colt

# Narrowband Market review

Consultation Response by Colt Technology Services

**Non Confidential Version**

# About Colt

Colt provides world class network, voice and data centre services to thousands of businesses around the world, allowing them to focus on delivering their business goals instead of the underlying infrastructure. Customers include 18 of the top 25 bank and diversified financial groups and 19 out of the top 25 companies in both global media and telecoms industries (Forbes 2000 list, 2014). In addition, Colt works with over 50 exchange venues and 13 European central banks.

Colt operates across Europe, Asia and North America. It recently completed the acquisition of KVH, an integrated managed communications and IT infrastructure services business, with headquarters in Tokyo and operations in Hong Kong, Seoul and Singapore.

Today Colt's network directly connects 207 cities, with a further 49 Metropolitan Area Networks (MANs) and direct fibre connections into more than 22,500 buildings. Also, Colt operates 29 carrier-neutral data centres in Europe and in Asia-Pacific region. Our Global network spans three continents with Colt-owned infrastructure in 28 countries. This allows us to provide services to our customers across 86 countries.

Colt has a wide portfolio of network, voice and data centre services which are delivered with industry leading customer service and security:

- Our network services offer, among others, managed network Services, bandwidth and Ethernet services, fibre infrastructure and wavelength services;
- Voice services comprise Enterprise voice services (such as PSTN and SIP trunking access and outbound calls) as well as wholesale voice services (world-wide call termination via TDM and VoIP interconnection service, Reseller solutions and tools, White Labelled Services and Number Hosting);
- Data centre services enable Colt to provide colocation in carrier-neutral data centres, remote hands' services, disaster recovery space and DC Connect (direct connections to any enterprise within a data centre – including carriers, internet and cloud service providers, internet and financial exchanges, and content providers or distributors)
- Also Colt delivers integrated solutions services using our strong capabilities to integrate products and services and provide solutions to enterprises across the globe.

# Consultation response

Colt welcomes the opportunity to respond to Ofcom's present Narrowband Market Review consultation. In this short response, Colt focuses on the major aspect of this consultation that is of direct relevance to Colt: the importance of appropriate regulation for call origination. For this as well as other matters, Colt fully supports and refers to UKCTA reply.

## Need to maintain access regulation in the WCO and WFAEL

Colt agrees with Ofcom's conclusion that BT holds SMP (Significant Market Power) in the WFAEL (Wholesale Fixed Analogue Exchange Line) and the WCO (Whole Call Origination) markets. Indeed , regarding the WFAEL market Ofcom states:

- *"BT's **high market share** which although declining is still high (55% in Q4 2015/16);*
- *the **limited potential** for CPs using BT's WLR to **switch to alternative** wholesale services in order to serve certain retail segments;*
- *the limited constraint imposed by switching to mobile and VoIP, and the absence of these services as alternatives for some consumers;*
- *that BT has been charging at the regulated price cap for WLR, which is consistent with **pricing not being constrained by competition**;*
- ***barriers to entry** and expansion as discussed above; and*
- ***weak** countervailing **buyer power**."*

As for the WCO market, Ofcom affirms:

- *BT's **high market share** which although declining was still high (49% in Q4 2015/16);*
- *the **limited potential** for CPs using BT's WCO to **switch to alternative** wholesale services;*
- *the groups of interest whose services are based on BT's WLR, who could not be (economically) supplied using MPF and for which BT would have a larger market share than it does in the wider market;*
- *although there is increasing substitution from fixed to mobile and VoIP by some types of users for some types of calls, the overall constraint imposed by such switching is limited;*
- *BT has been charging at the regulated price cap for WCO, which is consistent with **pricing not being constrained by competition**;*
- ***barriers to entry** and expansion as discussed above; and*
- weak countervailing buyer power.

Since 2013, Colt has observed BT's dominance in the market which justifies the need to maintain existing SMP obligations on BT. Two main market developments can illustrate this: the maintenance of CPS in the market and the absence of migration as a result. Those arguments were already described in Colt's submission to Ofcom's 2015 Call For Inputs and are still true today. This is explained further below:

1. **Deregulation of CPS but product maintained in the market.**
   Although Ofcom deregulated CPS in 2013, BT has not withdrawn the product from the market and Colt still uses it.

   If BT were to withdraw CPS, customers would be forced to choose another option to avoid losing service. BT clearly calculates that the more likely outcome is that these customers would switch their line and calls to another service provider. By maintaining the CPS offer, BT calculates that it has a stronger chance of holding onto the customer's retail line revenue. If BT were confident that its calls and line package were at least as competitive as that of other service providers, BT would see the option to withdraw CPS as an opportunity to regain the customer's retail calls revenue. This suggests that BT sees the retention of the CPS wholesale product as a defensive tactic to avoid losing the relationship with the customer.

