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# Hull Area Wholesale Fixed Telecoms Market Review 2021-26

Volume 4: Legal instruments

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**STATEMENT:**

Publication date: 28 October 2021

# SMP services conditions

## NOTIFICATION UNDER SECTIONS 48 AND 79 OF THE COMMUNICATIONS ACT 2003

### Notification of the identification of markets, the making of market power determinations and setting and revoking SMP services conditions in relation to KCOM under section 45 of the Communications Act 2003

#### Background

1. On 22 July 2004, Ofcom published a statement entitled “The Regulatory Financial Reporting Obligations on BT and Kingston Communications – Final Statement and Notification” (the “2004 Regulatory Accounting Notification”), which imposed various regulatory financial reporting obligations on KCOM. Many of these obligations were revoked in the following years, but those relating to narrowband markets remained in force to date.
2. On 30 November 2017, Ofcom published a statement entitled “Narrowband Market Review: Statement” (the “2017 Narrowband Statement”). The 2017 Narrowband Statement set out Ofcom’s conclusions on its review of narrowband markets including the wholesale fixed analogue exchange lines, the wholesale ISDN30 Exchange Line services and wholesale ISDN2 Exchange Line services markets by identifying markets, making certain market power determinations and setting SMP conditions. At Annexes 9 and 10 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“November 2017 Notification”).
3. On 31 July 2018, Ofcom published a statement entitled “Wholesale Local Access and Wholesale Broadband Access Market Reviews - Review of competition in the Hull Area” (the “2018 WLA and WBA Statement”). The 2018 WLA and WBA Statement set out Ofcom’s conclusions on its review of wholesale local access markets and wholesale broadband access markets in the Hull Area by identifying markets, making certain market power determinations and setting SMP conditions. At Annex 6 of that document, Ofcom published

a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“July 2018 Notification”).

4. On 28 June 2019, Ofcom published a statement entitled “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets” (“2019 Statement”). The 2019 Statement set out Ofcom’s conclusions on its review of, among others, the business connectivity market by identifying markets, making certain market power determinations and setting SMP conditions. At Annex 26 of that document, Ofcom published a notification under section 48(1) of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“June 2019 Notification”).
5. On 16 July 2020, Ofcom published a consultation document entitled “Hull Area: Wholesale Fixed Telecoms Market Review 2020” (the “Consultation”). In the Consultation, Ofcom proposed to identify markets, make market power determinations and set and revoke SMP services conditions in relation to KCOM under section 45 of the Communications Act 2003. It gave notice of proposals for SMP conditions and directions to be imposed on KCOM. It also proposed to revoke some SMP conditions and directions currently applicable to KCOM.
6. Copies of the Consultation referred to in paragraph 5 were sent to the Secretary of State in accordance with sections 48C(1), and 81(1) of the Act.
7. Ofcom received several responses to its proposals set out in the Consultation referred to in paragraph 5 above and it has considered every such representation. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of those proposals.

## Decision on market identifications and market power determinations

8. Ofcom has identified the markets listed in Column 1 of **Table A** below for the purpose of making a determination that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market. In identifying these markets, Ofcom is satisfied that the criteria in subsection 79(2B) of the Act are met;

**Table A: Market identifications and market power determinations**

Column 1: Market Identification	Column 2: Market power determination
(i) The supply of wholesale local access at a fixed location in the Hull Area	KCOM
(ii) The supply of wholesale leased lines access services in the Hull Area	KCOM

## Decision to set, apply and revoke SMP services conditions

9. Ofcom is setting, in relation to the markets (i) and (ii) identified in Table A above, the SMP conditions as set out in **Schedule 1** to this notification and which are to be applied to KCOM to the extent specified in that Schedule. These SMP conditions shall, unless otherwise stated in that Schedule, take effect from 1 November 2021. Section 4 of the Interpretation Act 1978 (c. 30) (“the Interpretation Act”) shall apply as if this setting of the SMP conditions were a commencement of an enactment by an Act of Parliament.
10. The effect of, and Ofcom’s reasons for, the decisions in relation to the SMP conditions referred to in this notification are set out in the Statement which accompanies this notification.
11. Subject to the savings in paragraph 12, Ofcom is (to the extent still extant) revoking with effect from 1 November 2021 the SMP conditions applied to KCOM as set out in the November 2017 Notification in so far as they apply to: wholesale fixed analogue exchange lines services in the Hull Area; wholesale call origination on a fixed narrowband network in the Hull Area; Interconnect Circuits in the Hull Area; wholesale ISDN30 Exchange Line services in the Hull Area; and wholesale ISDN2 Exchange Line services in the Hull Area.

12. The savings in this paragraph relate to the SMP Conditions in Schedule 2 to Annexes 9 - 10 of the November 2017 Notification. In relation to the markets and interconnection specified in Column 1 of Table B below, the SMP Conditions listed in Column 2 shall, to the extent they apply to the market concerned, continue to apply in relation to the provision of services to the customers listed in Column 3 until they are revoked with effect on the day which is one year from 1 November 2021. Sections 16 and 17(1) of the Interpretation Act shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.

**Table B: Narrowband Markets/interconnection**

<b>Column 1: Market/interconnection</b>	<b>Column 2: SMP Conditions</b>	<b>Column 3: Customer</b>
The supply of Wholesale fixed analogue exchange line services in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 2, 4, 5 (except 5.2B, 5.3B, 5.4B, 5.4C, 5.4D, 5.5B, 5.6B)	Existing Wholesale Fixed Analogue Exchange Line Customers
The supply of wholesale ISDN30 Exchange Line services in the Hull Area	Conditions 1B, 1C (except 1C.1B), 2, 4, 5 (except 5.2B, 5.3B, 5.4A, 5.4C, 5.4D, 5.5B, 5.6B)	Existing ISDN30 Customers
The supply of wholesale ISDN2 Exchange Line services in the Hull Area	Conditions 1B, 1C (except 1C.1A), 2, 4, 5 (except 5.2B, 5.3B, 5.4A, 5.4C, 5.4D, 5.5B, 5.6B)	Existing ISDN2 Customers
The supply of Wholesale call origination on a fixed narrowband network in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 4 (except 4.3, 4.9), 5 (except 5.2A, 5.3A, 5.4A, 5.4B, 5.4C, 5.5A, 5.6A, 5.7)	Existing WCO Customers
The supply of Interconnect Circuits in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 4 (except 4.3, 4.9), 5 (except 5.2A, 5.3A, 5.4A, 5.4B, 5.4D, 5.5A, 5.6A, 5.7)	Existing WCO Customers

13. Ofcom is also (to the extent still extant) revoking the SMP conditions applied to KCOM as set out in:

- a. the 2004 Regulatory Accounting Notification;
- b. the July 2018 Notification; and
- c. the June 2019 Notification in so far as it applies to the wholesale market for CI Access services (as defined in that Notification) in the Hull Area.

with effect from 1 November 2021.

14. Sections 16 and 17(1) of the Interpretation Act shall apply as if these revocations were a repeal of an enactment by an Act of Parliament.

### **Ofcom's duties and legal tests**

15. In identifying and analysing the markets referred to in Table A above, and in considering whether to make the corresponding determinations set out in this notification, Ofcom has, in accordance with section 79 of the Act and where considered relevant, had regard to EECC materials<sup>1</sup>.
16. Ofcom considers that the SMP conditions above comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition, and further that the revocations of the SMP conditions referred to above comply with the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.
17. In making all of the decisions referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has taken account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive<sup>2</sup> where the recommendations appear to Ofcom to be relevant.
18. Ofcom has also had regard to the Statement of Strategic Priorities in making the decisions referred to in this notification.

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<sup>1</sup> Section 79(6A) of the Act defines "EECC materials" as "recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directive or the EECC Directive (including those published after IP completion day)." i.e. after 31 December 2020.

<sup>2</sup> The EECC Directive has replaced among other things the Framework Directive with effect from 21 December 2020.

## Interpretation

19. For the purpose of interpreting this notification —

- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 20 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
- (b) headings and titles shall be disregarded;
- (c) expressions cognate with those referred to in this notification shall be construed accordingly; and
- (d) the Interpretation Act shall apply as if this notification were an Act of Parliament.

