mobile packages which it is difficult for fixed CPs to compete with - as they do not have equivalent access to wholesale mobile services from the vertically integrated MNOs on comparable terms to the fixed market. In the absence of any requirement for wholesale access in the mobile market or any charge control for wholesale mobile prices, MNOs are able to offer better deals when competing with service providers and resellers for customers' business.

FCS would also like to stress the importance of the wholesale markets considered in this review 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 the SME 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 the markets considered by this review, particularly WLR.

Ofcom has also called for feedback on the impact of Openreach's quality of service. Members report very poor and volatile service levels over an extended period and we expand on the impact of this below.

Consultation Questions

We have not responded to all of Ofcom's consultation questions but have provided general comments under each section of the call for inputs, which are set out below:

Market definition and market power assessment

Our view is that changes in technology and the emerging products which are based on these new platforms are leading to a significant blurring of previously accepted market definitions. As noted above, the distinction between "Wholesale Access" and "Wholesale Broadband" is a hard one to draw in a fibre environment. It is important, therefore, that Ofcom ensures that regulation of all products, including next generation services, is at a level which adequately protects competition during the transitional period.

We have also noted in our overview, the impact of fixed mobile convergence and the entry of the Mobile Network Operators into the fixed market. We suggest that it may be more effective going forward to conduct reviews of consolidated "Voice" and "Broadband" markets across both fixed and mobile platforms. A division into broader "Access" and "services" markets would also be a helpful way to consider appropriate forms of regulation and remedies in a changing market.

A specific area of concern for FCS members, which we would like to see addressed as part of these market reviews, is the growth in new business parks and housing developments which are subject to "solus" supplier arrangements - with other service providers effectively locked out. We believe that this constitutes a form of "local SMP" which requires Ofcom intervention. We have reviewed the research carried out for Ofcom by Analysis Mason on local fibre deployment but this does not seem to specifically address the issue at the micro level which is currently causing concern to our members.

With regard to ISDN30 services, we agree that this continues to be a separate market, distinct from, for example, leased lines and SIP trunk services and needs to be regulated accordingly.

We agree with Ofcom's current findings of SMP in all the relevant markets subject to the review.

Remedies: introduction

We refer to our comments on market definition above and suggest that there is a need for Ofcom regulation of Openreach's NGA products (VULA/GEA) and associated ancillary services, including migration charges.

On the specific issue of notice periods, we do not see any need to change the current arrangements which provide notice periods of 90 days for changes to rental services. However, we have recently been alerted by a member to a recent change (OR313) which involves a significant increase to the supplementary charge for WLR Short Duration Lines. This change, introduced at 28 days notice, will have a significant impact on the member's business, as they serve a number of large property developers and utility companies. While we appreciate that flexibility enabling Openreach to provide special offers at short notice is generally beneficial, this does not seem appropriate for the change noted above.

Remedies: Wholesale local access

As noted above, our main concerns relate to fibre and the NGA products in the WLA and WFAEL markets.

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.

Our concerns about "Wires Only", flagged up in earlier responses, have been partially allayed at this stage by the current arrangements put in place by Openreach for delivery of this option as "Self-Install". This is broadly similar to current arrangements for the supply of broadband services (where modems and routers etc. are provided to customers by post). Our major concern was that there would be a need for involvement of an Openreach engineer in subsequent migrations which would introduce a cost barrier to customers wishing to switch provider. However, although we understand that this is not the case under current arrangements we would be very concerned if a new variant of "Wires Only" was introduced which required onsite activity by engineers, or otherwise raised the level of complexity or cost of the migration process.

FCS supports the concept, particularly relevant to the higher bandwidth fibre networks, of a "Multi-Service Pipe" 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.

We have no specific comment on the desirability of retaining PIA as a remedy as this type of product is not relevant to most FCS members. Our concern is that any associated migration scenarios should not create new barriers to switching.

As noted above, there is a specific area of concern about the growth in "solus" supplier arrangements for new business parks and housing developments which we believe constitutes a form of "local SMP" requiring Ofcom intervention and development of appropriate remedies.

