Virgin Media's response to Ofcom’s Call for Inputs to its Fixed Access Market Review

20th December 2012

Contents

INTRODUCTION

Virgin Media is pleased to respond to Ofcom's Call for Inputs (CFI) to its Fixed Access Market Review. We set out below our overall thoughts on the matter, with our responses to the specific questions posed by Ofcom following.

The development and deployment of broadband services in the UK, and the networks and infrastructure that are required to support them, remain critical to enabling the competitiveness, productivity and, in the current economic conditions, recovery of the UK's economy. It is vital therefore that the regulatory framework applying to such services is fit for purpose and achieves the right balance between promoting competition and investment, and ensuring that the necessary safeguards for both citizen consumers and purchasers of wholesale services from dominant providers are in place.

The review of the Wholesale Local Access ('WLA') market comes at a time when broadband services continue to evolve. Virgin Media has, during the currency of the current market review period, been at the forefront of the deployment of NGA, making substantial investments in our network, upgrading technologies, and increasing the speed offered to customers. This, in turn, has helped to stimulate investment by other providers, most notably BT, who is actively promoting its Infinity products at the retail level.

Virgin Media continues to pioneer and innovate in superfast broadband services in order to develop our approach to future technologies, applications and services.

Broadly, we consider that the last review appropriately defined markets and assessed market power, and that the remedies imposed were generally appropriate. However, we consider that some of the regulatory framework imposed in the last WLA review has not necessarily been supportive of innovation from alternative network providers. We had considered that the use of an appropriate passive access remedy could have had substantial beneficial impact on the market by allowing network expansion by utilising BT infrastructure. In particular, the PIA remedy imposed by Ofcom in the last market review, sadly, has not proved fit for purpose. Whilst we understand the difficulties of imposing a new remedy to a market that will work, it is incumbent upon Ofcom as part of this market review to understand why the remedy has not been effective and, most importantly, not to abandon the concept (given that the market analysis supported the imposition of an appropriate remedy to address the identified competition concern), but to ensure that an appropriate remedy can be imposed going forward.

Ofcom has also, in this review of the Fixed Access markets, combined a number of different markets not formerly reviewed together. We understand the desire to review the access markets together, given that the charge controls set for LLU and WLR products are intrinsically linked. The task of reviewing the critically important WLA market must not diminish the task of reviewing the wholesale exchange line markets, and indeed it must not be the case that the charge control (for LLU/WLR) products becomes more important the market review under which they are set. We do note, however, that a considerable number of access markets have remained on Ofcom's radar during the last year by virtue of a number of "no material change" assessments. Whilst this should ensure that there are no surprises in market development to date, it is also important not to place too great a reliance on these reviews, which by their nature provide a snapshot assessment of a market, rather than a forward looking three year analysis.

Finally, before we respond to the individual questions posed in the CFI, we would comment that, in the absence of Ofcom's anticipated publication on its approach to cost orientation, we are not fully able to comment on the specific questions that invite views on whether that remedy remains appropriate in the various markets under review. In that light, we reserve our position in relation to cost orientation, and may make specific comments in response to Ofcom's cost orientation review that are relevant to these markets, and this market review. In that light, we will invite Ofcom to consider such comments in assessing its position as to what to propose in the forthcoming Fixed Access consultation currently expected to be published in May.

We look forward to working with Ofcom in its approach to reviewing these markets and would be happy to provide clarification on any of the issues that we have raised in this response.

RESPONSES TO QUESTIONS

Market definition and market power assessment

2.1 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing WLA market definitions or SMP assessments? If so, please provide reasons to support your views.

Virgin Media considers that broadly, there have not been significant changes within this market to the extent that the current market definitions and SMP assessments would be displaced.

It is of note that in the recent review of WLR/LLU charge controls concluded earlier this year a supplementary consultation was undertaken in November 2011, which considered, inter alia, whether there had been a material change in the WLA market. In the consultation Ofcom was of the view that there had been no material change, and updated its consideration of evidence, taking into account retail broadband pricing[1], and the emergence of BT's NGA service[2]. Additionally, Ofcom reviewed its assessment of BT's market power within the market, for example, updating market share data with 2012 figures.

