

7th October 2020

Response to “Wholesale Voice Markets Review”

Magrathea welcome the opportunity to respond to this consultation which includes a number of areas we have been in contact with Ofcom about since the previous Narrowband Market Review.

We are very pleased to see that a number of our concerns have been considered as part of this consultation process and appreciate the opportunity to further define the issues and comment on proposed solutions.

We also note that whilst this review goes some way to address our concerns, there are still a number of areas that fall outside of this specific review but which will have a serious and considerable impact on the future of our industry, we have therefore taken the opportunity to mention these in addition to responding to the questions asked. If Ofcom would like to discuss any of these points with us in more detail, we would be pleased to make ourselves available at your convenience.

One key point that we must address is that this is the first five year review period and it falls at a time of enormous change and uncertainty in the sector meaning that there is the potential to be unduly restricted by, or indeed lacking in, regulation at various points and therefore we would wish to see plans for interim reviews and some flexibility throughout this period, something which was suggested in the recent DCMS briefing.¹

Response to consultation questions

Question 4.1: Do you agree with our proposal not to regulate the WCO market on the basis that it no longer fulfils the three criteria test set out in the 2014 EC Recommendation? Please set out your reasons and supporting evidence for your response.

WCO is directly tied to WLR and as such we feel Ofcom should recognise that the two are an inseparable package that people are still purchasing today. At the time of writing there is still no meaningful alternative in the wholesale market and many other challenges to be overcome before the WLR closure project can be considered successful.

1. Department for Digital, Culture, Media and Sport, 2020. Government response to the public consultation on implementing the European Electronic Communications Code (dated 22 July 2020).

Elsewhere it is well documented that there is a noticeable and concerning lack of public awareness around the changes we are facing and still very little is understood about the criteria being used to decide when it is appropriate to consider an exchange migrated or how voice only consumers will be served.

As a result, we would urge Ofcom to keep at least a base level of regulation over the legacy products until such a time as there is greater certainty and consumers have adequate knowledge and options to be able to make informed decisions.

Question 5.1: Do you agree with our proposed market definition in relation to WCT? Please set out your reasons and supporting evidence for your response.

Question 5.2: Do you agree with our proposed market definition in relation to MCT? Please set out your reasons and supporting evidence for your response.

Question 5.3: Do you agree with our provisional conclusion that each provider of WCT has SMP in the market served by that provider? Please set out your reasons and supporting evidence for your response.

Question 5.4: Do you agree with our provisional conclusion that each provider of MCT has SMP in the market served by that provider? Please set out your reasons and supporting evidence for your response.

Yes, we agree.

Question 6.1: Do you agree with our proposal to maintain a network access obligation on all WCT providers? Please provide reasons and evidence in support of your views.

Yes, we agree.

Question 6.2: Do you agree with our proposed remedies that would be specific to BT's provision of WCT? We welcome evidence on all aspects of our proposals and in particular whether we should maintain BT's obligation of no undue discrimination. Please provide reasons and evidence in support of your views.

Yes, we agree with the proposed remedies. We will cover this in more detail later in our response but we agree that the obligation of no undue discrimination remains necessary, particularly at this time when networks are trying to establish new access arrangements to terminate traffic. It is true that the obligation to provide network access fair and reasonable terms should negate the need for this particular requirement, however it is our experience that this is not sufficient and has insufficient enforcement to achieve the removal of discrimination.

We cannot foresee any benefit to the consumer by removing this obligation.

Question 6.3: Do you agree with our proposed charge control on WCT and the analysis that informed this proposal? Please provide reasons and evidence in support of your views.

Yes, we agree, and we welcome the proposed removal of the requirement to notify termination charges since this does appear to be a disproportionate control currently.

However, we still don't believe that our concerns, which have been raised constantly since 2010, have been addressed in the area of reciprocal or symmetric rates. This is touched on later in our response relating to interconnect but it's worth mentioning here that the objective served by the charge control on WCT is only partly achieved on account of networks making the (very sensible at this stage) decision not to build out to the DLE and therefore 'single tandem' rates are payable. Given the recognised significant market share in this market that BT enjoys it is clear that there is an asymmetry, particularly when you consider that the difference between FTR and ST rate is over 500%.

