Wholesale Voice Markets Review 2021–26

UKCTA Response to Ofcom

Submitted to Ofcom: 8th October 2020

Introduction

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. We advocate regulatory outcomes designed to serve consumer interests, particularly through competition, to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.org.uk.

2. We welcome this opportunity to comment on Ofcom's proposals for the Wholesale Voice Market. This response is split into the following sections:

   A. Contracting for Fairness – why the SIA needs reform;
   B. Interconnect Issues (including WCO and Call Termination);
   C. Safeguarding Network Security and integrity.

A - Contracting for Fairness – Interconnect contract Reform

3. UKCTA believes that a new regulatory approach is required if Communication Providers (CPs) are to complete the transition to IP. Previous narrowband reviews have handed too much control to BT. While there has been an emphasis on keeping regulation technology neutral, BT's scale and necessary involvement in so many calls (termination, origination and porting), together with their reluctance to explore collaborative solutions, has allowed them to dictate the default industry technology at any given time. This has put them in full control of the pace of IP adoption across the sector.

4. In light of this, and given the current regulatory arrangements, BT has the ability and incentive to tactically "game" between IP and TDM traffic types using the IPX platform, rather than as a transitionary network. For example, it has been able to secure traffic volume from other carriers through tiered charging commitments. This is often the only route to securing lower pricing on both TDM and IPX. In setting a volume commitment to achieve, BT is able to pull in traffic that it would not otherwise attract on straightforward commercial terms, as CPs need to add traffic that could be routed more cheaply and efficiently elsewhere in order to hit the volume target, and avoid a commercial penalty elsewhere. This in turn prevents the competitive transit market functioning effectively. It has meant that the wider industry has been unable to fully realise the efficiencies of IP, which ultimately leads to customer detriment and reinforces the market power of BT.

5. Given this, today BT retains far too much influence on market outcomes. Often this influence is not acknowledged in regulatory outcomes, with legacy approaches (such as the onward routing nature of number porting) retaining BT's commercial involvement in calls where they are neither the terminator nor originator.

   Contractual Reform is essential – Ofcom needs to aid this process

6. BT's Standard Interconnect Agreement (SIA) and its related documents (Element Based Charging (EBC) matrix and Carrier Price List (CPL)) afford BT too much control. These key contractual documents, which effectively shape the overall framework and the interconnect relationships between rival operators, were drafted when BT was heavily regulated. Things have moved on, however the contracts are largely unchanged and are therefore out of step with the commercial reality prevailing in the market today.

7. Under the SIA contract, BT can also impose its own pricing, while simultaneously rejecting any attempt by others to mirror the pricing for their own equivalent services. This asymmetry needs to end. A new industry contract template is urgently required. The industry, including UKCTA, is prepared to resource drafting an entirely new contract and to do so in a truly collaborative manner. However, OTA facilitation and Ofcom high-level oversight are key to the success of this initiative. UKCTA believes Ofcom must direct BT to negotiate a new Reference Offer contract, ending the use of the IPX Agreement and the SIA, to create one fair and balanced IP interconnect agreement.

8. This new IP interconnect agreement is the most important foundation to any new regime. While the bulk of the SIA remains fit for purpose and can be retained to support various traffic types, there is a modest but critical list of reforms needed to bring the contract up to date. These include:

    I. Introduction of asymmetry of rights around price changes (SIA para 12 & 13).
    II. Review of BT's obligation when it comes to giving access to their system(s) to support interconnection (this should extend beyond TDM and support IP).
    III. Ending the Stipulation that all ISI points lie within 50M of a BT site for all CPs – this is no longer fit for purpose and it drives a BT centric approach to interconnection.
    IV. Changes that would allow BT to purchase transit from other CPs (currently they refuse to do this).
    V. Changes to strike a fair balance of commercial risk between the parties.
    VI. Review the agreement to ensure it is balanced and does not favour BT over other CPs in any aspect that can be considered detrimental to competition and the wider market.