Ofcom specifically consulted on the question of whether there had been a material change within the market, and none of the six respondents (including Openreach) to the consultation disagreed with Ofcom's assessment.

Virgin Media considers that this recent re-assessment of the market, lends considerable weight to suggesting that the WLA market has not significantly altered since the 2010 assessment. In making this comment, we acknowledge that a no material change analysis effectively considers market conditions at a particular time (the setting of new / amendment of existing SMP conditions), rather than over the three year forward look period that a market review will consider. Nevertheless, the current analysis provides a sound basis for the starting point for this review.

2.2 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing WFAEL market definitions or SMP assessments? If so, please provide reasons to support your views, or where relevant please cross-refer to material submitted during the current narrowband market review.

As for the WLA market, Ofcom conducted a "no material change" assessment as part of the WLR/LLU review, during which it concluded that there had been no such change in the market since the review.

[1] Paragraph 4.63 of the WLR/LLU Further Consultation, which compared the pricing of Virgin Media's 30Mb product to BT's 20Mb product.
[2] Paragraph 4.67 of the WLR/LLU Further Consultation detailing BT's Infinity 40Mb pricing, and the continued existence of a chain of substitution between CGA and NGA products.

We also consider that there have been few changes in the market since the last review

2.3 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing ISDN30 market definitions or SMP assessments? If so, please provide reasons to support your views.

As with both the WLA and WFAEL markets, the ISDN30 market has been very recently reviewed in the context of a no material change assessment during Ofcom's ISDN30 price control review.

Therefore, we consider that the current market definitions and SMP assessments make an appropriate starting point for this review.

2.4 Have there been any significant changes since the last market review, or do you see any developments in the next three to four years, that would alter the existing ISDN2 market definitions or SMP assessments? If so, please provide reasons to support your views.

ISDN2 has not been reviewed since 2009, when BT was found to have a 99% market share. Although ISDN2 is a declining product, certain uses (such as the provision of resilience) still mean that it remains a relevant product going forward, and as such the market definition and SMP assessment from 2009 remain an appropriate starting point for this review.

2.5 Have there been any significant changes since the last market review, or do you see any developments in the next three years, that would alter the existing market definitions or SMP assessments for these other retail markets in the Hull area? If so, please provide reasons to support your views.

Virgin Media has no comment in relation to this question.

Remedies: introduction

3.1 Have there been any significant changes since the last market review that mean we should alter our approach to general remedies assuming that such remedies continue to be required? If so, please provide reasons to support your views

Virgin Media considers that there have not been significant changes within the market to the extent that would justify a radically different approach to general remedies.

Virgin Media would note specifically that the obligation on BT to provide network access / new network access is particularly important in this market, where there is the potential for new or alternative methods of access to be requested as NGA development evolves. In considering how such a remedy should be imposed, Ofcom should consider the development of the market over the last four years, and the

extent to which new access has been enabled by the current conditions, in order to ensure that a clear and effective approach can be taken going forward.

We also urge Ofcom to carefully consider how any non-discrimination should be applied in general and in particular cases. In the last market review VULA was supported by a stricter obligation. If further specific passive access remedies are mandated, Ofcom will need to give particular consideration as to how this remedy should be applied in order to ensure that BT's potential ability to restrict competition can be appropriately addressed. This comment is equally applicable to potential transparency obligations which can, depending upon how they are imposed (for example with the obligation to publish KPIs), can effectively disincentivise discriminatory behaviour from the outset.

3.2 Where there is SMP, what do you consider to be an appropriate notice period for changes to charge, terms and conditions for the services covered by this review, assuming that such a remedy is required? Please provide reasons to support your views.

Virgin Media notes that, as Ofcom have set out in the CFI, there are a number of differing notice periods across and within markets given the differing nature of individual products and services. We do not consider that there is, as the question suggests, necessarily a single "one size fits all" notice period that can be appropriately applied within this market review.

Virgin Media considers that 90 day notice periods, as currently imposed remain important for CPs. They provide essential visibility as to changes within the market and allow us a sufficient and appropriate period of time to react and, if necessary, adjust our prices. Any changes to the current level of regulation should continue to be considered on an individual basis, rather than seeking to align regulation, which whilst providing a "neat" solution, would not effectively address the needs of CPs competing with BT, and therefore not address their market power.

