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Dear Ali,

### **Business Connectivity Market Review and Passive Infrastructure Market Review – Response by Colt Technology Services**

As mentioned in our telephone conversation, owing to the long-term sickness of a team member, Colt was unable to provide a response to the above consultations in an ideally detailed or timely manner. Nevertheless, I hereby include a high-level indication of Colt's views on the key issues.

In view of the clear linkages between them, Colt has argued for some time in favour of conducting Business Connectivity and Passive Infrastructure market reviews in tandem. We therefore welcome this aspect of Ofcom's approach. In a similar spirit – and notwithstanding Ofcom's use of separate consultations for each – this letter constitutes our response to both.

Colt's views on the BCMR coincide with those expressed in the Passive Access Group's response (in which Colt is a named respondent) on all material issues save one. The exception is Ofcom's provisional conclusion that no CP enjoys SMP in the Central London Area (CLA). Colt considers Ofcom's findings to be reasonable. Although there is a rebuttable presumption that an actor with above 50% share of the relevant market is dominant, Colt considers that the peculiar features of that market give a reasonable basis for rebutting the presumption. Owing to the density and value of the market, barriers to entry are low, and prices are substantially below those prevailing elsewhere in the UK.

Colt has no disagreement with Ofcom over the general principle of geographic market segmentation for the purposes of competitive analysis. However, the key issue concerns the methodology used to assess the existence of differentiated markets and the presence or absence of SMP, therein. All methodologies are imperfect and inevitably involve a balance between the risk of false positives and false negatives. Our view is that in previous BCMRs, Ofcom's approach erred somewhat towards the risk of false negative conclusions, ie, that SMP does not exist in circumstances where the competitive constraints are factually-speaking, low. This led Ofcom to inappropriate de-regulations (for example, of West London). Ofcom's refined methodology in our view reduces the risk of false negatives and is therefore, welcome.

Colt also agrees with Ofcom's provisional decision to define a single market covering all Contemporary Interface (CI) bandwidths. The technology underlying the services is now

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sufficiently modular and scalable that the costs of switching between different bandwidths (in a competitive market) would allow a chain of substitution to exist throughout the supply-side.

Colt also agrees with Ofcom's provisional decision to remove usage restrictions from Duct and Pole Access (DPA). This allows business-focused CPs to contribute to the over-riding objective of increasing infrastructure competition and choice, in the local access market. The benefits of this will accrue to but will not be restricted to, large business customers of the type that would normally purchase a leased line. It also heralds the advent of a range of innovative products aimed at more granular market segments of business users, as well as increasing opportunities for business CPs to collaborate with residential and mobile CPs, to create and exploit economies of scope.

Nevertheless, Colt disagrees with Ofcom's provisional conclusion in the BCMR, to keep CI prices constant in nominal terms (CPI-CPI). While Ofcom acknowledges the existence of supernormal returns, it appears to rely excessively on prospective competition introduced by the proposed removal of PIA usage restrictions. While we recognise **in principle** the validity of an approach that takes account of such market linkages, we consider that in this case, the proposed relaxation of price controls on active products is premature. The effectiveness of the DPA remedy has yet to prove itself.

Colt also disagrees with Ofcom's provisional conclusion to remove DPA usage restrictions in areas where in the BCMR, it finds no SMP. This is precisely the sort of market linkage that Ofcom **should** consider and we find it inappropriate to acknowledge the existence of downstream competition to the extent necessary to prevent an SMP finding, yet simultaneously to propose a remedy that interferes with investment incentives and competitive behaviour in that downstream market.

Colt very much agrees with Ofcom's analysis of the potential benefits of dark fibre. Indeed, the rationale for a dark fibre remedy remains as strong today as it was when first proposed in the previous BCMR. The potential benefits of dark fibre exist in all product markets where the previous BCMR envisaged the remedy would apply. This includes access, inter-exchange and backhaul markets. We therefore disagree with Ofcom's provisional conclusion to restrict the remedy to the inter-exchange connectivity market.

In principle, it could be argued that a dark fibre remedy is redundant in a market with de-restricted DPA. However, the two remedies are far from being sufficiently close substitutes for such a conclusion to be obvious. Furthermore, and along the lines argued above, the unrestricted DPA remedy is still too immature and as yet unproven, for its existence to justify changing conclusions on remedies in related markets.

Should you wish to discuss any aspect of the above further, please do not hesitate to let me know.

Yours sincerely,

**Barney Lane**  
**Vice President, Regulatory and Government Affairs**