2. **Absence of migration to WLR.**
   With the deregulation of CPS, CPs such as Colt have evaluated migrating its CPS business to WLR in order to avoid any risks of price increases and/or complete withdrawal of the CPS product. In practice, however, not all CPs have done this because of the cost of migration. Given CPS is still available, customers see no major incentive to migrate. Consequently, neither Colt, nor its customers have seen any compelling reason to migrate to WLR on any significant scale.

   Furthermore, some technical limitations can impede the options for migration. This happens when a customer buys any of Openreach's Centrex products on the line (eg Featureline product). In this case Colt cannot migrate the customer to WLR because it is a conflicting product. For those customers Colt would either have to work with them to find an alternative product, or would risk losing the customer. Although such customers are small in number, they do represent an important risk to Colt since they are mostly multi-site customers.

   Nonetheless, Colt does offer WLR migration and is working with customers who prefer to migrate. However due to external elements explained above, we believe this will be a very slow process.

However, if WLR were deregulated Colt believes BT might have more incentives to withdraw both WLR and CPS at the same time. Indeed, when operators use CPS from BT, the end user still has to turn to BT in order to be provided with line rental. This way BT keeps a direct relationship as well as revenue directly from the end user. However, if CPS were not available, operators would have to move all their business to WLR and BT would lose all its billing relationship and revenue from the end customer. Therefore, we believe BT has not yet withdrawn CPS due to the obligation to maintain a more demanding product in the market. However, in case BT has no longer any obligation to provide WLR, we believe there are strong chances BT would have more incentives to withdraw any call origination services.

Colt expects WLR and CPS business slowly declining each year due to mobile and VoIP substitution. One of the factor contributing to this slow process comes from the absence of substitutes from a lot of legacy data-over-narrowband-voice technology still in use (eg various alarm and monitoring systems more prevalent in the business market than the residential one).

We therefore expect this slow trend to remain for the next three years.

**[Confidential.**

**]**

Colt did not develop the capability to offer WLR when it was initially offered but revisited this choice in order to compete for large voice contracts from multi-site customers. Indeed for large multi-site voice contracts, the inability to replicate the whole retail telephony service offering of the incumbent would prevent CPs without ubiquitous networks from competing with BT. Thus, in order to sell large accesses on main sites on Colt fibre, Colt needs the complements of WLR or CPS for smaller sites. Any withdrawal of such regulatory remedies before the extinction of the TDM retail offerings of the incumbent would therefore reduce customer choice on voice telephony.

Indeed, Colt positions itself as being a ‘single provider solution’ to the market. While we primarily target customers whom we can serve on-net,  the multi-site nature of many of our customers means they cannot be served exclusively on-net. WLR remains important for CPs to remain competitive with BT, for these types of detail. Also some customers require WLR as a backup service of their current voice line.

Hence, Colt strongly believes call origination services should remain regulated.

## Need to maintain access regulation in the WCO and WFAEL

Having stated the above, it is very surprising that Ofcom then decides to address BT's dominance by suggesting to remove the charge control obligations on BT in the WFAEL and the WCO markets in order to replace these with a fair and reasonable charges obligation.

Ofcom justifies this choice by recognising the reduction in BT's market power and the recent market developments. Colt does not agree with Ofcom's approach. In our view, Ofcom has not provided sufficient justification for its approach. While BT's market share has reduced, it is still (by far) the highest. Stating BT's market power has "reduced" should not be used by Ofcom as an argument to relax SMP obligations: a given operator holds SMP or does not, and, as long as it does, it can use this dominance to manipulate the market in its favour.

Given the integrated nature of BT's business and, (even after Ofcom's announced reforms), the common shareholding of BT and Openreach, it would retain the ability to margin squeeze wholesale customers without harming its own net position.

Regarding BT's market share, it is over 55% in the WFAEL market and 49% in the WCO market. However, Ofcom also states these are certainly even higher in some segments. For example, Ofcom considers BT has at least 80% wholesale market share among SMEs in the business analogue sector. In this case Ofcom's argument in terms of "reduced SMP" does not stand: the extent of BT's dominance is still obvious. The proposal to remove the charge control will therefore inevitably result in an increase in WLR pricing for this segment.

Also it is important to note that the current charge control on WLR sets a price cap. If there were actual competition, BT would be free to decrease its WLR prices. This type of reaction to market conditions would be a sign of an effective competitive market. However this behaviour has not been observed from BT, thus strengthening the view that BT's pricing is not constrained by competition.Colt therefore believes the removal of the charge control will result in price increases of WLR. These increases will give BT excessive returns in its cost of capital and allow it to impose a margin squeeze on its competitors.

Consequently, removing charge control obligations in the WFAEL and the WCO markets would create real threat of market distortion. Robust remedies are still needed in these markets. Therefore, **Colt urges Ofcom to review its decision to at least apply a pricing safeguard set at CPI-CPI per year for the duration of the control**. This approach would avoid end customers suffering harm by protecting them against unreasonable price increases.