

COLT Telecommunications
Response to Business Connectivity Market Review
4 April 2008

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1. Introduction and summary of response

This is COLT Telecom's formal submission to Ofcom's Business Connectivity Market Review Consultation (BCMR) dated 17 January 2008. It is provided in addition to confidential data supplied by COLT to Ofcom.

The proposals considered in the consultation are likely to have a serious impact on COLT's business. COLT has already submitted significant documentation to Ofcom to assist in the difficult task of accurate analysis of the issues and COLT is keen to continue to be part of a regular and open dialogue with the Ofcom team on this review given the importance of it to our business.

In summary we argue in this response as follows:

- That geographic deregulation is not an appropriate tool
 - existing competition to BT is not yet fully effective, even in the most competitive areas, and so does not justify deregulation.
 - competition based on small geographic areas and narrowly defined product markets alone is not sustainable nor does it reflect how business customers buy their services.
 - all competitors to BT in the UK are still relatively small in geographic scale and reach, and therefore may not be viable if the foundation of the current regulatory regime were removed.
 - the consequence if Ofcom were to deregulate may be that in the longer term Ofcom has to re-regulate. This would represent an embarrassing failure of the current deregulatory policy.
 - deregulating in this way creates uncertainty for CP's in terms of the Return On Investment they might expect from historical investments made in reaching customers. This could adversely affect competition
 - a geographically disaggregated regulatory regime would be more difficult / costly to design and implement for Ofcom, BT and industry: deregulation that increases bureaucracy. In particular, investment will suffer due to the increased regulatory uncertainty created by an inherently complex system.

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- That the product market definitions used by Ofcom are not sufficient
 - There should be a separate product market (or at least a sub-market) for high quality business connectivity services that includes high-grade ADSL and SDSL. At present these services are considered alongside mass-market consumer access services which results in an incorrect assessment of competitive conditions. There is concern that the proposals for regulating this grouping of services will mean a paucity of decent wholesale provision (and ultimately retail) of business grade services going forward – an important factor for competing Communications Providers (CPs) and one that is key to the viability of UK business generally.

- That access to dark fibre is not the right answer for opening up the access network
 - This is not an efficient remedy - it will create complex logistical problems (particularly vis a vis duct sharing). It would also lead to confusion over recovery of costs.
 - There seem to be no obvious benefits over ethernet access obligations on BT.
 - It is not clear that BT has SMP in fibre in many areas in any event.
 - Those providers encouraged by past regulation to invest in network infrastructure would have their assets undermined.

COLT would like to see considerably more work done on this market review before Ofcom can even consider relaxing regulations per its proposals. It urges Ofcom to address the following key limitations of its current review:

- the lack of an adequate or useful impact assessment;
- failure to consider the impact of its proposals on business markets and key segments (particularly regarding multi-sited customers); and
- questionable assumptions and data quality used for assessing the market; in particular the assumption of a 250m network build to define the boundary of the CELA.

Without these essential elements being properly addressed within the analysis, COLT considers Ofcom to be de-regulating prematurely and without due process.

2. About COLT

COLT is a leading European provider of business communications. COLT specialises in providing data, voice and managed services to major enterprises, SME and wholesale customers. COLT owns and operates a 13-country, 20,000km network that includes metropolitan area networks in 34 major

European cities with direct fibre connections into 14,000 buildings and 18 COLT data centres. COLT Telecom Group S.A is listed on the London Stock Exchange (COLT). Information about COLT and its services can be found at www.colt.net

COLT was established in 1992 with the assistance of Fidelity Investments, one of the world's largest privately-held mutual fund and investment management companies. Fidelity remains COLT's majority shareholder today.

COLT built its first 15km of London fibre network in 1993 and over the following three years expanded its London network and offered services in major European cities, with local sales, service and support capabilities. From 1997-2001, COLT raised over £2bn of new capital to fund the construction of a 15,000km pan-European backbone network. Today the company operates in 13 countries and owns an integrated 20,000km network that directly connects around 100 major European cities, with metro networks in 34 of them. COLT's network also connects 14,000 buildings and 18 COLT owned data centres.

