

Additional Consultation: Narrowband Voice

UKCTA Response to Ofcom Consultation

Submitted to Ofcom: 16th October 2009

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

Introduction

UKCTA members represent the overwhelming majority of the UK's alternative fixed line sector and our members are acutely aware of the importance of retaining ex-ante regulation to protect consumers from market failure. UKCTA opposed Ofcom's proposals to deregulate Single Transit and we very much welcome this additional consultation and Ofcom's reassessment of the issue of single transit in light of stakeholder comments. Transit is a vital wholesale market that enables all operators, regardless of network size, to offer a full range of voice destinations to end users.

We also cautiously welcome Ofcom's decision to address the issue of communication provider interconnect price publication. We are keen to see a common approach introduced that reduces reliance on the BT Carrier Price List, however we must ensure that this new approach captures all CPs, including those who choose to host their number blocks with a third party.

The remainder of the response follows the format of the consultation for ease of reference.

Regulation of Single Transit

Question 19.1: *Do you agree with Ofcom's assessment that there are separate single transit and inter-tandem conveyance/transit markets in the UK excluding the Hull Area? If not, please explain why.*

Yes, we believe the single transit market is separate from the inter-tandem conveyance/transit market in the UK. There are a number of instances where CPs are compelled to buy Single Transit from BT either as a result of lack of interconnection (where it would not be cost effective to connect to every other CP) or through BT bundling Single Transit into other products (NTS, Number Portability etc) and there are many sections of the market which are not competitive (in particular the many thin routes carrying traffic to smaller

CPs aren't expected to be benefit from competition). In contrast, competitive alternatives do exist when CPs are seeking to avoid BT's inter-tandem charging.

Market Power Assessment

Question 19.2: *Do you agree with Ofcom's assessment that BT has SMP in the single transit market? If not, please explain why.*

Yes. While Transit has now dropped off the European Commission's list of Markets, the characteristics of the UK Market are sufficiently different from other member states to warrant retention of SMP in the UK. The UK narrowband market has a large number of very small providers and an SMP transit product is required to provide end to end connectivity. UKCTA believes the UK transit market requires SMP on single Transit and passes the three criteria test.

Proposed Remedies

Question:19.3: *Do you agree that Ofcom should impose a requirement to provide network access on reasonable request on BT in the market? If not, please explain why.*

Yes. The provision of network access on reasonable request is essential if end users are to enjoy cost effective seamless services from their communication providers. BT is the default interconnect partner for all. BT remains the only provider that is interconnected to every UK CP. The nearest competitor in the transit market is a long way behind and in reality, due to the economics of interconnection, is unlikely to challenge BT's position during the life of the next review. There are many bottlenecks in the market due to the scale of investment needed to connect directly to the many small providers that terminate UK number ranges.

Question19.4: *Do you agree that Ofcom should impose a requirement not to unduly discriminate on BT in the ST market? If not, please explain why.*

Yes. We believe that it is essential that BT is not able to discriminate in the transit market. Without this protection BT could take action which might undermine the commercial interests of its competitors and in turn leave consumers with less choice, by charging more for routes where no commercial alternatives are available. We would request guidance from Ofcom as to the circumstances where BT could charge different prices without falling foul of the undue discrimination condition. For example UKTCTA does not believe that BT's cost to serve would vary much between CPs and in our view this would be not be an objective justification for differential pricing. In particular we are seeking Ofcom's views as to how it would

approach the issue of BT charging different originators different prices to access the same routes.

Question 19.5: *Do you agree that Ofcom should impose a requirement that BT's charges should be subject to a cost orientation obligation in the ST market? If not, please explain why.*

Yes UKCTA would support Ofcom's proposal to impose a cost orientation obligation on BT's Single Transit offering. This is a key safeguard to prevent BT abusing its position of significant market power. BT's competitors need to be protected from discretionary price rises and any damaging attempts to price below cost.

Question 19.6: *Do you agree with Ofcom's proposed interpretation of this condition as set out in Annex 14? If not, please explain why.*

UKCTA would support the application of the principles set out in section A14.5 of Annex 14. We believe that appropriate benchmark for Single Transit pricing should be set at the level of long run incremental costs plus an equal proportionate contribution to common costs (or CCA fully allocated cost as a reasonable proxy).

Question 19.7: *Do you agree that Ofcom should impose a requirement to publish a reference offer on BT in the single transit market? If not, please explain why.*

Yes, UKCTA supports the requirement to publish a reference offer. It is essential to support the other remedies proposed.

Question 19.8: *Do you agree that Ofcom should impose a requirement to notify technical information on BT in the single transit market? If not, please explain why.*

Yes. UKCTA members need to be informed and given reasonable notice of any technical changes that may impact their ability to use this essential product.

Question 19.9: *Do you agree that Ofcom should impose a requirement to notify charges, terms and conditions on BT in the single transit market? If not, please explain why.*

Yes, UKCTA believe that the requirement to notify charges and terms and conditions is essential, providing transparency and helping to guard against anti-competitive behaviour. UKCTA members require advanced warning of any changes which may impact on their own

services to end users. The absence of such a remedy would hinder the very operation of the market.

