

Consultation: Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges.

Supplementary consultation to the Wholesale Fixed Telecoms Market Review

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.

The Commercial Realities

4. There remain, in Gamma's view, several barriers to a successful withdrawal which, if left unaddressed, put the smooth adoption of full fibre at risk. Leaving aside the wider economic landscape, these are:
 - Unattractive Single Order Generic Ethernet Access ("**SOGEA**") commercials – reducing supplier uptake
 - A lack of clear messaging – risking end customer trust, and,
 - A lack of answers to real-world questions – giving rise to a rational reluctance to make change

We set out further detail to evidence our view below.

Unattractive SOGEA commercials in the supply chain

5. SOGEA is currently, list price for list price direct from Openreach, £0.65p per month cheaper than Wholesale Line Rental (“WLR”) plus Fibre-to-the-Cabinet (“FTTC”) - the former at £17.05, the latter being a combined £17.70. This is in keeping with our own previous research into naked broadband where we considered the cost of the tie-cable from the distribution frame and port on the line card in the Digital Local Exchange (“DLE”) processor to be in the order of £0.55p per month.
6. However, the commercial reality is that Openreach have a volume-based pricing offer in the market which does not include SOGEA, which makes the “new” product appear between £1.59 and £4.00 pounds¹ per FTTC circuit per month more expensive. Indeed, the construct of the volume-based pricing is that any failure to achieve the FTTC volumes committed results in the historic benefits of previous sales success being re-couped by Openreach from the Communications Provider (“CP”).
7. CPs do not require exchange presence to purchase WLR directly from Openreach, so the perfect storm is for a CP to currently purchase WLR directly from Openreach (at £7.71) and indirectly benefit from the discounts supplier receives under the Openreach promotion, It is not surprising, therefore, that there is a reluctance to adopt SOGEA by the CPs who have signed such commitments, a lack of attractive pricing to aid migrations, and a lack of messaging in the marketplace on the subject.
8. Gamma believes that the most likely SOGEA ordering scenario is that of a new provision where Fibre-to-the-Premises (“FTTP”) is not available, and made all-the-more compelling when the exchange has had a stop sell notice triggered. The size of that market is difficult to determine because it is inversely linked to FTTP availability, and the urgency for SOGEA varies depending on Openreach and other fibre builders’ ability to reach premises because this pushes stop sell notifications. The operational overhead of both businesses and their supplier of migrating an existing customer from WLR+FTTC services on to SOGEA, only to have to migrate them again to FTTP means that a double-migration is, in our view, very unlikely to take place.

¹ [https://www.ciz-openreach.co.uk/downloadfile/661?contentid=444&pagetitle=Volume_commitment_special_offer_on_GEA-FTTC%2C_Gfast_and_GEA-FTTP - slide deck](https://www.ciz-openreach.co.uk/downloadfile/661?contentid=444&pagetitle=Volume_commitment_special_offer_on_GEA-FTTC%2C_Gfast_and_GEA-FTTP_-_slide_deck) [accessed 24th November 2020, an offline copy of which can be provided on request]

Lack of clear messaging

9. We note some of the concerns in consumer forums about SOGEA² - these are precisely the sort of real world issues that give CPs pause for thought, before we consider that the copper-retirement programme will probably also lead to price inflation. This is not likely related to the underlying costs of FTTP and SOGEA, but a reasonable response to operators trying to protect supernormal margins made on their 'back book' estates.

There are also conflicts in messaging from within British Telecommunications plc ("BT") Group. In broad terms, one part of BT is referring to SOGEA as a permanent product, whereas another paints a picture of it being a stop-gap to fibre. [REDACTED]

[REDACTED]³

[REDACTED]

[REDACTED]

[REDACTED]

Whilst there are still some areas of the migration that need to be agreed between industry, Openreach and Ofcom, Openreach are clear that the 12 month notification of stop-sell is a notification that the named exchange(s) will be deemed a FTTP priority exchange⁴ and that copper access products will not be sold at premises that are FTTP enabled. In addition, Openreach are intending to retire copper access products within a fixed date, yet to be agreed, from the initial stop-sell date. This clearly indicates that SOGEA is not a permanent product from a national perspective.