COLT followed a clear strategic path to the development of its network. First came the dense, last-mile fibre network in London, then in the other first-tier European cities. Once the local networks were deployed, all the COLT metro networks were connected over a wholly-owned backbone. COLT has predominantly built its own network and infrastructure. Only in a very few cases is the COLT backbone network reliant on elements leased from other carriers. In total, COLT has invested almost £3bn in creating its pan-European and long-distance network. COLT also works with other high quality providers to extend the reach of its services 'off-net' via fibre and wholesale DSL, as well as implementing local loop unbundling across 13 countries.

COLT is established as a leading European provider of business communications services offering end-to-end security, reliability and high performance. COLT is organised into three customer-facing business divisions that focus on meeting the needs of Major Enterprises, SMEs and Wholesale customers. COLT is a leading supplier in a number of industry sectors, particularly the financial services and professional services segments. In each of its business divisions, COLT has professional services experts who design and manage complex solutions for their customers. Our services include award-winning Ethernet services, data centre outsourcing and managed IT services from security to email and other managed applications.

- For Major Enterprises, we provide sophisticated connectivity and IT infrastructure to underpin their operations
- For SMEs, COLT is focused on providing packaged solutions

- In the Wholesale sector, we focus on building strategic relationships with our global and national carrier customers, helping them to achieve their business objectives.

The current President and CEO Rakesh Bashin was appointed in December 2006, bringing with him extensive experience in the global telecommunications and managed services industries. Our vision and overarching goal is to be the most trusted provider of converged data, voice and managed services to businesses across Europe.

To achieve this, we have four further goals:

- deliver an outstanding customer experience
- deliver business innovation building on our unique fibre network and data centre infrastructure across Europe
- create an exciting and successful environment that attracts and retains the very best people
- achieve sustainable profit growth.

3. Transparency

A point COLT has raised before relates to Ofcom's responsibility to carry out its regulatory duties in a transparent and equitable manner. To elicit the best regulatory results Ofcom spends considerable time and resources consulting with Industry and analysing markets. The length and complexity of this BCMR, and the time taken to produce it from the original information request, tends to support our claim that the inherent complexity of geographic markets analysis is a problem in itself. In many cases, it is simply unrealistic for stakeholders to be able to challenge the analysis in any depth, or form an adequate understanding of the consequences of what is being considered. In the short term, this lack of transparency increases the costs of the regulatory process on industry, but more importantly it means that Ofcom is unlikely to receive comprehensive and accurate feedback on its proposals; possibly resulting in inappropriate deregulation.

In our response to the 2006 discussion document on Disaggregated Markets COLT made this point and suggested that Ofcom actively engage industry and focus its communication on the potential impact of changes. It suggested this might best be achieved via focussed workshops or an industry-wide working group. We note that this approach has not been followed; a process that detracts from giving Industry confidence in the conclusions reached.

4. Market definitions – product and geographic

4.1. Product markets: - COLT believes that Ofcom has not quite accurately identified the product markets for either Wholesale Broadband Access (WBA) or for Business Connectivity. It

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should adjust the current definitions to create a separate market to encompass business grade connectivity services. This market should include ADSL and SDSL services within it.

COLT has also contributed to the UKCTA submission on this issue and would fully support the case made for separating a Business Grade ADSL market and the data set out therein. It also supports the concerns expressed about availability of SDSL type services going forward, particularly given the proposed withdrawal of DataStream.

There are four main points regarding Ofcom's analysis of the product markets that COLT would express concern with:

- inclusion of residential and business in the market defined for WBA;
- substitutability of business grade ADSL with SDSL;
- lack of full consideration of the needs of customers in business markets for services to multiple sites; and
- validity of separating retail and wholesale markets for leased lines.

4.1.1. Inclusion of residential and business in the market defined for WBA

COLT has made extensive submissions on this subject already in its response to Ofcom's WBA Market Review 2006/07. In its response it expressed a concern that the product market failed to distinguish between mass market residential internet access and the provision of high quality business connectivity services.