Question 19.10: *Do you agree that Ofcom should impose a notification period of 90 days, or would 28 days be sufficient in this market?*

UKCTA would support the retention of 90 days notice in this market. A shorter notice period would not allow the price change to be filtered through the various stages of the supply chain (from BT to CP to reseller to end user).

Question 19.11: *Do you agree that Ofcom should impose an obligation on BT to comply with obligations governing cost accounting systems and processes as set out by Ofcom in the ST market? If not, please explain why.*

Yes. UKCTA members have been at the forefront of trying to improve the regulatory accounting regime governing BT. We see a continued need for Cost Accounting obligations in relation to Single Transit. We need to have confidence in the remedies proposed and without a solid understanding of the cost to serve we would not have the necessary transparency needed to establish whether BT is complying with its obligations. The obligation itself is not unduly onerous as it would sit alongside similar obligations for call termination and call origination.

The transparency and the timely provision of information by BT will be critical in monitoring its compliance with the proposed obligations. We believe that Ofcom's forthcoming 'clean sheet' review of regulatory financial reporting would be an appropriate vehicle via which to ensure that those characteristics prevail and UKCTA looks forward to participating in that initiative in due course.

Irrespective of any enhancements to BT's regulatory accounts, we believe that Ofcom should follow developments closely and maintain a keen interest in them, particularly in respect of BT's compliance with the proposed basis of charges and non-discrimination obligations.

UKCTA notes that it would be incumbent upon BT to assess and show whether prices are compliant with the proposed non discrimination obligation, and that Ofcom appears to be of the view that the remedy as proposed would allow it to intervene in a timely manner to deal with any competition concerns. While we recognise that such an approach is standard practice in instances where a non discrimination obligation applies, we remain concerned that

BT's regulatory accounts render the assessment of non discrimination (and hence its proof/dis-proof) difficult in certain instances. We therefore believe that ensuring that those accounts are sufficiently transparent so as to facilitate a definitive assessment of non-discrimination should be a key objective of Ofcom's 'clean sheet' review.

Question 19.12: *Do you agree that Ofcom should impose an obligation on BT to comply with obligations governing accounting separation as set out by Ofcom in the ST market? If not, please explain why.*

Yes. UKCTA support this proposal and believe it to be appropriate at this point in time as it is necessary to support cost orientation. It is imperative that BT's compliance with any cost orientation obligation is able to be readily assessed by both CPs and Ofcom. In this regard, it is critical that BT's regulatory accounts are sufficiently transparent so as to facilitate such assessment – and the forthcoming 'clean sheet' review should necessarily address any shortcomings.

Question 19.13: *Do you agree that Ofcom should impose a requirement that BT's charges should be subject to a cost orientation obligation for PPP related to the ST market? If not, please explain why.*

UKCTA members are compelled to purchase PPP as it is bundled with BT's Single Transit service and we therefore support the proposal to make PPP (as bundled with Single Transit) subject to a cost orientation obligation.

Question 19.14: *Do you agree with Ofcom's proposed interpretation of this condition as set out in Annex 14? If not, please explain why.*

Yes. UKCTA members support the cost orientation benchmark for PPP (when bundled with Single Transit) being set at long run incremental costs plus an equal proportionate contribution to common costs (or CCA fully allocated cost as a reasonable proxy).

Notification of call termination charges

UKCTA cautiously welcomes Ofcom's proposals to require CPs to notify their charges for geographic call termination; this will reduce future reliance on BT's Carrier Price List and assist the market in functioning effectively. We are keen to see any changes implemented to capture all CPs who have UK number allocations. UKCTA members have particular concerns about the commercial arrangements surrounding BT hosted number blocks. In the case of Communications Networking Services (CNS - a stand alone BT Group business), BT number blocks have been assigned to CNS but CNS is only accessible via a BT transit service, therefore increasing the cost base for UKCTA members originating calls to CNS numbers.

UKCTA members can't replicate this practice as BT require other CPs who host third party ranges to reassign the number blocks to themselves. BT only permits the hosting CP to charge the same rate as their existing services and not previous range holder rate. This doesn't create a level playing field and UKCTA believe Ofcom must either require BT to assign hosted ranges (such as CNS) to BT, with originating CPs only paying the BT termination rates, or requiring CPs whose numbers are hosted to publish both their termination rates and make available on request a list of the points of interconnect available for other CPs to hand the traffic over directly to avoid transit charges.

Question 19.15: *Do you agree that Ofcom should impose a requirement for other CPs to notify their charges? If not, please explain why.*

UKCTA welcome this proposal. All CPs should be required to publish their interconnect termination rates. Ofcom must ensure that the definition of a CP is broad enough to include entities such as CNS, to prevent such bodies avoiding publishing their termination rates online.

Question 19.16: *Do you agree that a notification period does not need to be set by Ofcom as commercial arrangements are sufficient? If not, please explain why.*

Yes, UKCTA agree with Ofcom's proposal to leave the notification of rate changes to individual Communication providers.

Question 19.17: *Do you agree that Ofcom should not impose an obligation to impose an obligation to publish a reference offer? If not, please explain why.*

Yes. The requirement to provide a full reference offer would be disproportionate.