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Office of Communications (Ofcom)
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For the attention of:
Ms. Sharon White
CEO

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Dear Ms. White,

Subject: Commission Decision concerning:

Case UK/2017/2024: Wholesale call termination on individual public telephone networks provided at a fixed location in the United Kingdom

Case UK/2017/2025: Wholesale access to the public telephone network provided at a fixed location in the United Kingdom

Case UK/2017/2026: Wholesale call origination on the public telephone network provided at a fixed location in the United Kingdom

Comments pursuant to Article 7(3) of Directive 2002/21/EC

1. PROCEDURE

On 26 October 2017, the Commission registered a notification from the UK national regulatory authority, Office of Communications (Ofcom)¹, concerning i) the market for wholesale call termination on individual public telephone networks provided at a fixed location², ii) the market for wholesale access to the public telephone network provided at

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

² Corresponding to market 1 in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111

a fixed location³ and iii) the market for wholesale call origination on the public telephone network provided at a fixed location⁴ in the United Kingdom.

Ofcom published four national consultations⁵ in the period going from April 2015 till August 2017.

On 9 November 2017, a request for information⁶ was sent to Ofcom and a response was received on 14 November 2017.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

2.1.1. Wholesale call termination on individual public telephone networks

The market for wholesale call termination on individual public telephone networks provided at a fixed location was previously notified to and assessed by the Commission under case UK/2013/1496⁷. Ofcom proposed to define the product market to include termination services of voice calls to UK geographic numbers allocated by Ofcom to particular communication providers (CPs), pursuant to the UK numbering plan. Ofcom designated with Significant Market Power (SMP) each operator to whom it allocated the numbers from the fixed numbering range, as by definition such operators have 100% of the market for calls terminating to their numbers. On BT, Ofcom imposed a full set of remedies, including a price control obligation based on a pure BU-LRIC methodology, while all other CPs were obliged to provide termination services on fair and reasonable terms and conditions.⁸ In its comments the Commission asked Ofcom to shorten the timeline for entry into force of the new rates and to consider the imposition of stricter price

ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

³ Corresponding to market 1 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

⁴ Corresponding to market 2 in Commission Recommendation 2007/879/EC of 17 December 2007.

⁵ In accordance with Article 6 of the Framework Directive.

⁶ In accordance with Article 5(2) of the Framework Directive.

⁷ C(2013) 6275.

⁸ While no strict price control was imposed, Ofcom continued to provide guidance on its understanding of "fair and reasonable terms", in practice setting, in a non-binding way, the FTRs for all other CPs at the level of BT's.

control on all other CPs (i.e. the same as for BT), instead of relying on a non-binding interpretation of "fair and reasonable" terms and conditions.

2.1.2. *Access to the public telephone network provided at a fixed location*

The markets for access to the wholesale fixed analogue exchange lines (WFAEL) and for access to wholesale ISDN30/ISDN2 exchange line services in the United Kingdom were previously notified to and assessed by the Commission under case UK/2014/1607⁹.

WFAEL markets

WFAELs were defined as intermediate products that are sold to CPs to enable them to provide a telephone connection (typically a single 64 kbit/s channel) from a customer's premises to a local aggregation point in the access network. Ofcom defined two separate geographic markets, the United Kingdom excluding the Hull area¹⁰ and the Hull area. Ofcom found the three criteria test was met and that BT had SMP in the UK excluding the Hull area, while KCOM had SMP in the Hull area. Ofcom imposed a series of remedies on the two SMP operators.¹¹

ISDN markets

ISDN30 services cater for larger business sites, supporting up to 30 narrowband 64kbit/s channels and are used most commonly to provide multiple telephone lines to private branch exchanges. IP-based services such as SIP-trunking were not included in the relevant market since Ofcom found that for many ISDN30 users barriers to switching to IP-based services¹² still remained. On the wholesale level, ISDN30 included self-supply of wholesale ISDN30 exchange lines by retailers using their own PSTN, cable or fibre network, or using LLU. Ofcom defined ISDN2 as a narrowband access service operating over an analogue exchange line that was designed to provide two digital 64 kbit/s channels supporting traditional telephony, fax and data with a guaranteed transmission rate. Ofcom excluded IP-based services from the market definition for the same reasons as for ISDN30 services. Ofcom defined two separate geographic markets, the United Kingdom excluding the Hull area and the Hull area, designated BT and KCOM with SMP in their respective geographic markets¹³ and imposed a series of access remedies on the two operators.

