CMA's response to the Business Connectivity Market Review - Review of the retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments markets

www.thecma.com 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.

Business Impact Statement

CMA is concerned that the consultation of some 450 enterprise users in early 2007 (Annex 9 of the condoc) focused too heavily on detailed and intricate economic issues and failed to identify the primary causes of concern – that in too many areas of the country there are no competitors to BT in the supply of business connectivity; that BT has increased its prices to levels that are forcing major shifts in the leased-line/managed services markets and that the regulator is not moving fast enough to counter or alleviate these trends.

Specifically, business customers warn that:
SDSL and Business Grade ADSL must be included as increasingly important elements of business connectivity (eg: to MPLS VPNs) – they have no consumer market and serve to compete directly with PPCs;
Past experience suggests that the development of the wholesale Ethernet market means that SMP in the above-1Gbps sector is likely to be entrenched for some time to come. The price structure of short-haul Ethernet appears to be based on opportunity cost versus traditional high-bandwidth circuits, and seems to have no relationship to actual costs for the different bandwidths;
Dark fibre, as a retail product, is urgently needed as a means of delivering competition in the high bandwidth market and the development of new services;
Many local authorities and private enterprises have seen increases in leased line prices exceeding 150% over the past 12 months;
There is no alternative to BT in rural areas. Competition does not exist and is unlikely to materialise in the foreseeable future;
There is a real danger that 21CN will give BT first-mover advantages and Ofcom will be unable to take ex-ante action in time to prevent that happening;
The Valuation Office Agency is taking action to levy business rates on privately-owned infrastructure such as dark fibre and masts, but not on leased circuits;
A voluntary undertaking (to support and provide certain legacy products with prices which do not increase at a rate higher than inflation) should be the least expected from BT and prices should not increase at a higher rate than inflation;
BT's continuing monopoly on ducts and (to a much lesser extent, copper) is increasingly a matter for concern, especially when dark fibre becomes readily available.

Meeting with Ofcom

CMA is grateful to Ofcom for arranging a meeting with CMA members prior to this response. The unedited replies to CMA's internal consultation were provided to Ofcom to inform that meeting. What follows is a digest of those replies, suitably anonymised. As such there is no objection to putting the digest in the public domain.

Detailed Responses

1 From a Major High Street Bank

Overall this is a disappointing consultation because it says that the progress since privatisation and deregulation of the business telecommunications market is still desperately slow and the same obstacles are being used by the incumbent providers to shackle new markets. If the UK is to remain genuinely competitive and innovative then Ofcom needs to dedicate more focus, effort and attention to this market.

In terms of specific markets;

PPC

It is very disappointing that such a cornerstone of business telecoms continues to be dominated by a single provider and remedies put in place have failed to rectify that situation. That the roll-out of SDSL was so poorly implemented by BT with terrible procedures should have come as no surprise given it would have offered a lower cost alternative to the expensive PPC product.

Therefore as regards PPC;

- Ofcom must guarantee a review prior to removal of any price controls on the PPC market. Current cost controls and reporting should be investigated as a matter of urgency to dissuade CP and Consumer concerns that this monopoly is being exploited.
- SDSL and business grade ADSL must be included as a business connectivity as they have no consumer market and serve to compete directly with PPC.

Wholesale Ethernet

It is disappointing to see yet another market being developed to the benefit of BT and detriment of competition and consumers. Wholesale Ethernet has the same problems that have bedevilled other markets. This suggests that the emphasis and effort Ofcom are able to devote to the effective regulation of the business telecoms market fall short of what is required. This situation should not have been allowed to develop. Therefore Ofcom should make review of this market a priority. Ofcom should also look at how new products are regulated, in terms either of the frequency of review or the process used, because the development of wholesale Ethernet market suggests we are not learning from previous events and SMP will probably now be entrenched for a period of time.

Dark fibre remedy

I am strongly in favour as it offers a route to delivering competition in the high bandwidth market and the development of new services which will not occur if providers are instead forced to rely on a wholesale or EOA BT product. History indicates that if CPs have to rely on BT-provided EOA products then they will be products fashioned to suite the needs of BT Group rather than those of competition and innovation. There should be clear, aggressive timescales on the development of this as a remedy.

