



Review of the wholesale broadband access markets

Call for Inputs

Call for Inputs

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Section 1

Review of the wholesale broadband access markets

Introduction

- 1.1 Under the common European regulatory framework for electronic communications¹, Ofcom is required to carry out periodic reviews of electronic communications markets in the UK², including the markets for wholesale broadband access ('WBA').
- 1.2 Our last review of the WBA markets concluded in a statement in December 2010 on market definition, market power determinations and remedies in which we imposed certain regulatory obligations on BT plc (BT) and KCOM plc (KCOM) in those markets where they were found to have SMP (the '2010 WBA Statement')³ and a further statement in July 2011 setting a charge control on BT (the '2011 WBA CC Statement')⁴. That review covered the period from March 2010 to March 2014. We are now commencing a new market review to examine competitive conditions in the supply of WBA services in the UK, which will cover the period from April 2014 to March 2017 (the 'Review').
- 1.3 This Call for Inputs seeks stakeholders' views on key issues for the Review before we start our substantive analysis of competitive conditions in the WBA markets. The Call for Inputs will run in parallel with information requests under section 135 of the Communications Act 2003 (the 'Act'), which we plan to issue later this month and which we will rely on to gather information for the purposes of the Review.
- 1.4 The Review will:
 - identify the relevant WBA products and services and the appropriate geographic areas within which those products and services should be considered so as to define the relevant economic markets for our analysis; then
 - examine each of those markets in order to determine whether each market is prospectively competitive and whether any undertaking has significant market power ('SMP'); and
 - finally, if we consider that one or more operators has SMP in the relevant market(s), we will consider whether it is appropriate to impose (or maintain) regulatory remedies on those operators.

¹ 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 ('Framework Directive'), as amended by Directive 2009/140/EC and Regulation 544/2009, together with the 'Specific Directives' as referred to and defined therein.

² Article 16 Framework Directive.

³ Review of the wholesale broadband access markets: Statement on market definition, market power determinations and remedies, 3 December 2010

<http://stakeholders.ofcom.org.uk/binaries/consultations/wba/statement/wbastatement.pdf>

⁴ WBA Charge Control: Charge control framework for WBA Market 1 services, 20 July 2011
<http://stakeholders.ofcom.org.uk/binaries/consultations/823069/statement/statement.pdf>

- 1.5 As in the last WBA review, in formulating our approach to market definition and SMP we will take due account of the European Commission's Recommendation on relevant product and service markets (the 'Recommendation')⁵ and SMP Guidelines⁶. The WBA market corresponds to EC Market 5 in the Annex to the Recommendation, which defines the WBA market as comprising "non-physical or virtual network access including 'bit-stream' access at a fixed location."
- 1.6 We would like to gather stakeholders' views on:
- how we might define the relevant markets and assess SMP, particularly in light of any market developments since our last market review;
 - with respect to the existing remedies, stakeholders' experience of regulated WBA services, market entry and competition in the relevant markets;
 - whether and how these markets have changed since the last market review was completed, both from the perspective of stakeholders and the perspective of their customers; and
 - any relevant issues outside the proposed scope of our review that stakeholders consider we should include.
- 1.7 We seek responses to this Call for Inputs **by 5pm on 20 December 2012**.

Policy objectives

- 1.8 In carrying out market reviews, Ofcom must give effect to the European and national legal and regulatory framework for electronic communications markets, in particular, the policy objectives and regulatory principles in Article 8 of the Framework Directive which are reflected in our legal duties set out in Sections 3 and 4 of the Act which includes our principal duty in carrying out our functions:
- to further the interests of citizens in relation to communications matters; and
 - to further the interests of consumers in relevant markets, where appropriate by promoting competition.

Proposed approach for this review

- 1.9 The purpose of the Review is to consider the state of competition in the WBA markets in the UK to determine whether those markets are effectively competitive.
- 1.10 We have undertaken significant analysis of these markets on previous occasions. Since we last reviewed these markets, the common European regulatory framework for electronic communications was amended to require market reviews ordinarily to be undertaken every three years. In light of this, we intend to adopt an approach

⁵ Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007/879/EC), OJ L344, 28.12.2007, p.65: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_344/l_34420071228en00650069.pdf

⁶ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:165:0006:0031:EN:PDF>

which will involve us taking our previous analysis as a starting point for these reviews and to concentrate our subsequent analysis on developments in the markets and areas of particular stakeholder concern.

