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Equality of access and local loop unbundling in the UK broadband telecommunications market

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Abstract

The relationship between an incumbent telecommunications operator and those companies that access its network is often fraught. This is particularly true in respect of local loop unbundling (LLU), a key product in the broadband telecommunications market. OFCOM, the UK's telecommunications regulator, recently conducted a major review of the industry that resulted in a new approach to tackling this relationship. This paper focuses on this new approach, which combined a new regulatory concept – equality of access – with the establishment of a mini-regulator focusing on local loop unbundling processes, and goes on to assess the extent to which the relationship has been improved.

Keywords: Telecommunications; Broadband; Regulation; OFCOM; UK; Local loop unbundling (LLU)

1. Introduction

In late 2005, OFCOM, the independent UK telecommunications regulator, announced that it had reached an agreement with BT to create a new independent division to run its local access network. This agreement not only marked the end of the major review of telecommunications regulation in the UK which is analyzed in detail in Section 3, but also provided the means to tackle the growing tension between BT and the other service providers that relied on its access network. At the heart of the undertakings signed by BT were measures to improve how other operators gained access to BT's network, in particular local loop unbundling (LLU), a technique that allows other operators to set up their own equipment in the local exchanges of BT and which was seen to be vital for the development of a competitive broadband market in the UK.

With the above in mind, this paper is divided into five main sections. In the first of these the often fraught relationship between BT and the other service provides that rely on its network is highlighted, while in the

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second section the strategic review of telecommunications that was conducted by OFCOM is described. The third section then recounts the outcome of the strategic review as well as other regulatory developments relating to service-based competition. The fourth section discusses the implications of these regulatory developments for the relationship between BT and other service providers as well as for the uptake of LLU. In the fifth and final section, conclusions are offered.

2. Background

In recent documents, such as OFCOM (2004a, 2004e, 2004f), three distinctive phases in the regulation of the UK telecommunications market are identified. These three phases reflect a changing emphasis in the regulatory regime, from duopoly to competitive markets and from infrastructure-based to service-based competition. The first regulatory phase identified, 'Duopoly', lasted from 1984 to 1991 and was characterised by two companies being present in both the fixed-wire and mobile markets. BT and Mercury, a joint venture between Cable & Wireless and Bell Canada, were present in the fixed-wire market and BT Cellnet, a joint venture between BT and Securicor, and Vodafone in the mobile. According to OFCOM, a key issue during this period was the desire to reduce prices.

Following the regulatory review conducted by OFCOM's predecessor, the Office of Telecommunications Oftel, the duopolies that had initially been favoured were abolished (Curwen, 1997, p. 129).[1] Two additional mobile licences were issued to Orange and One-2-One (now T-Mobile), and infrastructure investment in the fixed-wire market was encouraged. Some of this infrastructure investment focused on the central business districts of major cities, with perhaps the most prominent company being COLT, while other companies like Scottish Telecom (now Thus) invested in the national trunk market. The awarding of cable franchises in the aftermath of the 1990 Broadcasting Act, which rewrote the licence for cable TV operators, also resulted in considerable infrastructure investment, though the initially highly-fragmented nature of the industry meant that the companies were local and regional rather than national in their scope.[2]

According to OFCOM, this phase lasted until 1997 when service competition became prominent. Since 1997, UK regulation has sought to encourage service as well as infrastructure competition. However, neither of these developed as anticipated. Infrastructure competition was slow to develop, because new entrants lacked scale while the development of service competition was frustrated by "delays and inadequacies" in the wholesale market (OFCOM, 2004e, p. 53). The relationship between wholesale and retail markets has been a central component of UK regulation in recent years.

New entrants have consistently complained that BT has abused its position in the wholesale market to enhance its competitiveness in retail markets. Although a wide range of complaints have been made against BT over the years, the most common criticisms have been that BT Wholesale has been slow to respond to the requests of new entrants, that the quality of service enjoyed by new entrants has been inferior to that of BT Retail, that some markets suffered from a lack of certainty that hindered investment (see, for example, OFCOM, 2004c) that wholesale products are not suitable for the mass market and that wholesale prices place new entrants at a competitive disadvantage vis-à-vis BT Retail.[3] In addition to these complaints, Freeserve, an ISP, implied that the separation of BT Wholesale from BT Retail was not functioning as it should. According to John Pluthero, former head of Freeserve (Wilsdon and Jones, 2002, p. 53f):

> The Chinese walls...may be fooling Oftel. But to the rest of us who understand the lead times needed to bring new products to market, it's obvious that these walls are paper thin.

[1] For a description of the gradual liberalisation of the telecommunications market during this period see, for example, Curwen (1997, p. 129–160) or Thatcher (1999).

[2] According to Curwen (1997, p. 132), towards the end of 1996 there were 165 cable franchises, 130 of which were under the control of 15 multiple systems operators. These companies, mainly U.S.-owned, consolidated into NTL and Telewest, which then merged to form a single cable operator, NTL, in March 2006. This then bought Virgin Mobile in July and relaunched as Virgin Media in February 2007.

[3] In April 2000, BT announced a new organisational structure for the UK (BT, 2000). The UK fixed-wire business was divided into two: BT Retail, focusing on both residential and business customers, and BT Wholesale, supplying communication services to both BT Retail and other telecommunications companies. When announcing this new structure, BT noted that both divisions would operate at arm's length from one another and would facilitate more focused management (BT, 2000, p. 9f).