

# CWU RESPONSE TO OFCOM CONSULTATION: REVIEW OF THE WHOLESALE LOCAL ACCESS MARKET

## Introduction

It is important to note that since the consultation paper was published there have been two important developments.

First the Digital Economy Act had all elements stripped out of it which referred to the roll-out of the superfast broadband highway (Next Generation Access – NGA) and public investment thereof for more remote areas in the ‘wash-up’ of Government legislation at the end of the last Parliament.

Second the result of the General Election produced a change of political leadership in the form of a Conservative and Liberal Democrat coalition. The new Government is introducing secondary legislation for the broadband infrastructure that will support investment in new high-speed broadband internet connections. The content of the new proposals has yet to be disclosed but there can be no guarantee that the assumed levels of public investment in the roll-out of the NGA will be present in the new legislation to the same levels.

This being said the CWU fully supports the statement in Paragraph 1.10 that “...it is important to continue to deliver effective regulation of CGA (*Current Generation Access*) networks at the same time as supporting a smooth transition to NGA networks.”

The CWU also notes the legal framework governing Ofcom’s proposals as stated in Paragraph 1.18 that “...it is only possible to impose obligations on those CPs (*Communications Providers*) that have SMP. We therefore are not proposing regulatory obligations on other CPs in this market – including Virgin Media.” However the CWU would strongly argue that although Ofcom cannot place any regulatory obligations on other CPs it considers applying voluntary obligations upon them in the absence of regulatory force. This in part is due to the significant market power (SMP) exercised by Virgin Media especially in some exchange areas. There will come a time when Virgin Media and other CPs should have to provide open access to their ducts, as British Telecom (BT) is required to do now, if competition is not to be distorted in their favour and against BT’s.

***Question 1 - Do you agree with our proposed product market definition? If not, please explain why.***

Yes the CWU agrees with the proposed market definition. In particular the CWU would like to emphasize the requirement as contained in Paragraph 6.74 that transparency as to quality of service which should operate both ways between supplier and carrier. The CWU is concerned that quality of service standards could slip as a consequence and this could impact negatively on BT's utilization of performance management procedures. In this regard the Reference Offer (RO) should set high minimum standards as stated in Paragraph 6.80 for "...conditions relating to maintenance and quality (service level agreements ("SLAs") and service level guarantees ("SLGs"))".

***Question 2 - Do you agree with our proposed geographic market definition? If not, please explain why.***

Yes the CWU agrees with the proposed geographic market definition.

***Question 3 - Do you agree with our proposals that BT and KCOM (Kingston Communications) have SMP in their respective geographic markets? If not, please explain why.***

Yes the CWU agrees with the proposals that BT and KCOM have SMP in their respective geographic markets.

***Question 4 - Do you agree with our proposals for the general access requirements that should apply to BT and KCOM respectively? If not, please explain why.***

The CWU would wish to place a strong emphasis in the RO on setting high minimum standards as stated in Paragraph 6.80 for "...safety standards". As all too often such safety standards are the first to fall by the wayside when access to BT ducts is granted to third parties. Such standards should be reproduced in any commercial arrangements struck between the parties concerned

In addition the CWU supports as stated in Paragraph 6.107 the "...publication of a set of KPIs (*Key Performance Indicators*)..." for the development of Local Loop Unbundling (LLU) especially in regard to provisioning and fault repair. The CWU believes that such KPIs must be mutually shared and kept to between supplier and carrier.

***Question 5 - Do you agree that Ofcom should impose a new network access obligation on KCOM, that would require it to follow a statement of requirements process to handle requests for new network access in this market? If not, please explain why.***

No comment.

***Question 6 - In relation to LLU, do you agree with the assessment and options set out?***

Yes the CWU agrees with the assessment and the options set out. However as stated at the beginning the CWU strongly believes that Virgin Media is also required to provide performance indicators for providing LLU products. This is because as Paragraph 7.22 states BT's market share for fixed voice call volumes has declined to 47% in 2008 and BT's share of the wholesale broadband access (WBA) has also fallen to 47% in 2008.

***Question 7 - In relation to fibre access, do you agree with the potential unbundling arrangements for the different fibre architectures and the positions/options set out given the current and expected future availability of fibre within BT's access network?***

The CWU would like to reiterate the point that what applies to BT under Option 3 should also apply to Virgin Media and other CP's such as COLT who may have a very tight geographical SMP such as the City of London. Option 3 relates to the deployment of multiple fibres where the fibre-to-the-premises (FTTP) technology is utilized particularly with a shared Gigabit Passive Optical Network (GPON). Unless this proposal applies to Virgin media and other CP's too then as Paragraph 7.66 states this will act as a disincentive for BT to invest in its FTTP network.

***Question 8 - In relation to SLU, do you agree with the assessment and options set out?***

Similarly with Option 2 the CWU believes that the same proposal regarding Sub-Loop Unbundling (SLU) should also apply to Virgin Media.

***Question 9 - In relation to PIA, do you agree with the proposed PIA obligation structure and the proposed implementation arrangements?***

In stating in Paragraph 7.105 that typically the provision of underground ducts or overhead telephone poles constitutes about 50-70% of overall capital expenditure of an access network then impacts on Virgin Media because as stated in Paragraph 7.111 "...there is a wider debate about the potential for infrastructure owned by other organizations to play a role, in enabling NGA network rollout". The CWU considers that in the meantime until the amendments

to the EU regulatory framework relating to infrastructure sharing have been incorporated into UK law by May 2011, Ofcom should be placing voluntary obligations upon Virgin Media for infrastructure sharing and indeed others such as COLT.

***Question 10 - In relation to VULA, do you agree that VULA may be a necessary access remedy in the WLA market and if so, do you agree with the key characteristics identified and how these currently relate to BT's GEA products?***

No comment.

***Question 11 - Do you agree with the framework for considering specific access remedies on BT?***

Yes the CWU agrees with the framework for considering specific access remedies but reaffirms its point that in some exchange areas Virgin Media is the SMP and so therefore should be included within the specific access remedies framework.

***Question 12 - Do you agree that there is a need to have a complementary set of access remedies and if so, do you agree with the proposed set of remedies on BT?***

No comment.

***Question 13 - Do you agree that no specific access remedies should be imposed on KCOM in the WLA market at this time? Could any remedies on KCOM at the WLA market level address the competition issues that we have identified?***

No comment.

***Question 14 - Do you agree with our assessment against the legal tests for each specific remedy, as set out in Section 9?***

No comment.

## Contact

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