9. Undertaking these reforms would get around the problems associated with BT's current IPX Agreement, which is a commercial contract that is not fit for purpose as a long term interconnect agreement. There is a variety of reasons for this, for example:
    a. It permits BT the ability to terminate the agreement at short notice by use of the termination for convenience clause, CPs therefore have no security of supply.
    b. The IPX agreement gives BT too much power over the pricing set.

c. IPX commercials are not fully integrated into the interconnect landscape with routing plans still separate, which ultimately has a cost bearing on other CPs.

10. There is no particular reason why there has to be a separate contract for IPX rather than a single agreement updated to reflect the changes in technology and interconnection which have occurred since the SIA was first drafted. Other countries have far simpler, yet robust, arrangements that do not involve separate agreements.

11. UKCTA remains keen to work with Ofcom and all parties, including BT, to deliver a new UK IP interconnect framework that will stand the test of time and better reflect the diverse voice communications market of today.

12. Care must be taken over the transitional arrangements for BT's transition from TDM to IP. It is clear that BT should publish a firm and binding timetable for number block migration. UKCTA agrees with Ofcom's proposal to add such a timetable publication requirement as part of the Transparency SMP Condition. However, UKCTA believes this migration timetable should be binding six months ahead of the migration date (with the commercials migrating, even if the physical routing for the number block is delayed). UKCTA would also like to see the migration done in large enough number blocks (e.g. 10k) to avoid complexity driven by granularity. The more information available in advance, the easier the migration will be for industry and customers.

13. 30 days of parallel running at the point of migration is insufficient time and fails to recognise the significant work that CPs must undertake to accommodate BT's migration program. A three-month period of parallel running is proportionate, striking the right balance between allowing sufficient time for all parties to make the necessary arrangement to accommodate the migrations and ensuring that commercial disadvantage does not occur.

B- Other Key Issues on Interconnection

14. The design of the TDM interconnect charge control is still problematic. The use of very large baskets offers BT too much freedom when combined with large sub-basket caps of CPI+10%. The charge control works strongly in BT's favour, allowing it undue flexibility to favour its own downstream operations to the detriment of industry and it strongly reduces certainty and confidence for industry who cannot practically discern whether the controls are being complied with.

15. BT has total control of a range of low volume but essential services (such as text relay, emergency call handing) which necessitates interconnection. As a result they can raise prices without the threat of a competitive response. These services, where BT is the only realistic provider (given the economies of scale needed in supply) require a degree of regulatory oversight. BT should not be denied a fair return, but the current situation allows BT to put through large price rises without any contractual means of challenge. Ofcom should not ignore this

issue and seek to introduce safeguard caps (or at the very least secure a robust voluntary commitment from BT not to increase pricing by more than CPI).

16. UKCTA would like greater clarity on the Single Designated POC for FTRs for IP networks. In the situation where all networks would be interconnected on IP, a policy of allowing single POC designation could be open to abuse. For example, an operator could change the designated POC to a different one after build out is complete; or by designating a POC in a difficult or remote area to increase build out costs of competitors. Similarly, it may impact on network resiliency as those providers who want increased resiliency will need to connect to at least two POCs, while only one may secure the regulated rate.

17. By allowing single POC designation for IP networks, Ofcom is permitting the continuation of transit costs charging (which Ofcom no longer regulates), despite Ofcom recognising that conveyance costs on IP are not distance dependent.[1] This policy could therefore negate one of the benefits of IP migration. We note that in other countries e.g. Austria, regulated rates are available at all POCs whether you connect to them all, or just one or two of them.

18. UKCTA agrees with the proposal to not require the use of NICC standards to determine IP Standards through regulation, but leaving this to be resolved by industry.

19. UKCTA agrees with the deadline for all calls to BT geographic numbers to be charged at regulated rates from 1 April 2025 regardless of whether the number has actually migrated to IP or not. This provides incentive to BT to ensure the migration is completed in a timely manner.

Wholesale Call Origination

20. UKCTA has some concerns around the voluntary BT commitments for Wholesale Call Origination. Firstly, BT has committed to “fair and reasonable prices”; However, this does not give much comfort to industry. BT would be the arbiter of what is fair and reasonable, and based on previous experience for other products, this could lead to large prices rises (e.g. PPCs rose at CPI+8% and was considered “reasonable”.)

