



Internet Telephony Services Providers' Association

ITSPA Response to Consultation: Wholesale Fixed Telecoms Market Review (WFTMR) 2021-26

About ITSPA

The Internet Telephony Services Providers' Association ("ITSPA") represents over 100 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs. However, the ITSPA Council is confident that this response reflects the views of the overwhelming majority of ITSPA members.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>.

Executive Summary

1. As a trade association representing providers of "over-the-top" services, ITSPA's main priority in any review of the underlying physical infrastructure, such as the WFTMR, is that it promotes a level playing field. Ofcom will recall ITSPA's work on "net neutrality" and will not be surprised that we want to ensure the WFTMR does not discriminate against the content (providing it is lawful) consuming the services in question.
2. While individual members which are vertically integrated and install or manage their physical infrastructure, will invariably submit separate detailed responses, ITSPA itself is only concerned about one aspect (or specifically a lack of an aspect) of the Consultation; voiceband data ("VBD").
3. VBD services remain prevalent and essential to society, be it Critical National Infrastructure or to vulnerable persons.
4. Both the current Universal Service Directive and the European Electronic Communications Code contain provisions which either require the provision of a circuit at all premises that can support VBD, or for replacements of legacy networks to be at least of comparable quality.
5. Ofcom's proposal to deregulate the Wholesale Fixed Analogue Exchange Line market, on a forward-looking basis into a market review window that includes BT's planned PSTN switch off, without a proper analysis of the consequences for VBD is a material error.



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Legacy Services

6. The WFTMR is a forward-looking review. Unsurprisingly, this is discussed by Ofcom in §2.6-2.7 and A5.15 of the Consultation as it is a matter of European Union law¹.
7. The market review period is 2021-2026. Therefore any forward-looking review must take into consideration the planned closure of the PSTN by BT, anticipated to be at least substantially in progress by the end of 2025.
8. Also, the European Electronic Communications Code² (“EECC”) comes into effect at the end of this year, before the start of any remedies identified in the WFTMR and should have any relevant provisions taken into account.
9. There is much in the EECC, and ITSPA notes Ofcom recently consulted on the transposition of the Directive. However, of importance to the WFTMR are the provisions on legacy networks at Article 81 which state:
 1. *Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 67 shall notify the national regulatory authority in advance and in a timely manner when they plan to decommission or replace with a new infrastructure parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to Articles 68 to 80.*
 2. *The national regulatory authority shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users. [..].*
10. This becomes a hugely material provision when considering the myriad of services that may be subject to disruption, or termination, as a result of BT’s actions. Such services include (but are not limited to):
 - a. Broadband monitoring of c250,000 Ethernet Access Direct circuits in the UK;

¹ §13 of (2018/C 159/01) Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services, itself referred to in Article 16 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (as amended)

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code



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- b. Systems powered by the 48 volts on the line from the Exchange, such as;
 - i. Reservoir monitoring systems;
 - ii. Redcare alarm systems; or
 - iii. Taxi phones in supermarkets, used around 3 million times a year by the most vulnerable in society.
 - c. Payment processing terminals, including Paypoint, which is used by some of the most economically disadvantaged in society.
 - d. Pull-cord alarms used by the disabled or elderly as well;
 - e. Telemetry, such as in-home medical applications; or
 - f. Fax machines.
11. Despite the politically expedient soundbites relating to gigabit-capable home connections, and the prevalence of over-the-top and mobile applications, VBD remains a critical part of the UK infrastructure.
12. Indeed, it was deemed so critical that the European Union identified specific VBD applications in legislation³ to ensure at least one undertaking provided it at any given premises.
13. The existence of the market review during an overlap period between the existing law (Framework Directive) and a new statute (EECC) is inconvenient, but both Directives contain provisions regarding VBD:
- a. The Universal Service Directive mandates a connection capable of supporting facsimile.
 - b. The EECC requires replacement of legacy technology to be of at least comparable quality.
14. Importantly, we note that the EECC provision of “comparable quality” would seem to include the provision of 48V of power over an RJ11 connection and not just continuing to assure VBD applications.
15. The Consultation, *prima facie*, is being conducted using the existing powers in the Framework Directive, we assume because Ofcom intends to conclude the review and enact any provisions before the EECC transposition deadline of 21st December 2020. Given Ofcom’s tendency to be optimistic on publication timescales, we consider the absence of “hedging” by consulting on the same subject matter concerning the relevant article of the EECC to be a risky position.