Remedies: Wholesale fixed analogue exchange lines

WLR is still the most important means for FCS members to compete in these markets and it is, therefore, critical that it is maintained and supported fit for purpose for the life of the current review and beyond. The Openreach roll out of fibre infrastructure is selective and favours residential areas. So WLR will continue to be particularly important for business customers in areas where fibre is not deployed. We also strongly believe that BT must offer a WLR type product, a "WLR4", for fibre only areas.

As discussed elsewhere, the service provided by Openreach for business CPs needs to be improved. Openreach is collaborating with industry on a project to achieve this, and progress to date is encouraging. The success of the project depends on bringing much greater focus on this area which involves in its initial phase, the development of Key Performance Indicators to provide appropriate reporting on business performance (currently masked by overall performance data) and some re-engineering of some Openreach processes in call centres and in the field. It is critical that Openreach resources this project effectively and ongoing investment in upgrading the network and in preventative maintenance is also important.

Approach to any local loop unbundling and wholesale line rental charge controls

We have no specific comments at this stage.

Remedies: Wholesale ISDN30

We have no specific comments at this stage.

Remedies: Retail and wholesale ISDN2

We have no specific comments at this stage.

Remedies: Markets in the Hull Area

There have been no significant changes on which we wish to comment at this stage.

Openreach's quality of service

Members report very poor and volatile service levels over an extended period. This not only provides a poor experience for the end-user customer but is also damaging to competition. Customers are less likely to change providers or take up new services where there are extended lead terms or where the process appears to be unreliable and uncertain.

There is also currently an unacceptable level of failure and current arrangements for jeopardy management and escalation of problems are not effective in rectifying problems within an acceptable timeframe. This is particularly acute and damaging for businesses, where the cost of failure is much higher than for residential customers.

Customers see quality of service as the responsibility of their service provider. Openreach's current level of unpredictability and failure to meet even extended lead-times, or to deal effectively with failures - matters beyond the CP's direct control is damaging to the service providers' businesses. In addition to direct costs arising from increased resource to manage failures and problems and loss of revenue through lost order, the current situation is also deeply damaging to the individual CP's reputation.

The introduction of the SLA/SLG regime for provisioning, whilst welcome in principle, has clearly not been a sufficient incentive to improve performance. We welcome recent initiatives to strengthen the SLAs/SLGs in the WLR and LLU contracts but believe that some liability on Openreach for consequential losses sustained by customers would be a more effective incentive to improve.

We believe that the current performance issues may be the legacy of earlier decisions by Openreach to reduce engineering resource. The experience and expertise which has been lost has unsurprisingly proved difficult to replace when needed. FCS believes that this is a downside of the ongoing lack of true business separation, where BT group objectives may be allowed to override Openreach needs.

The overriding concern here is the importance of maintaining and resourcing WLR as a fully fit for purpose product over the review period and beyond. We are concerned about the regular rejection of SORs designed to make the product more efficient and reliable for CPs and end user customers. SORs are often rejected on cost benefit grounds or delayed while the cost benefit or demand is assessed. The latter is not always straightforward given the number of CPs consuming WLR and the diversity of business models involved. Two examples of such delay include SOR 8283: "Never fail customer twice" and SOR 8376: "WLR/MPF Site office fast track process" both of which are now being re-assessed as part of the project to improve service. WLR is a regulatory remedy and we do not believe that commercial cost benefits should be the main factor in deciding on the value of such enhancements.

Finally, we would like to note that some useful functionality was lost during the transition from WLR2 to WLR3 which has never been fully replicated:

- CPs cannot now place a change order for additional channels and SNDDI at the same time
- It is no longer possible to request the conversion of an RCF service back to an active PSTN/ISDN installation without a break in service
- Management of ISDN30 DASS lines with less than 8 channels is problematic, orders are rejected for this type of installation a scenario which is most likely to be encountered when transferring a **BT Retail Classic** ISDN30

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.