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Legislation Committee No.2

Response to the Proposed Welsh Language (Wales) Measure 2010

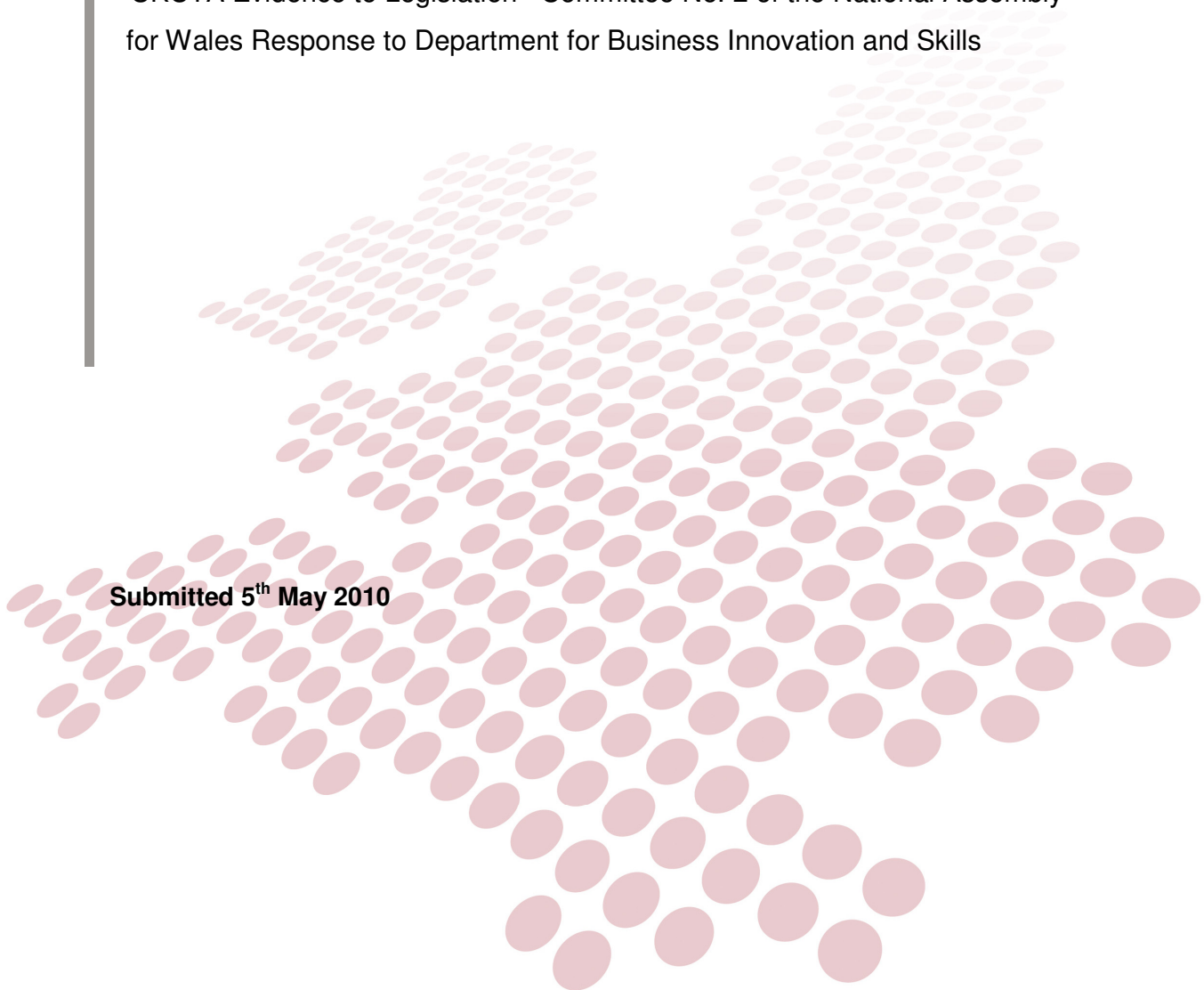
UK Competitive Telecommunication Association (UKCTA)



Proposed Welsh Language (Wales) Measure 2010

UKCTA Evidence to Legislation Committee No. 2 of the National Assembly
for Wales Response to Department for Business Innovation and Skills

Submitted 5th May 2010



Introduction

UKCTA welcomes the opportunity to provide written evidence to Legislation Committee No.2 in relation to the Proposed Welsh Language (Wales) Measure. UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Our role is to develop and promote the interests of UKCTA members to Ofcom and Government.