³ Article 4(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (as amended) (the “Universal Service Directive”)



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16. In any event, if we follow Ofcom's apparent position and disregard Article 81 of the EECC, we are surprised Ofcom have not made any reference to Article 4(2) of the Universal Service Directive. Proposing deregulation of fixed-line telephony without any regard to Ofcom's obligations to ensure facsimile (which by extension would assure VBD) is a material oversight by the regulator, especially given the reliance on such services by Critical National Infrastructure or the most vulnerable in society.
17. Additionally, Ofcom has a statutory duty to protect "*the needs of persons with disabilities, of the elderly and of those on low incomes*"⁴ and the impact of the Consultation on these groups, with a potential for VBD applications (especially those powered by exchange lines) to be unilaterally ceased by BT must be considered.

Net Neutrality

18. The status of the legislative provisions safeguarding an open internet⁵ are uncertain at the end of the transition period as the United Kingdom exits the European Union. The establishment of a truly open internet in this country was a long battle, both in terms of the voluntary undertakings given by major domestic operators but also in terms of securing a workable statutory provision. Ofcom will no doubt recall that ITSPA was heavily involved in both domestic and European work on this subject, not least because our members operate OTT services which rely on the fundamental principle of non-interference by Internet Service Providers.
19. While the WFTMR focuses on infrastructure to enable to provision of data services in the UK, the market definitions capture elements of active services. These active services have the capability of interfering (be it with good intentions or otherwise) with the principles of an open internet. We therefore urge, as a starting point, that the relevant remedies are framed so as to secure the provisions of the Net Neutrality Regulation where appropriate.
20. As a further point, we note that Ofcom has not yet consulted upon or given a policy position regarding what it intends to do if the Net Neutrality Regulation ceases to apply to the UK. One of the main benefits of the provisions is that it provides certainty for investment in products that operate OTT and therefore we would welcome a definitive signal that this will continue.

⁴ Section 3(4)(i) of the Communications Act 2003 and to the extent relevant, Section 3(4)(h).

⁵ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union as amended by Regulation (EU) No 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (the "**Net Neutrality Regulation**")



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Business Users

21. The WFTMR, being infrastructure based, does focus on the provision of physical connectivity to premises. This, by definition, treats a residential dwelling in the same manner as a business park or office building.
22. Not all physical infrastructure is equal, even within the scope of the market definitions in the WFTMR. The characteristics of business users are such that the active electronics or the composition of the fibre optic strand can have an impact on the suitability of that connection, regardless of the ISP involved.
 - a. Financial institutions may place a greater weight on low latency;
 - b. Businesses are generally more likely to require synchronous upload or download speed, or potentially even more upload than download in some cases;
 - c. Fault-fix times, right first time and certainty of installation date are all areas where they significantly differ in both their willingness to pay and needs from residential consumers.
23. We already note issues arising from this approach; for example, an EFM circuit is seen by Openreach as multiple WLR lines, not as an Ethernet service. The issues experienced with Openreach in relation to the COVID-19 pandemic are indicative of a drive to homogenise volume processes across residential and business applications in a manner that is ultimately unsuitable.
24. We say there are in fact two high level geographic market categories which apply above Ofcom's proposed definitions:
 - a. Properties which are subject to the non-domestic rating regime, and
 - b. Properties which are subject to the domestic rating regime.
25. This provides a very easy, algorithmic and factual differentiator between two groups with very different needs. We do not see it as a burden upon the regulator nor the regulated to operate two sets of remedies tailored on this basis.
26. Such a regime would offer significant benefits too, as it would mean that measures such as reporting would automatically be classified in such a manner that issues experienced by the business community are more readily visible to stakeholders.