

Wholesale Fixed Telecoms Market Review 2021-2026.

Non-confidential Response of Gamma Telecom Holdings Limited

About Gamma and this Consultation Response

1. Gamma Telecom Holdings Limited ("**Gamma**") is a Public Electronic Communications Network ("**PECN**") that provides wholesale fixed and mobile telephony and data services, to some 1,200 channel partners. Two of these channel partners are wholly owned subsidiaries and represent themselves over 20% of our business. In all cases, our partners and subsidiaries sell almost exclusively to all sizes of businesses and not-for-profit entities throughout the UK and increasingly to various European Union member states. Gamma has a turnover c£285m per annum and is ultimately owned by Gamma Communications plc, a company listed on the Alternative Investment Market with a market capitalisation of over one billion pounds.
2. This consultation response relates to Gamma and its UK subsidiaries. Any conflict between the implied position of Gamma in any UK Competitive Telecommunications Association (UKCTA), Internet Telephony Services Providers Association (ITSPA) or Federation of Communication Services (FCS) responses or that of any other association in which Gamma is involved, or implies Gamma is involved, is accidental and we consider that our views in this response should prevail.
3. Gamma trusts that this response addresses the questions posed by the Office of Communications ("**Ofcom**") and would welcome the opportunity to elaborate on any points in more detail if required. Please don't hesitate to contact [REDACTED], for further detail in the first instance.
4. While the Consultation is highly technical and detailed, Gamma would like to take a holistic approach to the subject matter. It is easy to get consumed by the economics of fixed access and ignore the bigger picture.

Jurisprudence

5. There is now a substantial body of case law on regulating the market in question. There are two decisions of the Competition Appeal Tribunal ("**CAT**")¹ that we trust Ofcom have taken the utmost account of in the Consultation (and will do in any future Statement). We note that the Competition and Markets Authority has yet to make its determination in the non-specified price control matters

¹ *British Telecommunications v Office of Communications* [2017] CAT 25 and *TalkTalk Telecom Group plc and Vodafone Limited v Office of Communications* [2020] CAT 8

referred to it by the CAT in the most recent case. However, we consider this to be a matter of “checking Ofcom’s workings” so to speak, and not of substance to the high-level principles.

Business Users

6. There is a danger that a focus on infrastructure competition will force a homogenous market for access bearers. The consequence is that such an approach risks considering all premises to be equal. Whilst partially true and recognising many similarities between the segments, it does an injustice to the users within those premises.
7. A residential user of broadband is not the same as a business user of broadband. A financial institution using of Ethernet does not have the exact same requirements as a multi-tenancy office building.
8. In terms of broadband, our experience is that residential users are more focussed on download speed and installation time. Whilst we recognise that the increased home working brought about the COVID pandemic has allowed business users to work remotely via their residential broadband service, it remains true that business users are more interested in time to fix, quality of service, reliability of installation date, security and upload speed relative to residential customers.
9. Taking our Ethernet example, a financial institution may place far more weight on latency (for example in terms of high frequency trading) and less on other metrics whereas a multi-tenancy office building may just be focussed on throughput and the ability to flex the service.
10. These are not just questions of active services running over passive infrastructure. Whilst all ducts may look the same there are several components that are relevant (and we believe are within the product definition and proposed remedies).
11. The type of fibre is a key example. The age of the fibre and various characteristics determine its operational efficacy. Different types are better for low latency connections than others for example. A ubiquitous “dark fibre” remedy does not address some of the more esoteric, but essential, points that arise.
12. The Optical Termination Unit deployed determines the flexibility of the circuit in terms of varying its throughput, along with the choice of electronics having an input into the operational efficacy.

13. We also note that Openreach has two monopolies: the physical asset², and the servicing of that asset.
14. Only Openreach engineers can perform works on the physical infrastructure (although we note that they outsource several operations, so this cannot be purely a competency or security concern). There is therefore an incentive to homogenise the service wrap to enjoy economies of scale; thus, reinforcing the problem of artificially treating a business and residential premises the same.
15. Businesses place a premium on certainty; be that the installation date, uptime, right first time or mean time to fix. These are different metrics than those which may be advocated for assessing the performance relative to the needs of just a residential market, for example. It is important that Openreach isn't incentivised to either prioritise residential users over businesses (or vice versa) nor to homogenise its products based purely on an overly simplistic regulatory construct.
16. Our views on the differing needs of business and residential users are not just limited to the concerns expressed within this Market Review. We have also expressed them in our consultation response to the proposed transposition of the European Electronic Communications Code (which we consider to be unlawful in its present form). We fear that Ofcom continues on a course of force-fitting the vast majority of UK businesses into the same market and approach as residential users.

Market Review Period

17. The duration of the market review, being 5 years, is novel. We agree that it is important to create an environment where there is certainty to promote investment, however, this period covers BT's planned closure of the PSTN. To date, the industry does not fully understand BT's plans, has not had the experience of the two trials in Salisbury and Mildenhall, and therefore it is premature to fix remedies for the full period. Indeed, it would be understandable at this stage for even BT to have not fully solidified its plans, and instead be looking to process and learn from the outcome of the trials before proceeding with a defined approach.
18. We would therefore suggest that there be a review timetabled for when BT has finalised its plans for the PSTN closure and when the industry has completed its review of what happened in Salisbury and

² Which is owned by BT at a group level and not Openreach Limited, itself not in keeping with the outcome of the July 2016 Strategic Review in our opinion.

Mildenhall. Preferably this would be a formal Consultation on whether the remedies of this Market Review need changing considering actual events.

19. As it stands, the “forward looking” requirement of this market review contains far more unknowns today than it will in one year’s time, than it did a year ago and more, we believe, than any previous market review in recent times. Hence, it is our belief, that despite the implied certainty provided by a longer fixed period of regulation, additional certainty would be provided by continual assessment and ‘truing-up’, potentially also with an option for a defined ‘break clause’ triggered if those true-ups themselves get further from the view originally forecasted.
20. It may therefore be beneficial if this market review were to end 6-9 months after the anticipated conclusion of the trials, and remedies were able to be fine-tuned to the outcomes of those trials which, we believe, are more likely to hold true over the longer market review period. This will help all stakeholders secure the best outcome for their customers.