

Non-confidential

KCOM – Response to proposed consent for KCOM to defer its 2019/20 and 2020/21 Regulatory Financial Statements Consultation and notification of proposed consent under sections 49 and 49A of the Communications Act 2003

- 1.1 KCOM Group Limited (“KCOM”) welcomes the opportunity to respond to Ofcom’s consultation on Ofcom’s proposal to grant KCOM a deferral to its 2019/20 and 2020/21 Regulatory Financial Statements (RFS) submission dates (the “Consultation”).¹
- 1.2 For the reasons set out in KCOM’s letter to Ofcom of 27 March 2020, KCOM considers that there are clear and compelling reasons for Ofcom granting the deferral to the RFS submission dates as it is impracticable for KCOM to meet the current submission dates given the change in KCOM’s corporate status and KCOM’s deadline to file its statutory financial statements. Ofcom is proposing to grant KCOM a deferral to its 2019/20 and 2020/21 RFS submission dates as requested by KCOM. Ofcom is also proposing to use the Wholesale Fixed Telecoms Market Review for the Hull Area to consult on a permanent change to RFS submission dates. While KCOM will respond to the latter separately KCOM considers that the logic for granting an extension in the current circumstances applies equally to a permanent change to KCOM’s RFS submission date.
- 1.3 KCOM agrees with both of Ofcom’s proposals that:
 - Ofcom grant a consent to defer the deadline for publication of KCOM’s 2019/20 and 2020/21 RFS by an additional five months. This will mean that for 2019/20 and 2020/21, based on its current financial year end date of 31 March, KCOM must publish its RFS and any corresponding audit opinions no later than 31 December 2020 and 31 December 2021 respectively.
 - Ofcom consult on any new SMP condition requiring KCOM to publish its RFS as part of the forthcoming Wholesale Telecoms Market Review for the Hull Area. To change the deadline for publication of KCOM’s RFS beyond 2021, Ofcom would issue, after consultation, a new Significant Market Power (SMP) condition. This will be considered as part of the forthcoming Wholesale Telecoms Market Review for the Hull Area.
- 1.4 Specifically, KCOM agrees with Ofcom that legal tests set out in section 49(2) of the Communications Act 2003 (the “Act”) are met as they relate to Ofcom consenting to the deferral of KCOM’s deadline for publishing its RFS such that the granting of the deferral is:

¹ Ofcom (2020), *Proposed Consent for KCOM to defer its 2019/20 and 2020/21 Regulatory Financial Statements: Consultation and notification of proposed consent under sections 49 and 49A of the Communications Act 2003*, Consultation, 4 June 2020, available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0021/196302/consultation-kcom-defer-regulatory-financial-statements.pdf





- objectively justifiable as it allows KCOM sufficient time in which to prepare its 2019/20 and 2020/21 RFS in the context of its new statutory accounts filing requirements and deadline;
- not unduly discriminatory because BT is the only other SMP provider which has regulatory accounting obligations and, given the context of KCOM's delisting, does not face the same statutory accounts filing considerations in preparing its 2019/20 and 2020/21 RFS;
- proportionate, as it does not grant more additional time than is necessary for KCOM to prepare its 2019/20 and 2020/21 RFS; and
- transparent, in that it is clear that Ofcom's intention is to ensure that KCOM has sufficient time in which to prepare its 2019/20 and 2020/21 RFS in the context of KCOM's statutory accounts filing obligations and KCOM's obligations following this consent are clear.

1.5 Further, KCOM agreed with Ofcom that the granting of this consent will not have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which Ofcom has functions under Part 2, Chapter 1 of the Act. KCOM agrees that the granting of this consent is not of EU significance as in Ofcom's opinion it would not affect trade between Member States.