Ofcom concluded in its WBA Market Review that the relevant market was the market for asymmetric broadband internet access which included both residential and business customers. It claimed that there was an overlap in services used by residential and business customers with distinctions between services offered to each sector much reduced since the last review. Ofcom also suggested that that it may be that suppliers would increasingly be unable to segment the market profitably between residential and business customers, an argument which COLT finds particularly concerning given the obviously segmented approach which has been taken by the majority of providers competing with BT.

While there may indeed be some overlap in services used by residential and some very small business customers, this is not the case with major business customers who generate the majority of business market revenues.. COLT believes that Ofcom has given insufficient consideration to these differences which are material and will continue to, exist.

As Ofcom noted, there are business customers who have and will continue to have a need for higher quality products relative to residential customers and that there are currently different asymmetric broadband access products targeted at business and residential customers. Ofcom's own customer research published alongside the consultation document found that when questioned, the largest proportion of business customers using ADSL stated they were paying £30 - £79.99 per month for connectivity, while the largest proportion of residential ADSL users stated they were paying £15 - £19.99 per month. This is a not insignificant difference and suggests that there may be indeed be a break in the chain of substitution which requires further examination.

In COLT's experience the need for these different products will continue during the period of this review and further assurances regarding the provision of business targeted products should be provided to ensure:

- continuity of supply for customers
- acceptable ROI is achieved
- sustained competition and customer choice

CPs such as COLT that are focussed on business users will continue to need access to a range of upstream and downstream products at the same time, due to, for example, considerations of economies of scale and site density. COLT is often required to prepare proposals covering multiple business customer sites. These sites would not cost-in with products such as LLU because there is not the equivalent density for business market take-up that exists in consumer markets. COLT also has a concern that Ofcom might deem residential products and services as sufficient to serve the combined business and residential market, thereby preventing the launch of new and appropriate business services and allowing the withdrawal of existing ones. This could severely undermine business competition across the whole national market.

In particular, the requirements of larger businesses warrant separate consideration where connectivity requirements are more often than not driven by a range of needs (not just internet access) often related to the critical nature of the information the customers business relies on. Key requirements include guaranteed bandwidth, full service availability, diversity, resilience, fast delivery and associated service levels. Differential pricing in this marketplace is designed to reflect the value added nature of the services being offered and associated service levels. For further detail we would refer Ofcom to the joint response to the WBA consultation submitted by UKCTA.

These differences in the retail business market are reflected in the wholesale business market. On the demand side there is a need for high availability, low latency, and guaranteed bandwidth access. Ideally, such services could be installed quickly, and would come with repair times approaching those found on leased line products. Ofcom should note that there is a gap in the wholesale broadband market for a product which offers these ideal characteristics. The closest available product is BT DataStream. One reason for this gap is the nature of supply in this market. It is not straightforward to move from offering a residential grade wholesale broadband access service to offering the ideal business grade service outlined above. The difficulties, and therefore costs, are not of a technical nature, but lie in the development of new business processes and systems required to support a much higher quality service.

The minimum efficient scale for a LLU operator rules out the option of using this service for business only provision. Similarly, the case for a successful LLU operator to move into the high-end business access market is likely to require a substantial number of customer lines. Unfortunately, this is likely to be a very small market segment as many of the major customers have their own VPN's. For this reason, it may well be the case the market will not support a sufficient number of competitors to deliver effective competition in the business market

In the long run, it might be possible that successful LLU operators will move into the business market under discussion, and therefore retail business customers should still receive a service. However, even in this instance there will be little incentive to supply to a business market given the scale issue. In residential (and to a lesser extent business) internet access markets, the narrowing of competitive alternatives at the retail level due to the absence of a business market arguably will not have a detrimental impact on residential consumers. These consumers make choices based on core service characteristics: price and bandwidth. Indeed Ofcom's research report 'The Consumer Experience' published in November 2007 showed that the main reasons for residential broadband users switching services were price and quality of service (specifically for broadband services, speed of connection).¹

Business customers have a variety of needs regarding their business connectivity depending on the importance of the services they are running across their networks. In COLT's experience working with customers in the Finance sector, Media, Government etc. the service wrap (availability, resilience, diversity, service levels etc.) is critical in their decision-making and supplier selection. Indeed the core feature of a business connectivity service is often the management of an entire network and ensuring its constant availability, rather than the price