We welcome the requirement for BT to offer FTR on all ranges by 2025 but this leaves another four years of them being able to profit from the fact they are behind the rest of industry on their migration plans and have yet to establish a workable IP interconnect offering. With this in mind we once again propose that BT should be required to offer FTR at less points of interconnect (TDM) as well as on their IP product to better balance WCT costs for the remainder of the life of the TDM and to ensure other networks are not left at a disadvantage for another five years.

It is also worth mentioning at this stage that in the consultation (para 3.35) you refer to a BT presentation "All-IP Migration Interconnect Charging Update: phase 2 Number Block Migrations" in the context of announcing the intention to retire the TDM network. In fact, on that update BT clearly stated "this is not a DLE closure programme" so at the time of writing there has still been no communication from BT to us as an interconnect customer outlining their intentions or plans for our TDM interconnect estate. Magrathea raised this issue formally at the previous BT SIA review workshop (2018) and still await useful input from BT.

Question 6.4: Do you agree with our proposal to maintain an access obligation on all MCT providers? Please provide reasons and evidence in support of your views.

Question 6.5: Do you agree with our proposed charge control on MCT and the analysis that informed this proposal? Please provide reasons and evidence in support of your views?

Yes, we agree, and we welcome the proposed removal of the requirement to notify termination charges since this does appear to be a disproportionate control currently.

Question 6.6: Do you agree with our proposal to introduce a reciprocity condition on the termination of international calls and the analysis that informed this proposal? Please provide reasons and evidence in support of your views.

Yes, we agree. The current barrier on UK carriers to be able to recover the excessive surcharges applied by many EU countries can make services uncompetitive and have a negative impact on consumers. The flexibility to adjust pricing should encourage other countries to be more measured in their pricing as there will be reciprocal benefit to doing so as covered in Option 3 of the consultation document. The consultation doesn't give much detail on how this can be achieved so we would like to see further consultation on this.

Question 7.1: Do you agree with our proposed non-pricing remedies specific to BT? Please set out your reasons and supporting evidence for your response.

Yes, we agree although we would like to see this taken a step further and introduce charge controls on IP Interconnect, at least until 2025 when we will see how the market settles. This period of change and migration could easily be manipulated for financial gain and the vagueness of 'fair and reasonable charges' is unlikely to be a deterrent. Any resulting disputes or complaints would take a large portion of the migration period to investigate and resolve which could prove a barrier to migration within the desired timeframe.

The requirement not to unduly discriminate is, in our view, essential. As noted in the consultation there may be an incentive on BT to provide access terms that disadvantage other networks. Recent experience has shown a level of 'cherry picking' the most profitable business with which to provide an interconnect arrangement and therefore we feel there is justification for this remedy.

We do however wish to clarify our views on the above relate to equivalent interconnect arrangements to those currently provided on the TDM. There appears to be some confusion amongst BT, Ofcom and Industry with regard to classification of various service types – something we would urge Ofcom to review alongside this current consultation. BT IP Exchange is now being marketed as a carrier grade interconnect solution (to mirror TDM) as well as a managed service available to Communication Providers.

This confusion is already causing many challenges for industry, particularly with regard to number portability and transit, and as such we believe these various markets need to be properly reviewed and specified before the obligation to not discriminate can be correctly and fully met.

Transparency requirements are again welcomed, one of the key benefits of the existing SIA regime is that all networks have visibility and the opportunity to influence the terms. This is a key part of creating a level playing field and promoting competition.

Question 7.2: Do you agree with our proposals relating to BT providing transparency on its migration timetable? Please set out your reasons and supporting evidence for your response.

Yes, we agree for all the reasons stated in the consultation document. The proposed timetable of 12 months-notice and 30 days simultaneous charging of FTR appears reasonable.

Question 7.3: Do you agree with our proposal to require BT to provide WCT for all geographic calls as if its migration to IP is complete, from 1 April 2025? Please set out your reasons and supporting evidence for your response.

We do agree but refer to our earlier comments about the interim period. The IP network has previously been deemed efficient and most other major networks have already made great progress in migrating so we agree there must be some incentive on BT to catch up with the new regime. In fact, we would go so far as to suggest the date could be sooner than 2025 so the benefit they currently get from applying unregulated transit fees to carriers that have been unable to interconnect via IP before now is prohibited sooner.

Ofcom note in the document that to make this change early could result in a rush to migrate that BT cannot manage and so we would suggest a fairer approach would be to do immediately review the transit element of these calls and introduce a more reasonable cost or at least require BT to provide FTR at fewer than the current >600 Points of Interconnect.