CELA

Separate geographic market for 34/45 Mbits PPC in CELA. I am unconvinced Ofcom will be able to ensure no cross subsidisation or predatory pricing occurs or be able to re-act quickly enough if it does to prevent BT re-establishing SMP.

2 From a County Council in West Midlands

The County Council has seen an increase in the cost of certain Leased Line circuits of over 150% over the last 12 months.

There are no product or service enhancements - just a huge price increase. There is no alternative supplier in the vast majority of cases; if this is not an abuse of a monopoly position then I'm not sure what is. How Ofcom allowed this to go through is beyond me, its appalling and I know that we are not unique, *(two other named CC's)* are authorities that I know have also suffered huge increases.

The impact on *(this CC)* is around £250k per annum, I understand that *(another named CC)* have suggested the cost increase to them is close to £3M.

My recommendation would be to create a market similar to that in the commercial broadband market place where BT provide fibre to alternative suppliers who can then resell services to customers.

Any further price increases in this market would be untenable.

I have not read the proposals in detail but BT's continued abuse of captive customers is unacceptable; Ofcom's inability to properly manage such matters also suggests that they are ineffectual.

3 <u>A Large Publishing Company</u>

I have already sent in to Ofcom my views and hopefully there will be a large number of responses to the consultation, with the end result being that dark fibre access to the BT fibre network will be made available.

4 <u>A Utility</u>

I am concerned that 1.14 only mentions a limit on price rises for TI Analogue circuits. I would like to see this extended to TI low bandwidth digital circuits.

5 <u>A County Council in the NW</u>

The County Council is a class leader in the development of its network infrastructure - a 600 site network namely comprising a WAN backbone of private, carrier class, microwave radio between core nodes and edge site, last-mile-circuit provision by leased line circuit or private unlicensed radio (5.8Ghz, subject to line of sight).

Circuit type breakdown:

EPS	ANUK circuits	No. 84
Learning Stream 2Mbs	MXUK circuits	No. 137
LES/EES	SHUK circuits	No. 217
Radio (lic/un-lic)		No. 105
Other		No. 60

The County faces a monopoly position and for many years has had no choice but to purchase its leased line communications circuits either directly from BT or through a BT reseller (Thus, ADIT); up until October 2006 we had consistently seen costs coming down for fibre based circuits. On the basis of the latter statement (and where <u>no</u> alternative link option existed) the County invested substantially in BT LES/EES leased line circuits (sold by BT as Ethernet products) in compliance of delivering Government agenda.

The effect of recent changes to leased line costs is summarised below.

- October 2006 BT rebrands LES to EES - Note, effectively doubled the annual revenue costs on many of our circuits.

- January 2007 BT ramps up new ancillary installation charges - Note, with reference to a programmed rollout of 'Children's Centres' in socially deprived areas we faced standard installation costs <u>per site</u> of circa £7k <u>and</u> additional ancillary charges averaging £10k. This gave an <u>additional financial burden of some £100k</u> on a single project for a 12 site delivery !

- August 2007 BT announce Ofcom regulated price changes to LES/EES - Note, the three phase price increase (Sep 07, Dec 07, July 08) will result in the County Council facing an unprecedented <u>+£600k increase</u> in revenue terms for these circuits alone. The situation is further exacerbated with the introduction of 'distance charging'.

<u>Note</u>: the highest proportion of end users for these circuits being schools !

The reality is that the net effect of these increases on the public sector results in grants such as Standards Fund and grants for major new initiatives such as Children's Centres being used to purchase over priced services from a private company with a monopoly position in *(this county).*

To date, Ofcom have been helpful in many respects with previous communications with my colleagues. However, despite *(this county)* forming representations via ADIT it does not seem to have been possible for Ofcom to create an effective market where none exists and clearly their many papers on the subject shows no objective evidence of who they actively sought dialogue with to support their thoughts.
(This County) would like to take any and all opportunity to have meaningful dialogue and representation in shaping Ofcom's (and therefore BT's) review of the current and future market place.