The Commission commented on the impact of IP-technology on the WFEAL and ISDN markets and invited Ofcom to closely monitor the market developments of IP-based services.

⁹ C(2014) 4229.

¹⁰ "The Hull area" refers to Kingston upon Hull and covers 0.7% of UK premises.

¹¹ The remedies on BT included the requirement to offer Wholesale Line Rental (WLR), the access price of which was determined via a top-down cost model using BT's regulatory financial statements.

¹² Ofcom stated that firms that do not need to replace their current equipment in the near future incur an additional cost of switching to IP-based services and that concerns over reliability and quality of service seemed to remain.

¹³ BT had a ■% market share in the ISDN30 market and almost 100% in the ISDN2 market, while KCOM had close to 100% in both ISDN markets.

2.1.3. *Call origination on the public telephone network provided at a fixed location*

The market for wholesale call origination (WCO) on the public telephone network provided at a fixed location in the UK was previously notified to and assessed by the Commission under case UK/2013/1495¹⁴. Ofcom defined a product market that included all WCO services (used to supply retail communication providers targeting the residential and the business segment, as well as voice-only and dual-play customers). Ofcom identified two relevant geographic areas: the UK excluding the Hull area and the Hull area. Ofcom designated BT and KCOM as having SMP in their respective geographic markets¹⁵ and imposed a set of remedies on both operators¹⁶. Additionally, Ofcom imposed a set of remedies for interconnect circuits¹⁷ on both BT and KCOM. The Commission did not comment on Ofcom's proposals.

2.2. Retail market developments

While the total number of fixed analogue lines has remained relatively stable in the UK over the last 10 years¹⁸, the overall volume of calls, and the volume of fixed calls in particular, has continued to fall¹⁹. The four largest telecoms providers providing retail lines and voice calls are BT, Virgin Media, Sky and TalkTalk.²⁰ ISDN30 and ISDN2 channel volumes have been falling over time.²¹

With the current measures, Ofcom intends to tackle competitive concerns in several retail segments, where wholesale line rental (WLR) and WCO are still used extensively by access-seekers to supply retail voice services. These segments

¹⁴ C(2013) 6275.

¹⁵ BT and KCOM had a market share of 62% and 100%, respectively, in wholesale call origination. Ofcom considered that potential direct and indirect constraints on BT from both inside and outside the defined market were unlikely to constrain sufficiently BT's and KCOM's SMP.

¹⁶ BT's obligations included a requirement to provide network access on reasonable request; a requirement not to discriminate unduly; transparency obligations; and a charge control based on a 'LRIC+' methodology. KCOM's obligations included a network access requirement, provided on fair and reasonable terms.

¹⁷ Interconnect circuits provide the physical infrastructure to connect the exchanges (switches) of two CPs in order to allow traffic to pass between them.

¹⁸ From 28.8 million analogue fixed lines in 2007 to 30.3 million lines in 2016. Ofcom argues that an explanation for the stable number of fixed analogue lines is that many residential customers keep their fixed line mainly for internet access.

¹⁹ From around 270 billion minutes in 2007 to around 220 billion minutes in 2016. Mobile use has constantly increased and now fixed calls accounted for only around 30% of the total number of minutes in 2016, down from 61% in 2007.

²⁰ BT's retail share of fixed analogue lines has fallen steadily over time, although that has plateaued to around 40%. Sky's share has increased steadily and is now around 19%, while TalkTalk and Virgin Media's retail shares have remained relatively stable at 10% and 15%, respectively.

²¹ ISDN30 channels decreased from around 2.9 million in 2010 to around 2.1 million in 2017, while ISDN2 channels decreased from around 1.2 million in 2010 to around 0.8 million in 2017.

include voice-only customers (i.e. customers without a broadband service), split-supplier customers (i.e. customers that buy broadband from a different supplier), off-net customers (i.e. outside the LLU and cable footprint) and business customers who still rely on analogue and ISDN fixed telephony lines.²² For these customer segments, remedies based on wholesale local access (WLA) have not been effective.