¹ 'The Consumer Experience' 20 November 2007, Paragraph 4.6 <http://www.ofcom.org.uk/research/tce/ce07/>

and bandwidth of individual access circuits. To put this another way, there is great value to the customer in having competition between different value added services, and less importance attached to the underlying network. In this context, the removal of a business market for the provision of the underlying network services is likely to have a very detrimental effect on consumers – drastically reducing both the range of choices and the number of competitors across all downstream markets for business services which require wholesale broadband as an input.

COLT awaits Ofcom's final statement on the WBA market review and hopes that it takes seriously our submissions regarding the inclusion of residential and business services, and the exclusion of SDSL. Whatever Ofcom's findings on this we believe that the factors we have detailed above make it essential that Ofcom also gives serious consideration to the inclusion of high-end ADSL services within the business connectivity market.

4.1.2. Availability of SDSL services in the UK market

Again, via the WBA Market Review, COLT has already expressed its concerns regarding the availability of SDSL services as an alternative to leased lines in the UK. While COLT's experience across Europe has shown that it is possible to supply high quality leased line replacement services using SDSL technology at a fraction of the cost of traditional circuits, this opportunity does not exist in the UK. We believe there are two main reasons for this being the case:

- relative to leased line prices, the price of wholesale SDSL services from BT is far too high to encourage demand; and
- better service levels are available with wholesale leased line services.

For these reasons, COLT has previously argued that Ofcom must give further consideration to the inclusion of SDSL services within the WBA market. We believe that this would encourage demand-side substitution between symmetric and asymmetric broadband internet access limited by beginning to address large price differentials and the low value which asymmetric broadband internet access customers place on symmetric broadband internet access.

COLT appreciates that symmetric services are often provided to customers using leased lines or PPCs. But as Ofcom recognises, symmetric services can also be provided via SDSL. Ofcom has indicated that it believes that SDSL services remain outside the WBA market with demand-side substitution between symmetric and asymmetric broadband internet access limited by the large differences in price and the low value which asymmetric broadband internet access customers place on symmetric broadband internet access. Ofcom also

concludes that supply-side substitution at the retail level would not provide a competitive constraint.

Ofcom's conclusion appears to be unduly influenced by BT's pricing policy. Unfortunately, there is no incentive for BT to encourage take-up of a service based on a more efficient technology as it would simply cannibalise existing revenues. There is very little competition to BT in the provision of low bandwidth leased line tails, and so BT is best served by using older technology and maintaining higher prices. The result is a large price differential which prevents demand substitution and high margins for BT. This is not good for customers or competition.

COLT urged Ofcom to bring wholesale SDSL prices closer into line with the cost of an efficient operator via the WBA market review. When SDSL was moved into the wholesale broadband market review in France, the result was a greater than 50% reduction in prices. The main reason for its inclusion would be the similarities and common elements of the architecture of an ADSL and SDSL network. In a truly competitive market, these would tend to bring prices for the two services much closer together than those in the UK market today. In contrast, SDSL network architecture has little in common with that for leased lines. However, by regulating these services under the same market review, Ofcom provides credibility to the claim that SDSL should be priced very close to traditional interface circuits.

Additionally, in the 2003/04 market review Ofcom noted the potential for voice services to be provided over broadband (VOB) together with internet access using an ADSL based service. Ofcom's conclusion was that in the future, the supply of services in this way might have the potential to remove the cost difference between the provision of ADSL and SDSL broadband internet access. The common line costs associated with the SDSL service would also apply to an ADSL service where they were not being recovered from a customer taking a PSTN service. No analysis of the impact of the development of VOB services was given in the WBA market review and COLT believes that this is an area which Ofcom should have given further consideration to. VOB services have developed rapidly since the 2003/04 review was undertaken and wholesale "naked DSL" services are currently of interest to a number of communications providers. As the review is forward looking, COLT believes that it is appropriate that these developments are considered in the context of whether symmetric and asymmetric services form part of the same market.

