

Markham Sivak
Ofcom
Competition Policy Group
Riverside House
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4th June 2009

Dear Markham

Fixed Narrowband Retail Services Markets

This response to Ofcom's consultation has been prepared on behalf of the Fixed Service Providers Group of the Federation of Communications Services, which represents more than 140 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband. A list of our members can be found on the FCS website - www.fcs.org.uk

We are pleased to have the opportunity to respond this consultation which proposes to remove all company specific retail regulations on BT intended to enhance competition in analogue telephony. We are not in a position to comment on the detailed economic analysis on which the consultation questions largely focus but we do have some major concerns and some general comments to make.

We have significant reservations about Ofcom's decision that BT no longer has SMP in the relevant retail markets, which we believe to be premature. The definition provided in Annex 7 to the consultation states that "very large market shares – in excess of 50% - are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position". The consultation states at 1.9 that BT still enjoys market shares in the access market of 66% for residential and 57% for business lines.

We also note the continuing dominance of BT in the retail market in Northern Ireland where BT's share of, for example, the business market is still over 80%. BT marketing activity in conjunction with the lack of equivalence arising from the decision not to require the introduction of functional separation and specifically the role played by Openreach on mainland UK has led to a curtailment of choice and consequent low levels of customer satisfaction. Ofcom must ensure that this unsatisfactory situation is not compounded by further relaxation of relevant regulation.

BT still enjoys many scale advantages over the rest of the market and Ofcom has identified one of these stating at 1.12 that "customers that are uninterested in changing providers are most likely to remain with BT"

There are further concerns that removal of the existing constraints may lead to changes in behaviour which will affect competition in the relevant markets. The current SMP conditions have provided effective remedies in promoting effective competition (in preventing e.g. predatory pricing). As noted above, we do not support the proposed deregulation but, if these changes are made and removal of the current remedies prompts changes in BT behaviour which are anti-competitive, Ofcom must be ready to intervene.

As another example of these advantages of scale, we feel that the popularity of the inclusive business packages referred to at 4.91 is largely due to BT marketing and the power of the brand. Other CPs can use e.g. Indirect Access to replicate this type of service offer but do not always have the knowledge and expertise to do so.

We note Ofcom's decision not to impose remedies for ISDN. However, continuing delays in delivery of fully fit-for purpose services via WLR3 mean that there is still no true equivalence in this area with consequences for effective competition. There is also a replicability issue with regard to e.g. site offices

With regard to the proposal to remove the requirement on BT to publish its prices, we note that the detailed list currently published by BT currently contains an element of reference data which provides information on which price point applies to each different number range in use (e.g. 0844832xxxx calls are charged at band G9). This part of BT's published prices has a benefit to the industry as a whole as it provides a freely available source of data required by Communications Providers to price calls accurately on customer bills. So, whilst we understand that the obligation on BT to publish their prices will be removed, we would not wish to lose this reference data at the same time. Section 2, parts 10-17 of the BT price list contain the reference data being referred to

We also challenge the statement that business lines are now delivered more quickly than residential

We trust that the above comments are helpful and would welcome the opportunity to discuss any of the issues further with Ofcom.

Yours sincerely

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

Michael Eagle
General manager