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Dear James

Narrowband Market Review

SSE has a retail business providing communications services of fixed-line phone and broadband to residential customers, using available wholesale products. These include the regulated wholesale products of wholesale line rental (WLR) and wholesale call origination (WCO) provided by BT, which continues to have significant market power (SMP) according to Ofcom's analysis of relevant markets as part of this review. SSE also purchases a material quantity of WLR lines for its own wider business purposes.

Our main comment on the proposals put forward as part of this review is to express concern about the proposal to move from a price control remedy to a 'fair and reasonable charge' obligation for both WLR and WCO. This is a significant change in regulation and brings considerable uncertainty for many communications providers (CPs) who, like SSE's Retail business, rely on these regulated wholesale inputs for the provision of their retail services. We note also that the protection of 'no undue discrimination' is proposed to be removed for the WCO products, which "will give BT the flexibility to undertake commercial negotiations and respond to increasing competition" according to paragraph 7.110.

While the existing price controls in these areas provide the certainty of a specified trajectory of maximum wholesale prices for the review period, the 'fair and reasonable' approach introduces many uncertainties which could ultimately undermine the position of competitors to BT in the retail markets and thereby the strength of competition overall to the detriment of consumers. BT could increase prices and do so more frequently than under a price control framework – and the fact that, as Ofcom notes (paragraph 6.21), BT has priced up to the regulated cap in the current review period, suggests that it would be very likely to increase prices if the cap was removed. With increasing pricing flexibility across the WCO market, it could also introduce structures of charging such as bulk discounting that would adversely affect the many smaller CP competitors that operate across residential and business markets, while favouring its own much larger retail businesses. The potential for uncertainty in what constitutes a 'fair and reasonable' charge is also underlined by Ofcom's comments at paragraph 7.54 that indicate an expectation of regulatory disputes on the matter.

The consultation recognises (paragraphs 6.17-9) that there are no realistic alternatives to BT's regulated WLR products for the majority of CPs. Even larger competitors that have been active in unbundling BT exchanges still rely on WLR to service customers they have beyond their own unbundled footprint. Ofcom in fact mentions, at paragraph 6.19, a number of customer segments, where they expect that BT's market position is even stronger than the overall BT market share of wholesale fixed access lines at 55%. These segments include exchanges where unbundling has been limited and the residential fixed voice-only market, about which Ofcom has recently issued its market review document, as well as smaller business customers.

A very real possibility for the outcome of this review, if Ofcom does not maintain the current structure of price control regulation of the wholesale products mentioned, is that some CPs will withdraw from markets where they are required to use these products insofar as they can or increase retail prices to match increasing input wholesale prices and compensate for uncertainties. Over time, this could lead to a lessening of competition and higher pricing for consumers, including in the areas where Ofcom has highlighted that BT is already more dominant than on average across the market. This includes the residential fixed voice only market, where one part of Ofcom's proposed approach to remedies is to encourage competition by promoting the existence of competitors to BT for voice only services. Now that Ofcom's proposals on the residential fixed voice only market has been clarified and published, we urge Ofcom to consider the links between the two reviews from the perspective of smaller CPs who currently form part of the competitive landscape and rely on the regulated narrowband market wholesale products to do so.

Ofcom's analysis shows that BT remains very dominant in the provision of wholesale products, with effectively no alternative options for competitors to use in some parts of the market. Against this background, any relaxation of the price control framework seems premature. We note Ofcom's comment that it is concerned only to protect, rather than promote competition in the relevant market but suggest that smaller retail competitors to BT will not be protected sufficiently by the relaxations in regulatory requirements proposed. On the other hand, a stable, predictable and non discriminatory wholesale charging framework would support and protect existing competition in the associated retail markets.

Yours sincerely

Aileen Boyd
Regulation Manager