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Dear Andrew

Virgin Media's response to Ofcom's Consultation "Regulatory Financial Reporting : a Review"

Virgin Media are pleased to respond to Ofcom's consultation on Regulatory Financial Reporting (the "September Consultation"). The imposition of relevant and appropriate reporting requirements on dominant providers is crucial to the overall regulatory regime imposed to address identified competition concerns within markets.

As Ofcom identified in its September Consultation, recent years have seen errors, restatements and changes in accounting treatment that have undermined the confidence in the current arrangements and a review of the financial reporting regulatory framework is timely and appropriate. We understand that the September consultation takes a high level approach to many issues, and that a fuller more detailed consultation will be issued in early 2013 containing specific proposals.

Virgin Media considers that the specific questions asked by Ofcom in this consultation have been addressed by UKCTA, and we support and adopt those responses. We therefore intend to restrict our individual response, to highlight three key issues that we consider to be of particular significance.

1. An appropriate level of detail

Virgin Media considers that it is vitally important that confidence can be restored to the current system of regulation. Fundamentally, we consider that this means a sufficient level of detail has to be provided in published format to ensure that industry and other interested stakeholders can be reassured that a dominant provider is complying with its wider regulatory obligations.

The CAT, in the PPC Judgement¹, stated that one of the purposes of the financial reporting regime was "to ensure that the appropriate data is published to enable compliance with SMP conditions to be monitored".

Therefore, whilst any obligation imposed must be proportionate, and it is plainly wrong to oblige a dominant provider to produce financial data that is not related to compliance with an underlying SMP condition, publication of key

¹ BT v Ofcom and others [2011] CAT 5: Paragraph 161

data remains a “must have” in any regulatory scheme, especially one that fulfils the identified attributes of relevance, reliability, transparency, and proportionality.

UKCTA’s response provides further detail regarding the concern over proposing a system that would publish less, or more aggregated information and we support that. We also note that the consultation, in some instances appears to support the retention of detailed publication (see for example paragraph 3.80), but also seems, in other places, to suggest that less detail could be appropriate. We appreciate that this is the first of two consultations, and detailed proposals cannot be made at this stage, but we would be concerned if the level of detail required to be published was reduced in the next consultation, as we consider that would seriously undermine the effectiveness of the regulation.

2. Cost Orientation

Ofcom recognise the importance of the financial reporting scheme with respect to the regulatory remedy of cost orientation which is currently imposed in the majority of price controlled markets.

At paragraph 3.49 of the September Consultation Ofcom states “it is important for CPs to have public assurance of compliance with cost orientation obligations, where they apply” and further understands the current concern over monitoring compliance.

Virgin Media, agrees with UKCTA’s comments that Ofcom’s decision to carve out cost orientation from this consultation makes it difficult to fully comment on this consultation, and that there is now a burning need for Ofcom to ensure that it at least follows through with its proposals to publish a separate consultation on cost orientation to fill this gap.

Virgin Media have already expressed concerns over Ofcom’s proposed approach to price control remedies in the BCMR markets, where it has been proposed that there is no requirement to continue to impose a cost orientation obligation in price controlled markets. Virgin Media consider that the approach proposed in the BCMR consultation is fundamentally flawed, and would be more concerned if this approach was reflective of a more general approach to cost orientation.

It is of note that, aside from BT on whom the remedy is imposed, respondents to the BCMR appear to be unanimously concerned about Ofcom’s proposals, suggesting the level of importance this issue has within industry.

Therefore, any proposals in relation to financial report obligations need to fully consider their application to cost orientation remedies, and to ensure that monitoring compliance with obligations can be effectively undertaken by Ofcom, and in the context of published statements, the wider industry.

3. BT should take responsibility for reported data



We agree with the comments made in the September Consultation that BT should retain ownership of the RFS. The key issue is that with this ownership and responsibility comes an accountability that needs to be able to be enforced by Ofcom in the event that obligations have not been met. Indeed, a lack of ownership by BT could absolve them of any responsibility and considerably devalue the system. Therefore, whilst ownership should certainly remain with BT, the involvement of other parties, including Ofcom, to ensure that the regulatory intent of the obligations is fulfilled, as discussed in the UKCTA response is something that needs to be taken into account.

Conclusion

Virgin Media welcomes this review of a system that is, in effect, currently broken. It is vitally important that Ofcom considers the views of industry as the recipients of any published data and therefore key stakeholders in this process. Although no detailed proposals have been made at this stage, Virgin Media is encouraged by the desire to restore confidence to this aspect of regulation, however, some aspects of the consultation do cause concern, and it is hoped that, having regard to the comments in responses from industry including the response from UKCTA, such concerns can be address in advance of proposals being published next year.

Yours sincerely

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