Remedies: Wholesale local access

4.1 What are your views on how well the current set of remedies for WLA has worked in combination to promote efficient and sustainable competition and what impact has this had on investment in WLA services? Please provide reasons to support your views.

Virgin Media considers that the remedies introduced during the last market review of PIA and VULA, have had mixed results, which we address in more detail in our response to the questions below.

4.2 Have there been any significant changes since the last market review that mean we should alter our approach to regulating the current BT LLU remedies (including Ancillary services) assuming that such a remedy continues to be required? If so, please provide reasons to support your views.

Given the recent review and setting of LLU charge controls earlier this year, we do not consider that there have been significant changes that would impact on the approach to LLU remedies under this review.

4.3 Have there been any significant changes since the last market review that mean we should alter our approach to regulating VULA, assuming that such a remedy continues to be required? If so, please provide reasons to support your views.

Whilst BT has launched its GEA product, their VULA compliant offering, and it is now being taken up by other CPs in order to compete in the NGA broadband space, there are a number of concerns regarding its current form.

We consider that the favouring of VULA over PIA by the industry may skew the competitive dynamics of the market, and discuss this in our response to question 4.11, below.

We also consider that Ofcom needs to review the pricing of BT's GEA product as part of this review, given that it specifically adopted a "light touch" approach to price regulation in 2010 noting that the remedy was new and therefore there was uncertainty as to whether a price control was required. We consider that in the time since the introduction of VULA and BT's development of its GEA product set, there is considerably more information at large in relation to how the remedy operates, the take up of the relevant product and the likely future reliance upon it; in short there should be far more visibility on its costs and revenues. All of these circumstances mean that a comprehensive review of the regulation applied to the remedy, including pricing regulation should be undertaken by Ofcom in the course of this market review. We discuss some specific issues in our response to question 4.6, below.

4.4 How important is the next three to four year period in the take-up of VULA? Please provide reasons to support your views.

It is apparent that superfast broadband offered via GEA is now becoming a staple offering for more and more CPs. EE emphasises its fibre offer, Sky and TalkTalk are promoting their superfast products and BT Retail has spent considerable amounts to market their Infinity product, which remains the biggest "adopter" of GEA to date. This suggests that take up is now significantly increasing, and will continue to do so going forward. We have concerns, as discussed above about the potential for market distortion if GEA (which is an overlay product), becomes the market standard at the expense of own infrastructure solutions. We discuss this in more detail in our response to question 4.11, below.

4.5 What are your views on the key characteristics of VULA, how they have been implemented by BT and other related issues (such VULA for business and FVA)? Please provide reasons to support your views.

Whilst we do not make specific comment at this time, we would draw attention to the need for Ofcom to consider VULA in light of other regulated access remedies (PIA or any replacement) to ensure that appropriate competitive conditions are maintained

within the market, and the incentive to invest in network infrastructure is not undermined by the development of an active remedy.

4.6 Does our general pricing approach to the pricing regulation of VULA remain appropriate, assuming that such a remedy continues to be required? If not, why? Please provide reasons to support your views.

As stated above, Virgin Media consider that the basis for Ofcom's decision in the last market review to impose no price controls, no longer holds, and without prejudice to what pricing controls may be appropriate for this remedy; we consider that it is necessary for Ofcom to consider this issue in detail in this review.

Ofcom have already noted, in question 4.8, the potential for margin squeeze, as originally identified in the 2010 market review, and we consider that the appropriateness of the "fair and reasonable" safeguard imposed in that review, should be fully reviewed by Ofcom. However, Ofcom's review should not be constrained to the single competition concern of margin squeeze, and should consider what, if any, additional pricing or other competition concerns there may be in respect of BT's discharge f its VULA obligations and what, if any, complementary remedies would be appropriate in the circumstances.

4.7 What are your views on BT's pricing of VULA ancillary services, in relation to migration charges and any ancillary services not consumed by BT? Please provide reasons to support your views.

As set out above, we consider that it would be appropriate for Ofcom to review its approach to pricing regulation applied to VULA, and in doing this they should take a holistic approach, which should account for services not consumed by BT.

4.8 Have the existing ex ante safeguards against margin squeeze in relation to VULA been effective? If not, what would be an alternative approach? Please provide reasons to support your views.