2.3. Wholesale markets analysed

Ofcom defined and analysed the following wholesale markets for the purposes of making a market power determination:

- i. the market for wholesale call termination on individual public telephone networks;
- ii. the market for WFAEL services in the United Kingdom excluding the Hull Area;
- iii. the market for WFAEL services in the Hull Area;
- iv. the market for wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area;
- v. the market for wholesale ISDN30 exchange line services in the Hull Area;
- vi. the market for wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area;
- vii. the market for wholesale ISDN2 exchange line services in the Hull Area;²³
- viii. the market for WCO on a fixed narrowband network in the United Kingdom excluding the Hull Area; and
- ix. the market for WCO on a fixed narrowband network in the Hull Area.

The analysis of each market is described in turn below.

2.4. Market definition

2.4.1. Wholesale call termination on individual public telephone networks

The relevant markets are defined as the provision of termination services to other CPs for the termination of voice calls to UK geographic numbers. Ofcom considers that call termination to non-geographic numbers is a service subject to different competitive constraints and therefore it does not consider it to be part of the same product market. Further, Ofcom considers that currently there are no demand and supply-side substitutes to call termination services.²⁴ Ofcom defines 285 separate markets; the geographic extent of each market is defined as the area served by individual CPs within the United Kingdom.

²² Ofcom calculates that residential voice-only customers account for 6% of fixed analogue exchange lines, split-supplier customers account for 3%, off-net customers account for 5%, while business customers account for 13%. Together, these groups account for 25% of fixed analogue exchange lines. If ISDN users (which use WCO as well as wholesale ISDN connections) are included, these groups of interest represent around one third of the total number of narrowband channels in the UK.

²³ The two WFAEL markets and the four ISDN market are grouped together in the following sections under the title "Access to the public telephone network provided at a fixed location".

²⁴ In this regard Ofcom refers to an "OTT VoIP bypass" mechanism, according to which calls destined to fixed numbers can be diverted for termination by an OTT VoIP provider to a mobile or internet app, without the caller or the calling operator noticing. This is distinct from calls to geographic numbers being delivered over VoIP technology by the fixed termination provider. However there are no indications that such OTT VoIP bypass occurs to any material extent.

2.4.2. Access to the public telephone network provided at a fixed location

WFAEL markets

WFAEL are a wholesale narrowband analogue access connection between a customer's premises and a local exchange. Ofcom defines the relevant product market as including WFAEL delivered via copper access, cable access, Metallic Path Facility (MPF) and FTTP offering a narrowband voice service using an analogue telephone adaptor. The regulator assessed indirect constraints at the retail level from mobile access, broadband access and ISDN, and direct constraints at the wholesale level from broadband. Notwithstanding their growing importance, Ofcom did not find them to be sufficient constraints on the provision of WFAEL. As in previous rounds of analysis, Ofcom defines geographic markets for the UK excluding the Hull Area and, separately, the Hull Area.

ISDN markets

ISDN30 and ISDN2 are narrowband access services, most commonly used by businesses to provide multiple lines for calls. ISDN2 services are appropriate for business sites requiring fewer than eight voice channels, whereas ISDN30 services are more appropriate when a larger number of channels are required. Ofcom defines separate product markets for ISDN30 and ISDN2 exchange lines.

Ofcom concludes that IP-based services do not pose a sufficiently strong constraint to warrant widening the relevant markets. Ofcom defines geographic markets for the UK excluding the Hull Area and, separately, the Hull Area.

2.4.3. Call origination on the public telephone network provided at a fixed location

WCO is the wholesale service that enables voice calls over an access connection on a fixed narrowband market. Ofcom defines the relevant product market as including WCO over WFAEL and over ISDN lines. This involves the conveyance of all signals originating from the point in the network closest to the end customer's point of connection to the network where those signals can be accessed by another telecoms provider. The regulator assesses the indirect constraints at the retail level from mobile, VoIP, text-based messaging, email and social media, and direct constraints at the wholesale level from broadband. Ofcom recognises that these constraints appear greater for calls than access to the underlying lines, but do not find them to be a sufficient constraint on WCO. Ofcom defines geographic markets for the UK excluding the Hull Area and, separately, the Hull Area.

2.5. Three criteria test

Since the markets for access to the public telephone network provided at a fixed location (WFAEL and ISDN30/ISDN2) and the market for WCO are no longer included in the Commission's Recommendation on relevant markets, Ofcom performed the three-criteria test on the relevant markets that it defined to establish whether they are still susceptible to ex-ante regulation.