20. In this notification—

- (a) "**Access Agreement**" means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with an SMP Condition requiring network access;
- (b) "**Act**" means the Communications Act 2003 (c. 21);
- (c) "**EECC Directive**" means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast);
- (d) "**Existing ISDN2 Customer**" means a Third Party who ordered wholesale ISDN2 Exchange Line services from KCOM prior to 1 December 2018;
- (e) "**Existing ISDN30 Customer**" means a Third Party who ordered wholesale ISDN30 Exchange Line services from KCOM prior to 1 December 2018;
- (f) "**Existing WCO Customer**" means a Third Party which is either an Existing Wholesale Fixed Analogue Exchange Line Customer, and Existing ISDN2 Customer or an Existing ISDN30 Customer, with whom KCOM has an Access Agreement for the provision of Wholesale Call Origination as at 1 November 2021;

- (g) “**Existing Wholesale Fixed Analogue Exchange Line Customer**” means a Third Party with whom KCOM has an Access Agreement for the provision of Wholesale Fixed Analogue Exchange Lines from KCOM as at 1 November 2021;
- (h) “**Framework Directive**” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended;
- (i) “**Hull Area**” means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);
- (j) “**ISDN2 Exchange Line**” means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Basic Rate Access standard as defined by the International Telecommunications Union, providing two digital channels with a bandwidth of 64 kbit/s each plus a control channel of 16kbit/s over a common digital bearer circuit;
- (k) “**ISDN30 Exchange Line**” means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Primary Rate Access standard as defined by the International Telecommunications Union, providing up to 30 digital channels with a bandwidth of 64 kbit/s per channel plus a control channel of 64 kbit/s;
- (l) “**ISDN**” means the integrated services digital network which is an electronic communications 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;
- (m) “**July 2018 Notification**” has the meaning given to it in paragraph 3;
- (n) “**June 2019 Notification**” has the meaning given to it in paragraph 4;



- (o) “**KCOM**” means KCOM Group Limited, whose registered company number is 02150618;
- (p) “**November 2017 Notification**” has the meaning given to it in paragraph 2;
- (q) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- (r) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019;
- (s) “**United Kingdom**” has the meaning given to it in the Interpretation Act;
- (t) “**wholesale leased lines access services**” means symmetric point-to-point uncontended business connectivity circuits between end-user sites and the first point of aggregation or between customer sites (without aggregation); and
- (u) “**2004 Regulatory Accounting Notification**” has the meaning given to it in paragraph 1.

21. The Schedule to this notification shall form part of this notification.

**Signed**



David Clarkson

Competition Policy Director, Ofcom

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002**

28 October 2021

## Schedule 1: SMP conditions

### Part 1: Application

- The SMP conditions in Part 3 of this Schedule 1, except where specified otherwise, apply to the Dominant Provider in each of the following relevant markets listed in Column 1 of Table 1 below to the extent specified in Column 2 of Table 1. Save as otherwise specified in any condition, each condition shall enter into force on 1 November 2021 and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

**Table 1: Relevant markets for the purposes of this Schedule**

Column 1: Relevant Market(s)	Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1
The supply of wholesale local access at a fixed location in the Hull Area	Conditions 1, 3, 4, 5 (except 5.3), 6, 7 (except 7.3), 8, 9
The supply of wholesale leased lines access services in the Hull Area	Conditions 1, 2, 4, 5 (except 5.2(h) and 5.2(p)), 6, 7 (except 7.2), 8, 9, 10

- The Conditions referred to in paragraph 1 above are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	Specific forms of network access

Condition 3	Requests for new forms of network access
Condition 4	No undue discrimination
Condition 5	Publication of a Reference Offer
Condition 6	Notification of charges and terms and conditions
Condition 7	Notification of technical information
Condition 8	Quality of service
Condition 9	Regulatory Financial Reporting
Condition 10	Provision of a Wholesale Pricing Transparency Report (PTR)

## Part 2: Interpretation

1. In addition to the definitions set out above in this notification and in each Condition below (where relevant), in this Schedule 1—
  - a) **“Access Change Notice”** means a notice given by the Dominant Provider of an Access Change;
  - b) **“Access Change”** means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;
  - c) **“Access Circuit”** means network access providing uncontended bandwidth connecting an end user premises to—
    - (a) an ODF Site, including a building designated by the Dominant Provider for use as an ODF Site in future; or
    - (b) a Third Party premises;
  - d) **“Ancillary Services”** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of network access provided by the Dominant Provider in accordance with Condition 1 or Conditions 1 and 2 (as applicable).
  - e) **“Dark Fibre Access”** means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals;
  - f) **“Dominant Provider”** means KCOM Group Limited, whose registered company number is 02150618, and any of its subsidiaries as defined in section 1159 of the Companies Act 2006;
  - g) **“Dominant Provider’s Price List”** means a document containing the charges for the Dominant Provider’s products and services;
  - h) **“Ethernet Services”** means services presented with the standard networking protocol defined under that name in IEEE 802.3 and published by the Institute of electrical and Electronics Engineers;

- i) **“Financial Year”** means the period from 1 April in a given year to 31 March in the following year;
- j) **“In-Building Handover”** means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party within an ODF Site of the Dominant Provider;
- k) **“ODF”** means optical distribution frame;
- l) **“ODF Site”** means the site of an operational building of the Dominant Provider that houses an optical distribution frame;
- m) **“Reference Offer”** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;
- n) **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- o) **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- p) **“Special Offer”** means a temporary price reduction for a particular product or service, applicable to all customers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is no higher than the price immediately before the start of that period;
- q) **“Specified Services”** means the services or groups of services that KCOM is required to report to Ofcom pursuant to Direction 4, Annexes 19 and 20;
- r) **“Third Party”** means a person, other than KCOM, providing a public electronic communications service or a person providing a public electronic communications network;
- s) **“Wholesale End-to-End Circuits”** means network access providing uncontended bandwidth connecting an end user premises and another end user premises;
- t) **“Wholesale Pricing Transparency Report”** means a report required under Condition 10 to be provided to Ofcom; and

u) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

2. For the purpose of interpreting this Schedule, except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Schedule shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products or services which are in the opinion of Ofcom substantially similar to those products. These product definitions, including quality assurance information and pricing are as at 12 October 2021 on the product information pages on the following websites: as to WLA: [http://pricing.kcomhome.com/media/1573/p13-s27\\_wholesale\\_fibreline\\_local\\_access.pdf](http://pricing.kcomhome.com/media/1573/p13-s27_wholesale_fibreline_local_access.pdf); and as to LL Access [http://pricing.kcomhome.com/media/1476/p13-s19\\_ethernet\\_connect\\_access\\_service.pdf](http://pricing.kcomhome.com/media/1476/p13-s19_ethernet_connect_access_service.pdf) and [http://pricing.kcomhome.com/media/1475/p13-s10\\_ethernet\\_direct\\_access\\_service.pdf](http://pricing.kcomhome.com/media/1475/p13-s10_ethernet_direct_access_service.pdf).

## Part 3: SMP conditions

### Condition 1 – Network access on reasonable request

- 1.1** Except insofar as Ofcom may from time to time otherwise consent in writing, and subject to Condition 1.2 the Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2** Condition 1.1 does not apply to requests for copper-based network access.
- 1.3** The provision of network access by the Dominant Provider in accordance with this Condition must:
- (a) take place as soon as reasonably practicable after receiving the request from a Third Party; and
  - (b) be on:
    - (i) fair and reasonable terms, conditions and charges; and
    - (ii) such terms, conditions and charges as Ofcom may from time to time direct.
- 1.4** The provision of network access by the Dominant Provider in accordance with this Condition must also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.
- 1.5** The provision of network access by the Dominant Provider in accordance with this Condition shall also include such Ancillary Services as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.

