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Dear Marvin

Review of wholesale fixed analogue exchange lines markets

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 300 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 service providers and resellers. A list of our members can be found on the FCS website - www.fcs.org.uk

In general we agree with Ofcom's finding of continuing SMP for BT in this market and the remedies proposed in this consultation.

Our main concern is focused on competition in the emerging fibre networks and the mixed economy of fibre and copper which will exist in the meantime. We particularly note in this regard Ofcom's comment in clause 3.22 that "any narrowband access services delivered over BT's FTTP network will fall within the scope of this market".

In our response to the recent Wholesale Local Access market review we noted members' disappointment at Openreach's announcement that it no longer intends to develop VoNGA, effectively leaving resellers with no means to provide voice services in greenfield areas where Fibre to the Premise (FTTP) is deployed.

While welcoming the roll out of fibre, FCS members have expressed a general concern that, depending on the method of delivery of wholesale voice services, the introduction of the new technology has the potential to break the current market model. Competition in the fixed market is currently based on the complementary remedies of WLR and LLU and the free movement of customers between CPs offering services based on these wholesale products. Changes to this

“dual” approach may have the effect of creating “walled gardens” where customers are unable to move to their provider of choice due to higher cost of transfer or unavailability of appropriate wholesale voice services to make this possible.

Specifically, there is fear of a “land grab” by CPs deploying services based on VULA. This would be exacerbated by high customer migration prices which may be set during the trial and early roll out period which are not conducive to the free movement of customers, introducing obstacles to customer switching and the effective functioning of competition in the market.

There is also concern that the current NGA trials may enshrine service specifications and commercial arrangements which are suitable only for large companies with their own infrastructure and the potential to unbundle. Ofcom must ensure that all CPs are party to discussions on these arrangements during the development period and there must be more widespread consultation on pricing to ensure that in-life prices are suitable for CPs with varying business models. Independent service providers and resellers, therefore, need to be accepted and involved as contributors to all aspects of the product 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 wider visibility of the delivery programme at a much more detailed level – for example, information on the activation of street cabinets following enablement of an exchange.

We strongly disagree with Ofcom’s view, expressed in the consultation document, that greenfield deployment of FTTP will necessarily be very small; there are already very significant exceptions such as the Olympic Village with plans for 3,000 FTTP enabled apartments which will become legacy housing after the games. There is also likely to be a “ripple” effect in greenfield areas around the main games sites. In general it seems evident that FTTP will increasingly be deployed as standard in new business parks and housing developments within the forward look period of this review - with certain classes of CPs potentially shut out of competing for business in these areas.

We would like to stress the continuing importance of the service provider or reseller model and the need for availability of suitable (WLR type) products for this type of CP 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. 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.

Quality of delivery is also an issue and FCS has recently commissioned independent research on the attitudes of SMEs to their telecoms providers. The survey, which was carried out by YouGov on behalf of FCS in September, demonstrated the importance of independent service providers and resellers in terms of their share of the SME market - 27% of the total sample of 517 stating that they used an independent rather than a national provider.

The responses showed that the qualities most valued by SMEs in their telecom suppliers were responsiveness, flexibility and being sympathetic to the needs of small businesses (this applies to the whole sample regardless of whether their existing supplier is an independent or national provider). In each of these key areas the independent resellers were significantly more highly

rated by their SME customers. A copy of the full report and detailed figures is attached as Schedule 1 to this response and can also be found on the FCS website www.fcs.org.uk

The survey also demonstrated that a high proportion of SMEs (77% of all respondents) are aware of the roll out of fibre networks and over 60% consider the opportunities which the new technology offers to be important to their companies. Increased bandwidth, higher data carrying capacity and higher speed video conferencing were specifically cited as potential benefits. It is thus important that these businesses should be able to access these benefits via the providers they value most.

The survey also revealed that traditional voice services remain very important to this sector. Although 56% of respondents expressed themselves willing to use IP based services, 87% still rate access to traditional services over fibre as important or very important compared with 34% for VoIP. For this reason, our response focuses on the importance of maintaining the ability for service providers and resellers to continue to provide traditional voice services over fibre where it is not possible to use copper to do so. With withdrawal of VoNGA, there is no obvious way for these CPs either to provide services to new customers in FTTP areas (or to existing customers who move to such an area) with a consequent detrimental effect on competition and choice for the customer.

Ofcom has concluded that NGA will not affect BT's SMP in this market and that BT will be required to provide wholesale "access on reasonable request". We agree with this finding and support Ofcom's view. We agree with Ofcom's comment at 3.39, that vertically integrated operators do not offer access voluntarily and for this reason we would urge Ofcom to place specific obligations on BT to provide a WLR equivalent product for fibre and thereby maintain the model which has been so successful in promoting competition in fixed services in recent years.