2.5.1. Wholesale access to the public telephone network provided at a fixed location

WFAEL markets

WFAEL in the UK excluding the Hull Area

Ofcom finds that the first criterion (*presence of high and non-transitory barriers to entry*) is satisfied due, notably, to the historical reliance by telecoms providers on WLR and WCO to supply voice services to certain groups of customers (e.g. business, fixed voice-only, off-net customers), which suggests it has not been cost effective or otherwise commercially effective to use MPF or cable to supply these segments. The second criterion (*market structure which does not tend towards effective competition*) is satisfied due, notably, to i) BT's market share which, although declining, is still high (54% in Q4 2016/17); ii) the low likelihood of telecoms providers switching in sufficient volumes from BT's WLR to alternative wholesale services; and iii) the limited constraint imposed by switching to mobile and VoIP, and evidence that these services are not effective alternatives for some customers. Finally, the third criterion (*competition law alone would not adequately address the market failure*) is also fulfilled because the speed of an intervention based solely on competition law in response to anti-competitive behaviour may not be sufficient to prevent harm in certain circumstances and therefore ex ante regulation is necessary to maintain effective competition.

WFAEL in the Hull area

Ofcom finds that the first criterion is satisfied due, notably, to the significant investment required to build an alternative network, particularly when combined with the relatively small population over which the fixed costs of entry could be spread. The second criterion is satisfied notably due to KCOM's high market share (nearly 100%), while the third criterion is satisfied for similar reasons to the ones explained above for the UK excluding the Hull Area.

ISDN markets

ISDN30 and ISDN2 in the UK excluding the Hull Area

Ofcom finds that the first criterion is satisfied due to the large sunk costs that would need to be incurred to establish the infrastructure required to provide ISDN exchange lines, and the fact that these costs would need to be recovered in a declining market. Ofcom finds that the second criterion is satisfied due, notably, to i) insufficient constraints generated from IP-based networks (although these are increasing); and ii) BT has maintained a high market share over time (62% in ISDN30 and 100% in ISDN2 as of March 2017). The third criterion is satisfied for similar reasons to the ones explained above for the WFAEL markets.

ISDN30 and ISDN2 in the Hull area

Ofcom finds that the three criteria test is met for reasons similar to the ones explained in the market for WFAEL in the Hull area, above.

2.5.2. Call origination on the public telephone network provided at a fixed location

WCO in the UK excluding the Hull Area

Ofcom finds that the first criterion is satisfied due, notably, to i) the high costs of building a sufficiently large direct access network; and ii) the historical reliance by telecoms providers on WLR and WCO to supply voice services to certain types of customers (e.g. business, fixed voice only, off-net), which suggests it has not been cost effective or feasible to use MPF or cable to supply these customers²⁵. The

²⁵ BT is still providing around 3.3 million WLR lines to its competitors in 2017, down from 5 million in

second criterion is satisfied due, notably, to i) BT's market share which, although declining, is still high (48% in Q4 2016/17); ii) the low likelihood of telecoms providers switching in sufficient volumes from BT's WCO to alternative wholesale services to generate effective competition in certain market segments; and iii) despite increasing substitution from fixed to mobile and VoIP by some types of users for some types of calls, the overall constraint imposed by such switching remains insufficient at present. The third criterion is satisfied for similar reasons to the ones explained above.

WCO in the Hull area

Ofcom finds that the three criteria test is met for reasons similar to the ones explained in the market for WFAEL in the Hull area, above.

2.6. Finding of significant market power

2.6.1. Wholesale call termination on individual public telephone networks

Ofcom indicates that each number range holder has, by definition, 100% of the market for calls terminating to its numbers, thereby raising a presumption that it has SMP. Furthermore, barriers to entry are high and there is not sufficient countervailing buyer power to act as a constraint to each operator.

2.6.2. Wholesale access to the public telephone network provided at a fixed location

WFAEL markets

WFAEL in the UK excluding the Hull Area

Ofcom concludes that BT has SMP in the WFAEL market in the UK excluding the Hull Area due to the following main²⁶ reasons:

- i. BT retains a market share of 54% (down from 68% in Q1 2012/13). In addition, for some groups of customers, supply using MPF or cable is less common and existing suppliers are more reliant on WLR from BT;
- ii. The strength of out-of-market constraints on BT from mobile and VoIP has grown since the last review, but remains limited.