COLT is keen for its concerns regarding availability of SDSL services to be recognised. If Ofcom determines not to deal with them in the context of the WBA review, then COLT

suggests these can be partially addressed via this BCMR by including high-end ADSL and SDSL services in the same market.

4.1.3. Lack of full consideration of the needs of customers in business markets for services to multiple sites

As already mentioned, COLT feels that this BCMR is weakened by failing to adequately address the needs of business customers which have multiple sites to connect. COLT notes that this issue has been considered in previous Ofcom research² where Ofcom found that a key decision criterion for businesses was that the supplier could serve all of their sites. The same survey found that only 4% of large businesses and only 36% of medium businesses were single sited.

The research done for the BCMR does not pick up the importance of being able to serve all of a business' sites but does contain a table showing that around three quarters of businesses are multi-sited. COLT believes that a sub-national approach to regulation which does not consider a separate business market could foreclose supplier competition and choice for a majority of UK businesses. These businesses tend to be the largest organisations who deliver the biggest revenue streams within the business marketplace. Such customers are extremely important for UK Plc and other competitors. COLT would like Ofcom to consider this aspect this to be considered in greater detail before deciding whether regulations should be lifted.

4.1.4. Validity of separating retail and wholesale markets for leased lines

In its analysis, Ofcom has continued to make a distinction between leased lines sold at a retail and wholesale level. A leased line is simply a service that offers dedicated capacity between two locations. This circuit can be used to carry voice and/or data traffic. Given the very basic nature of the service, it is inherently difficult to distinguish between retail and wholesale supply. An operator may sell an identical service for the same price to both another operator and a business customer. Both will actually be using the circuit as an input to a final service, but only one then happens to sell this service to another customer. This perhaps suggests that there is only one market for leased lines rather than distinct retail and wholesale markets.

A closely related point is that operators often buy leased lines from BT and use them to provide a voice or data service (as opposed to a "retail" leased line). These quite rightly count as leased lines in the analysis of wholesale markets. However, it is unclear whether or not

² e.g. Ofcom's Strategic Review – Sept 2005:
<http://www.ofcom.org.uk/research/telecoms/reports/pricing.pdf>

dedicated capacity circuits provided by BT Wholesale to BT Retail to enable similar voice and data services are also counted in the analysis Ofcom has carried out on this point.

4.2. Geographic markets

COLT submitted a substantial response to Ofcom in 2006 on the implications of disaggregating markets based on sub-national geographies. Most of this commentary remains relevant to this market review.

There are three main areas that COLT takes issue with in this latest market review which also considers geographic-based deregulation:

- The accuracy of the analysis and evidence used to support the case for geographic disaggregation
- The practical issues in successfully implementing such a regime
- The shortcomings of the overall impact assessment made

4.2.1. The accuracy of the analysis and evidence used to support the case for geographic disaggregation

COLT would argue that there is no geographic area (smaller than the whole country) where truly sustainable competition is possible. The combination of demand patterns for access network services and the costs of building and maintaining an access network imply that the relevant market is essentially national in scope. Clearly, pockets of competition have developed, but only as a result of a favourable regulatory regime. COLT maintains that, if the regulation were removed, market forces would eventually lead to the return of monopoly, or at least a return to monopolistic behaviour. Competitors would persist but they may still be unable to constrain the behaviour of BT effectively.

Even if Ofcom still concluded that disaggregation is appropriate in principle in the UK (and therefore that sustainable competition is possible at least in some areas), COLT believes that the evidence in leased lines markets does not support such a change in regulation. Ofcom defined the boundary of the CELA zone primarily on the basis of the average number of operators able to provide services to businesses with over 250 employees in a postal sector following a 250m network build assumption. We have already provided confidential data that challenges these assumptions. The conclusions reached point to a market that is not really competitive even on a building by building basis let alone on the postcode zoning within CELA

Ofcom uses. Indeed some postal sectors there appear to be no circuits provided, or at least a very limited number. The market can only be sensibly analysed on a national basis.