**1.6** The Dominant Provider must comply with any direction Ofcom may make under this Condition.



## **Condition 2 – Specific forms of network access**

- 2.1** Without prejudice to the generality of Condition 1, except insofar as Ofcom may from time to time otherwise consent in writing, the provision of network access under that Condition must include, where the Third Party, in writing, reasonably requests, the form of network access specified in this Condition.
- 2.2** Ethernet Services including the provision of the following services:
- (i) Access Circuits;
  - (ii) Wholesale End-to-End Circuits.
- 2.3** Dark Fibre Access including provision of the following services:
- (i) Access Circuits;
  - (ii) Wholesale End-to-End Circuits.
- 2.4** The provision of network access by the Dominant Provider in accordance with this Condition shall also include such other entitlements as Ofcom may from time to time direct.
- 2.5** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

### **Condition 3 – Requests for new forms of network access**

- 3.1** The Dominant Provider must, for the purposes of transparency, publish guidelines in relation to requests for new forms of network access made to it. Such guidelines must set out:
- (a) the form in which such a request should be made;
  - (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access;
  - (c) the timescales in which such requests will be handled by the Dominant Provider; and
  - (d) any provisions directed by Ofcom.
- 3.2** The guidelines must meet the following principles:
- (a) the process for consideration of requests shall be documented end-to-end;
  - (b) the timescales for each stage of the process shall be reasonable, including providing (where relevant) adequate time for interested persons other than the Third Party making the request to make representations;
  - (c) the criteria by which requests will be assessed shall be clearly identified;
  - (d) the process for determining, with a Third Party that has made a request, the information in that request that is to be treated as confidential, shall be documented end-to-end;
  - (e) the reasons for rejecting any request shall be clear and transparent;
  - (f) the avenues of redress for rejected requests shall be clearly identified; and
  - (g) any changes to the guidelines shall be agreed between the Dominant Provider and other communications providers in an appropriate manner.
- 3.3** The Dominant Provider must, upon reasonable request from a Third Party considering making a request for a new form of network access, provide that Third

Party with such information as may be reasonably required to enable that Third Party to make a request for a new form of network access. Such information must be provided within a reasonable period.

**3.4** Except in so far as OFCOM may from time to time otherwise consent in writing, where the Dominant Provider receives a request from a Third Party for a new form of network access the Dominant Provider must:

- (a) deal with the request in accordance with the guidelines described in Condition 3.1 above;
- (b) inform the party making the request that the request falls within the scope of the guidelines described in Condition 3.1 above; and
- (c) publish the non-confidential elements of the request no later than 5 days after receipt of the request.

**3.5** Publication pursuant to Condition 3.4(c) shall be effected by the Dominant Provider placing a copy of the non-confidential elements of the request on any relevant publicly accessible website, which for the avoidance of doubt shall not require password access, operated or controlled by the Dominant Provider:

- (a) prominently; and
- (b) in such form and/or manner as OFCOM may from time to time direct.

**3.6** A modification of a request for a new form of network access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, must be considered as a new request.

**3.7** The Dominant Provider must, in accordance with the requirements of Conditions 3.8 and 3.9 below, publish in relation to requests the information specified in KPIs (i) to (x) below, and any such additional information as OFCOM may from time to time direct.

**KPI(i) – Total number of requests received**

the total number of requests that were received by the Dominant Provider during the corresponding Relevant Period;

**KPI(ii) - Total number of 25-day Unanswered Requests**

for the corresponding Relevant Period, the total number of requests received by the Dominant Provider in respect of which the Dominant Provider has not provided a response within 24 Working Days of that request having been received;

**KPI(iii) - Total number of 75-day Unanswered Requests**

for the corresponding Relevant Period, the total number of requests received by the Dominant Provider in respect of which the Dominant Provider has not provided a response within 74 Working Days of that request having been received;

**KPI(iv) – Total number of Accepted Requests**

the total number of requests that were accepted by the Dominant Provider during the corresponding Relevant Period;

**KPI(v) – Total number of Rejected Requests**

the total number of requests that were rejected by the Dominant Provider during the corresponding Relevant Period;

**KPI(vi) – Total number of 25-day Rejected Requests**

the total number of requests that were rejected by the Dominant Provider more than 25 Working Days after being received by the Dominant Provider during the corresponding Relevant Period;

**KPI(vii) – Total number of 45-day Rejected Requests**

the total number of requests that were rejected by the Dominant Provider more than 45 Working Days after being received by the Dominant Provider during the corresponding Relevant Period;

**KPI(viii) – Total number of Project Plans**

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request during the corresponding Relevant Period;

**KPI(ix) – Total number of 80-day Project Plans**

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request more than 80 Working Days after being received by the Dominant Provider; and

**KPI(x) – Total number of 95-day Project Plans**

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request more than 95 Working Days after being received by the Dominant Provider.

**3.8** The information required to be published under Condition 3.7 above must be published by the Dominant Provider no later than one month after the end of each Relevant Period.

**3.9** Publication referred to in Condition 3.7 shall be effected by the Dominant Provider:

(a) placing the information prominently (including in such form as OFCOM may from time to time direct) on any relevant publicly accessible website operated or controlled by the Dominant Provider, which for the avoidance of doubt shall not require password access; and

(b) sending a copy of the information to OFCOM.

**3.10** In this Condition 3:

(a) “**Project Plan**” means an agreed plan between the Dominant Provider and a Third Party on project execution and project control for the development for a new form of network access. For the avoidance of doubt, Project Plans are agreed between the Dominant Provider and a Third Party with a view to concluding an Access Agreement; and

(b) “**Relevant Period**” means the following periods of six months beginning either (as applicable) on:

- (i) 1 August and ending on 31 January; and
- (ii) 1 February and ending on 31 July.

**3.11** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition requiring amendments to the guidelines.

#### **Condition 4 – No undue discrimination**

- 4.1** Except insofar as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Conditions 1 and 2, as applicable.
- 4.2** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

## Condition 5 – Publication of a Reference Offer

- 5.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish a Reference Offer in relation to the provision of network access pursuant to Conditions 1 and 2 (as applicable) and act in the manner set out below.
- 5.2** Subject to Condition 5.11, the Dominant Provider must ensure that a Reference Offer in relation to the provision of network access pursuant to Condition 1 or Conditions 1 and 2 (as applicable) includes, where applicable, at least the following, and any other matters Ofcom may direct from time to time —
- 5.2(h) and 5.2(p) only apply to WLA**
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
  - (b) the locations at which network access will be provided;
  - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
  - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
  - (e) any ordering and provisioning procedures;
  - (f) relevant charges, terms of payment and billing procedures;
  - (g) details of maintenance and quality as follows—
    - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, and for provision of support services (such as fault handling and repair);
    - (ii) Service Level Commitments, namely the quality standards that each party must meet when performing its contractual obligations;



- (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
- (iv) a definition and limitation of liability and indemnity; and
- (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (h) details of measures to ensure compliance with requirements for network integrity;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of providing Accommodation Services or location of masts);
- (n) the standard terms and conditions for the provision of network access;
- (o) details of interoperability tests; and
- (p) details of traffic and network management.

### **5.3**

#### **LL Access**

Subject to Condition 5.11, and to the extent not already required by Condition 5.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Dark Fibre Access includes an explanation of differences (if any) between:

- (a) the matters set out in Condition 5.2 which apply to the provision of the Dark Fibre Access; and
- (b) the matters set out in Condition 5.2 which apply to the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Condition 2.2 above.

### **5.4**

To the extent that the Dominant Provider provides to itself network access that:

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any Third Party, the Dominant Provider must ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Condition 5.2(a) to (p) and any other matters Ofcom may direct from time to time .

- 5.5** Subject to Condition 5.7 below, the Dominant Provider must, on the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force.
- 5.6** The Dominant Provider must update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided as soon as reasonably practicable after the date that this Condition enters into force.
- 5.7** In relation to publication of the Reference Offer relating to Dark Fibre Access, the Dominant Provider must publish a Reference Offer which includes all relevant matters set out in Condition 5.2 by no later than nine months after the date on which this Condition enters into force.
- 5.8** Publication referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by the Dominant Provider.
- 5.9** The Dominant Provider must send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 5.10** Where Service Level Guarantees are required by this Condition 5, any payments required by the Service Level Guarantees must be provided proactively, and without prejudice to the right of either party to claim for additional loss.



## **Condition 6 – Notification of charges and terms and conditions**

- 6.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this Condition.
- 6.2** Where it proposes an Access Change, the Dominant Provider must send to Ofcom, and to every person with whom it has entered into an Access Agreement pursuant to Condition 1 or Conditions 1 and 2 (as applicable), an Access Change Notice.
- 6.3** The obligation in Condition 6.2 shall not apply where the Access Change is directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.

**6.4**

An Access Change Notice must:

- (a) in the case of an Access Change involving new network access, be sent not less than 28 days before any such amendment comes into effect;
- (b) in the case of an Access Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, the introduction of a Special Offer), be sent not less than 28 days before any such amendment comes into effect;
- (c) in the case of an Access Change relating to the end of a temporary price reduction in accordance with the terms of the Special Offer, be sent not less than 28 days before any such amendment comes into effect; and
- d) in the case of any other Access Change involving existing network access, be sent not less than 56 days before any such amendment comes into effect.

**6.5**

The Dominant Provider must ensure that an Access Change Notice includes—

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;
- (c) the current and proposed new charge and/or current and proposed new terms and conditions (as the case may be); and
- (d) the date on which, or the period for which, the Access Change will take effect (the "**effective date**").