Question 7.4: Do you agree with our proposal to subject BT's provision of TDM interconnection circuits to a charge control which expires on 1 April 2025? Please set out your reasons and supporting evidence for your response.

We do agree, this regulatory and pricing certainty during this period is very welcome.

Question 7.5: Do you agree with our proposal to require BT to provide IP interconnection on fair and reasonable terms, conditions and charges supplemented by guidance? Please set out your reasons and supporting evidence for your response.

We do agree with Ofcom that if you directly connect at a BT Node no ancillary port charges should be made as the cost of equipment, as noted by Ofcom, is already included in the LRIC based FTR calculation. We are also inclined to agree with Ofcom that only a single one-off fixed charge to run cross connects is appropriate and as a benchmark the Openreach 'Internal Cablelink Variant 1' would seem acceptable.

Aside from the above, we do have concerns about the lack of reciprocity in this arrangement. In the TDM environment costs are shared to acknowledge the fact that traffic is exchanged on the links, some BT owned some OLO owned. With the currently proposed

charging structure the OLO must pay all the costs to enable BT to deliver traffic to them. This is unique to the current BT IPX interconnect agreement in our experience.

The risk here is that the OLOs will ring-fence BT owned traffic for as long as possible and continue to utilise TDM links that are on a cost share basis with BT, thus stretching out migration plans further still. An arrangement mirroring the current ISI offering, whereby networks have a right to mirror in reverse interconnect charges for BT owned traffic would resolve this.

You suggest the fact that there are less POCs on BTs IP network than with the TDM mitigates the risk of excessive charges. For this to be a factor in measuring risk we would like further clarity about the connectivity factors and how they will combine with BT IP Exchange.

Currently operators using the IPX product can connect to the BT 21CN network at the transport layer in one location but then utilise that connection to reach the session border controllers (SBCs) at no additional cost and can receive FTR for WCT on all ranges regardless of which SBCs you are actually connecting to. This makes sense when you consider that the connections to these SBCs are actually virtual and not directly related to physical connections as one ethernet connection into the BT network can and will (as it does today) carry traffic to multiple BT SBCs all from one node. As there is no physical element to the network at this point the cost of moving traffic between SBCs is negligible, far lower than would be worth administering for any party.

However, we believe it would be reasonable for BT to nominate specific SBCs on which to host specific area codes for traffic management purposes, and to nominate those SBCs to be the point that FTR is available. However, we do not think it reasonable due to the ultra-low costs of transporting IP traffic for BT to require other operators to connect to specific BT 21CN nodes to connect to specific SBC units, and thus require a CP to connect to every 21CN node to obtain FTR on all ranges. Given the absence of measurable cost in this scenario we would suggest that other networks should only be required to connect at a minimum of two (for resilience) 21CN Nodes to be regarded as obtaining a formal interconnect and by doing so gain access to all SBCs to be able to gain FTR on all ranges and that this should be included in the regulations to prevent future disputes and potential barriers to entry for smaller networks.

Question 7.6: Do you have any concerns regarding the existing obligations, which do not require a hosting party to ensure that hosted providers can make WCT available at an accessible POC? Please set out your reasons and supporting evidence for your response.

Yes, we do have concerns. In our experience (and in our own service offering) a host network provides most, if not all, of the network level requirements to the hosted party. One of the most common reasons for a hosting arrangement is that the hosted party does not have sufficient network infrastructure, and in some cases technical expertise, to run their own network and interconnects and therefore it is logical that they should require extra support in meeting their obligations.

For example, Magrathea hosted clients have number exports managed for them by default and we only agree to them fulfilling that obligation outside of our agreement if we have evidence that they can and will do so. In contrast, BT appear to trust that their hosted clients will fulfil their obligations unless they have opted to take a fully managed solution from BT which leaves us with many range holders in the UK to whom we cannot terminate traffic and pay FTR and to whom we have great difficulty importing and exporting numbers.

It is our opinion that Ofcom should review and clarify the different network types, something that has not been done for many years when the PECN/ECN/PECS definitions were set, and provide clarity about the obligations on each network type going forward into this new regime. Now is a perfect opportunity, whilst technical and commercial agreements are in their infancy, to iron out many of the historic problems we have had to work around.