Please see our response to question 4.6

4.9 What should be the purpose of any ex ante margin squeeze safeguards in relation to VULA (for example, actively promoting expansion by non-BT retailers or simply protecting reasonably efficient retailers) where such safeguards are required ? Please provide reasons to support your views.

Please see our response to question 4.6. We would seek to emphasise the need for Ofcom to approach regulation (and specifically pricing regulation) of VULA on a holistic basis, for example, also considering its impact on other infrastructure providers, rather than focussing on non-BT retailers or a specific single issue.

4.10 Should PIA be retained as part of the set of NGA remedies, assuming that such remedies continue to be required? Please provide reasons to support your views.

Virgin Media supported the introduction of this remedy at the time of the last review and specifically considered that appropriate regulation combined with an appropriate

product offering from BT, would allow a potential expansion of our network, primarily by the use of BT poles.

Whilst welcoming the broad approach of introducing the PIA remedy, we specifically cautioned Ofcom that the regulatory framework which enabled it must be fit for purpose. We questioned the Reference Offer requirements and argued for a more prescriptive approach combining an aggressive delivery timetable in order to shape a product offering from BT that would be usable in appropriate scale developments, and appropriately priced.

Unfortunately, the PIA product launched by BT, in response to the regulatory framework set by Ofcom, was not fit for purpose, and this has lead to little interest in take up, simply because it does not offer a financially or operationally viable proposition. Virgin Media has examined the use of PIA, but in its current form, has like the majority of other CPs rejected it as an approach.

The questions posed in this CFI suggest that Ofcom is considering removing the remedy from the market. In our view this would be too simplistic an approach. Fundamentally, as shown by our previous response to the 2010 review, and the trials that we undertook around that time, there is potential for a passive access remedy to create a broadening of competitive conditions in the market. Whilst it is undeniable that to continue to impose PIA as a remedy in its current form would not be constructive, it should not mean that some more effective form of physical infrastructure access should not be mandated.

Indeed, given that the 2010 review presented CPs with a choice of NGA investment routes, through PIA and VULA, it is important to take account of the purposes of those remedies together. The offering of an active and a passive remedy, had they been taken up more equally, would have balanced the market in terms of investment being made at different levels of the market. However, given that PIA has turned out to be unfit for purpose, competing providers have necessarily focussed their provision of NGA services on VULA (through BT's GEA product). Investment into VULA means that those CPs who have committed funds will now be unwilling to switch to an alternate product and lose sunk costs. As GEA/VULA gains in momentum, the likelihood of PIA being taken up reduces further, especially given the lack of economic viability for non-BT NGA areas. If, practically speaking, there is only an "active" option to allow CPs to invest in the provision of NGA, then this risks distorting investment decisions. Such a distortion may potentially lead to an increase in BT's dominance of the market in the longer term. Moreover it would foreclose the opportunity for competing providers to provide truly differentiated products. Both of these outcomes would be detrimental to the interests of consumers.

We consider that Ofcom should undertake a detailed review of passive remedies, as the offering of an effective passive remedy remains important in order to promote true infrastructure competition, especially in light of the relative take up of VULA. To withdraw the remedy without further review would not be appropriate, but neither would patching up the existing remedy be useful.

4.11 What changes might be made to the PIA product that could increase NGA investment by other CPs? Please provide reasons supporting your views, and in particular any specific business plans which could be made viable by such change.

Please see our response to question 4.10.

4.12 Have there been any significant changes since the last market review that mean we should alter our approach to regulating SLU, for example, in response to technological change, assuming that such a remedy continues to be required? If so, please provide reasons supporting your views.

Virgin Media notes that there has not been significant take up of SLU, certainly by major providers. However, it remains an important remedy, not only to niche providers who have utilised it, but also to ensure the opportunity to provide NGA on a FTTC basis through own infrastructure investment remains. Ofcom should ensure that Openreach current projects (eg Vectoring, which notionally requires control of all street cabinet lines) will not interfere with the availability of this remedy.

4.13 Have there been any significant changes since the last market review that mean we should alter our position on wavelength unbundling? If you think wavelength unbundling is appropriate, what form of remedy should be imposed ((including the payment or funding mechanism, i.e. who pays for it, how this would be calculated and when the investment would occur), and what would be the likely effectiveness of such a remedy in addressing competition issues? Please provide reasons to support your views.