## Condition 7 – Notification of technical information

**7.1** Except in so far as Ofcom may from time to time otherwise consent in writing, where the Dominant Provider provides network access pursuant to Condition 1 or Conditions 1 and 2 (as the case may be) and proposes new or amended terms and conditions relating to the following—

(a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);

(b) the locations at which network access will be provided; or

(c) technical standards (including any usage restrictions and other security issues),

the Dominant Provider must publish a written notice (the “**Notice**”) of the new or amended terms and conditions within a reasonable time period.

**7.2** The reasonable notice referred to in Condition 7.1 must be not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect.

[WLA  
only]

**7.3** Save where the new or amended terms and conditions relate to or are a consequence of new or amended technical specifications determined by NICC Standards Limited (whose registered company number is 06613589), the reasonable notice referred to in Condition 7.1 must be not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect.

[LL  
Access  
only]

**7.4** The obligation in Condition 7.1 shall not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act;

**7.5** The Dominant Provider must ensure that the Notice includes—







## **Condition 9 – Regulatory Financial Reporting**

- 9.1** Except in so far as Ofcom may consent otherwise in writing, the Dominant Provider shall act in the manner set out in this Condition 9.
- 9.2** Ofcom may from time to time make such directions as they consider appropriate in relation to the Dominant Provider’s Cost Accounting System, Accounting Separation System and its obligations under this Condition 9;
- 9.3** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 9.
- 9.4** For the purpose of this Condition 9, publication shall be effected by:
- (a) placing a copy of the relevant information on any relevant publicly accessible website, which for the avoidance of doubt shall not require password access, operated or controlled by the Dominant Provider; and
  - (b) sending a copy of the relevant information to any person at that person’s written request.

### **Requirements relating to the preparation, audit, delivery and publication of the Regulatory Financial Statements**

- 9.5** The Dominant Provider shall in respect of the Market and the Disaggregated Activities (as applicable) for each Financial Year:
- (a) prepare such Regulatory Financial Statements as directed by Ofcom from time to time in accordance with the Accounting Documents (the relevant Accounting Documents to be identified in the Regulatory Financial Statements by reference to their date);
  - (b) secure the expression of an audit opinion upon the Regulatory Financial Statements as directed by Ofcom from time to time;
  - (c) deliver to Ofcom the Regulatory Financial Statements and corresponding audit opinion identified as directed by Ofcom from time to time and in accordance with Condition 9.6(a);

- (d) publish the Regulatory Financial Statements and corresponding audit opinion as directed by Ofcom from time to time and in accordance with Condition 9.6(b) and (c);
- (e) ensure that any Regulatory Financial Statements and corresponding audit opinion that it delivers to Ofcom and/or publishes are fit for such purpose (or purposes), if any, as notified by Ofcom in writing;
- (f) in so far as it is reasonably practicable to monitor the effect of such changes, deliver to Ofcom a report detailing any changes in the Accounting Documents, any Process and any other methodology which caused any figure presented on any one of the Regulatory Financial Statements to change by more than 5% from the figure that would have been presented had such a change not been made. Any such report shall include details sufficient to render transparent such changes in accordance with any relevant direction Ofcom may make from time to time; and
- (g) in respect of the Financial Year beginning on 1 April 2021 and ending on 31 March 2022, prepare the Regulatory Financial Statements and all associated documents and records required by this condition and the directions made under this condition, as if this condition and the directions made under this condition had applied from 1 April 2021.

**9.6** The Dominant Provider shall:

- a. deliver to Ofcom copies of the Regulatory Financial Statements and any corresponding audit opinion, each and all of which shall be in the form in which they are ultimately to be published, at least two weeks before they are required to be published;
- b. publish the Regulatory Financial Statements and any corresponding audit opinions within 9 months after the end of the period to which they relate; and
- c. publish with the Regulatory Financial Statements any written statement made by Ofcom and provided to the Dominant Provider commenting on the data in, the notes to or the presentation of any

or all of the Regulatory Financial Statements and/or the Accounting Documents.

- 9.7** The Dominant Provider shall make such amendments to the form and content of the Regulatory Financial Statements as are necessary to give effect fully to the requirements of this Condition 9. The Dominant Provider shall provide to Ofcom particulars of any such amendment, the reasons for it and its effect, when it delivers the Regulatory Financial Statements to Ofcom.
- 9.8** The Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of this Condition 9 on a current cost basis and shall be capable of doing so in relation to any period. Such Financial Statements, explanations or other information shall be, in the opinion of Ofcom, meaningfully reconcilable to the Statutory Financial Statements.
- 9.9** The Dominant Provider shall ensure that Accounting Policies shall be applied consistently within the same Regulatory Financial Statements, between Regulatory Financial Statements for the same Financial Year and from one Financial Year to the next. Each Regulatory Financial Statement shall include Prior Year Comparatives which shall be prepared on a basis consistent with Current Year Figures. The Dominant Provider may depart from this requirement in preparing the Regulatory Financial Statements for a Financial Year if there are reasons for doing so provided that the particulars of the departure, the reasons for it and its effect are stated in a note in the Regulatory Financial Statements in accordance with Accounting Standards and GAAP.
- 9.10** The Dominant Provider shall secure that sufficient checks, controls and meaningful reconciliations are performed between figures contained in the Regulatory Financial Statements and the accounting records (or between figures supplied by either the Cost Accounting System or the Accounting Separation System upon which the Regulatory Financial Statements rely and (i) other figures supplied by either the Cost Accounting System or the Accounting Separation System and/or (ii) the accounting records) to:

- a. enable the Regulatory Auditor to conclude that, in its opinion, both the Cost Accounting System and the Accounting Separation System complies with the Accounting Documents; and
- b. enable the Regulatory Financial Statements to be audited and an audit opinion expressed upon them in accordance with any relevant direction of Ofcom under this Condition 9.

**9.11** The Dominant Provider shall preserve records sufficient to provide an adequate explanation of each Regulatory Financial Statement for a period of six years from the date on which each Regulatory Financial Statement is delivered to Ofcom.

### **Requirements relating to audit of the Regulatory Financial Statements**

**9.12** The Regulatory Auditor that the Dominant Provider from time to time appoints shall at all times be satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall notify Ofcom in writing of the Auditor appointed to secure compliance with this Condition 9 before the Auditor carries out any work for that purpose. The Dominant Provider shall notify Ofcom of any proposed change of Regulatory Auditor 28 days before effect is given to that change.

**9.13** In the event that the Regulatory Auditor is in the opinion of Ofcom unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Regulatory Auditor that is at all times satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall ensure that the Alternative Regulatory Auditor:

- a. carries out such on-going duties as are required to secure compliance with this Condition 9;
- b. carries out work or further work, in addition to that performed by the Statutory Auditor and/or by the former Regulatory Auditor, in relation to such matters connected to compliance with this Condition 9 as are of concern to Ofcom and notified to the Dominant Provider in writing; and/or

- c. re-performs work previously performed by the Statutory Auditor and/or by the former Regulatory Auditor in relation to such matters connected to compliance with this Condition as are of concern to Ofcom and notified to the Dominant Provider in writing.

- 9.14** The Dominant Provider shall extend to the Alternative Regulatory Auditor such assistance and cooperation as would be extended to the Statutory Auditor and/or to the Regulatory Auditor and, to the extent similar assistance and co-operation may be required from the Statutory Auditor and/or from the former Regulatory Auditor, the Dominant Provider shall use its best endeavours to secure such assistance and co-operation.
- 9.15** The Dominant Provider's letter of engagement appointing the Regulatory Auditor shall include such provisions acknowledging the acceptance by the Regulatory Auditor of duties and responsibilities to Ofcom in respect of its audit work, audit report and audit opinion as are consistent with the ICAEW Guidance.
- 9.16** The Dominant Provider shall use its best endeavours to obtain from the Regulatory Auditor any further explanation and clarification of any audit opinion required under this Condition 9 and any other information in respect of the matters which are the subject of that audit opinion as Ofcom shall require.

#### **Requirements relating to the Primary and Secondary Accounting Documents**

- 9.17** The Dominant Provider shall prepare, maintain and keep up-to-date the Primary and Secondary Accounting Methodology Documents in accordance with this Condition 9.
- 9.18** The Dominant Provider must deliver an up-to-date version of the Primary and Secondary Accounting Documents to Ofcom when it delivers the Regulatory Financial Statements to Ofcom.
- 9.19** The Dominant Provider shall publish an up-to-date version of the Primary and Secondary Accounting Documents on or before the day of publication of the Regulatory Financial Statements.
- 9.20** Insofar as there is any inconsistency between any or all of the Primary Accounting

Documents, the Primary Accounting Documents shall have the following order of priority:

- (a) the Regulatory Accounting Principles;
- (b) the Attribution Methods;
- (c) the Transfer Charge System Methodology;
- (d) the Accounting Policies.

