



BT's response to Ofcom's consultation document
"KCOM Regulatory Financial Reporting: Consultation on proposed regulatory financial reporting directions for KCOM"
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2. Introduction

2.1 We welcome Ofcom's strategic review of KCOM's regulatory financial reporting requirements and agree with Ofcom that regulatory financial reporting should provide it with the information that it needs to make informed regulatory decisions, monitor compliance with regulatory obligations, ensure that obligations address underlying competition issues and investigate potential breaches of obligations¹.

2.2 We agree that regulatory financial reporting should provide reasonable confidence to stakeholders that the regulated company has complied with its Significant Market Power (SMP) conditions while adding credibility to the regulatory financial reporting regime.

2.3 However, we do not consider that the volume and nature of information that Ofcom continues to require KCOM to produce and publish is proportionate to the needs of stakeholders, given the nature of the pricing remedies ("fair and reasonable") imposed.²

3. Single framework for regulatory reporting

3.1. We welcome Ofcom's statement that it considers that the information it requires SMP providers to publish in their RFS should reflect the level of the remedy, and strike a balance between information that stakeholders need to contribute to the regulatory regime and confidentiality concerns around the commercial nature of the financial information.³ However, we disagree with Ofcom's inconsistent implementation of this statement as it clearly stated it does not use KCOM's RFS as a basis for setting charge controls.⁴

3.2. We recommend that Ofcom should consider a single framework for regulatory reporting across BT and KCOM. Such a framework should be based on four key principles:

3.2.1. The framework should apply consistently across all market reviews;

3.2.2. It should apply consistently to all UK operators on which SMP obligations are imposed;

3.2.3. Information required to be reported should clearly correlate to the pricing (and other) remedies imposed; and

3.2.4. Information required to be reported should be proportionate to the benefit and, to be proportionate, the requirement must go no further than necessary (i.e. no more onerous than necessary).⁵

¹ See paragraph 1.1 to 1.2 of the KCOM Regulatory Financial Reporting Consultation.

² See paragraph 1.2 of the KCOM Regulatory Financial Reporting Consultation.

³ See paragraph 2.10 of the KCOM Regulatory Financial Reporting Consultation.

⁴ See paragraph 3.16 of the KCOM Regulatory Financial Reporting Consultation.

⁵ See paragraph 2.9 to 2.10 of the KCOM Regulatory Financial Reporting Consultation.

3.3. A single regulatory reporting framework that follows the above principles would be:

- 3.3.1. Consistent with Ofcom's requirement to ensure that imposed regulation is transparent, reasonably necessary, targeted and proportionate;
- 3.3.2. It would provide greater certainty to all stakeholders over the information provided by regulated entities. Stakeholders would be able to compare reported information more easily across the entire UK; and
- 3.3.3. It would reduce the costs for all participants by streamlining reporting requirements.

3.4. In the table below we set out our proposal for such a framework for regulatory reporting, which makes a clear link between any pricing remedy imposed and information that operators are required to publish.

Pricing remedy	Reporting obligation			
	Performance summary by market	Adjusted performance schedule	Market summary	FAC by service and component
No remedy	None	None	None	None
Fair and reasonable	Published	As appropriate	None	None
Bottom up charge control	None	None	None (revenues and volumes in a compliance statement)	None
Safeguard cap	None	As appropriate	None (revenues and volumes in a compliance statement)	None
CPI-X charge control	Published	As appropriate	Published	Published
Cost orientation/basis of charges	Published	As appropriate	Published	Depends upon specific nature of cost orientation requirement

3.5 In all markets where KCOM is found to have SMP, and in which pricing remedies have been imposed, the remedy is that prices need to be "fair and reasonable", no cap or cost orientation obligations have been imposed on KCOM. We consider therefore that the needs of stakeholders would be met by the publication of a performance summary by market (in a similar level of detail to that in BT's RFS) only. The requirement to continue

to produce and publish additional detailed information on KCOM's costs by nature and by network component is not proportionate to the needs of regulation.

4. Reducing published and private information reporting requirements

4.1 In light of the observations on the key principles for regulatory reporting that we believe Ofcom should follow, we agree with Ofcom's proposals to reduce KCOM's publication requirements by over 30%, although, as noted above, we consider that Ofcom should make further reductions.⁶ However, we disagree with Ofcom's proposal that KCOM should provide information privately that Ofcom deemed to be a duplication of what is already disclosed publicly elsewhere.⁷ In this regard, we do not think it is efficient for Ofcom to require KCOM to duplicate information already available.

4.2 We also have concerns about Ofcom's inconsistent approach between BT and KCOM when it imposes regulatory reporting requirements in relation to the same remedies. For example:

4.2.1 KCOM is already exempt from any reporting for Call Termination and Interconnect, although it, like BT, has SMP in these markets.⁸ There was no explanation or statement for this inconsistent approach in the context of the 2017 Narrowband Market Review Statement.

4.2.2 Ofcom's recent reviews of the Wholesale Broadband Access ('WBA') and Hull wholesale market concluded the size of WBA Market A for BT was 0.9% and KCOM it was around 0.7%.⁹ Although these represent a similar proportion of the total UK markets for both BT and KCOM, only BT has to provide service level reporting (i.e. no obligation on KCOM to apply corresponding information).

4.2.3 KCOM is not required to produce DLRIC and DSAC information for reporting to Ofcom, but we are required to produce such information in all markets where we have reporting obligations, including for services where, like KCOM, our prices are subject only to "fair and reasonable" obligations. We would welcome clarity from Ofcom as to why such information is required from us and for what purpose it is used.

⁶ See paragraph 1.8 of the KCOM Regulatory Financial Reporting Consultation.

⁷ See paragraph 4.46(g) (I – iii) of the KCOM Regulatory Financial Reporting Consultation.

⁸ See Annexes 9 – 10: Legal Instruments of the 2017 Narrowband Market Review Final Statement.

⁹ See Ofcom's announcement of Wholesale Broadband Access and Hull wholesale market reviews.

4.3 It is not clear why Ofcom is treating KCOM and ourselves differently in the above respects. We believe that Ofcom must be consistent between operators when it imposes or withdraws regulatory reporting requirements. We would welcome the opportunity to work with Ofcom to develop a framework that will provide consistency between the regulatory requirements for KCOM and BT, and to achieve a reporting regime that will support future regulation as outlined in recent document "*Regulatory certainty to support investment in full-fibre broadband – Ofcom's approach to future regulation*" published on 24 July 2018.