WFAEL in the Hull Area

Ofcom concludes that KCOM has SMP in the WFAEL market in the Hull Area due, notably, to i) its market share (nearly at 100%); and ii) constraints from mobile and

2012. Take-up of MPF (LLU) has increased in recent years. However, use of MPF to supply the identified groups of interest remains limited, even if the costs of migrating customers to MPF remain modest. While MPF volumes are projected to increase, this is unlikely to affect how BT's competitors supply customers in off-net areas and voice-only customers. In relation to supply to business customers and customers buying broadband and voice lines separately, it remains to be seen whether BT's share of these customer segments is diminished by MPF-based competitors. To date, these have overwhelmingly been supplied using WLR rather than MPF.

²⁶ Ofcom also points out that BT's pricing behaviour is consistent with it holding SMP (WLR has been priced at the maximum level allowed by the cap, and BT has made returns significantly in excess of its cost of capital) and that entry, expansion or countervailing buyer power are unlikely to prevent BT from exercising market power over this review period.

broadband access (via FTTP or fixed-wireless networks) will not be strong enough to constrain KCOM's market power in WFAEL during the period of this review.

ISDN markets

ISDN in the UK excluding the Hull Area

Ofcom concludes that BT has SMP in the ISDN30 and ISDN2 markets in the UK excluding the Hull Area due to the following main²⁷ reasons:

- i. BT accounts for a high, although declining share of wholesale ISDN channels (62% in ISDN30 and 100% in ISDN2 as of March 2017);
- ii. The strength of out-of-market constraints on BT from mobile and VoIP has grown since the last review, but remains limited.

ISDN in the Hull Area

Ofcom concludes that KCOM has SMP in the ISDN markets in the Hull Area notably due to KCOM's market share of nearly 100% for wholesale ISDN lines.

2.6.3. Call origination on the public telephone network provided at a fixed location

WCO in the UK excluding the Hull Area

Ofcom concludes that BT has SMP in the WCO market in the UK excluding the Hull Area due to the following main²⁸ reasons:

- i. BT's market share, which stands at 48%, is consistent with a finding of SMP, particularly when it is recognised that WCO represents demand for a service that cannot be avoided when a customer purchases WLR or ISDN (where BT's share is well over 50%);
- ii. Ofcom presents evidence of increasing substitution to mobile and VoIP, but also evidence that there are situations when fixed calls will be preferred for price, quality or other reasons. This, coupled with the extent to which WCO usage is tied to the line on which it is used (WFAEL or ISDN2 or ISDN30), and the reluctance of customers to give up their fixed line, leads Ofcom to conclude that mobile and VoIP calls are not sufficiently strong constraints.

WCO in the Hull Area

Ofcom concludes that KCOM has SMP in the WCO on a fixed narrowband network market in the Hull Area. The regulator considers that KCOM's market share is strongly suggestive of SMP.

²⁷ As for WFAEL services, Ofcom considers that BT charges its wholesale ISDN access products at the maximum level permitted under the charge control and BT makes returns well in excess of the cost of capital and that there remain barriers to entry, insufficient countervailing buyer power and the potential for BT to charge high prices to its customers absent regulation.

²⁸ Ofcom also considers that there is scope for more use of MPF or cable to supply customers that currently use WLR and WCO, but at present such use is mainly confined to self-supply by alternative providers. It also finds that BT's pricing at the maximum regulated rate is consistent with it having market power in the WCO market.

2.7. Regulatory remedies

2.7.1. Wholesale call termination on individual public telephone networks

Ofcom proposes to broadly maintain the previously imposed set of remedies on BT, i.e. provision of network access on reasonable request, non-discrimination, publication of a reference offer, accounting separation, cost accounting and charge control.²⁹ With regard to all other telecom providers, Ofcom proposes to impose network access at reasonable request and a charge control obligation.³⁰

Ofcom considered whether it is appropriate to differentiate the remedies with regard to calls originating from outside the EEA, and proposes to maintain the price cap on all traffic.