Virgin Media considers that Ofcom must look at regulating the market in order to promote competition at the deepest level of the infrastructure at which it is likely to be efficient and sustainable, in accordance with the principles of the Telecoms Strategic Review (TSR). Therefore, in addition to considering whether there have been significant changes since the last market review in relation to wavelength unbundling, Ofcom should also consider the effect of creating a further "unbundling" remedy, when (depending on its form and implementation) this may not promote infrastructure based competition. In that regard Ofcom should look at the issue of passive access more broadly taking into account fibre access.

4.14 Are there any other specific access product remedies that might help address any SMP that may be found in the WLA market? Please provide reasons to support your views.

Virgin Media considers that Ofcom should seek to regulate by encouraging investment at the deepest achievable level, and as such where network competition can be achieved with regulatory support, this should be a focus for the review. This approach would be consistent with the position in the TSR. This ties into our concerns with the effectiveness of the current PIA remedy, as discussed in our response to question 4.10, above.

4.15 Are there any other technological changes that may impact on current or future remedies in the WLA market? Please provide reasons to support your views.

Ofcom should consider the potential impact of mobile access via 4G connections, which are already being offered and heavily marketed by EE, and will be likely to be

equally as heavily promoted in 2013 by the other MNOs, when the spectrum from the 4G auction comes on stream.

The forward look period for this review of 2014-2017, will mean that such services have had up to 18 months to establish themselves prior to the period of review, and as such, may have the potential to have a considerable impact on the market.

4.16 Do you think we should continue to accompany any charge controls imposed in the WLA market with a cost orientation obligation? If not, what approach would be better suited instead? Please provide reasons to support your views

Virgin Media considers that cost orientation is a valuable remedy as a complement to an RPI-X style charge control. We set out in our response to Ofcom's Business Connectivity Market Review the advantages of using cost orientation in tandem with a charge control when a relevant risk of adverse effects arising from price distortion has been established. In particular we set out that cost orientation (in combination with a charge control) has the following functions:

- Protection from excessive pricing.
- Protection from predatory pricing / price squeeze.
- Protection from exploitation of new services entering the market
- In combination with a charge control, protection from charge control failure due to forecasting errors, especially where market is unstable / not well established
- In combination with a charge control, protection in relation to the pricing of individual services within the wider defined basket

We consider that, in Ofcom's BCMR consultation, there was an over-emphasis on the need to protect against potentially excessive pricing which lead to an over-reliance upon a charge control in the absence of cost orientation. We were concerned that no adequate remedy had been proposed to deal with potentially excessively low pricing, and that this was a fundamental flaw in Ofcom's proposals.

We would be most concerned if Ofcom were to adopt a cross market approach to pricing remedies that sought to replace cost orientation with an RPI-X charge control with additional sub-caps. We do not consider that such an approach would be appropriate unless it could be demonstrated that excessive pricing was the only potential pricing distortion arising from the market analysis.

Additionally, we noted that, although cost orientation may have lacked definition in the past, since the recent PPC dispute determination, which has been the subject of appeal in the CAT and the Court of Appeal, we now have extremely clear guidelines as to how the remedy (as currently worded) should be interpreted. We consider this increases the transparency of the remedy and provides a significant degree of certainty to industry in terms of what is being controlled, and how the control operates. In tandem with Ofcom's on going review of regulated financial reporting, which has the potential to increase the transparency and certainty of BT's RFS, cost orientation is a potentially very useful and powerful remedy.

Ofcom has stated that it is planning to publish a document[3] on cost orientation, and as such we are not in a position to comment fully on this question in this Call for Inputs. However, as indicated at the recent Ofcom / UKCTA workshop[4], Ofcom will accept additional comments on cost orientation and how it should apply in the FAMR, in the response period to that document. We therefore reserve making any additional comment on this issue until we have the opportunity to respond to the cost orientation document, save for the general comments above, and a continued reliance upon the comments submitted in our BCMR response, which related to inter-market issues.

4.17 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the WLA market where we nevertheless believe that some form of price regulation is appropriate? And what form should this obligation take? If not, what approach should we use in such cases? Please provide reasons to support your views.