- 1.11 We are therefore seeking stakeholders' views, together with reasons for those views, on the key issues that relate to the scope of this review in the areas of; market definition, SMP findings and remedies. We are particularly interested in stakeholders' views on the extent to which the analysis which formed the basis of our 2010 WBA Statement and 2011 WBA CC Statement remains appropriate and/or where stakeholders think we should change our position. This will inform the extent to which significant further analysis is needed in light of market developments in this review. Where the available evidence indicates that there have been no significant developments, we would expect to refresh our previous analysis, in particular by updating the key evidence relied on in our last review. Conversely, where evidence suggests more material developments, we would expect to conduct a more detailed analysis. Stakeholders are therefore asked to provide reasons to support their views.
- 1.12 All of the views expressed in this document are preliminary and to be tested against market evidence. For example, where we seek your views on the approach to be taken to particular remedies, this should not be seen as prejudicing any SMP assessment. Before coming to any decisions about the regulation that will apply after March 2014 we will be setting out detailed proposals in a consultation document, which we expect to publish in May 2013.

Related work

- 1.13 We are also issuing today a Call for Inputs in respect of our fixed access market reviews of the wholesale local access (WLA), wholesale fixed analogue exchange lines (WFAEL), ISDN2 and ISDN 30 markets and certain additional markets in Hull⁷. Those market reviews will include consideration of whether the current remedies in respect of local loop unbundling (LLU) and wholesale line rental (WLR) products in the WLA and WFAEL markets continue to be appropriate.
- 1.14 The fixed access markets are upstream of the WBA market under consideration in this Review. The Commission's framework for market reviews requires the adoption of a 'modified greenfield' approach⁸. This means that the market analysis should be carried out on the basis that existing SMP remedies in the WBA market, or in downstream markets, do not apply. SMP remedies in the upstream fixed access markets, however, do need to be taken into account in the WBA market analysis.
- 1.15 As these two reviews are closely connected, the responses to this Call for Inputs may be used as an input to our fixed access market reviews and this Review may also draw on the responses to the fixed access market Call for Inputs, where appropriate.

Market definition

- 1.16 Market definition is necessary so that we can assess whether WBA services markets are effectively competitive or whether there is a requirement to impose ex-ante

⁷ <http://stakeholders.ofcom.org.uk/consultations/fixed-access-markets/>

⁸ See the European Commission's explanatory note accompanying the Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive:
http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/sec2007_1483_final.pdf

regulation. As a first step in our analysis, we need to consider which products and services fall within the markets for WBA.

Product market definition

Our position in the 2010 WBA Statement

1.17 The WBA markets relate to the supply of WBA services by communications providers ('CPs'), both for their own internal use and to each other. WBA services are one of the key building blocks in the supply of retail broadband products to consumers. Competition in retail broadband services depends on effective competition at the wholesale level (or on appropriate wholesale regulation where there is SMP), and the cost of this service therefore affects the prices that consumers pay for retail services.

1.18 In the 2010 WBA Statement we first defined the retail product market in order to inform our analysis of the wholesale markets. We defined the WBA wholesale product market as:

*"Asymmetric broadband access and any backhaul as necessary to allow interconnection with other communications providers which provides an always on capability, allows both voice and data services to be used simultaneously and provides data at speeds greater than a dial up connection. This market includes both business and residential customers."*⁹

1.19 The WBA wholesale product as market defined in the 2010 WBA Statement includes cable-, LLU- and fibre-based services to both residential and business customers, but excludes narrowband internet access, symmetric broadband access, mobile, fixed wireless and satellite internet access.

1.20 We also concluded that current generation broadband services were in the same market as higher speed next generation services.¹⁰ This reflected our view that current generation broadband services provided a constraint on the price of fibre-based products through a chain of substitution. We would like to understand whether any new services are developing which might lead us to a different conclusion in this review.

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

Geographic market definition

Our position in the 2010 WBA Statement

1.21 In the 2010 WBA Statement, we assessed the appropriate geographic market definition by considering competitive conditions in each of BT's local exchange areas on a forward-look basis. This approach reflected the fact that:

- LLU is a significant driver of competition in WBA markets;

⁹ 2010 WBA Statement, paragraph 3.193.

¹⁰ We defined current generation services to be those offering a maximum theoretical downstream speed of up to 24Mb/s, whereas next generation services offered speeds higher than this.