### **Requirements relating to the up-dating of systems, Accounting Documents and form and content**

**9.21** The Dominant Provider shall make such amendments as are from time to time required to:

- (a) the Cost Accounting System and the Accounting Separation System;
- (b) the Accounting Documents; and
- (c) the form and content of the Financial Statements,

in order to ensure that they are consistent with, and give effect fully to:

- i. any modifications of any SMP conditions;
- ii. any formal undertakings given by the Dominant Provider to Ofcom following investigations by them into possible contraventions by the Dominant Provider of any SMP conditions or any provisions of the Act and following any dispute considered by Ofcom under the Act; and
- iii. any enforcement notifications, directions, consents and determinations given or made by Ofcom from time to time under any SMP condition or under the Act or in relation to any dispute considered by Ofcom under the Act, and the Dominant Provider shall make such amendments, and notify Ofcom in writing of such amendments, within three months of the modifications, formal undertakings,

enforcement notifications, directions, consents and determinations having been made, provided that the requirements of this paragraph shall be suspended pending the final disposal of any proceedings seeking to have any such modifications, enforcement notifications, directions, consents, or determinations, quashed, set aside, modified or varied.

### **Requirements relating to deficiencies in the Regulatory Financial Statements and the Accounting Documents**

**9.22** Where Ofcom have reasonable grounds to believe that any or all of the Regulatory Financial Statements and/or Accounting Documents are deficient, the Dominant Provider shall, where directed by Ofcom,

- (a) amend the Accounting Documents in order to remedy the deficiencies identified by Ofcom;
- (b) restate the Regulatory Financial Statements identified by Ofcom as requiring restatement in accordance with the Accounting Documents which have, where necessary, been amended pursuant to subparagraph (a);
- (c) secure in accordance with any relevant direction of Ofcom under this Condition the expression of an audit opinion on the restated Regulatory Financial Statements;
- (d) deliver to Ofcom the restated Regulatory Financial Statements and corresponding audit opinion; and
- (e) publish the restated Regulatory Financial Statements and corresponding audit opinion.

### **Requirements relating to the maintenance of sufficient accounting records**

**9.23** The Dominant Provider shall maintain accounting records in a form which, on a historical cost basis and on a current cost basis:

- (a) enables the Network Services, and, insofar as they have been disaggregated in terms of Network Activities, each of the Network Activities, to be separately identified; and the costs, revenues, assets and liabilities of the Network Services,



and, insofar as they have been disaggregated in terms of Network Activities, each of the Network Activities, to be separately attributable;

(b) enables the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, each of the Accounting Separation Activities, to be separately identified; and the revenues, costs, assets and liabilities of the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, the revenues, costs, assets and liabilities of each of those Accounting Separation Activities, to be separately attributable; and

(c) shows and explains the transactions of the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, the transactions of each of the Accounting Separation Activities.

**9.24** The accounting records referred to in Condition 9.23 and all associated documentation shall be, as appropriate:

- (a) maintained in accordance with the Accounting Documents;
- (b) maintained in order to ensure compliance with this Condition 9;
- (c) sufficient to enable the Regulatory Financial Statements to have expressed upon them any relevant audit opinion required under this Condition 9;
- (d) sufficient to ensure that charges for Network Access can be shown to be fair and reasonable and not to be unduly discriminatory; and
- (e) sufficient to provide a complete justification of the Dominant Provider's charges for Network Access; and
- (f) sufficient, to provide a complete justification of the Dominant Provider's charges for the provision of services to End Users.

### **Requirements relating to the preparation and maintenance of a Wholesale Catalogue**

**9.25** The Dominant Provider must prepare, maintain and keep up-to-date a Wholesale Catalogue, in which:

(a) each of its Wholesale Services is identified as either an External Wholesale Service and placed on the External Wholesale Services List or an Internal Wholesale Service and placed on the Internal Wholesale Services List or, where appropriate, is identified as being both an External Wholesale Service and an Internal Wholesale Service and placed on both the External Wholesale Services List and the Internal Wholesale Services List;

(b) an accurate description is prepared of each of the Dominant Provider's Internal Wholesale Services, External Wholesale Services and Wholesale Activities sufficient to enable them to determine whether these activities have been appropriately identified and sufficiently described; and

(c) an accurate description is prepared of each of the Dominant Provider's Network Services and the extent to which these activities are used in the course of supplying Wholesale Services sufficient to enable them to determine whether these activities and their use have been appropriately identified and adequately described.

**9.26** The Dominant Provider shall deliver the Wholesale Catalogue to Ofcom when it delivers the Regulatory Financial Statements to Ofcom.

#### **Further accounting separation requirements**

**9.27** The Dominant Provider shall maintain a separation for accounting purposes of the Accounting Separation Market Activities from other activities and of Accounting Separation Activities from other activities, so as to:

(a) identify all elements of revenue, cost, assets and liabilities, with the basis of their calculation and the detailed attribution methods used, related to the Accounting Separation Market Activities and Accounting Separation Activities including an itemised breakdown of fixed assets; and

- (b) ensure that Accounting Separation Market Activities and Accounting Separation Activities are identified and are recorded at an appropriate amount in accordance with the Accounting Documents.

### **Requirements relating to the demonstration of non-discrimination**

**9.28** The Dominant Provider shall ensure it is able to demonstrate that at any point in time:

- (a) where a Network Service or combination of Network Services is used by the Dominant Provider in providing Internal Wholesale Services, the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in respect of the use of the Network Services is equivalent to the amount applied and incorporated for the use of the Network Services or combination of Network Services in the charge payable for an equivalent External Wholesale Service;
- (b) the same amount as applied and incorporated in the Transfer Charge for the Internal Wholesale Service in subparagraph (a) in respect of the use of the Network Services is applied to the Network Service or combination of Network Services whenever it is used by the Dominant Provider in providing an Internal Wholesale Service;
- (c) the same amount as applied and incorporated in the Transfer Charge for the equivalent External Wholesale Service in subparagraph (a) in respect of the use of the Network Services is applied to the Network Service or combination of Network Services whenever it is used by the Dominant Provider in providing an External Wholesale Service; and
- (d) the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in subparagraph (a) in respect of the use of the Network Services shall be the cost of those Network Services unless the Network Service concerned is one of the Accounting Separation Activities.

### **Definitions**

**9.29** For the purpose of interpreting this Condition 9 the following definitions shall apply:

**“Accounting Documents”** means together the Primary Accounting Documents, the Secondary Accounting Documents, and either the Wholesale Catalogue or the Retail Catalogue as appropriate, all as amended from time to time in accordance with this Condition 9;

**“Accounting Policies”** means the manner in which the requirements of the Companies Act 2006, the Accounting Standards and the accounting policies whenever not superseded by the Regulatory Accounting Principles, are applied by the Dominant Provider in each of the Regulatory Financial Statements;

**‘Accounting Separation Activities’** means Wholesale Services and those Wholesale Activities, Network Services and Network Activities used directly or indirectly in the course of supplying Wholesale Services;

**‘Accounting Separation Attribution’** means the totality of all apparatus, data, procedures and activities which the Dominant Provider uses or holds for use to determine the costs, revenues, assets and liabilities to be attributed to an activity, either based upon data recorded by an Accounting Separation Measuring System or otherwise;

**‘Accounting Separation Market Activities’** means all of the Wholesale Services supplied in the Market and all of the Wholesale Activities, Network Services and Network Activities used directly or indirectly in the course of supplying those Wholesale Services;

**‘Accounting Separation Measuring System’** means the totality of all apparatus, systems, data, procedures and activities which the Dominant Provider uses or holds for use to determine the extent to which costs, revenues, assets and liabilities are to be attributed to activities related to Network Access;

**‘Accounting Separation System’** means the Accounting Separation Attribution and Accounting Separation Measuring System taken together;

**‘Accounting Standards’** means the accounting standards by reference to which the

Dominant Provider are required to prepare the Statutory Financial Statements;

**'Alternative Regulatory Auditor'** means any Auditor not for the time being appointed as the Dominant Provider's Regulatory Auditor;