The appropriate form of price control remedy will be determined by the nature of the competition concerns identified in the market analysis, and to that extent it is difficult to comment on whether one form of price control would be appropriate in advance of knowing the provisional outcome of that analysis.

To the extent that there are specific pricing issues that a cost orientation can address; ie Protection from excessive pricing, predatory pricing / price squeeze; the exploitation of new services entering the market or as a form of light touch "range" price regulation, Virgin Media considers that cost orientation has many positives and, noting the position adopted by Ofcom in the BCMR, we consider that it is a remedy that should continue to be considered by Ofcom, and to be imposed in appropriate cases.

As discussed in our response to the previous question, we are awaiting Ofcom's forthcoming publication on cost orientation, to which we will response, and may make further comments on the remedy in the context of this review in that response.

Remedies: Wholesale fixed analogue exchange lines

5.1 Have there been any significant changes since the last market review that might impact on our approach to regulating the current WLR remedies (including for Ancillary services), assuming that such a remedy continues to be required? If so, please provide reasons to support your views.

Virgin Media considers that, broadly, there have not been significant changes within the market that would alter the basic approach to remedies in this market.

5.2 Do you think we should continue to accompany any charge controls imposed in the WFAEL market with a cost orientation obligation? If not, what

[3] The nature of the document / project has not been confirmed, but Ofcom have indicated that industry will be given an opportunity to comment.
[4] 10 December 2012

approach would be better suited instead? Please provide reasons to support your views

We consider our response to question 4.16 applies equally to this question. Additionally, we also note that in relation to the withdrawal of cost orientation on enhanced care services within the WFAEL market in 2010, specific concern was raised by stakeholders "*that the removal of the cost-orientation obligation for WLR enhanced (i.e. beyond basic) care does not set precedent for the removal of cost-orientation of enhanced care (or basic care) in relation to other services*." Ofcom responded to reassure stakeholders stating that "*We do not consider that this decision sets a precedent on the treatment of services in other markets. Each market and market remedy, including the basis of charges conditions, has to be considered on its own merits.*"[5] We would be concerned if this question implied any change in approach by Ofcom, potentially setting a precedent for the removal / non-imposition of cost orientation.

5.3 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the WFAEL market where we nevertheless believe that some form of price regulation is appropriate? And what form should this obligation take? If not, what approach should we use in such cases? Please provide reasons to support your views.

Please see our responses to questions 4.17 and 5.2, which apply equally to the WFAEL market.

Approach to any local loop unbundling and wholesale line rental charge controls

6.1 Do you think that an approach to the pricing of wholesale access services based on an ongoing copper network is appropriate? Please give reasons for your answer.

Virgin Media agrees with Ofcom's assessment that it would not be appropriate to regard FTTP as the MEA, and that any charge control (if such a remedy is appropriate and maintained), should be based on an on going copper network, as set out in paragraph 6.22 of the CFI.

6.2 In an ongoing copper network cost model, would it be appropriate to assume the same common cost allocation per line, across all lines, whether in practice the lines were copper-based, fibre-based or a hybrid of the two? Please give reasons for your answer.

Virgin Media would be concerned if Ofcom chose an approach that had the effect of creating any sort of cross-subsidy for BT's NGA services, which could lead to charges being set in a manner that would discourage otherwise efficient infrastructure based investment.

---

[5] Ofcom Charge controls for Wholesale Line Rental implementation statement 2010: paragraph 4.26, responding to an issue raised in C&W's consultation response

6.3 Should we seek to implement a new cost model for the connection and rental charges of the core access products which relies less on disaggregated BT management accounting data and instead is based on BT's RFS network components and CVEs and AVEs (along the lines described in this section)? Please give reasons for your answer.

We note that Ofcom are, in this CFI, suggesting that they are seeking to align their modelling approach across charge controls and markets[6]. We can see merit in this approach provided that there are sufficient safeguards to ensure continuity of regulation in moving from one modelling system to another. The increased transparency of a system that allows appropriate interrogation and understanding by stakeholders is also a potential benefit.