21. There is also potential for BT to raise WCO prices as customers migrate to IP, leaving a small pool of customers who remain on TDM to cover the same costs. Often these customers have very valid reasons for needing to remain on TDM networks and cannot migrate as quickly or easily to IP. UKCTA does not think such customers should be disadvantaged and therefore Ofcom should push for much firmer pricing commitments until IP migration.

[1] Paragraph 7.137 of the consultation.

22. In particular, UKCTA believes Ofcom should seek to secure robust voluntary pricing commitments from BT on the price of CPS until 2023. Call origination remains an important service for a number of end-user categories (including some business users) and while demand is declining, many will remain dependent on it until the transition to fibre is complete. Capping CPS charges at CPI+0% basis is a proportionate response ahead of migration to IP networks.

Termination markets

23. UKCTA members are content that Ofcom's approach to setting the FTR is proportionate and creates the necessary level of price certainty in the next review period.

24. UKCTA strongly supports the removal of the annual FTR notification to Ofcom obligation. This is an added burden which provides no added benefit.

Non-EEA / International calls

25. UKCTA is supportive of aligned termination rates for traffic terminating in the UK, regardless of origin. However, we appreciate that regulatory regimes in other countries may not reciprocate this approach and if there is an imbalance, UK consumers will suffer, due to the wealth transfer away from the UK, with no corresponding consumer benefit.

26. We would urge Ofcom to use its influence to remind other national regulators that differentiated rates based on origin go against the fundamental Most Favoured Nation (MFN) principle of the World Trade Organization (WTO) General Agreement on Trade in Services (GATS), which the EU has adopted. This principle prohibits treating operators of one Member less favourably than any other. Article 5(a) of the Annex on Telecommunications requires Members to ensure that any service supplied to any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions.

27. That said, reciprocity is the obvious solution where overseas operators fail to ensure alignment and will provide some protection for UK consumers as well as being fair to countries which have very low or zero termination rates (e.g. the US which operates a Bill and Keep system).

28. We hope that once the reciprocity approach is adopted, it will incentivise non-compliant carriers to act responsibly. This would avoid the practical administrative issues that would need to be addressed to accommodate the ability to bill differentiated rates based on origin and to have different rates for each operator.

C - IP interconnection Security Safeguarding

29. TDM has several qualities regarding security, standards and resilience inherent by its design. IP reduces the cost of entry into the market and has given parity with well-resourced, technically competent networks to lean start-ups and those diversifying into the heavily regulated telecommunications industry.

30. However, we know from issues around CLI presentation and manipulation that the less well-resourced networks tend to be the ones generating issues and as such, we have reason to question their compliance with other matters such as withheld CLI. We know from the Telehouse North outage recently, that many such networks do not necessarily have the resilience and diversity required of them under current regulations (GC A3).

31. The current regulatory paradigm classes an operator with an instance of Freeswitch on a Raspberry Pi in a basement, connected by WiFi to a residential broadband connection as an ECN. The PSTN interface (between said basement operator and, for example, an UKCTA member) is, for all intents and purposes, the same as an Enterprise SIP connection and is nothing like the infrastructure (as well as operational processes and procedures) in place between UKCTA members. The TDM-centric definitions and classifications need revisiting to ensure they remain fit for purpose in an all-IP world.

32. The Consultation is silent on several important specifics around security and encryption, the identity of a regulated operator, precisely where on BT's IP network the FTR will apply etc. This is important detail that cannot wait for an incident or a dispute to resolve.

33. Furthermore, the very core of a LRIC charge control is based on the premise that the common cost of call termination is recovered from an operator's outbound retail revenues. The Consultation places the industry on a path where even an IP-PBX on a business premises could connect to the BT IP edge and get entitlement to the FTR – thus major terminators would be unable to recover the foregone common cost, which would lead to a return to FAC. That would clearly be a bad position for the industry let alone consumers but can be avoided by Ofcom doing the right thing and specifying (and enforcing) the appropriate standards and detail upfront.