

## Review of the Fixed Narrowband Services Wholesale Markets

### Response by KCOM

4 June 2009

KCOM welcomes the opportunity to comment on Ofcom's conclusions in the context of the wholesale narrowband market review.

Our comments in this response are limited to Ofcom's review of the market in the Hull area. In general we accept the conclusions which Ofcom has reached in respect of the Hull area and the proposed approach to regulatory remedies. In particular we appreciate that Ofcom continues to take the view that the imposition of specific obligations in respect of some services would be disproportionate. However, we believe that there are some aspects of Ofcom's analysis which require further consideration and/or explanation which we comment on further below.

#### Market Definition and SMP Assessment

##### *Impact of Broadband Developments and NGA*

We are concerned that Ofcom has not fully considered the impact of developments in the broadband market and the deployment of next generation access in undertaking its SMP assessment. We believe that both have the potential to significantly impact the wholesale narrowband market during the period which this review will cover, particularly given Government proposals to introduce a Universal Service Commitment for the provision of broadband services at a minimum specified speed.

It is likely that if these proposals are confirmed investment in and deployment of broadband solutions, including NGA, will accelerate and players other than BT and Virgin will take the opportunity to enter the market offering alternative access not only for broadband but also for narrowband services. Many of these deployments will be regional in nature and as such they represent a very real competitive threat in the Hull area. Investment in a small geographic area such as Hull would represent a small incremental cost for alternative providers, particularly larger players who are able to exploit economies of scale and scope associated with their existing businesses. For these reasons, we believe that these developments represent a far greater constraint for KCOM than Ofcom's limited analysis suggests.

##### *Business Exchange Lines*

Ofcom has concluded that wholesale residential and business exchange lines are part of the same market in the Hull area. However, we are concerned that this does not reflect the constraint which alternative access solutions such as leased lines place on business analogue exchange lines both at a wholesale and retail level.

In its statement on the Business Connectivity Market Review published in December 2008 Ofcom concluded that KCOM no longer had SMP in the retail market for low bandwidth TI leased lines based largely on KCOM's low market share of 25%. And



although Ofcom found KCOM retained SMP in the wholesale market for TISBOs up to and including 8Mbit/s in the Hull area, KCOM's market share was found to have reduced considerably (Ofcom's estimated a share of at least 51% based on 2006 data). KCOM's Regulatory Financial Statements for the year ended 31 March 2008 show from 2005/06 to 2006/07 the number of circuits decreased by a further 3%, with a further 8% decrease from 2006/07 to 2007/08. This would suggest rather more extensive use of alternative access methods than suggested by Ofcom and must be taken into account by Ofcom in assessing the direct and indirect constraints which apply to KCOM's provision of business analogue exchange lines.

## Remedies

### *ISDN2 and ISDN30*

We have argued in our response to the Retail Narrowband Market Review that the continued application of regulatory remedies to ISDN2 and ISDN30 is unjustified. Ofcom has concluded that the prospect of significant entry in the ISDN market appears muted, particularly as this is a product nearing the end of its lifecycle with customers opting for alternative technologies to provide the functionality they require. In these circumstances we do not see what purpose is being served by continuing to regulate these products.

Our comments apply equally in the wholesale market, particularly in respect of ISDN2 where we have seen a significant reduction in the number of connections over the last 3 years. KCOM's Regulatory Financial Statements for the year ended 31 March 2008 show a 16% decrease in the total number of ISDN2 connections between 2005/06 and 2007/08 with a decrease of 76% in residential ISDN2 connections during the same period. In these circumstances we do not believe that the continued application of regulatory remedies is justified or proportionate.

### *Alternative Approaches*

We welcome the fact that Ofcom has concluded that it would not be appropriate to impose a formal WLR remedy on KCOM. We believe that such an approach would not necessarily provide an efficient solution for either KCOM or potential competitors wishing to enter the market. Where there is a finding of SMP there may be other wholesale offerings 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.

In this regard we note that we are close to concluding negotiations with a major reseller for such an alternative means of access. We believe this will enable the reseller to compete effectively and efficiently with KCOM while avoiding regulatory and operational burdens and limitations which might otherwise result for both parties if there was a need to provide a mandated service offering less flexibility.

We would encourage Ofcom to consider these alternatives when assessing the appropriate approach to take in addressing SMP.