- the geographic area in which an LLU operator can compete by unbundling any particular local exchange is determined by the area served by that exchange; and
 - BT and LLU operators generally set their local 'de-averaged' prices on a local exchange basis.
- 1.22 We assessed competitive conditions in each local exchange area on the basis of a number of factors including market shares, network coverage and the number of Principal Operators ('POs')¹¹ present in the local exchange.
- 1.23 We identified three wholesale geographic markets by grouping together those BT local exchanges in which the level of actual or potential competition was such that competitive conditions within each market were sufficiently homogenous. In the 2010 WBA Statement BT's local exchanges were grouped according to the following criteria:
- Market 1: exchanges where only BT was present or forecast to be present (which, at the time of the 2010 WBA Statement, comprised 11.7 per cent of premises);
 - Market 2: exchanges where two POs were present or forecast and exchanges where three POs were present or forecast but where BT's share was greater than or equal to 50 per cent (10.0 per cent of premises); and
 - Market 3: exchanges where four or more POs were present or forecast and exchanges where three POs were present or forecast but where BT's share was less than 50 per cent (77.6 per cent of premises).
- 1.24 In assessing forecast plans for the purposes of allocating exchanges to Markets 1, 2 and 3 we counted operators as forecast to be present in an exchange only if they had committed plans as at the date of the 2010 WBA Statement to deploy in the specific exchange in question. The BT exchanges which fell within each of these markets were listed in the appendices to the Legal Instrument at Annex 1 to the 2010 WBA Statement.
- 1.25 We also defined a separate, fourth wholesale geographic market for the Hull area, in which KCOM was the only fixed network provider (this market accounted for 0.7 per cent of UK premises).
- 1.26 Since 2010, POs have entered more local exchanges, which may have resulted in greater competition. In the light of this, we are considering whether the criteria we used to identify four separate geographic markets in the 2010 WBA Statement remain appropriate.
- 1.27 In carrying out a market review we are required to take a forward look at how competitive conditions may develop over the period of the review. In our 2010 WBA Statement, we did this by taking into account forecasts of future deployments by POs. However, we are mindful of the fact that roll-out plans provided by POs may include proposed roll-out that does not subsequently occur and, in addition, POs

¹¹ POs were chosen on the basis of their ability to impose a material competitive constraint on BT. The operators classed as POs in the 2010 WBA Statement were BT, Cable & Wireless Worldwide, O2, Sky, TalkTalk and, in those local exchange areas where cable coverage exceeded 65 per cent of delivery points, Virgin Media.

may during the period covered by this Review roll-out into exchanges not considered in plans available at the time of our Review. Therefore we are considering whether the approach taken in the last WBA review is the most appropriate way to capture future entry and its impact on competition.

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

Question 3: In the last WBA market review we identified four geographic markets in the UK. Is it still appropriate to identify four geographic markets using the same criteria as in the last market review? Or have there been changes since the last market review, or are any developments foreseen over the period of the next market review, that mean the number of geographic markets or the criteria used to distinguish the geographic markets may have changed? If so, please give reasons for your views.

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

SMP assessment

Our position in the 2010 WBA Statement

- 1.28 In the 2010 WBA Statement our findings on our assessment of the degree of market power in each of the relevant markets we had defined were as follows:
- BT held a position of SMP in the provision of WBA services in Market 1;
 - BT held a position of SMP in the provision of WBA services in Market 2;
 - No operator held a position of SMP in the provision of WBA services in Market 3; and
 - KCOM held a position of SMP in the provision of WBA services in the Hull area.
- 1.29 We asked above whether stakeholders consider there have been any market developments in the market since the last review that require us to take a different approach to geographic market definition. Given the link between geographic market definition and SMP, we would like to know whether any such developments might impact our SMP analysis.

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

Remedies

Our position in the 2010 WBA Statement

- 1.30 In the 2010 WBA Statement we found that there was limited prospect of any substantial wholesale competition in **Market 1** (as defined therein) over the forward-look period covered by the 2010 market review. We therefore imposed general access and non-discrimination obligations on BT. We also imposed obligations requiring BT to publish information that would secure transparency for the services provided in Market 1. In relation to transparency of financial information we decided that BT should be subject to an accounting separation obligation to provide transparency as to the services it provides to external CPs and to its own retail divisions, and a cost accounting obligation to provide transparent cost data.
- 1.31 In addition we decided that BT's services in this market should be based on the costs of provision (i.e. cost orientation), and should be subject to a charge control in order to restrict BT's ability to charge excessive prices to CPs which would ultimately be passed on to consumers. The details of the charge control were considered in a further consultation published in January 2011 and finalised in the 2011 WBA CC Statement published in July 2011¹². This was the first time that we had imposed cost orientation and a charge control in the WBA market. We imposed these obligations in order to ensure that other CPs would have the opportunity to use wholesale products supplied by BT to compete effectively at the retail level.
- 1.32 In **Market 2** we also imposed general access, non-discrimination and transparency obligations, for the same reasons as in Market 1. However, we decided not to impose a charge control. Although we found there was potential for BT to raise its prices to an excessive level, given its market position, we found that there was some wholesale competition and the potential for this to develop further. We therefore decided to impose a cost orientation obligation on BT but did not impose a charge control. As in Market 1, we also decided that BT's services should be subject to accounting separation and cost accounting obligations to provide transparency of financial information.
- 1.33 In the **Hull area** we decided to impose general access, non-discrimination and transparency obligations (including an accounting separation obligation) on KCOM. We considered that a lack of retail competition in the Hull area was demonstrated by the lack of entry into the market by providers other than KCOM. In assessing our approach to remedies, we took into account the absence of roll-out plans of other providers. Our view was that imposing additional wholesale regulation (such as charge controls) would not encourage investment by other providers. We did not impose a cost orientation obligation, a charge control, or a cost accounting obligation.
- 1.34 In this review, if we find SMP in any markets, we will determine what remedies are appropriate to address the competition concerns identified. In addition to potential