Ofcom updated the parameters of the BU LRIC model relating to traffic volume forecasts, network build parameters (such as average call duration), asset capacities and utilisation, network asset unit costs and trends, WACC and incremental administrative costs. The fixed determination rate caps are determined via the BU LRIC cost model on an annual basis (i.e. no averaging or glide path is used).³¹

Current cap and pure BU LRIC forecast costs included in the draft measure (in pence per minute):

	2017/18	2018/19	2019/20	2020/21
Current cap (nominal terms)	0.0346			
Forecast cost (real 2016/17 terms)	n/a	0.0303	0.0286	0.0269

2.7.2. Access to the public telephone network provided at a fixed location and call origination on the public telephone network provided at a fixed location

Ofcom proposes to maintain a number of the current remedies in the WFAEL, WCO, ISDN30 and ISDN2 markets on SMP operators BT and KCOM. In particular, these remedies include the requirement to provide general network access

²⁹ Ofcom proposes to remove the obligation to notify technical information, as it is no longer necessary in view of the maturity of the BT network.

³⁰ With the imposition of charge control on all CPs, Ofcom departs from its previous practice, i.e., price control based on fair and reasonable pricing. Ofcom now considers that the imposition of charge control also on all other CPs is more simple and transparent, and greatly reduces the monitoring and compliance burden. Moreover, the imposition of a single maximum price cap is also facilitated by the fact that Ofcom no longer differentiates the termination tariff for peak/off-peak periods.

³¹ According to the reply to the request for information, since notifying the Draft Statement, Ofcom has identified some minor changes to certain inputs which will mean that the Final Statement will contain slightly different termination rate caps for 2018/19 and 2019/20. These changes do not affect the cost outputs of the model, but are the result of applying the most up-to-date inflation data.

on fair and reasonable terms and, for BT only, specific access requirements in the form of WLR in the WFAEL, ISDN30 and ISDN2 markets.

On the other hand, Ofcom recognises that the competitive constraints faced by BT and KCOM in the WFAEL, ISDN and WCO market have grown since the last review³² and it expects these constraints to continue to grow over the review period. Ofcom has taken these increased constraints into account in the delineation of the regulatory obligation. As a result, Ofcom is reducing regulation on both SMP operators. The main changes include:

- i. removing charge controls in the WFAEL and WCO markets and replacing them with a fair and reasonable charges obligation;
- ii. removing most remedies on new lines³³ in the ISDN30 and ISDN2 markets (after a transitional period of 12 months);
- iii. removing the requirement not to unduly discriminate in the WCO market;
- iv. removing the new forms of access requests remedy in all four markets; and
- v. removing the requirement to notify technical information in all four markets.

Remedies to be imposed on BT in the WFAEL, ISDN and WCO markets in the UK excluding the Hull area and on KCOM in the same product markets in the Hull area:

WFAEL in the UK excluding the Hull area
Provide network access on reasonable request
Provide specific network access in the form of WLR*
Requirement not to unduly discriminate (incl. EOI for BT)
Publish a Reference Offer
Notify changes to charges
Accounting separation
Cost accounting
Quality of service: transparency and quality of service standards*
ISDN30 and ISDN2 in the UK excluding the Hull area (after 12-month transitional period)
<u>All lines</u>
Accounting separation
Cost accounting
<u>Existing lines</u>
Charge control*
Provide network access on reasonable request

³² Sky and TalkTalk have increased their sales using their MPF networks. There is scope for the share of WFAEL lines supplied over these networks to grow within that footprint. This could be through greater self-supply by Sky and TalkTalk, or through growth in the use of MPF in a ‘merchant’ market to supply retailers. Virgin Media’s cable network also now covers 50% of households and it expects to reach 60%, which might lead to further erosion of BT’s share of the WFAEL market. Out-of-market constraints from mobile access and VoIP (potentially over broadband only lines) also have the potential to grow further.

³³ Ofcom defines new ISDN lines as lines which require a new installation at the end customer’s premises, rather than the connection of additional channels to an existing installed line.