(We) have *(recently)* had dialogues with a number of comms providers, including BT, and I attended the CMA conference last week.

This matter as you know is very serious for us as we face increases in annual charges that could approach or exceed £1 million per year, in addition to massive increases in install charges for new circuits. Rises of as much as 60% and more seem to be in prospect.

BT clearly have a commercial motive for reasserting their effective monopoly of comms infrastructure. In the years since the passing of the 1984 Telecommunications Act, BT's monopoly has been significantly eroded in metropolitan areas in the UK, but much less so in rural areas, which include large swathes of what currently is known as *(this County).* 21CN is a project that will give BT strategic advantage through its ownership of state of the art high capacity infrastructure. However this demands very significant investment over a period of many years. Clearly the existing customer base in areas where there is no competition is a potentially easy means of funding this investment through significantly increased tariffs which it is very hard for us to avoid because of the lack of competition.

I asked a question of the Ofcom presenter Peter Phillips at the CMA conference (Day One 26 Feb): did he really believe that there is sufficient business in the more rural parts of the UK to support more than one commercial comms provider? His answer was along the lines that we would be surprised at the extent to which regulation could generate competition and develop a market. He did not deny that the BT price rises which *(this County)* and others have been encountering were a consequence of Ofcom regulatory policy.

It is hard to see any strategic logic in Ofcom's regulatory approach. In being overtly complicit in BT price rises Ofcom are increasing the flow of investment into 21CN, which in the longer term will reassert not reduce BT's monopoly position. As we have previously said, much of this investment is coming from central govt grants such as the Standards Fund (which supports learning in schools). It doesn't in that sense look different to the situation before 1984 in the rural areas: a monopoly funded by the state.

For a customer such as a local authority who has a need for high capacity comms, the only obvious way of challenging the BT monopoly would be, either alone or with a partner, to make a significant investment in high capacity fibre infrastructure. Effectively this would run the risk of creating a second Kingston Communications, which surely cannot be Ofcom's intention.

Recent initiatives by the Valuation Office Agency to levy business rates on privately owned comms infrastructure such as dark fiber and mast facilities, but not on leased circuits, is another perverse curiosity of the present regulatory and funding scenario.

6 A County Council in the South

……………Those *(local authorities)* with mainly learning streams are not affected. But ……….large rural shire Counties have substantial increases to find - approaching £900,000 per year. The increases mainly affects the schools' grids for learning. Using Government standards fund money nearly all school in the UK have secure fast internet access mainly using BT LES (EES) circuits. The Government investment runs into £billions. If we need to charge schools more for the service to cover these BT increases and as a result they withdraw from the Grids for learning this will be a huge waste of Government investment (much of which helped BT extend its fibre network into rural areas - maybe helps with their 21C project?).
…………. We also need to be aware that BT have substantially increased prices on popular services before eg their metro VPN product.

The issues seem to be:
The differences in competition between urban and rural areas
Would a BT public sector tariff be possible

7 A Large High Street Retailer

From my experience I would generally agree with the Ofcom conclusions, although I would add my concerns that PPC prices are too high into their future deliberations on the setting of future price controls.

The agreement by BT to continue with the support of analogue and sub 2MBit circuits up to 2011 (with the option to cease their support earlier if the underlying platform is closed) is slightly worrying as I see no appetite inside *(this company)* to actively withdraw such services from use where they continue to deliver a working solution. Perhaps I would be happier with such a stance if BT actually started to deliver its 21CN roll-out (after all it is now 15 months behind schedule) with some proposals as to how we can move legacy services on to the new platform. I do not think it is acceptable for them to continually slip the delivery of the new network whilst maintaining a 2011 target end date for existing services.

8 An International Manufacturer

The consultation includes the following key proposals:

- Deregulation of high bandwidth wholesale terminating segments in a proposed new geographic market – the Central and East London Area (CELA).
COMMENT ; We would be in favour of this.

- Deregulation of KCOM in the Hull market for low bandwidth traditional interface retail leased lines.
COMMENT ; No strong preference either for or against this.