4.2.2. The practical issues in successfully implementing such a regime

The implications of moving towards geographic disaggregation in regulation are far-reaching. In addition to a huge challenge agreeing the right principles there are the problems in applying them. Implementing a different regime based on different geographic markets could prove counter-productive in terms of efficiency and effect. Challenges include:

- An increased complexity of regulatory analysis. As Ofcom has already experienced, there is a huge increase in information to collect and analyse relative to collating the data on a sub-national basis. The burden on the Regulator and industry is greater and the complexity of the data means a greater dependency on expert professional advice as the analysis becomes too sophisticated for non-specialists to understand. This impacts on the transparency of consultations (see further comments made in section 3 above).
- An increase in complexity means an increased risk that regulatory mistakes will be made. The corollary of this is a detrimental effect on the appetite for investment.
- Ofcom must consider the problem of preventing leverage of market power between different geographic areas in circumstances where it may have lost the power to impose regulation in some of these areas. If a separate market is defined in a particular area in which no operator is found to have SMP, Ofcom will not be able to impose any ex ante competition regulation. This severely constrains Ofcom's ability even to monitor compliance with regulations (applied in other areas) designed to prevent leverage.
- Some other questions raised by this scenario concern separation between SMP and non-SMP business along geographic lines. For example, how can accounts be reliably separated, and crucially, on what basis should shared costs be allocated? How could Ofcom prevent unfair bundling of SMP and non-SMP services when the product is the same? Will it be possible to have effective Chinese Walls on a geographic basis? If a product is developed as a result of an SMP finding, should Ofcom allow this product to be sold in non-SMP areas, or does the non-SMP division have to re-develop something to achieve the same functionality? COLT believes that some of the most serious issues will concern non-price product specification, and will therefore be inherently more difficult to monitor and police. For example, if more operational resource were allocated to non-SMP areas in order to offer better SLAs,

this would be both difficult to detect, and may also have a detrimental impact on service quality in SMP areas.

- In order to regulate effectively, Ofcom must understand BT's cost base. So if regulation is to be applied on a geographic basis, Ofcom needs to understand how the cost base varies between different geographic areas. Cost modelling is difficult at the best of times, and common cost allocation between different vertical segments of a business has always caused problems for regulators. The required common cost allocation on a horizontal/geographic basis will be even more difficult. Ofcom will be forced to rely not only on BT data, but on BT assumptions. BT has strong incentives to allocate costs to the regulated areas where it faces little or no competition and appear to have a low cost base in competitive areas. This gives BT justification to support aggressive pricing in competitive areas with relatively high prices in non-competitive areas.
- BT is required to develop and offer certain wholesale products due to their market power if these products are offered in both SMP and non SMP areas. What should happen to the costs associated with product development? Ought BT to be forced to develop a product with the same functionality twice?

Overall, the question Ofcom must address is whether the benefits of a reduction in regulation in certain areas outweigh the considerable costs associated with the additional complexity of administering the remaining regulatory regime. Ofcom's Strategic Review set the policy principle that one should try to deregulate wherever possible. One of the underlying reasons behind this aim is the expectation that markets will work better (that is, to deliver greater benefits to consumers and society at large) if they are not constrained by the "red tape" of regulation. Unfortunately, this argument does not necessarily hold true in its application to geographic disaggregation. There is a strong possibility that the additional complexity of the regulatory regime will in fact increase the "red tape" burden of regulation, negating the positive effects of deregulation.

Finally, during the debates on geographic markets over the recent past, it has often been noted that one of the drivers for differentiation of the regulatory regime is that BT is at an unfair disadvantage in the areas most likely to sustain competition. The argument is that BT must offer services nationally, but competitors are able to cherry pick just the lowest cost geographic areas and therefore undercut BT. If this really does constrain BT's ability to compete in retail markets, this could be solved quite easily by BT Retail buying circuits from these lower cost alternative suppliers, in exactly the same way that other suppliers rely on BT when it is uneconomic for them to build. Taking account of all the complications, this is a much

simpler, and probably more efficient, solution than trying to mould an inflexible regulatory regime to an uneven and ever changing competitive geographic landscape. Furthermore, were this to happen, it would be testament to the true competitiveness of these geographic areas

