

## Review of the Retail and Wholesale ISDN30 Market

### Response by KCOM

15 June 2010

KCOM welcomes the opportunity to comment on Ofcom's conclusions on the retail and wholesale ISDN30 market review. Our comments in this response are limited to Ofcom's review of the market in the Hull area.

#### Market Definition and Market Power Assessment

KCOM broadly accepts Ofcom's conclusions in respect of both the retail and wholesale markets in the Hull area. However, we are concerned that the impact of services provided by alternative providers via leased lines solutions has not been considered further. In its statement on the Business Connectivity Market Review published in December 2008 Ofcom concluded that KCOM no longer had SMP in the retail market for low bandwidth TI leased lines based largely on KCOM's low market share of 25%. This suggests extensive use of alternative access methods by customers both for PSTN and ISDN services. We firmly believe that this alternative provision is more of a constraint than Ofcom concludes.

We also do not fully accept Ofcom's view that the fact that ISDN30 is nearing the end of its lifecycle does not necessarily imply that the competitive constraints in the ISDN30 market have increased. Ofcom has acknowledged that the prospect of significant entry in the ISDN market appears muted, however that does not mean that the prospect of significant entry using alternative technologies is also muted. We have seen some market entry in Hull by providers offering VoIP based systems and we expect that as these services develop there will be considerable interest from customers looking to replace their existing services. We consider the provision of services by others using alternative technologies to be a very real constraint on the terms on which we offer ISDN30 services in the market and expect this constraint to become more marked over the period covered by this market review.

#### Remedies

KCOM welcomes the pragmatic approach that Ofcom is proposing to remedies for the Hull area.

In terms of the specific remedies Ofcom is proposing, it appears that the Conditions in large part simply mirror those placed on BT. However, this means that a number of definitions which are not used in the KCOM specific conditions have been unnecessarily transposed. Below we provide a mark-up of the definitions which shows the amendments we believe need to be made. For consistency with other SMP Conditions we also believe that Condition AAB(IS)4.6 should be amended to allow KCOM to make a reasonable charge for providing a copy of the Reference Offer.



## Definitions

3. In this Schedule 1:

(a) “**Act**” means the Communications Act 2003 (c. 21);

(b) “**Access Charge Change Notice**” has the meaning given to it in Condition AAB(IS)6(a).2;

(c) “**Access Contract**” means:

- (i) a contract for the provision by the Dominant Provider to another person of Network Access to the Dominant Provider’s Electronic Communications Network;
- (ii) a contract under which Associated Facilities in relation to the Dominant Provider’s Public Electronic Communications Network are made available by the Dominant Provider to another person;

(d) “**Dominant Provider**” means KCOM Group plc, whose registered company number is 2150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;

~~(e) “**Exchange Line**” means Apparatus comprised in the Dominant Provider’s Electronic Communications Network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing Electronic Communications Services at the premises at which the Network Termination and Testing Apparatus is located;~~

~~(f) “**Existing Line Transfer**” means the combination of transactions consisting of a customer (including but not limited to a customer who is a provider of a Public Electronic Communications Service) of the Dominant Provider for an Exchange Line terminating his contract (‘the customer contract’) with the Dominant Provider for the Exchange Line, and the Dominant Provider entering into a contract for that Exchange Line with a provider of a Public Electronic Communications Service (‘the Third Party contract’), except where the Third Party contract is entered into after the Dominant Provider has ceased the Exchange Line (in which case the Third Party contract shall be deemed to be a New Line Installation);~~

(ge) “**ISDN**” means the integrated services digital network which is an Electronic Communications Network evolved from the telephony integrated digital network that provides for digital end-to-end connectivity to support a wide range of Public Electronic Communications Services, including voice and non-voice services, to which End-users have access by a limited set of standard multipurpose customer interfaces;

(f) “**Network Component**” means, to the extent they are used in the Services Market, the network components specified in any direction given by Ofcom from time to time for the purpose of these Conditions;

~~(h) “**Network Termination and Testing Apparatus**” means an item of Apparatus comprised in an Electronic Communications Network installed in a fixed position on Served Premises which enables:~~



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~~(i) Approved Apparatus to be readily connected to, and disconnected from, the Network;  
(ii) the conveyance of Signals between such Approved Apparatus and the Network;  
(iii) the due functioning of the Network to be tested, but the only other functions of which, if any, are:~~

- ~~(a) to supply energy between such Approved Apparatus and the Network;~~
- ~~(b) to protect the safety or security of the operation of the Network; or~~
- ~~(c) to enable other operations exclusively related to the running of the Network to be performed or the due functioning of any system to which the Network is or is to be connected to be tested (separately or together with the Network);~~

~~(i) “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Relevant Subscriber. Where a Network Termination Point is provided at a fixed position on Served Premises, it shall be within an item of Network Termination and Testing Apparatus;~~

~~(j) “**New Line Installation**” means a service for the installation of an Exchange Line, where some or all external (or internal) wiring has to be provided, or brought into use, by the Dominant Provider. For purposes of this definition, “external wiring” means wiring from the distribution point to the protection box (or where one would be fitted) at the premises at which the Network Termination and Testing Apparatus is located and “internal wiring” means wiring from the protection box up to and including the first main socket, block terminal or other Network Termination Point;~~

~~(k) “**Ordinary Maintenance**” means maintenance which is part of the service provided by the Dominant Provider in consideration of the charge for an Exchange Line and includes normal fault repair, as defined in the Dominant Provider's standard terms and conditions;~~

~~(l) “**Public Telephone Network**” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;~~

~~(m) “**Reference Offer**” means the terms and conditions on which the Dominant Provider is willing to enter into an Access Contract;~~

~~(n) “**Relevant Subscriber**” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such Services;~~

~~(o) “**Services Market**” means each of the markets sets out in paragraph 12(ab) of the Notification;~~

~~(p) “**Third Party**” means either: (i) a person providing a Public Electronic Communications Network; or (ii) a person providing a Public Electronic Communications Service;~~



(j) **“Transfer Charge”** means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt, such activities or group of activities include, amongst other things, products and services provided from, to or within the Services Market and the use of Network Components in that Services Market;

(k) **“Usage Factor”** means the average usage by any Communications Provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity;

~~(s) **“Wholesale ISDN30 Line Rental”** means an Electronic Communications Service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an ISDN30 Exchange Line;~~

~~(t) **“Wholesale Line Rental”** means any and all of the following provided by the Dominant Provider:~~

- ~~(i) Wholesale Analogue Line Rental;~~
- ~~(ii) Wholesale ISDN2 Line Rental; and~~
- ~~(iii) Wholesale ISDN30 Line Rental;~~