¹² In the 2011 WBA CC Statement, we imposed a charge control condition on BT in respect of Market 1 as defined in the 2010 WBA Statement. In so doing, we concluded that there had been no material change in Market 1 in the period between the SMP finding in respect of Market 1 in the 2010 WBA Statement and the setting of the charge control condition in the 2011 WBA CC Statement. TalkTalk appealed that decision to the Competition Appeal Tribunal ('CAT'). The CAT dismissed TalkTalk's appeal: see the judgment of the CAT of 10 January 2011 in case 1186/3/3/11 *TalkTalk Telecom Group plc v Ofcom (Wholesale Broadband Access Charge Control)* [2011] CAT 1 at http://www.catribunal.org.uk/files/1.1186_TalkTalk_Judgment_CAT_1_100112.pdf TalkTalk has appealed the CAT's decision to the Court of Appeal (appeal pending).

access remedies, we may need to consider the appropriateness of different pricing remedies, including:

- Whether a charge control is appropriate;
- Which WBA products should be subject to any charge control we impose;
- If we do impose a charge control, whether a cost orientation obligation should accompany it, or whether another approach, such as sub-caps, would be better suited; and
- If we do not impose a charge control but still consider that some kind of price regulation is needed, what form this should take; for instance whether we should use a cost orientation obligation, or another type of regulation such as a safeguard cap.

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

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

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

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

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

Next steps

- 1.35 Stakeholders have until 20 December 2012 to respond to this Call for Inputs and provide their qualitative views on the matters set out in this paper. In addition, we will be issuing over the coming weeks information requests under Section 135 of the Act to collect the data that will underpin our analysis in the Review.
- 1.36 Our goal is then to publish a full consultation with our policy proposals in May 2013, with a final statement currently scheduled for March 2014.

Annex 1

Responding to this Call for Inputs

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 20 December 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/review-wholesale-broadband/howtorespond/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email WBA2014@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Steven Ball
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3379
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Steven Ball on 020 7981 3379.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to ten weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 In this Call for Inputs, we have identified the following key questions we would like stakeholders to consider:

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

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

Question 3: In the last WBA market review we identified four geographic markets in the UK. Is it still appropriate to identify four geographic markets using the same criteria as in the last market review? Or have there been changes since the last market review, or are any developments foreseen over the period of the next market review, that mean the number of geographic markets or the criteria used to distinguish the geographic markets may have changed? If so, please give reasons for your views.

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

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

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

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

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

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

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

Annex 5

Links to relevant documents

Ofcom Documents

- Review of the wholesale broadband access markets, Consultation on market definition, market power determinations and remedies, 23 March 2010
<http://stakeholders.ofcom.org.uk/binaries/consultations/wba/summary/wbacondoc.pdf>
- Review of the wholesale broadband access markets, Second consultation on market definition, market power determinations and remedies, 20 August 2010
http://stakeholders.ofcom.org.uk/binaries/consultations/wholesale-broadband-markets/summary/WBA_condoc.pdf
- Review of the wholesale broadband access markets, Statement on market definition, market power determinations and remedies, 3 December 2010
<http://stakeholders.ofcom.org.uk/binaries/consultations/wba/statement/wbastatement.pdf>
- Proposals for wholesale broadband access charge control, Consultation document and draft notification of decisions on charge control in WBA Market 1, 20 January 2011
<http://stakeholders.ofcom.org.uk/binaries/consultations/823069/summary/condoc.pdf>
- Wholesale broadband access charge control, Charge control framework for WBA Market 1 services, 20 July 2011
<http://stakeholders.ofcom.org.uk/binaries/consultations/823069/statement/statement.pdf>
- Review of the wholesale local access market, Consultation on market definition, market power, determinations and remedies, 23 March 2010
<http://stakeholders.ofcom.org.uk/binaries/consultations/wla/summary/wlacondoc.pdf>
- Review of the wholesale local access market, Statement on market definition, market power determinations and remedies, 7 October 2010
http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf
- Communications Market Report 2012, 18 July 2012
http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/CMR_UK_2012.pdf