Provide specific network access in the form of WLR*
Requirement not to unduly discriminate (incl. EOI for BT)
Publish a Reference Offer
Notify changes to charges
Quality of service: transparency*
WCO in the UK excluding the Hull area
Provide network access on reasonable request ³⁴
Publish a Reference Offer
Notify changes to charges
Accounting separation
Cost accounting

* *Remedy not imposed on KCOM in the Hull area*

Moreover, in light of its finding that BT has SMP in the market for WCO and in the market for WCT in relation to the geographic numbers that it holds, Ofcom proposes to maintain the specific requirement for BT to provide interconnect circuits based on TDM technology at its digital local exchanges. Ofcom also concludes that regulation of interconnect circuits provided by KCOM is necessary in light of KCOM's SMP in the market for WCO in the Hull Area.

3. COMMENTS

The Commission has examined the notification and the additional information provided by Ofcom and has the following comment:³⁵

Impact of constraints from VoIP and mobile and of BT's voluntary commitments at retail level

The Commission understands that Ofcom is keen to ensure effective competition in several retail segments where BT's competitors still make extensive use of wholesale line rental (WLR) and wholesale call origination (WCO) to supply voice services. The Commission understands that remedies based on wholesale local access (WLA) have proved less effective to date for some retail customer segments, which include voice-only customers, split-supplier customers, off-net customers, as well as business customers still relying on analogue and ISDN fixed telephony lines. Ofcom estimates that, together, these groups account for around one third of all narrowband channels. Given the continued importance of the WLR and WCO services, coupled with BT's and KCOM's high market shares in the associated wholesale and retail markets, the Commission acknowledges Ofcom's argument that regulation still seems to be necessary to allow access-seekers to effectively compete with the SMP operators on these markets.

The Commission further notes that Ofcom continues to exclude services provided over alternative platforms, such as VoIP and mobile, from the defined WFAEL, ISDN and WCO markets. For the WFAEL markets, Ofcom's key reason for not including VoIP services is that those services are generally provided in addition

³⁴ BT currently provides Carrier Pre-Selection to meet this obligation.

³⁵ In accordance with Article 7(3) of the Framework Directive.

to a fixed access connection and that it therefore would not allow the consumer to avoid the cost of line rental when switching to a VoIP service. For ISDN lines, Ofcom argues that migration costs towards IP-based alternative services are probably very significant for businesses that are still using ISDN channels. Ofcom concludes that WCO is essential for the altnets' use of WLR.

Ofcom argues, however, that competitive constraints coming from alternative network types are on the rise and that, in due course, especially VoIP solutions are likely to become effective substitutes to the regulated services. In this context, the Commission welcomes Ofcom's proposal to reduce the extent of the remedies imposed on BT and KCOM in order to take into account the increased constraints deriving from these out-of-the-market services.

On the other hand, the Commission notes that, following Ofcom's recent investigation of the retail market for stand-alone landline telephone services, BT has voluntarily committed to reduce its retail prices for stand-alone telephony services (which according to Ofcom have been regularly increasing in recent years) by £7/month. The Commission expects that BT's voice-only customers - and most likely also some of the split-supplier, off-net and business customers - will immediately benefit from this reduction in retail rates. BT's competitors providing retail services to the same retail segments, who in recent years have generally followed BT's price increases, are likely to adopt a similar price reduction, if they want to remain competitive in these market segments. BT's commitments could therefore indirectly benefit an even larger share of end-customers in the retail segments that Ofcom is keen to protect.

In light of the increased constraints coming from VoIP and mobile networks at wholesale level, as well as of the upcoming reduction in the price of retail stand-alone telephony offers by BT and other operators, it seems likely that the justifications for continued regulation of the wholesale market under review will become weaker over the upcoming review period, to a point where full deregulation is likely to be justified.

Against this background, the Commission invites Ofcom to closely follow the evolution of the take-up and substitutability of IP- and mobile-based services for analogue and ISDN lines. It also seems important to follow the effects of BT's commitment to reduce its retail prices for stand-alone telephony services, given that this is likely to address the competitive concerns for at least some of the customer categories based on analogue lines that Ofcom is seeking to protect with its regulation of the WFEAL and WCO markets.

Pursuant to Article 7(7) of the Framework Directive, Ofcom shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC³⁶ the Commission will publish this document on its website. The Commission does not consider the information contained

³⁶ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the

herein to be confidential. You are invited to inform the Commission³⁷ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.³⁸ You should give reasons for any such request.

Yours sincerely,

For the Commission,
Roberto Viola
Director-General



Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

³⁷ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

³⁸ The Commission may inform the public of the result of its assessment before the end of this three-day period.