In seeking to align controls, it is therefore notable that in Ofcom's recent consultation in its Fixed Narrowband Market Review, it proposed to move away from the "aligned" approach hitherto adopted in the market, and move to a different approach. The aligned approach carries more weight the more markets it applies to, and we would encourage Ofcom to consider the proposed modelling approach in this review, as part of considering what approach to adopt in the Narrowband review.

6.4 If you consider a different modelling approach is more appropriate, please set out what this would be and why.

We do not have any additional comments beyond our response to question 6.3.

6.5 Do you see any reason to change the overall structure and design of the current baskets of ancillary service? Please give reasons for your answer.

We do not have any additional comments beyond our response to question 6.3.

6.6 Do you consider that X in RPI-X for the ancillary service baskets should be:

> ***a) based on our forecast efficiency target for the provision of these WLA services? or***
> ***b) based on an explicit model of basket costs, even if at an aggregated level?***

Please give reasons for your answer.

It will be important to assess the potential consequences of using an efficiency based approach over a cost based approach to ensure that the setting of a control for ancillary services (especially where there is a difference in take up as between BT and other CPs) are fully assessed to ensure that the aim of the control is fulfilled. Whilst the use of an efficiency based approach simplifies the control (and therefore provides transparency as to how it operates) this should not be at the expense of

[6] Call for Inputs; paragraph 6.39

failing to set charges that ensure that BT is constrained to provide a cost based service (as a whole) that does not benefit its own downstream business.

6.7 If you consider a different basis is more appropriate please set out what this approach would be and why.

We do not have any additional comments beyond our response to question 6.6

Remedies: Wholesale ISDN30

7.1 Have there been any significant changes since the last market review that mean we should alter our approach to regulating ISDN30 where we find SMP for BT? If so, please provide reasons to support your views.

We do not consider that there should be a significantly different approach to regulation of ISDN30, given the relatively recent review of the market by Ofcom.

7.2 Which, if any, pricing remedy do you believe would be appropriate for ISDN30 where we find SMP for BT? Please provide reasons to support your views.

The last control was designed to reduce the wholesale charge to the cost (plus mark up) based on an efficient hypothetical on-going network. This approach recognised the nature of BT's depreciated asset base for its ISDN30 service. We consider that it remains very important to continue to account for the nature of this declining market, and overly strict regulation of pricing could be counter productive, by for example skewing migration incentives.

7.3 Do you think we should continue to accompany any charge controls imposed in the wholesale ISDN30 market with a cost orientation obligation? And what form should this take? If not, what approach would be better suited instead? Please provide reasons to support your views

This question does not relate to the market, in that currently, there is no cost orientation obligation imposed in the wholesale ISDN30 market. That said, it is informative to note that in proposing not to impose cost orientation alongside a charge control, Ofcom specifically considered the individual nature of the market in deciding not to impose cost orientation. In that case, the identified competition concern was excessive pricing, in that Openreach was found to be pricing in excess of cost. In considering whether a complementary cost orientation remedy should be imposed, Ofcom proposed, in their consultation, not to apply cost orientation "*because we consider that the low number of services in the charge control baskets and the presence of safe-guard caps where appropriate, together with the requirements for charges to be fair and reasonable and not unduly discriminatory, will be more effective at constraining the level of prices*."[7]. Therefore, no precedent should be taken from that decision, in the context of removal of cost orientation from other markets.

[7] Ofcom : Price controls for wholesale ISDN30 services dated 1 April 2011: paragraph 5.29

7.4 If we do not impose a charge control, do you think that a cost orientation obligation is appropriate on products in the wholesale ISDN30 market where we nevertheless believe that some form of price regulation is appropriate? If not, what approach should we use in such cases? Please provide reasons to support your views.

Ofcom concluded it its recent price control review of ISDN30 services, that cost orientation, on its own, would not be an appropriate form of price control, given in part, the specific competition concerns identified (excessive pricing), and the depreciated nature of ISDN30 assets. This appears to be a reasonable starting point for an analysis of whether cost orientation would be an appropriate remedy for this market. Again, Virgin Media would emphasise that the somewhat unusual conditions in this market, should not mean that it creates any sort of precedent in relation to the application of cost orientation more generally.

Remedies: Retail and wholesale ISDN2

8.1 Have there been any significant changes since the last market review that mean we should alter our approach to regulating ISDN2? If so, please provide reasons to support your views.