- To accept a voluntary undertaking from BT to support and provide certain legacy products with prices which do not increase at a rate higher than inflation;
COMMENT ; A voluntary undertaking should be the least expected from BT and prices should not increase at a higher rate than inflation.

- Ofcom proposes to extend the charge controls placed on BT's SMP traditional interface wholesale terminating segments beyond September 2008 and will be consulting separately on the appropriate level at which they should be set. It also proposes to place new charge controls on trunk segments and wholesale Ethernet services provided by BT;
COMMENT ; Agree with all of these proposals

Ofcom has also given preliminary consideration as to whether it should review the possibility of a dark fibre remedy in the access network for wholesale leased lines markets where SMP has been found. Ofcom invites stakeholders – including CMA - to comment on whether this option should be explored further.
COMMENT ; We would welcome further exploration of this matter.

9 Another International Manufacturer

Traditional private circuits are on the way out, and I don't expect to have any in the next 12 months. However low-bandwidth TI access circuits are still used in our MPLS and voice network and BT definitely has SMP.

I was concerned at the previous review, that the AI market was not considered significant. We now have ntl:Telewest *(VM)* offering short-haul Ethernet, but their price structure is similar to BT's.

The issue I'm most concerned about is the price structure of short-haul Ethernet, which is based on opportunity cost versus traditional high-bandwidth circuits, and has no relationship to actual costs for the different bandwidths. There is no difference in fibre specifications, and the running costs are marginally higher (slightly more sensitive to signal quality and more expensive transceivers to maintain). However, the wholesale prices per local end are: Install £1,200 , £2,750 and £5,200, rental £2,100 , £2,750 and £7,500 for 10, 100 and 1000 Mb/s. An indication of the real cost is that the main link rental is speed-independent. I'm sure a lot of customers would choose 1000Mb/s over 100Mb/s if it were offered at an economic price.

A fibre equivalent of MPF would be even better, but MPF is really part of LLU, and I think it's a little early to force this on BT or Telewest.

10 A University

I can't help too much as we don't use leased lines. *(Here)* we dig up the streets and lay our own ducts and fibres so we have no need for leased lines.

I would venture to say that there is no real competition, except perhaps in London and maybe one or two other large cities, Birmingham and Manchester but it is all BT. The old cable companies tag their pricing to just below BT but are sometimes prepared to 'deal' if there is something extra in it.

Physically installing ones own network does have a higher capital cost but no ongoing costs... well except we get stung for rates now but being public sector we get some dispensations.

If competition can be fostered I suspect dark fibre would be a good route as then bandwidth concerns disappear. We run a 10Gbit backbone around *(name of town).* The advantage of purchasing 'leased dark fibre' is that someone else fixes it if it breaks and if the business downsizes or moves location it can be transferred or given back.

10 A Utility

We are not a big user of direct leased lines our interconnectivity tends to be by MPLS due to the distance between our sites, although we do obviously have connections the cost of the circuit for us is hidden in the MPLS. Where we do have a few leased lines they tend to be short distance low bandwidth private wires used for emergency communications.

11 A Petrochemical Company

1) CELA probably makes sense (although definition of high will vary over time). Does this extend to Ethernet services? Clearly BT will still have a monopoly on ducts and copper. Are there any proposed changes to duct legislation?

2) KCOM still behave in a very monopolistic fashion. Even recent activities with them, although on fibre services, have not been competitive. If this is to bring back Hull into the rest of the UK we should be very supportive but anything which requires us to continue to process Hull like a foreign country does not make sense.

3) Perhaps the BT voluntary undertaking should be no increase (given that bandwidth prices drop).

4) The Ethernet/trunk regulations will probably make sense too.

5) Re dark fibre option, would this include duct rights? If this is about market stimulation then the intent is probably justified. At the moment the investment costs for new fibre last mile solutions are still prohibitive.

End CMA, 22 March 2008

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (condoc) 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 and CEO are also members of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc. Note: if the condoc 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).

The draft response is sent to all 1500+ user 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 Chief Executive and Chairman.