Additionally, communications from BT Enterprise⁵ state that the WLR and Integrated Services Digital Network ("ISDN") stop-sell in the entire Salisbury exchange area is now in effect, contrary to the position we explain below as a result of Ofcom's enquiries following our recent bilateral meeting.

² <https://helpforum.sky.com/t5/Archive/How-do-I-get-off-SOGEA-VOIP-and-back-to-a-normal-landline/td-p/3113560> [accessed November 24th, 2020]

³

⁴ Has a minimum 75% Ultrafast deployment – product availability as detailed in https://www.openreach.co.uk/orgp/home/products/wlrwithdrawal/wlrwithdrawal/downloads/September_2020_Newsletter_Issue_6.pdf

⁵ Marketing E-mail from BT dated 1st December 2020 adduced as Annex 2 to this consultation response.

10. With some resellers being served by multiple Electronic Communications Networks, it is likely they will receive conflicting messaging about the future, let alone their customers which may be reviewing material from various other providers. This reinforces our long-held view that there needs to be a neutral, factual, national awareness campaign. The specifics should absolutely be communicated by an end user's provider(s), however, end users need an unbiased account of the facts – “copper is being retired, your provider is not just upselling you, you'll have to move, you need to consider battery back ups, internal wiring, location of power socket etc.”.
11. It would, in Gamma's view, be of great use for all stakeholders to have this factual material segregated into "information for business" and "information for consumers". While we appreciate Openreach's fibre build plans, and consequently exchange closures, are commercially sensitive – despite very likely leading to overbuild in high density areas – it does not lend itself to a business seeking certainty for their future connectivity needs. Indeed, a regional switchover will inevitably mean that many multi-site businesses will be impacted on a site-by-site basis over time, so the complexities of the migration journey, technically (management of out of hours number migrations, management of data services used to support in-office and home-workers, etc.) and commercially (impact on equipment leasing arrangements, contractual notice periods, price discount structures for the purchase of bundled services, etc.) are areas
12. We also note that the wash-up from Salisbury and Mildenhall will likely happen *after* the Local Service Exchanges enact stop-sell. We have genuine concerns that the focus on an expedient roll-out to *residential* premises is masking real world issues with respect to business providers that need to be considered prior to the impact being spread to the next one-hundred plus such areas.

Lack of answers to real world answers

13. On our recent call with Ofcom we agreed to provide the sorts of questions that have risen during our ongoing review of All IP. These will be provided shortly in separate correspondence.

Definitions

14. Annex 5 of Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 (the “**Draft Conditions**”) contains the proposed regulatory framework for the market in question.

15. Within the Draft Conditions, there are several causes for concern arising that may have practical, real-world, implications we would like to highlight.

Available

16. Section 1.6 to Part 3 of the Draft Conditions removes obligations on BT where “*Fibre-based network access is available to a Third Party on reasonable request in respect of any such end users.*”. To our knowledge, there is no expansion on the meaning of available, in the Draft Conditions or in the Consultation.

17. By convention, this would mean that it attracts the ordinary and natural meaning of the word which is “*able to be used or obtained; at someone’s disposal*”⁶.

18. The interpretation of this becomes quite key in real world scenarios. The availability (or otherwise) of Fibre-based network access determines whether or not BT has, at various stages of the copper retirement time line, an obligation to provide new Copper-based network access, is under charge controls on various forms of Copper-based network access, or can withdraw existing such services.

19. Two hypothetical scenarios outline the potential for harm arising from ambiguity with the word;

19.1. Flowed down the value chain are material price increases as a result of the removal of various charge controls to consumers because BT considers a premises exempt as a result of its fibre build, but has (for whatever reason) a 9 month lead time for a fibre deployment.

19.2. A business requires a new ISDN-30 channel to support a new hire, but BT decline to provide it because fibre is available, but it requires a wayleave to deploy, so cannot give an install date with any certainty.