Our aim is to foster a more competitive fixed telecommunications market in the UK, based on a regulatory framework that treats all competitors in this field equally and fairly. We believe that this is good news for consumers, the industry and the economy. Consumers will benefit from greater choice of more competitive, innovative products; network companies will be in a better position to compete; and the economy will benefit from greater investment. Our mission is to advocate industry regulation that is pro-competition and does not favour the nation's largest incumbent, BT. For this reason, we focus on working closely with the industry regulator Ofcom, the Government and other relevant organisations.

We are one of the leading voices in the UK fixed telecommunications industry, counting the majority of the market's main players as our members.

Summary

UKCTA is broadly supportive of the Welsh Assembly's objective of supporting and increasing the use of the Welsh language in Wales, but many UKCTA members, unlike BT have neither a retail nor a back office presence in Wales. It is therefore likely that the Proposed Measure could have a disproportionate impact on our members and could impact in the extent to which companies generally invest in new network and services in Wales.

While we have previously argued that the telecoms industry ought to be encouraged to provide greater access to Welsh language services on a voluntary rather than a compulsory basis, we are nevertheless keen to engage with the Assembly to ensure that any Measure adopted is designed to deliver the best outcome possible for Welsh consumers and businesses.

We believe that prior to any standards being imposed, much greater consultation and impact analysis will be required. In order to help ensure that the Measure is fair and proportionate UKCTA believes that it should contain a formal requirement for Welsh Ministers to commission a report considering fully the impact of any proposed regulations on the telecommunications sector. Ministers should also be required to seek advice from Ofcom on the potential impact of their proposals on the extent of competition in the Welsh telecoms market.

Impact on Competition & Investment in Wales

UKCTA fears that the Proposed Measure may have an adverse impact on competition in Wales since it does not take into account the multifaceted nature of the telecoms industry. It appears that the Proposed Measure is based on a premise that the telecoms sector is comprised of a uniform type of operator. This is simply not the case. Our industry is complex and dynamic, it

comprises both fixed line and mobile network operators, and the fixed line part of the industry itself encompasses a wide variety of types of organisation. These range from resellers with no infrastructure of their own, as well as those that employ both their own network and use access products purchased from larger operators, through to BT with its universal service obligation and ubiquitous coverage. Some providers serve only residential customers, others serve only the very largest government or private sector customers while others focus exclusively on the SME sector, in other words, each provider will have a different geographic footprint and operational make up in relation to Wales. For example a communications provider focused exclusively on the business community might only have one customer site in Wales. It would be disproportionate to require that communications provider to implement extensive Welsh language obligations given that they might in fact never be used. Similarly it would be inappropriate to impose such obligations on a communications provider serving only the wholesale telecoms community with no end-user customers of its own.

Since each operator's operational and geographic model will differ, any obligations imposed will impact companies in different ways. Proceeding on a "one size fits all" basis (based on the premise that all communications Providers are more or less the same as BT) risks, in UKCTA's view, reducing rather than increasing the extent of competition in Wales.

Such an approach is inappropriate for such a diverse sector and risks triggering unintended consequences, some of which might actually run counter to the objectives of the WAG.

It would be perverse if the additional costs of making provision for Welsh were to lead to a diminution of competitive service provision in Wales, particularly in

rural areas where residents often feel they do not enjoy the same access to broadband as those who live in urban areas. Access to next generation broadband in particular is regularly highlighted as a priority since it has the potential to transform the way we live and work, improving the efficiency of public services and overcoming the disadvantages of geography. The Welsh language deserves promotion but care needs to be taken to ensure that steps taken to promote it do not deny Wales access to the benefits of the latest technology by making Wales an unattractive place to invest.

We are also concerned by the issue of jurisdiction and in particular whether or not the measure can be applied outwith Wales. One of the defining characteristics of electronic communications is that services can be provided from a distance. As previously stated no UKCTA members are based in Wales and to the extent that they serve Welsh customers, they generally do so from elsewhere in the UK. It is unclear to us how the Proposed Measure can have jurisdiction over companies such as our members operating from elsewhere. We believe this issue needs to be considered and clarification provided to industry.

Scope of Services Covered

The scope of services is defined in Schedule 9. While Ministers must conduct an impact analysis they are not empowered to remove services from scope if that analysis shows the imposition of obligations would be disproportionate. This is because the schedule is entitled “activities in relation to which service delivery standards must be specified.” We believe that a permissive approach would be better, i.e. replacing “must” with “may”. Given that much of our concern centres on the proportionality of the measure and any future performance standards, this change is important to UKCTA since it would permit a more flexible approach to regulation.