Notwithstanding that ISDN2 is a legacy product, whose original core use (provision of business internet access) has largely been superseded, it continues to be used in specific contexts, for example where resilience is required, and therefore its continued supply remains important, especially in light of BT's market share.

8.2 Which, if any, pricing remedy do you believe would be appropriate for ISDN2 where we find SMP for BT? Please provide reasons to support your views.

ISDN2 is currently subject to a cost orientation obligation. Given the similarity with ISDN30 in terms of it being a declining copper based product, it may be an appropriate time to review pricing regulation of this product (although we are not necessarily suggesting that an approach identical to ISDN30 would be appropriate (ie the imposition of a charge control)).

8.3 If you consider that a cost orientation obligation remains appropriate for products in the wholesale ISDN2 market, what form should this obligation take? Please provide reasons to support your views.

We consider that it would be inappropriate to suggest the best approach to pricing regulation prior to an analysis of (a) market conditions and whether there are any pricing concerns and (b) the costs of provision of the service. Only when this information is know would it be appropriate to comment on the appropriateness of any pricing control. Again, this comment should not be taken to be a criticism of cost orientation as a remedy, merely a reflection that this question has been asked prematurely.

Remedies: Markets in the Hull Area

9.1 Have there been any significant changes since the last market reviews that mean we should alter our approach to regulating the current remedies on KCOM, where we find SMP for KCOM? If so, please provide reasons to support your views.

Virgin Media has no comment to make in relation to this question.

Openreach's quality of service

10.1 What is your experience of the quality of Openreach's access services delivery? If there are quality and timeliness concerns, how do these affect your activities/customers? Please provide reasons to support your views.

Virgin Media does not have any particular issues interacting with Openreach service agents, but considers that some of their ability to deal with matters can be negatively impacted by Openreach processes. An example of this would be, in the event of an engineer no show due to an Openreach system error/issue, the Virgin Media customer should be entitled to benefit from a quick turnaround for the visit to be re-provisioned. However, the service agents are required to complete an "e-response" proforma which can take 24 hours to resolve (or even longer in some cases), which then delays the resolution for our customer, creating a negative experience for them which can impact on our own brand.

We would also note that although the service agents are accessible, we consider that should a matter need to be escalated, we have experienced difficulties in being able to engage a manager. If this could be improved the procedure would benefit from managers that were able to take ownership and provide early guidance.

10.2 Do you consider that the current contractual SLAs including SLGs relating to Openreach's quality of service are adequate? If not, what are the current shortcomings? Please provide reasons to support your views.

As stated above, the SLAs involving e-responses can fall outside the required 4-24hr window, which directly impacts on our customers' experience, and therefore negatively impacts on our brand

We also consider that some of Openreach's processes do not adequately reflect the needs of our own customers. An example of this would be the "Disputed No Access" process where a reappointment will be sought to be made "based on the end user's availability over the next 5 days provided by the CP". Whilst a reappointment within five days may be appropriate, the need to confirm an appointment time to a customer (who can often be on the phone to us at the time, and demanding an explanation, apology and new appointment time), is not accounted for within the process

10.3 If you consider that there are shortcomings in the current service quality arrangements, what aspects do you consider to be solely within Openreach's

control, what aspects do you consider are impacted on by the actions Openreach's customers and what aspects do you consider are solely within Openreach's customers' control? Please provide reasons to support your views.

Virgin Media considers that there are shortcomings that fall entirely within Openreach's control. By way of example, when there needs to be a re-appoint (eg following an engineer no show), the Openreach agent will confirm that they need to contact Control in order to arrange the re-appoint. On a number of occasions we have experienced Openreach not being able to contact control. In these circumstances we have been advised to call again in 4 hours time. On some of those occasions numerous such callbacks have to be made. We have one example where five calls were made before the fault could be progressed. This is an Openreach created delay, by having a disconnect between the Openreach agent and Control, which causes significant additional delay to the process.

10.4 If you consider that there are aspects of service quality that cannot adequately be dealt with by contractual arrangements (including but not limited to SLAs and SLGs), what aspects are these and what framework do you think should apply to deal with these? Please provide reasons to support your views.

We do not have any further comments beyond our responses to Questions 10.1 to 10.3

Virgin Media
20 December 2012