20. Unfortunately, this is more than just an academic thought experiment. Based on our current national deployment of FTTP orders we know around 12% of FTTP order journeys to businesses are more akin to a labour-intensive Ethernet Access Direct (“**EAD**”) installation than an FTTC installation. This is exacerbated by an unmanageable level of service being provided throughout the delivery journey. We are not able to obtain what should be basic information about what is occurring and when. For instance, no duct meterage, no reasons for delayed cabling completion dates, no permit references for Traffic Management Applications. More concerning is the fact that there appears to

⁶ Oxford Dictionary of English, 2nd Edition, Revised (“**OED**”).

be no remedy to this immediately through the escalation support channels. The business oriented FTTP product 'FTTP Professional' has not been tested in the Salisbury trial and, though purportedly offering an EAD type provisioning journey, does not appear to offer a remedy to the ongoing provisioning issues. While this does not affect the gross profit, even for Gamma whose support teams are well-versed in the delivery of ethernet delivery, the indirect cost driven by the operational overhead can easily exceed the slim margins on this sort of service over a standard two or even three year minimum term. In addition, business providers cannot amortise these high provisioning costs across a large residential base. Nor can we differentially price these orders because we have no sight of the complexity until the order is placed. We would therefore urge Ofcom to monitor the quality of provisioning and service as it previously did for EAD, and introduce a similar Minimum Service Level measure.

21. We accept that BT will have a "failure allowance" imputed into its quality of service obligations. Indeed, we support an appropriate measure to cater for incidents such as an engineer being involved in a car accident and other reasonable excuses. It isn't designed to provide BT amnesty for the relative distinctions between a business provisioning activity compared to a residential one – and it risks a distortion when a disproportionate amount of the cost of this failure accrues to business-centric communications providers that cannot amortise it over a residential user base.
22. The average man on the street, we assert, would consider "available" to mean able to be consumed through the regular process in the regular timescales for the product in question.
23. The solution would appear to be one of three;
 - 23.1. Ofcom revise the Draft Conditions and define "available";
 - 23.2. Ofcom issue clear guidance in any Statement implementing the Draft Conditions on what they will likely consider the meaning of "available" to be in any enforcement action or dispute resolution; or
 - 23.3. Ofcom secure a Commitment (acceptable to it) from BT on what BT will interpret available as meaning.
24. As an aside, we would also suggest Ofcom require BT to report its performance in relation to Quality of Service split out into that to premises subject to the domestic rating regime and the nondomestic

rating regime. Our own experience in relation to Salisbury would suggest that there is cause to monitor this more closely.

Fibre-based Network Access

25. Part 2 of the Draft Conditions defines Fibre-based network access;

“[...] the wholesale provision of network access by the Dominant Provider over its electronic communications network where the physical connection between the local access node and the Network Termination Point comprises entirely of optical fibre”

26. We note that Part 2 also contains a defined term of Local Access Node which is not used here, but regardless of whether we take the ordinary and natural meaning, or Ofcom’s defined meaning, there is a risk that BT will consider the presence of an Ethernet circuit⁷ to be Fibre-based network access.

27. This would, if BT were successful in that argument, over time, enable the stop-sell of Copper-based network products, removal of the charge control of the same and their withdrawal without BT ever deploying FTTP as envisaged in terms of local access versus leased lines.

28. Assuming that Ofcom agree with our view that Ethernet does not “count” as Fibre-based Network Access, then we consider an extension to the definition quoted above to include “except where that physical connection is Ethernet Access Direct⁸”.

Stop-Sell

29. Recently, Openreach have apparently cleared up the ambiguity we referenced in a bilateral meeting with Ofcom and stated that the stop-sell on a Local Serving Exchange applied only to premises where there was fibre available⁹. Although we note above that other parts of BT are sending different messages to the entire industry.

⁷ Which would be all EAD circuits in excess of 100Mb/s and many under – approximately 250,000-300,000 in the UK.

⁸ For the sake of brevity, we have not listed all the products in the relevant market review which would apply, but logically they all would or the market review have to be referred to for completeness.

