

Review of the Wholesale Broadband Access Markets

Response by KCOM

25 September 2013

There have been significant developments in the UK broadband market since the last market review undertaken by Ofcom in 2010/11. These developments are also impacting on the market in Hull where we are continuing to roll-out our fibre network while facing increasing competition from resellers and now from significant alternative infrastructure providers for the first time.

KCOM is generally supportive of the approach proposed by Ofcom to regulation of wholesale broadband access in the Hull area, which our comments in this response are limited to. In particular, we are pleased that Ofcom is proposing to continue to adopt a pragmatic and proportionate response to address market power. We are currently making a significant investment in deploying fibre access and believe that the regulatory environment proposed by Ofcom is one which will provide the certainty and flexibility which will encourage infrastructure investment as well as competition for the benefit of customers within the Hull OLA area.

However, we are concerned that Ofcom is somewhat underestimating the competitive constraints which KCOM is now facing in the Hull area and in this response address those concerns.

Question 3.1: Do you agree with Ofcom's proposed product market definitions? If not, please explain why.

KCOM agrees with Ofcom's proposed market definitions, in particular we welcome the conclusion that superfast broadband services are in the same market as current generation broadband services.

We do however have some further comments on Ofcom's conclusions in relation to the retail markets. We appreciate that this will not alter the position with regard to SMP in the wholesale market in the Hull area but believe that it is important Ofcom understands the increasing constraints we are facing from competition including, for the first time, alternative fixed infrastructure.

Ofcom has characterised fixed wireless access as an 'in-fill' technology, a complementary solution to broadband in urban areas or as an alternative to low bandwidth symmetrical business services and proposes that in none of those cases can fixed wireless access be regarded as a close enough substitute to asymmetric broadband access to be included in the same market.

We do not agree that this characterisation of fixed wireless access is valid in the Hull area. There are a number of fixed wireless providers active in the Hull market, providing services to both residential and business customers. These services are very much marketed as an alternative to KC's fixed broadband service and as such cannot be said to be an 'in-fill' or complementary solution or an alternative to low bandwidth symmetrical business services. They are in fact



providing real competition to KCOM's fixed broadband services which we are very mindful of when developing our retail propositions.

Question 5.3: Do you agree with Ofcom's proposal that KCOM holds SMP in the Hull Area? If not, please explain why.

We accept Ofcom's proposal that KCOM holds SMP in the Hull area, however are disappointed with Ofcom's analysis of the current network deployment being undertaken by MS3 which has the potential to have a significant impact on our business both at a retail and wholesale level.

Ofcom has "informally" been told by MS3 that Phase 1 of their network build has already been completed which gives a network coverage of 550 properties. Phase 2 which is yet to be completed, it will extend the coverage to a further 2,164 properties in Hull's town centre. This would give MS3 the ability to serve less than 2% of Hull Area premises. We find this very surprising. A £5.5m investment covering 30km which only provides access to 550 properties does not make sense commercially and does not reflect our understanding of the level of coverage which MS3 already has or their future plans.

A recent report by Point Topic¹ provides the following overview of MS3's current and planned network deployment:

"Also in Hull, MS3 Networks, a business broadband provider, now passes 1,500 businesses with phase one of its network buildout comprising 33km of its own ducts and fibre brought in over the Humber Bridge, through the west of Hull and into the City Centre. The network, which went live in April 2013, also runs through residential areas and is located near 10,000 homes. Targeting the residential sector is part of the company's long-term five-year strategy, with the intention to cover 12,000 homes initially and then extend that number up to 25,000.

In July 2013 MS3 Networks began phase two of its network build to add another 30km of fibre into the east of Hull which is due to see significant economic growth as a regeneration area. Construction of this phase is expected to be complete at the end of 2013 and is due to add around 300 more businesses to the network. The operator aims to have 200km of fibre in place in five years' time."

Clearly this is more extensive than Ofcom has been led to believe and could have a significant impact on KCOM's business over the period of the market review, particularly in the business market. We would urge Ofcom to engage more formally with MS3 with regard to their actual and intended network and service deployment in the context of this and any other market reviews.

Question 6.3: Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on KCOM in relation to the market for WBA in the Hull Area? If not, please explain why.

KCOM has long argued that the imposition of specific access remedies would not be useful in the Hull area where a requirement to develop a defined service would not necessarily provide an

¹ **Superfast UK reviews, rethinks and revises** A short report from UK Plus 2 August 2013

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efficient solution for either KCOM or potential competitors wishing to enter the market. The imposition of a general access remedy in the last market review has provided KCOM with the ability to develop other commercial arrangements which offer alternative ways of providing access for competing CPs which are less burdensome in terms of regulatory obligations but still provide the service and functionality required. We therefore welcome Ofcom's proposal to continue with the current approach to remedies.

Question 6.4: Do you agree with Ofcom's approach to price remedies in the Hull Area? If not, please explain why.

KCOM agrees with Ofcom's approach to price remedies in the Hull area. We are firmly of the view that the imposition of charge controls and/or a cost orientation obligation on KCOM would not have the effect of encouraging others to enter the market. Rather it would simply impose additional regulatory obligations and costs on KCOM in respect of services for which there is no proven demand.

Question 6.5: Are there other remedies that, if imposed by Ofcom, would promote entry into the market in the Hull Area by other providers?

We do not believe that there are any additional remedies which Ofcom might consider which would have the effect of promoting further entry into the market in the Hull area by other providers.

KCOM has seen limited uptake of wholesale products by competing providers in the Hull area. In this regard we would refer Ofcom to its 2008 Wholesale Broadband Access Statement where Ofcom questioned a number of providers about entry into the Hull market.² In particular we note that none of the providers questioned claimed that KCOM was acting to prevent them from entering the Hull market or that the regulatory framework was insufficient, with Ofcom concluding "The reasons why alternative providers have not yet entered the Hull market therefore appear to be due to factors that are beyond regulatory control."

Ofcom's conclusion here is important and remains valid. The introduction of further remedies would simply increase the regulatory burden on our business with no discernible benefit for customers. We continue to believe that the best approach has been to provide flexibility through the imposition of a general access obligation rather than requiring the development of specific products. This has allowed us to develop resale products as an alternative to a full wholesale service enabling competitors to enter the market quickly and efficiently providing competitive services to customers in the Hull area.

² <http://stakeholders.ofcom.org.uk/binaries/consultations/wbamr07/statement/statement.pdf> para A5.14 – A5.16