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Dear Steve

Review of the wholesale broadband access market –second consultation

This response has been prepared on behalf of relevant member groups within the Federation of Communication Services, including our Fixed Service Provider and VoIP groups. FCS is the trade association for the UK communications industry representing 350 companies delivering fixed, mobile and radio products and services subject to regulation by Ofcom. FCS has more than 150 members delivering fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband including a large number of resellers. A list of our members can be found on the FCS website - www.fcs.org.uk

Our response to Ofcom's first consultation focused on the importance of the reseller model and the possible impact of the proposed changes on this sector. Our response to this second consultation also concentrates on issues relevant to these CPs. As previously, we have made a number of general points linked to our concerns rather than providing detailed responses to each of the individual questions.

We agree with Ofcom's analysis of the impact of the wholesale broadband market on customer choice. FCS members provide broadband services to a range of business and residential customers and need to be able to source appropriate wholesale inputs which recognise the needs of all of these clients. The level of service provided by independent and specialist service providers and resellers is particularly valued by SME customers.

We reiterate that we believe there is a case for considering business and residential to be separate markets as businesses often require higher levels of quality and reliability for their broadband services, particularly in the growing hosted VoIP market and it is important to ensure that appropriate wholesale products are available to support service provision in these more specialised retail markets.

As previously noted, there is a clear focus in the consultation on competition based on the LLU model. However, most LLU providers use their unbundled lines to provide services to their own

(generally residential) end-user customers rather than providing wholesale products which compete with those currently provided by BT Wholesale as inputs for specialist providers serving the business reseller market. There is, consequently, an ongoing reliance on BT to provide the wholesale broadband services required to support reseller delivery. In our view this applies equally to all the markets identified by Ofcom and we would suggest that in this respect BT still has SMP nationally in all the markets defined in the review (with the exception of the Hull area). Certainly, it is the case that BT is the only wholesaler providing national coverage, which in itself confers a degree of market power.

As noted above, smaller independent and specialist resellers serve a very significant proportion of the SME market (for voice services this is indicated by the fact that 3 million of the 9 million business connections are non-BT WLR lines).

We particularly note Ofcom's comments at 3.77 and the scenario outlined which envisages BT choosing to operate as a vertically integrated operator. This would be extremely damaging to the reseller sector and consequently to competition and customer choice in the markets they serve. We are concerned that Ofcom's analysis appears to focus solely on its impact on the redistribution of end user market share and does not consider at all the impact on resellers or on competition and choice.

While we are aware that SMP remedies for market 3 were removed following the 2008 consultation, we believe that Ofcom must specifically consider the possible impact on reseller CPs and have identified the remedies which will be needed to enable speedy intervention should BT's strategy or behaviour in this market change in the way identified by Ofcom in this section of the consultation.

In our earlier response we highlighted Ofcom's discussion of the impact of the withdrawal of SMP services conditions in the context of exchanges moving in to Market 3 (paragraphs 5.311 – 5.315 of the original consultation) and its suggestions on arrangements to protect the interests of affected CPs who rely on BT. For the reasons set out above, we believe that there is a particular and enduring requirement to protect the interests of reseller CPs in this market as they may not have the opportunity to make alternative arrangements where competitive wholesale products are not available. Ofcom itself noted that in the absence of regulation there is little incentive on the larger CPs to provide such wholesale services.

In summary, we would like to see the continuing provision of regulated wholesale broadband products in all the markets identified in the consultation - in both the current generation and next generation environments. We believe that this will most effectively promote competition by both providing certainty for established resellers and encouraging new entrants.

We trust that the comments in this brief response are helpful. Our members would be happy to meet with Ofcom to discuss any of the issues raised in greater detail.

Yours sincerely



Michael Eagle
General Manager