Question 1: *Do you agree with Ofcom's proposed wholesale market definition? If not, please explain why.*

We agree with Ofcom's proposed market definition. Specifically, we note Ofcom's comment in clause 3.22 that, since customers "consider fixed narrowband analogue access ... to be substitutes regardless of the underlying network", Ofcom believes that "any narrowband access services delivered over BT's FTTP network will fall within the scope of this market".

We also note Ofcom's view at 3.23 that "business and residential services continue to be targeted at different customer segments" and that "business customers are addressed by more specialist CPs offering bespoke services." WLR has clearly been the main means by which such differentiated services have been provided and the need for an equivalent service will continue as the network is upgraded to fibre.

Question 2: *Do you agree with Ofcom's proposed assessment that BT has SMP in the wholesale fixed analogue exchange lines market in the UK (excluding the Hull area), and KCOM has SMP in the same product market in the Hull area? If not, please explain why.*

We agree. We would also like to highlight Ofcom's statements at 4.9, 4.21 and 4.25 about the limitations of LLU as a basis for increasing competition in this market.

Question 3: *Do you agree with Ofcom's analysis of future developments that may affect these assessments? If not, please explain why.*

We broadly agree with Ofcom's analysis. We note and agree with Ofcom's comments at 4.21 and 4.22 that NGA roll out will not affect BT's SMP in this market and that its dominant position is, therefore, unlikely to change.

Question 4: *Do you agree that Ofcom should retain the set of proposed general SMP conditions on BT and KCOM? If not, please explain why.*

We agree

Question 5: *Do you agree that Ofcom should impose a new general SMP condition on KCOM by requiring it to follow an SOR process in handling new requests for Network Access? If not, please explain why.*

We agree

Question 6: *Are the KPIs proposed above sufficient to provide industry with the necessary level of transparency?*

We agree – the KPIs appear adequate to measure customer experience and ensure that there is no discrimination.

Question 7: *Do you agree that Ofcom should continue to impose an obligation on BT and KCOM to comply with obligations governing cost accounting systems and processes as set out by Ofcom? If not, please explain why.*

We agree

Question 8: *Do you agree that Ofcom should continue to impose an obligation on BT and KCOM to comply with obligations governing accounting separation as set out by Ofcom in the markets and technical area discussed? If not, please explain why.*

We agree.

Question 9: *Do you agree that Ofcom should impose an obligation on BT to provide analogue WLR products in the wholesale fixed analogue exchange lines market? If not, please explain why.*

We agree. WLR has low barriers to entry and promotes competition, diversity and innovation. The availability of WLR is essential to enable specialist service providers and resellers to deliver services required by the business market, particularly SMEs.

Question 10: *Do you agree that it is not currently necessary to require KCOM to provide a wholesale analogue exchange line product? If not, please explain why.*

We agree but this an area which should be kept under review by Ofcom should demand from industry increase.

Question 11: *Do you agree that additional requirements for wholesale analogue exchange products, arising as a result of NGA deployments should for the time being be met under the terms of the general access obligation?*

No. The products delivered by BT as the SMP operator must meet the needs of all existing providers, including those specialist CPs who serve both the business and residential markets but who do not have access to the infrastructure which is required to consume services such as Fibre Voice Access. It is essential to keep barriers to entry low, as is the case in the current market.

Further, development of these products and the commercial arrangements for their consumption must be conducted with the widest possible range of CPs. It is important to ensure that a small group of early adopter CPs do not have undue influence on the development of new products or associated commercials. This could be done either by extending the remit of an existing industry forum such as the Copper Products Commercial Group (CPCG) which embraces providers of both WLR and LLU or a more formally constituted industry forum with a specific mandate to manage this type of industry change.

Equivalence of inputs has been a key factor in delivering competition in the industry since implementation of the Undertakings and there is a concern that failure to provide the range of products needed by all players in the industry could lead to a dilution of this important principle. It seems evident that the decision by BT Retail not to adopt VoNGA was instrumental in Openreach's decision not to develop this product. It would be perverse if the effect of this decision will be that a large element of the existing industry will be unable to compete with BT Retail (and a few other CPs) on a level playing field.

We disagree with Ofcom's view that Green field FTTP deployment will necessarily be low in the forward look period for this review. Technology and customer expectations are changing rapidly which may lead to changes in BT policy on its roll out strategy or on current policy for maintenance of copper in brownfield areas. As a specific example, the Olympic village is a potentially very large Greenfield site where BT intends to deploy FTTP to 3,000 apartments which will then be used for legacy housing. Under current proposals many CPs will be unable to offer voice services in these key development areas.

Question 12: *Do you agree that Ofcom should impose charge controls on BT in its provision of wholesale fixed analogue exchange line services? If not please explain why.*

We agree.

Question 13: *Do you agree that it would be disproportionate to impose charge controls on KCOM in wholesale analogue exchange lines? If not, please explain why.*

We agree.

We trust that the comments in this brief response are helpful. Our members would be keen to meet with Ofcom to discuss 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, slightly slanted style.

Michael Eagle
General Manager