**'Attribution Methods'** means the practices used by the Dominant Provider to attribute revenue (including appropriate Transfer Charges), costs (including appropriate Transfer Charges), assets and liabilities to activities or, insofar as those activities have been aggregated into Wholesale Segments or Retail Segments in a given Market, to each Wholesale Segment or Retail Segment;

**'Auditor'** means any auditor which could be appointed as the Dominant Provider's auditor in accordance with the requirements of the Companies Act 2006;

**'Cost Accounting Attribution'** means the totality of all apparatus, data, procedures and activities which the Dominant Provider uses or holds for use to determine the costs, revenues, assets and liabilities to be attributed to an activity, either based upon data recorded by a Cost Accounting Measuring System or otherwise;

**'Cost Accounting Measuring System'** means the totality of all apparatus, systems, data, procedures and activities which the Dominant Provider uses or holds for use to determine the extent to which costs, revenues, assets and liabilities are to be attributed to an activity related to Network Access or the provision of services to End-Users (as appropriate);

**'Cost Accounting System'** means Cost Accounting Attribution and Cost Accounting Measuring System taken together;

**'Current Year Figures'** means, in relation to any set of Financial Statements, the amounts relating to the Financial Year to which the accounts relate;

**'Disaggregated Activities'** means, in respect of a Market, the Wholesale Segments, Wholesale Services, Wholesale Activities, Network Services, Network Activities,

Retail Segments, Retail Products, Retail Activities and/or Retail Support Activities used or carried out in the Market, as appropriate;

**'External Wholesale Services'** means services supplied or offered to any communications provider other than the Dominant Provider;

**'External Wholesale Services List'** means the list of External Wholesale Services prepared under condition 9.25;

**'Financial Year'** means a financial year of the Dominant Provider in respect of which annual statutory accounts are required to be (or to have been) prepared and audited in accordance with the requirements of the Companies Act 2006;

**'GAAP'** (Generally Accepted Accounting Practice(s)) means United Kingdom or international (as appropriate) conventions, rules and procedures that define currently accepted accounting practice (including, for the avoidance of doubt, not only broad guidelines of general application but also any detailed practices and procedures);

**'ICAEW Guidance'** means guidance issued by the Institute of Chartered Accountants in England & Wales regarding reporting to regulators on regulated accounts;

**'Internal Wholesale Services'** means services equivalent to the External Wholesale Services which, in the absence of horizontal or vertical integration, could be supplied within the Dominant Provider;

**'Internal Wholesale Services List'** means the list of Internal Wholesale Services prepared under condition 9.25;

**'Market'** means each market to which this condition 9 applies;

**'Network Activities'** means any activities related to Network Access used directly or indirectly (or which in the absence of horizontal or vertical integration would be used directly or indirectly) in the course of supplying Wholesale Services and any

activities used in the course of such activities, excluding those activities which are Wholesale Activities;

**'Network Component'** means, to the extent they are used in the Market, the network components specified in any direction given by Ofcom from time to time for the purposes of these conditions;

**'Network Services'** means those groups of Network Activities used directly (or which in the absence of horizontal or vertical integration would be used directly) in the course of supplying Wholesale Services;

**'Primary Accounting Documents'** means documentation setting out the Accounting Policies, the Attribution Methods, the Regulatory Accounting Principles, and the Transfer Charge System Methodology;

**'Prior Year Comparatives'** means, in relation to any set of Financial Statements, the amounts relating to the Financial Year immediately preceding the Financial Year to which the accounts relate, re-evaluated if necessary to ensure that such figures are comparable to the Current Year Figures;

**'Process'** means the series of inter-related activities or actions to obtain, record or hold data or information or to carry out any operation or set of operations on the data or information, including:

- a) organisation, storage, adaptation, or alteration of the data or information;
- b) retrieval, consultation, computation or use of the data or information;
- c) disclosure of the data or information by transmission, dissemination, or otherwise making available; or
- d) alignment, combination, blocking, erasing or destruction of the data or information;

**'Regulatory Accounting Principles'** means the principles applied or used by the Dominant Provider in the preparation of the Regulatory Financial Statements;

**'Regulatory Auditor'** means the Auditor for the time being appointed by the Dominant Provider in accordance with these conditions;

**'Regulatory Financial Statement'** means any financial statement in respect of a Financial Year prepared, or required to be prepared by the Dominant Provider in accordance with this Condition 9;

**'Retail Activities'** means any activities wholly and exclusively carried out (or which in the absence of horizontal or vertical integration would wholly and exclusively be carried out) in the course of supplying Retail Products and any activities wholly and exclusively carried out in the course of such activities, excluding those activities which are Wholesale Services;

**'Retail Products'** means services used by or offered to any End Users (including The Dominant Provider);

**'Retail Segments'** means groups of Retail Products;

**'Retail Support Activities'** means any activities carried out directly or indirectly (or which in the absence of horizontal or vertical integration would be carried out directly or indirectly) in the course of supplying Retail Products and any activities directly or indirectly carried out in the course of such activities, excluding those activities which are Retail Activities or Wholesale Services;

**'Secondary Accounting Documents'** means documentation setting out details of the policies, methodologies, systems, processes and procedures for deriving or calculating the costs, revenues, assets and liabilities (including detailed attribution methods and detailed valuation methodology) used by the Dominant Provider in addition to the Primary Accounting Documents, the Wholesale Catalogue and the Retail Catalogue to prepare the Regulatory Financial Statements;

**'Statutory Auditor'** means the Auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 2006;

**'Statutory Financial Statements'** means any annual report required to be prepared





## **Condition 10 – Provision of a Wholesale Pricing Transparency Report**

**10.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall prepare and provide to Ofcom for each Relevant Period a Wholesale Pricing Transparency Report in relation to the provision of network access under Condition 1 or Condition 1 and Condition 2 (as applicable).

**10.2** Subject to Condition 10.4 the Dominant Provider must, in each Wholesale Pricing Transparency Report, set out the following:

(a) each wholesale leased lines access service, including each Dark Fibre Access service, being provided to a Third Party by the Dominant Provider under Conditions 1 and 2 (as appropriate) on the last day of the Relevant Period;

(b) in relation to each wholesale leased lines access service, excluding Dark Fibre Access service, referred to in Condition 10.2(a) above:

- i) specification of each of the service type, interface, bandwidth and circuit orientation;
- ii) the amount of the connection charge;
- iii) the date on which the rental charge was agreed;
- iv) any fixed or minimum term which have been agreed by the Dominant Provider and a Third Party in respect of the rental charge;
- v) the amount and the frequency of the rental charge; and
- vi) such characteristics of each connection as required to fully determine the connection charge and the annual rental charge from the Dominant Provider's price list.

(c) in relation to each Dark Fibre Access service referred to in Condition 10.2(a) above:

- i) specification of each of the service type, presentation and circuit orientation; and
- ii) the information referred to in Condition 10.2(b)(ii) to (vi).

**10.3** Provision referred to in Condition 10.1 shall be effected by sending the Wholesale Pricing Transparency Report in Excel spreadsheet format by email to the designated person in the form notified by Ofcom from time to time within one month after the



# Notification of the giving of a Direction under SMP Condition 1 and SMP Condition 5 in respect of the Wholesale Local Access Market

## Background

1. On 16 July 2020, Ofcom published a consultation document entitled “Hull Area: Wholesale Fixed Telecoms Market Review 2020” (the “Consultation”). In the Consultation, Ofcom consulted on new proposals to identify markets in the Hull Area, make market power determinations and set SMP conditions with respect to KCOM.
2. In the Consultation, Ofcom proposed to impose SMP condition 1 (Network access on reasonable request) and SMP condition 5 (Publication of a Reference Offer) on KCOM in respect of the wholesale local access and wholesale leased lines access services markets.
3. Ofcom also proposed a direction to be imposed on KCOM pursuant to SMP Condition 5 in respect of the wholesale local access market. The notification to that direction was published in the Consultation in accordance with section 49 of the Communications Act 2003 (“the Act”) and Ofcom sent a copy of it to the Secretary of State under section 49C(1)(a) of the Act. Ofcom invited responses to the Consultation by 24 September 2020.
4. Ofcom received several responses in relation to the proposals set out in the Consultation and it carefully considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.
5. On 28 October 2021, Ofcom published a statement entitled “Hull Area Wholesale Fixed Telecoms Market Review 2021-26” concluding the review referred to in paragraph 1 above. This statement identified the markets, made the market power determinations and set the SMP conditions set out in Schedule 1 to the 2021 SMP Conditions Notification.
6. The SMP conditions that are set include SMP condition 1 (Network access on reasonable request) and SMP condition 5 (Publication of a Reference Offer).