4.2.3. The shortcomings of the overall impact assessment made

COLT believes that Ofcom should have conducted a much more detailed impact assessment for its proposal to remove SMP status in the CELA "market". Ofcom seems to interpret its duty to conduct an impact assessment as only being required to choose between different remedy options. If no operator is found to have SMP there is no need for a remedy and therefore no need for an impact assessment to be carried out. COLT's interpretation of s.7 of the Communications Act is that Ofcom is under a duty to carry out an impact assessment whenever its proposals "involve a major change in the activities carried on". COLT believes this applies to removing regulation equally to imposing it. An impact assessment is a vital tool for clarity and for sharing with industry the practical effects of market theory.

5. Pricing and discount structures

The other area COLT has some concerns over relates to how pricing structures have been factored into the analysis carried out in this review. COLT is concerned that certain pricing packages that are offered by BT Retail on private circuits (retail equivalents) will effectively negate the effects of geographic segmentation of markets. An example of this would be the BT Netstream offering; a discount package that allows significant discounts to be accrued (up to 38%) if the customer commits set levels of spend on a variety of bandwidths, across a range of different types of circuits (including Megastream, Megastream Ethernet etc. for a specific contract term (up to 5 years). These services include wholesale components. The scheme also provides migration to some IP services and also reduces the discounts should customers fall below the specified discount floor. Any BT private circuits such as Kilostream, Megastream or Megastream Ethernet are included and upgrades to other BT products are achievable.

These schemes are clearly geography independent and leverage the total customer spend. It encourages long term commitment to BT to obtain the optimum discounts but without the need for capital investment in multiplexing equipment which PPC's require. This type of non-geographic pricing policy appears to be one way for BT to leverage power in the market irrespective of geography. On further consideration of this issue it may be appropriate for Ofcom to consider a regulatory remedy that prohibits BT from offering discount schemes that cut across both regulated and non-regulated areas.

Such an approach would be justified on the grounds of transparency and competition law enforcement.

6. Return On Investment

When COLT connects fibre to a customer premises or buys leased line connections it is making an investment in equipment which it needs to recover over time. Decisions to withdraw specific BT products will have an impact on the life of the investment and associated cost recovery. It is also likely to generate additional, unplanned costs of providing new connectivity as the old is removed and could lead to potential disruption to the customer. We would ask Ofcom to give serious consideration to this aspect of operators businesses when looking at the impact of changes to markets.

7. Dark fibre

COLT does not believe that mandating access to dark fibre is a suitable solution to opening up the bottlenecks in access. Although it would consider and engage in a consultation on this issue as proposed by Ofcom, it does not think it would be an efficient remedy.

Firstly such an approach would give rise to significant logistical problems, especially if duct sharing were an element of the solution. We can envisage issues regarding liability for ducts vis a vis repairs and with regard to third party wayleave issues. Duct sharing would also give rise to security issues around access and maintenance.

COLT's preferred approach would mirror what it has submitted in previous reviews that touch on this matter; that improved access to higher quality bitstream products would be better. There is little scope for innovation at the transport layer and most development in telecoms happens further up the value chain. CP's are likely to end up using the same electronics as BT and will therefore replicate BT's service, just at a lower price. Such a solution results in nothing more than an arbitrage opportunity.

It would be interesting to see if Ofcom concluded BT had SMP in fibre in many areas in any event. It is not obvious from an intuitive look at current market conditions.

8. Key conclusions and recommendations

- There should be a suitable national market identified for wholesale business grade broadband services that is separate from other broadband markets. This business market could be included within this BCMR as part of the low bandwidth TISBO segmentation. Ofcom should find that BT has SMP in this market and appropriate remedies should be imposed.

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- Ofcom should not regulate on the basis of dividing up the national market. Such an approach is incorrect in principle and unduly complex to govern in practice. The analysis used by Ofcom requires further work. COLT believes that the current analysis and lack of impact assessment carried out would mean Ofcom would be incorrect both in law and under due process requirements to proceed to de-regulate.

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- Ofcom should spend time ensuring the market is able to supply adequate Ethernet access products rather than considering whether fibre to dark fibre should be granted.

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