⁹

30. However, as it stands, the national stop-sell may come into effect in some Local Serving Exchanges prior to the ubiquitous availability of fibre in the entire footprint. To that end, our concerns regarding the impact are still relevant, just in a different scenario.
31. In other words, SOGEA (and Single Order Transitional Access Product (SOTAP) as appropriate) will be the only product available for new orders of Copper-based Network Access.
32. This does not compare with our understanding that the removal of obligations by Ofcom during the copper withdrawal (noting the separate national stop-sell) is designed to track the availability of FTTP. Indeed, a plain reading of Sections 1.1 and 1.2 of Part 3 of the Draft Conditions would suggest that BT is still obligated to provide copper-based network access on reasonable request where Fibre is not available.
33. We contend that it is entirely reasonable for a Third Party serving an end user that does not have fibre to continue to ask for existing products because SOGEA may not be suitable.
34. SOGEA is, for all intents and purposes, FTTC without a tie cable into a port in the DLE processor – or, Naked-FTTC. This means, even with the Universal Service Obligation¹⁰, that BT is not obliged to provide a download speed of more than 10Mb/s and no assurance of upload speed beyond 1Mb/s.
35. A replacement for an ISDN30 bearer, using our own planning assumptions, requires a minimum of 4.2Mb/s *synchronous*.
36. It is likely that premises will exist where either ISDN-2, ISDN-30 or Session Initiation Protocol (SIP) over Ethernet First Mile (EFM) are the only viable means of delivering a multi-user voice product reliably. Yet, BT's position appears to be that such premises must take a potentially backwards step (or even, after the Third Threshold Notice has been in effect for 2 years, have these services removed) because it has laid fibre to enough premises tens of miles away.
37. We consider that there needs to be some form of safeguard for this tail especially noting the provisions of Article 81(2) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (“EECC”)

“The national regulatory authority shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period

¹⁰ As brought about in the Digital Economy Act 2017

*for transition, and establishes the availability of alternative products of **at least comparable quality** providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users” [Emphasis added]*

38. We cover a scenario in this vein regarding vulnerable users below, however, the same approach to its resolution is likely to apply. We do not consider it to be an effective use of public resources for the regulator to address every possible fringe (or at least relatively uncommon) potential source of harm on an *ex-ante* basis, providing that the principles on how such circumstances are approached are embodied in regulatory policy and adopted by the Dominant Provider.
39. In this case, it can be as simple as securing a Commitment from BT that it won't seek to avail itself of its new found freedom following the various Threshold Notices where the end user would experience material detriment as a result.
40. That sentiment may need a little clarification to be enacted – we do not mean just the commercial difference of FTTP versus SOGEA or WLR+FTTC, we are referring to scenarios where the alternatives would be a legitimate backward step.
41. Finally, the threshold for the First and Second Threshold Notice is based on Ultrafast coverage, not Fibre. This means, in theory, that BT can deploy G.Fast to 75% of premises and stop-sell WLR, even if Fibre is only available to a handful of users. While we understand that the underlying intent of the distinction between Ultrafast and Fibre is to encourage ever better average connection speed regardless of technology, one of BT's interpretations we refer to herein of local stop-sell is, in our opinion, even more problematic.

Relevant Premises

42. In our response to another consultation in this market review¹¹ we welcomed Ofcom reserving its position on Relevant Premises, ostensibly because it prevents BT from marking its own homework. However, we do have a concern arising that the notion of “premises” is ambiguous at this time.
43. Logically, many will think of the ordinary and natural meaning, which is “*a house or building, together with its land and outbuildings, occupied by a business [..]*”¹². Some may consider this, on a

¹¹ “*Consultation: Copper retirement – process for determining when copper regulation can be removed*” published by Ofcom on 25th June 2020 (the “**Second Consultation**”)

¹² OED

very literal interpretation, to only apply to business locations, however, we do not seek to contend that it also applies to a residential dwelling.

44. In any event, telecommunications infrastructure extends well beyond either definition. It includes emergency phones at level crossings, street furniture such as digital advertising hoardings in bus shelters, cash machines in the middle of pedestrianised high streets.
45. Taking a more nuanced view, both BT's concept of 'address keys' and the Unique Property Reference Number used by utility providers, are potentially a more accurate representation of Relevant Premises.
46. As yet, we do not have sufficient visibility of BT's plans with respect to such applications other than to say that it is a valid question that Ofcom should consider alongside the responses to the Second Consultation.