We would also like to note concerns that the ease with which interconnect can be achieved via the public interconnect is not necessarily in-line with the requirements of our critical national infrastructure. Whilst public internet and internet peering can be adequate for small interconnect arrangements, it is our view that something more secure and resilient is necessary for a large, high volume arrangement. We think network should be afforded the right to insist on a physical interconnect as part of the fair and reasonable assessment.

To re-iterate our earlier comment, it would seem reasonable to insist on 'two or more' diverse points of interconnect for the sake of resilience but there is no justifiable reason in this 'virtual' era for connectivity and security solutions to negatively impact costs to any real degree.

Question 9.1: Do you agree with our initial view that the risks associated with IP interconnection should be manageable by industry?

Question 9.2: Do you agree with our proposed guidance concerning IP interconnection? Please set out your reasons and supporting evidence for your response.

Yes, we agree. The proposed guidance at para 9.21 would appear to satisfy the requirements to have an endorsed standard whilst also allowing for bilateral variations.

However, we do note that the proposed standards appear to be much lighter on interoperability testing than currently defined in the TDM handbook and we would be hesitant to endorse any relaxing of testing standards in carrier grade interconnects as this would be detrimental to the entire telecommunications network.

Question 10.1: Do you agree with our proposed market definition and SMP assessment for termination on the 070 number range? Please set out your reasons and supporting evidence for your response.

Question 10.2: Do you agree with our proposed remedies for operators holding SMP for termination on the 070 number range? Please set out your reasons and supporting evidence for your response.

Yes, we do agree on both points, however it is greatly concerning that there has been very little benefit passed through to the consumer since the significant reduction in wholesale rates on these number ranges and we would urge Ofcom to investigate that.

Additional points for consideration

There are other areas of concern which are not covered in the Wholesale Voice Markets Review as they do not fall under currently regulated areas, however we feel that now is the appropriate time for a wider review of wholesale relationships and how they will work post migration to all IP to ensure the market remains competitive, fair and remove the opportunity for game-playing to the detriment of business or consumers.

Ofcom infer in the consultation that the BT IP Exchange service will be a replacement for the current TDM interconnect customers and so it should follow that Ofcom appreciate the importance of an alternative to the SIA.

On a number of occasions, we have highlighted to Ofcom the differences between the SIA (current TDM regime) and the IP Exchange agreement. It is our opinion that the current IP Exchange agreement is not fit for purpose for carrier to carrier interconnect and something more aligned with the SIA would remain appropriate. Many years of negotiation and experience have been invested in the SIA and, although there are imperfections, the standardisation of such an agreement has served the industry well.

The consultation suggests that industry can resolve these concerns but experience shows that this is likely to be very difficult without some kind of requirement to do so. To reference para 7.131 of the consultation, we agree that many of the areas in the SIA and the existing reference offer relate to unregulated points but to leave industry and BT to negotiate without some involvement from Ofcom has proven in the past to be extremely difficult and is showing no signs of being simpler this time around. Particular areas of concern are transit and AERO charges on non-geographic traffic.

Magrathea have flagged concerns since the transit market was deregulated in the 2009 market review that, although Ofcom found that BT did not have SMP in this market, we believe in practice they still do and the drastically increased pricing since deregulation has created uncompetitive market and is detrimental to consumers and retail pricing.

In practice only a very small number of legacy networks are widely connected at the DLE and thus able to offer transit as a service. The lack of either competitive or regulatory pressures in this market therefore means that much of the intended benefit of WCT charge controls is lost.

We would like to see Ofcom's confirmation that due to the low-cost base of an efficient 21CN network distance related transit charges have no place in an IP world.

Interconnect with BT is not, and is unlikely to be for some time, a simple commercial benefit. They are without doubt part of the critical national infrastructure and as such there is an additional weight of responsibility to get the terms right.

As noted in your para 7.33, absent regulation there is risk that BT could leverage its position to undermine the WCT remedies. Something that we feel is still a risk without charge controls alongside a review of other BT services. Given the infancy of this interconnect option with BT, now seems like the prime time to taken into consideration the various elements of the existing Standard Interconnect Agreement and take a view on how this will be reflected in the new environment. To do so now could greatly reduce the risk of harm and the volume of disputes that Ofcom may find themselves dealing with going forward.

Yours faithfully,



Tracey Wright
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