## Decision to give a direction

7. Ofcom has decided to give the direction set out in the Schedule to this notification under section 49 of the Act, SMP condition 1.3(b)(ii), 1.4 and 1.5, and SMP condition 5.11.

8. The effect of this direction, and Ofcom's reasons for giving it, are set out in the statement accompanying this notification
9. The direction set out in this Schedule to this notification shall come into force on 1 November 2021.

#### **Ofcom's duties and legal tests**

10. Ofcom considers that the direction set out in this notification complies with the requirements of section 49(2) of the Act for the reasons set out in the statement accompanying this notification.
11. In giving the Direction, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six requirements in section 4 of the Act, and had regard to the Statement of Strategic Priorities.
12. A copy of the Direction, set out in the Schedule to this notification, has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.

#### **Interpretation**

13. For the purpose of interpreting this notification:
  - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 14 below;
  - b. save where otherwise defined in this notification, and except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the notification of proposed SMP conditions, given on the same date as this notification;
  - c. otherwise any word or expression has the same meaning as it has in the Act;
  - d. headings and titles shall be disregarded;
  - e. expressions cognate with those referred to in this notification shall be construed accordingly; and



**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002**

**28 October 2021**







7. Pursuant to Condition 9.2, Ofcom may make directions in relation to KCOM's obligations under the SMP conditions.
8. Pursuant to Condition 9.3, the Dominant Provider must comply with any direction Ofcom gives in relation to the Dominant Provider's Cost Accounting System, Accounting Separation System and its obligations under Condition 9.
9. Pursuant to condition 9.5(a), the Dominant Provider must prepare such Regulatory Financial Statements as are directed by Ofcom from time to time.
10. Pursuant to condition 9.5(b) the Dominant Provider shall secure the expression of an audit opinion upon the Regulatory Financial Statements as directed by Ofcom from time to time.
11. Pursuant to condition 9.5(c), the Dominant Provider shall deliver to Ofcom the Regulatory Financial Statements and corresponding audit opinion identified as directed by Ofcom from time to time.
12. Pursuant to condition 9.5(d), the Dominant Provider must publish the Regulatory Financial Statements and corresponding audit opinion as directed by Ofcom from time to time.
13. Pursuant to condition 9.29, "network components" means, to the extent they are used in the Market, the network components specified in any direction given by Ofcom from time to time for the purposes of the SMP conditions.
14. The directions set out in the Schedule to this notification shall apply in relation to the markets specified in each proposed Direction.
15. The directions set out in the Schedule to this Notification shall take effect on 1 November 2021.

#### **Ofcom's duties and legal tests**

16. The effect of these directions, and Ofcom's reasons for giving them, are set out in the statement accompanying this notification and, for the reasons therein, Ofcom considers that the directions comply with the requirements of section 49(2) of the Act.
17. In giving the directions, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six requirements in section 4 of the Act and the Statement of Strategic Priorities.









## **Direction 3 - Preparation, audit, delivery and publication Regulatory Financial Statements Direction**

### **Background**

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Conditions 9.2 and 9.5.
2. This direction applies with respect to the following markets unless otherwise specified:
  - a. WLA
  - b. LL Access

### **Direction**

3. Ofcom hereby specifies that KCOM shall prepare, secure an audit opinion in respect of, deliver to Ofcom and publish the Regulatory Financial Statements in accordance with the Annex to this direction for the markets listed above in paragraph 2.













## Annex 4 - Consolidation Profit and Loss (P&L) Statement

### KCOM Consolidation Statement

**Consolidated Total - For all markets where cost accounting and accounting separation obligations apply**

CURRENT COST PROFIT AND LOSS ACCOUNT		Restated (cross refer to notes)		£'k Change Year on year	% Change Year on Year
	Notes	£k CY	£k PY		
for the year ended 31 March 20xx					
<b>Turnover</b> (identifying Gross, Discounts and Net turnover for external sales if applicable)					
Internal Sales [Note]					
External Sales					
<b>Total Turnover</b>					
<b>Operating costs</b>					
Operating costs					
- Engineering Support					
- Finance & Billing					
- General Management					
- Bad Debts					
- Back Office Support					
- Other Costs (total of items below 5% of operating cost)					

Subtotal operating expenditure

Depreciation

- Duct
- Copper
- Fibre
- Transmission
- Exchange
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

---

**Total operating costs**

---

**Return**

---

**MCE**

---

**RETURN ON MEAN CAPITAL EMPLOYED**

for the year ended 31 March 20xx

**CY**  
**%**

**PY**  
**%**

**%**

---

**Return on mean capital employed**

---

[Note - All sales to be based on actual volumes x price]

**Annex 5 - Consolidation Mean Capital Employed (MCE) Statement**

**KCOM Consolidation Statement**

<b>STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED</b>		Restated (cross refer to notes)			
for the year ended 31 March 20xx				£'k	
	Notes	£k <b>CY</b>	£k <b>PY</b>	Change	% Change
<b>Fixed assets</b>					
Tangible fixed assets					
- Land & Buildings					
- Duct					
- Fibre					
- Copper					
- Transmission					
- Exchange					
- Other					
Investments					
<b>Total fixed assets</b>					
<b>Current assets</b>					
Stocks					























**Annex 10 - Market Network Activity Statement [provided on a confidential basis]**

**KCOM Consolidated Statement of Costs**

**Network Activity Statement for year ended 31st March 20xx**

**KCOM Market A Statement of Costs (there will be a statement for each wholesale market where cost accounting and accounting separation obligations apply)**

	HCA operating cost	Supp. Dep.	Holding gain and other CCA adj	Total CCA operating costs	CCA MCE	Applicable ROCE %	Capital costs	Total costs	Unit of measure	Volume	Ave CCA unit cost
<b>Fully Allocated Cost</b>											

**Components**

- Electronics;
- Field provision
- Field maintenance;
- Local Loop infrastructure
- Exchange concentrator;
- Exchange-exchange
- Transmission link;
- Back-office Provision;
- Back-office Maintenance;
- Sales and Product Management;

PPP for narrowband call  
services;  
Net Current Assets; and  
Other.

---

**Totals**

---

## **Annex 11**

### **Notes to the Regulatory Financial Statements**

These will contain notes, modelled on statutory accounting conventions, to assist the user in the interpretation of the individual statements.

The notes will address issues necessary to ensure that they are properly prepared including, to the extent necessary, the basis of accounting, accounting policies, changes for restatement, non compliance with UK GAAP and any other information that will enable users to properly understand the individual financial statement.

Among other things, the necessary notes would be expected to include:

- a description of the basis on which revenue from sales to other operators arise and other related matters necessary to understand how financial performance has been measured
- a commentary setting out how the principle of non discrimination and the calculation of usage factors have been applied in the preparation and presentation of the factual statements in respect of wholesale services

**Annex 12 - Reconciliation statement, P&L**  
**KCOM Reconciliation Statement**

Consolidated profit and loss account For the year ended 31 March 20xx	Turnover £k	Operating Costs £k	HCA Return or Profit before taxation £k	Holding gain/(loss) and other Adjustments £k	Supple- mentary depreciation £k	CCA Return or Profit Before Taxation £k
<b>Market/Area</b>						
Wholesale SMP Markets						
<u>Residual activities</u>						
- Wholesale residual activities						
- Retail residual activities						
<b>Total</b>						
<b>Adjustments (as necessary)</b>						
Elimination of Inter Business turnover and costs						
Other operating income						
Goodwill						
Group's share of profits of associates and joint ventures						
Profit on sale of fixed asset investments						
Profit on sale of Group undertakings						
Amounts written off investments						

Profit on sale of property fixed assets before exceptional items

Profit on sale of property fixed assets

Net short term interest payable

Long term interest payable

**As per the KCOM Annual Report (pxxx)**

**Annex 13 - Reconciliation statement, MCE**

	<b>CY</b>	<b>PY</b>
<b>KCOM Reconciliation statement</b>		
		<b>Restated</b>
		(cross refer to explanatory notes)
<b>Consolidated mean capital employed</b>		
For the year ended 31 March 200XX	<b>£k</b>	<b>£k</b>
Shareholders' funds as in the Annual Report (pxxx)		
CCA adjustments		
<b>Adjustments</b>		
Corporation taxes payable		
Provision for dividends payable		
Deferred tax /(ACT recoverable)		
Long term borrowing:		
Due in less than one year		
Due in more than one year		
Adjustments to closing capital employed		
Goodwill		
Minority interests		
<b>Closing CCA capital employed at 31 March</b>	_____	_____
<b>Opening CCA capital employed at 1 April</b>		
Adjustment to opening capital employed		