Proportionality

As previously discussed, the telecoms sector is very diverse. Some communications providers will have many Welsh customers while others will have comparatively few. Indeed UKCTA suspects that most communications providers do not actively log how many customers were based in Wales far less how many of them were likely to take advantage of Welsh language provision. Of course communications providers hold address details for customers but short of searching against every Welsh post code it would be difficult to identify customers as being Welsh based. In the business marketplace this relationship is even more complex with businesses placing orders from multiple locations for services to multiple sites across and outwith the UK.

In the absence of a universal service obligation, most of the large communications providers operate on a UK wide or even international basis and therefore any additional cost to provide for example Welsh language billing or Welsh language contact centres is likely to be vastly disproportionate to either (a) the likely level of demand or (b) any benefit to the communications provider in terms of better customer relations or greater sales in Wales. At this stage it is hard to conclude what the scale of any costs and benefits might be - given the outline nature of the provisions.

Companies such as BT, by virtue of its Universal Service Obligation, or the mobile network operators will have much greater presence in the Welsh market than most fixed network operators. For companies such as these, UKCTA believes the benefits in terms of customer perception of operating bilingually would help justify the costs. But for most other communications providers with relatively smaller footprint in Wales it might be cheaper and easier simply to refrain from offering service in Wales rather than shoulder the

burden of the additional cost and perhaps practical difficulty of complying with mandatory Welsh language obligations.

The potential disincentive to serve Wales is reinforced by statements such as that found in the Explanatory notes that for “services such as help lines and call centres, it may be easier to locate Welsh language provision in Wales”. This could be construed as sending a message to communications providers that the WAG expects them to be physically established in Wales in order to serve the Welsh market. This cannot be in the interests of Wales or Welsh consumers and businesses.

At a time when everyone recognises the increasing importance of electronic communications and at a time when politicians are striving to ensure that their constituents are not left behind in the push for superfast broadband, we believe that there is a significant risk that Welsh customers would be denied access to the full benefits which competition can bring in terms of increased choice of service, enhanced features and lower prices.

On a practical level we do question how the Proposed Measure is intended to be applied to an industry where there are few other regulatory barriers to entry. Licences were abolished in 2003 and communications providers now simply have to adhere to a system of general conditions published by Ofcom. This begs the question of how it is envisaged that the Commissioner will be able to identify which providers are operating in the Welsh market. Clearly if the proposals present significant additional cost and administrative burdens that will be bad for industry, but if they are applied selectively then there is the added potential to distort the market by disadvantaging only those operators who come to the attention of the Commissioner.

The Proposed Measure

It is important that any regulations aimed at securing the WAG's policy goals for the Welsh language are proportionate and do not endanger other policy objectives such as the promotion of next generation broadband services. In order to ensure this, rigorous analysis and consultation with industry and the regulator will be required. UKCTA therefore believes it is important that in advance of any regulations being drafted, that the Measure ought to include a requirement for Welsh Ministers to commission a report considering fully the impact of any proposed regulations on the telecommunications sector. We believe this should assess at least the following:

- a. A rigorous cost benefit analysis which examines each of the schedule 9 requirements. This should determine the impact on the various types of provider operating in the Welsh market. Only when an assessment of the proportionality of the proposed measures has been determined, should any draft standards be proposed.
- b. The anticipated level of demand for Welsh language services in the sector. Official figures suggest that around 20% of the Welsh population speak Welsh, that does not necessarily translate into demand for engagement with telecoms providers. It may be that demand will vary from requirement to requirement. For example it is possible that demand for Welsh language billing might differ from the demand for the ability to discuss detailed technical issues with a support desk (such as the technicalities of configuring a broadband service).
- c. An assessment of the range of telecoms services which are caught by the regulations. UKCTA is concerned that in this sector, that could be a very wide definition.

Such a report could be prepared by the Commissioner but would need sector specific input from Ofcom and would help inform Welsh Ministers' decisions in relation to any regulations. However, as currently proposed there appears to be no advisory role for the Commissioner to help inform Ministerial decisions as to proposed regulations.

Conclusion

While supportive of the principle underlying the Proposed Measure, UKCTA believes it has the potential to have a very significant impact on commercial organisations providing services to customers in Wales and in the case of those currently serving only a very small number of Welsh customers, has the potential to drive them from the Welsh market. We believe this is a particular risk to those who serve only the business market. Similarly any additional barriers to entry would most likely deter companies from entering the Welsh market. We would urge, therefore, the Committee to give close consideration to the matters raised in this submission and to propose changes to the Measure, and to engage both with industry and indeed with Ofcom. This will help to build support from industry and maintain confidence about investing in Wales.

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