

Review of the Wholesale Broadband Access Markets Call for Inputs

Response by KCOM

20 December 2012

KCOM welcomes the opportunity to respond to Ofcom's Call for Inputs in respect of the wholesale broadband access markets review. Our comments in this response are limited to Ofcom's review of the market in the Hull area.

A key concern for us is that in the forthcoming market Ofcom considers the deployment of alternative infrastructure in the Hull area and the impact that this is having on our business. There have been considerable developments in this regard since the last market review. We also continue to be of the view that imposing additional wholesale regulation is not the appropriate approach to encourage investment by other providers, nor indeed is it likely to encourage investment by ourselves. This is particularly important at a time when we are committing considerable financial and physical resource to deploying NGA infrastructure across our network.

Question 1: In light of our proposed approach for this review, have there been any changes since the last market review, or do you see any developments over the period of this review, which affect whether the WBA product market definition used in the last market review is still appropriate? If so, please give reasons.

Since the last market review we have seen accelerated deployment of wireless solutions as an alternative to fixed broadband services. There are now a number of providers offering wireless DSL connections to both businesses and residential customers. While these connections are currently not being used as wholesale inputs we believe there is no reason why they could not be in the future. For this reason we feel that Ofcom should reconsider its views on fixed wireless access as part of the forthcoming market review.

More generally, KCOM remains of the view that while it is possible that the WBA market may change quickly in the future, particularly as NGA deployment develops, for the purposes of this review these developments should not materially affect Ofcom's proposed market definitions.

Question 2: In our 2010 WBA Statement, we defined geographic markets by grouping together local exchanges with sufficiently homogenous competitive conditions, primarily by reference to the number of POs present or forecast to be present in the exchanges. Do you agree that we should follow the same approach in this Review?

We have no comment on this question.

Question 3: In the last WBA market review we identified four geographic markets in the UK. Is it still appropriate to identify four geographic markets using the same criteria as in the last market review? Or have there been changes since the last market review, or are any developments foreseen over the period of the next market review, that mean the number of



geographic markets or the criteria used to distinguish the geographic markets may have changed? If so, please give reasons for your views.

We accept that Hull remains a separate geographic market for the purposes of this review but have no comment to make on the criteria used to identify geographic markets in the last market review.

Question 4: What is the most appropriate way to capture changes in competition that may arise from future roll-out by POs? If we continue to use forecast roll-out plans provided by POs, how should we take account of the possibility that such plans may change in the future?

We have no comment to make in response to this question.

Question 5: Have there been any changes since the last market review that would impact our SMP assessment in the WBA markets identified in this Review? If so, please give reasons for your views.

Since the last market review there have been significant developments in the Hull area which are relevant to Ofcom's SMP assessment in the WBA markets identified in this review. MS3 Communications is currently deploying a network in Hull with an initial investment of £4.5m. We understand that the plan is to build a 116 km network over the next few months and in July MS3 announced that it had completed half of its initial phase 1 network build. This will provide direct infrastructure based competition to KCOM and is likely to do so in a relatively short timeframe given the limited geographic area to be covered. MS3 are positioning themselves as a wholesale provider who will work with resellers in order to provide services to end customers.

We see this network deployment as having the potential to have a significant impact on our business over the period covered by the forthcoming market review and should be considered by Ofcom when assessing SMP.

Question 6: What are your views on how well the current remedies have worked in promoting downstream competition? Please provide evidence or give reasons for your views.

KCOM has long argued that the imposition of specific access remedies would not be useful in the Hull area where a requirement to develop a defined service would not necessarily provide an efficient solution for either KCOM or potential competitors wishing to enter the market. The imposition of a general access remedy in the last market review has provided KCOM with the ability to develop other commercial arrangements which offer alternative ways of providing access for competing CPs which are less burdensome in terms of regulatory obligations but still provide the service and functionality required. For example, to meet demand for a cost effective wholesale service, KCOM offers a resale DSL service which has been used by providers offering services to business customers.

In this regard we believe that flexibility is key and therefore do not believe that there are any additional remedies which Ofcom might consider which would have the effect of stimulating competition.



Question 7: How effective have the current remedies been in addressing the market failures identified in the 2010 WBA Statement and in supporting competition and market entry? Please elaborate with examples.

KCOM has seen limited uptake of wholesale products by competing providers in the Hull area. Much of this is linked to the small size of the addressable market and the ability of alternative providers to quickly and efficiently deploy alternative means of connecting customers, e.g. fixed wireless access. However, as noted above we have been able to develop resale products as an alternative which enable competitors to enter the market quickly and efficiently providing competitive services to customers in the Hull area.

Question 8: If the current remedies have not been effective, in the event we find one or more CPs has SMP, what remedies do you consider we should we apply and why?

We have no comment to make in response to this question.

Question 9: Do you consider that the scope of the charge control was correct in terms of the products and services subject to the control? Has the charge control been effective? Looking ahead do you consider that a charge control is an appropriate remedy in the event that we find one or more CPs has SMP in the WBA market? If so, why?

We have no comment to make in response to this question, save that we continue to believe that the imposition of charge controls and/or a cost orientation obligation on KCOM would not have the effect of encouraging others to enter the market. Rather it would simply impose additional regulatory obligations and costs on KCOM in respect of services for which there is no proven demand.

Question 10: Are there any particular problems or issues in the WBA markets that this review should address? Where you identify a problem, please explain whether you believe regulation to be an appropriate response.

KCOM has announced plans for a fibre access network deployment. The first phase of that deployment has now been completed with a total of 15,000 premises having been passed. More recently we have also announced our next phase of the deployment of fibre which will pass a further 30,000 homes and businesses by March 2015.

Given this significant investment and the transformation of the Hull area network in the next few years, we are concerned to ensure that the regulatory environment is one which will encourage infrastructure investment as well as competition for the benefit of customers within the Hull OLA area. We would encourage Ofcom to be mindful of this in considering the appropriate approach to the regulation of wholesale NGA services. In particular we see a general access obligation as being the most appropriate way in which to ensure the development of wholesale fibre access products to meet market demand which may arise. We also believe it would be premature to include wholesale fibre services within the scope of any pricing controls (including cost orientation) due to the limited extent of our deployment and a lack of information about the wholesale products which might be required or the costs that would be incurred in meeting any demand. To do otherwise could have a detrimental effect on investment by KCOM.