Revised opening CCA capital employed at 1 April	_____	_____
Average CCA capital employed		
Daily averaging adjustment		
Deferred costs		
<b>Total CCA mean capital employed</b>	=====	=====
<b><u>Mean capital employed of SMP Markets</u></b>		
Wholesale Market A (where cost accounting and accounting separation obligations apply)		
Wholesale Market B etc (where cost accounting and accounting separation obligations apply)		
<b>Sub total markets</b>	_____	_____
<u>Residual activities</u>		
- Wholesale residual activity		
- Retail residual activity		
<b>Total CCA mean capital employed</b>	=====	=====

**Annex 14 - Wholesale residual, P&L [provided on a confidential basis]**

**KCOM Wholesale Residual Activities**

CURRENT COST PROFIT AND LOSS ACCOUNT for the year ended 31 March 20xx		Restated (cross refer to notes)			
	Notes	£k CY	£k PY	£'k Change Year on year	% Change Year on Year
<b>Turnover</b> (identifying Gross, Discounts and Net turnover for external sales if applicable)					
Internal Sales [Note]					
External Sales					
<b>Total Turnover</b>					
<b>Operating costs</b>					
Charges from Other KCOM Markets					
Operating costs (to show all cost categories that exceed 5% of operating cost including)					
- Engineering Support					
- Finance & Billing					
- General Management					
- Bad Debts					
- Back Office Support					
- Other Costs (total of items below 10% of operating cost)					



Sub total operating expenditure

Depreciation

- Duct
- Copper
- Fibre
- Transmission
- Exchange
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

---

**Total operating costs**

---

**Return**

---

**MCE**

---

**RETURN ON MEAN CAPITAL EMPLOYED**

for the year ended 31 March 20xx

**CY**

**PY**

**%**

**%**

**%**

---

**Return on mean capital employed**

---

[Note - All sales to be based on actual volumes x price]

**Annex 15 - Wholesale residual, MCE [provided on a confidential basis]**

**KCOM Wholesale Residual  
Activities**

**STATEMENT OF CURRENT COST  
MEAN CAPITAL EMPLOYED**  
for the year ended 31 March 20xx

Restated (cross refer  
to notes)

	Notes	£k CY	£k PY	£'k Change	% Change
<b>Fixed assets</b>					
Tangible fixed assets					
- Land & Buildings					
- Duct					
- Fibre					
- Copper					
- Transmission					
- Exchange					
- Other					
<b>Total fixed assets</b>					
<b>Current assets</b>					

Stocks  
Debtors  
- internal  
- external  
Cash

---

Total current assets

---

**Creditors: amounts falling due  
within one year**

Other creditors  
- internal  
- external

---

Total creditors: amounts falling due  
within one year

---

Net current assets

---

Total assets less current liabilities  
Provisions for liabilities and  
charges

---

**Closing capital employed**

---

**Annex 16 - Retail residual, P&L [provided on a confidential basis]**

**KCOM Retail Residual Activities**

CURRENT COST PROFIT AND LOSS ACCOUNT for the year ended 31 March 20xx		Restated (cross refer to notes)			
	Notes	£k CY	£k PY	£'k Change Year on year	% Change Year on Year
<b>Turnover</b> (identifying Gross, Discounts and Net turnover)					
Internal Sales [Note]					
External Sales					
<b>Total Turnover</b>					
<b>Operating costs</b>					
Charges from Other KCOM Markets					
Operating costs (to show all cost categories that exceed 5% of operating cost including)					

- Marketing
- Sales
- Customer Services
- Bad Debts
- Other Costs (total of items below 5% of operating cost)

Sub total operating expenditure

Depreciation

- Land and Buildings
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

---

**Total operating costs**

---

**Return**

---

**MCE**

---

**RETURN ON MEAN CAPITAL  
EMPLOYED**

for the year ended 31 March 20xx

**CY**  
**%**

**PY**  
**%**

**%**

**Return on mean capital employed**

---

[Note - All sales to be based on actual volumes x price]

**Annex 17 - Retail residual, MCE [provided on a confidential basis]**

**KCOM Retail Residual Activities**

<b>STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED</b>		Restated (cross refer to notes)			
for the year ended 31 March 20xx					
	Notes	£k CY	£k PY	£'k Change	% Change
<b>Fixed assets</b> (to show all asset categories that exceed 5% of operating cost including)					
Tangible fixed assets					
- Land & Buildings					
- Other (total of items below 5% of fixed assets)					
<b>Total fixed assets</b>					
<b>Current assets</b>					
Stocks					
Debtors					
- internal					
- external					
Cash					
<b>Total current assets</b>					









In respect of the WLA market, the required services are

- i) Wholesale Fibre Line Local Access (WFLLA) FTTP End User Rental Charges (All Bandwidths)
- ii) WFLLA FTTC
- iii) WFLLA End User New Provide
- iv) Other WFLLA End User Connection Charges
- v) Other WFLLA Fixed Charges
- vi) WFLLA Excess Construction Charges
- vii) Time related Charges
- viii) Other services in the WLA Market

In respect of the LL Access market, the required services are

**a) Dark Fibre Services**

- i) Single Fibre Rental Charges
- ii) Fibre Pair Rental Charges
- iii) Single Fibre Connection Charges
- iv) Fibre Pair Connection Charges
- v) Charge per Right When Tested\*
- vi) Charge per cessation\*
- vii) Patch Panels\*
- viii) Dark Fibre Excess Construction Charges
- ix) Other dark fibre services in the LL Access Market (not specified).

**b) Active Services**

- x) ECAS 1Gbit/s rentals
- xi) Other ECAS rentals
- xii) ECAS ECCs
- xiii) Other ECAS services in the LL Access Market (not specified).
- xiv) EDAS 1Gbit/s rentals





In respect of the WLA market, the required services are

- i) Wholesale Fibre Line Local Access (WFLLA) FTTP End User Rental Charges (All Bandwidths)
- ii) WFLLA FTTC
- iii) WFLLA End User New Provide
- iv) Other WFLLA End User Connection Charges
- v) Other WFLLA Fixed Charges
- vi) WFLLA Excess Construction Charges
- vii) Time related Charges
- viii) Other services in the WLA Market

In respect of the LL Access market, the required services are

- a) Dark Fibre Services**
- i) Single Fibre Rental Charges
- ii) Fibre Pair Rental Charges
- iii) Single Fibre Connection Charges
- iv) Fibre Pair Connection Charges
- v) Charge per Right When Tested\*
- vi) Charge per cessation\*
- vii) Patch Panels\*
- viii) Dark Fibre Excess Construction Charges
- ix) Other dark fibre services in the LL Access Market (not specified).
- b) Active Services**
- x) ECAS 1Gbit/s rentals
- xi) Other ECAS rentals
- xii) ECAS ECCs
- xiii) Other ECAS services in the LL Access Market (not specified).
- xiv) EDAS 1Gbit/s rentals
- xv) Other EDAS rentals



## Direction 5 – Audit Opinion for Regulatory Financial Statements

### Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Condition 9.2 and 9.5(b)
2. This direction applies with respect to the following markets unless otherwise specified:
  - a. WLA
  - b. LL Access

### Direction

3. Ofcom hereby directs KCOM to secure to the satisfaction of Ofcom, an appropriate audit opinion in respect of the published Regulatory Financial Statements as a whole, in respect of each Regulatory Financial Statement and in respect of each Regulatory Financial Statement for the markets listed in paragraph 2 above, to the “properly prepared in accordance with” (“PPIA”) standard, as determined following consultation with Ofcom and the Regulatory Auditor. KCOM shall ensure that the Regulatory Auditor shall state whether in their opinion:
  - i) each Regulatory Financial Statement complies with the requirements of Condition 9.5;
  - ii) each Regulatory Financial Statement has been properly prepared in accordance with the Accounting Documents, including the Prior Year Comparatives;
    - (1) having reviewed the Accounting Documents in forming their opinion under (ii) above, anything has come to their attention that would lead them to conclude that the Accounting Documents have not been properly applied in the preparation of the relevant Regulatory Financial Statement, disclosing where practicable any adjustments he considers to be required in respect of any such matter; and
    - (2) having reviewed the Accounting Documents, nothing has come to their attention that would lead them to conclude that the Accounting Documents are unreasonable.