Vulnerable Users

47. In this Consultation, we welcome Ofcom's more refined approach to the copper retirement process by only allowing a Third Threshold Notice to have any effect, once Ofcom has satisfied itself that vulnerable end users are protected.
48. However, harm can still arise from scenarios where BT increase prices (through the value chain) to vulnerable consumers that depend upon Copper-based network access, or potentially with their initiatives such as fault-to-fibre force them onto unsuitable technology, prior to Ofcom being content.
49. Gamma will directly pose the question to BT in the next appropriate public forum, seeking a Commitment from BT that it will only seek to enjoy its freedoms following various Threshold Notices where the user is not a vulnerable person who depends upon Copper-based Network Access. .
50. However, absent an acceptable written pledge from BT, it may require the intervention of the regulator to secure what we consider to be a relatively "open-and-closed" public policy outcome. We understand that Ofcom is planning on sending observers to forthcoming meetings on this matter, who may be keen to follow progress.

Other Issues

Net Neutrality

51. We understand that ITSPA has made representations in its response to this Consultation about Net Neutrality and its applicability to NTE. In the interests of brevity, we do not repeat the points ITSPA make, save to say we also adopt them and consider that, in a business environment, the risks of incompatible (with the prevailing legislation) or legacy NTE causing harm become more acute when copper-based network access is decommissioned.

“Split Blocks” and Copper Retirement Porting Scenarios

52. In the Statement transposing the EECC¹³, Ofcom have made it very clear, again, its view on the so-called “split-blocks” issue in number portability. As it stands, despite at least two interventions by the regulator on this subject, BT have not made any substantive progress to a resolution.

53. We are sympathetic to BT’s position with respect to the decode capacity on some DLE processors and its Universal Service Obligations. However, at present, the process is manual, does not cater for subsequent portability and is limited to just ten per week nationally across all operators.

54. This is not a situation that is acceptable in a copper-retirement where we anticipate an increased number of businesses may take the opportunity of forced migration to seek to split ranges on ISDN bearers for any number of reasons – be that a staged migration, or to have a different provider for their support centre to their admin functions and switchboard.

55. While it remains open for Gamma or others to potentially try and force this issue through making a reference under Section 185(1A) of the Communications Act 2003, given Ofcom’s very clear policy position on the matter, we do not consider that to be an effective use of public resources. That said, BT does need to take the matter more seriously than it currently is, from the industry perspective at least. To that end, we would encourage Ofcom to mandate the Office of the Telecommunications Adjudicator (“OTA”) to provide a monthly update on progress on this issue to focus attention appropriately. We hope that BT would react appropriately to the increased regulatory focus before Ofcom considered an own-initiative investigation to be required following monitoring the situation in this manner.

¹³ “Fair treatment and easier switching for broadband and mobile customers Implementation of the new European Electronic Communications Code” published by Ofcom on 25th October 2020.

56. There will be a need to co-ordinate, in a relatively industrialised manner, the migration of a data service from one provider, and the export of a telephone number. This can involve 3 parties for what may appear to be a simple upgrade from WLR+FTTC to FTTP. BT is the inbound call provider for all WLR customers. The end user may have their broadband with one provider and wish for a third provider, such as Vonage, to provide the voice.
57. This scenario is perhaps relevant to the small business shop owner, classic Small-Office Home-Office (“SOHO”) user than the average residential user. Indeed, we anticipate seeing a substantial drop in residential landline use with mobile-only (voice) households becoming the majority. However, SOHO users may take the opportunity to move their WLR number into various solutions gaining prominence in a post-pandemic economy, such as Microsoft Teams during the upgrade. As yet, we do not consider such business-centric scenarios to have had sufficient consideration in the relevant forums.
58. Worse still, business CPs have been actively excluded from some, such as the workstreams on switching, which is compounding this issue. While Ofcom continues to evaluate the various switching mechanisms presented by industry, at no point has Ofcom or the OTA consulted with business CPs as to the suitability of the proposals for business switching. The business CP community cannot operate in isolation; if a small business utilising a residential service wishes to switch to a business provider how will this be achieved if the residential and business providers are running disparate switching solutions. Again, the large residential providers who also offer business services will be able to amortise the development costs over a vastly larger user base, a benefit not afforded to business only CPs.