

A Response from the Communications Management Association to Ofcom's preliminary consultation on replicability and the regulation of BT's retail low bandwidth digital leased lines

About CMA

CMA is an association of ICT professionals from the business community who have a professional interest in communications, in both private and public sectors. It is a registered charity 50 years old, totally independent and without supplier bias. It is run by the members, for the members and aims to influence regulation and legislation, provide education and training and disseminate knowledge and information, for the public good. CMA's contribution to public consultations is generated via the process described in the Footnote to this response. (www.thecma.com)

Summary

CMA has received no favourable comments from its members on Ofcom's proposals. The general view is that the wholesale market is not robust (ie: competition is limited), that prices will rise and the market will return to being a de facto monopoly. The Ofcom proposals seem to be another example of failing to distinguish between the direct business, indirect outsource and residential markets. For those reasons CMA welcomes the Commission's requirement that Ofcom conduct a formal market review before implementing its proposals.

Condensed comments received from CMA members

1 From a High Street Bank (1)

Ofcom considers that, overall, BT's retail low bandwidth digital leased lines can now be replicated by its competitors. This will enable them to compete more effectively with BT in the downstream market. It also means that we can now rely more confidently on the wholesale remedies in the upstream markets to deliver effective competition at the retail level. The question, however, is whether wholesale competition in this market is sufficiently robust to provide effective checks and balances. There is less competition in this market than in the days when Mercury offered low bandwidth circuits and there is a belief that the PPC market is being exploited. The only area where proper competition might have arisen is from xDSL but BT's competitors have little or no interest in the business DSL market. SDSL, of course, has never materialised for fear of the damage it would do to the PPC market.

At para 3.17 of the condoc, Ofcom "is satisfied that the forecasting penalties have been amended in an appropriate manner. In addition, we do not consider that the absence of comparable internal transfer charges should be regarded as an obstacle to replicability." The problem with this approach is that hiding the costs in internal accounting is not the same as paying the costs as a penalty. If the sums involved are so insignificant then rather than allow the costs to be hidden within internal accounting the charge should be removed from external parties to ensure a level playing field. Otherwise the cost should be charged as a penalty recharge to other BT businesses on the same basis as for external CPs .

At para 3.34 Ofcom "is satisfied that there are no additional KPIs that can be introduced to

compare CMC performance. As a result we have concluded that this issue does no longer constitute a barrier to a finding of replicability.”

Ofcom’s conclusion is difficult to understand. The item was identified as having significance because without it third parties can have little confidence they are not being unfairly disadvantaged. Ofcom’s approach smacks of running away from a problem that offers no easy solution.

At para 4.6: “BT’s competitors are going to be able to use PPCs more effectively to compete with BT in the downstream market.”

Ofcom’s assertion is difficult to accept. It seems to mean that a monopoly market will provide the competition to limit the exploitation of another monopoly market.

2 From a High Street Bank (2)

Ofcom’s recent statement on Leased Lines Charge Control has the impact of doubling the price of Local End, Main Link and Enhanced Maintenance to service provider for sub 2 Mbit/s circuits. Then BT is able to exercise more pricing freedom but not below a price floor. This looks like a tactic to increase market share and stranglehold on the leased line market.

3 From a Specialist Consultant (1)

Summary – BT does not guarantee a symmetric DSL service to SMEs and other ISPs are not interested in the business user. If this situation were to be rectified there would be sufficient competition at both retail and wholesale level to justify Ofcom’s proposals. However, suppliers do not provide guaranteed a minimum QoS on DSL connections and hence Ofcom’s proposals are not acceptable.

4 From a Specialist Consultant (2)

Responding to the current economic climate, many large companies are investigating the benefits they might achieve through outsourcing their networks, either as part of an IT infrastructure or a separate business function. The last 12 months have seen a significant increase in the number of RFIs issued.

The regulation of BT pricing, when part of an outsourced “business function” has always been “open to interpretation” with aggressive discounting hidden under a blanket of other management and service charges. This has always given BT a big competitive advantage, which BT has further exploited by locking out the competition once the large outsource contract has been won. There is a general view among business users that BT often lacks the ability to deliver what it sells and thus the overall impact on competition is not as great as it might have been. However, the current Ofcom proposals will move BT’s competitive advantage further down into the smaller corporate and SME organisations.

In essence, when considering the impact of Ofcom regulative changes, the outsource and managed service market also needs to be taken into account as the business model and client expectations are very different from that of an end user purchasing circuits, (even though end-user orders can be very large).

5 From an international petro-chemical company

There is little direct competition in this domain. Wholesale competition is insufficient as you end up comparing margins and that is assuming any of the underlying transport pricing is transparent in the first place.

How are the KPI’s required for low bandwidth lines any different to those for broadband? BT must be managing the internal division with a raft of KPI’s. Any large, ITIL based organisation will have them coming out of their ears!!

Whilst DSL is nearing the level of penetration required the lack of QoS, symmetry and the service 'wrap' you get on business grade leased lines means we still have a few years to go before DSL is a true replacement for these services. You also have the security overlay (SSL, VPN or otherwise) to consider. Large and medium companies will use DSL options when they can. SLA's with third parties and the security requirements still results in a high number of dedicated circuits. Also you only have to worry about an Ethernet tap with leased line solutions and with DSL as the base all the companies need the secure, reliable infrastructure to land the services, harder for SME's.

Much of the UK voice estate is still non VoIP. So whilst that remains the need for tie circuits (trunk, backup or otherwise) remains.

CMA
20 August 2009

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (conduc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman is also a member of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the conduc. Note: if the conduc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

Time permitting, the draft response is sent to all members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board). The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chairman.