

Hull Area Wholesale Fixed Telecoms Market Review 2021-26

Volume 4: Draft legal instruments

Non-confidential version

CONSULTATION:

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Proposals for SMP services conditions

NOTIFICATION OF PROPOSALS UNDER SECTIONS 48A AND 80A OF THE COMMUNICATIONS ACT 2003

Proposals for identifying markets, making market power determinations and setting and revoking SMP services conditions in relation to KCOM under section 45 of the Communications Act 2003

Proposals for market identification and market power determinations

1. On 30 November 2017, Ofcom published a statement entitled “Narrowband Market Review: Statement” (the “2017 Narrowband Statement”). The 2017 Narrowband Statement set out Ofcom’s conclusions on its review of narrowband markets including the wholesale fixed analogue exchange lines, the wholesale ISDN30 Exchange Line services and wholesale ISDN2 Exchange Line services markets by identifying markets, making certain market determinations and setting SMP conditions. At Annexes 9 and 10 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“November 2017 Notification”).
2. On 31 July 2018, Ofcom published a statement entitled “Wholesale Local Access and Wholesale Broadband Access Market Reviews - Review of competition in the Hull Area” (the “2018 WLA and WBA Statement”). The 2018 WLA and WBA Statement set out Ofcom’s conclusions on its review of wholesale local access markets and wholesale broadband access markets in the Hull Area by identifying markets, making certain market determinations and setting SMP conditions. At Annex 6 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“July 2018 Notification”).
3. On 28 June 2019, Ofcom published a statement entitled “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets” (“2019 Statement”). The 2019 Statement set out Ofcom’s conclusions on its review of physical infrastructure and business connectivity markets by identifying markets, making

certain market determinations and setting SMP conditions. At Annex 26 of that document, Ofcom published a notification under section 48(1) of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to KCOM (“June 2019 Notification”).

4. Ofcom is today publishing a consultation document entitled “Hull Area: Wholesale Fixed Telecoms Market Review 2020” (the “Main Document”). In volumes 1 to 3 of this document, Ofcom is consulting on new proposals to identify markets in the Hull Area, make market power determinations and set SMP conditions with respect to KCOM.

Proposals on market identifications and market power determinations

5. Ofcom is proposing to identify the markets listed in Column 1 of **Table A** below for the purpose of making a determination that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market.

Table A: Market identifications and market power determinations

Column 1: Market Identification	Column 2: Market power determination
(i) The supply of wholesale local access at a fixed location in the Hull Area	KCOM
(ii) The supply of wholesale leased lines access services in the Hull Area	KCOM

Proposals to set, apply and revoke SMP services conditions

6. Ofcom is proposing to set, in relation to the markets (i) and (ii) identified in Table A above, the SMP conditions as set out in **Schedule 1** to this notification to be applied to KCOM to the extent specified in that Schedule, which SMP conditions shall, unless otherwise stated in that Schedule, take effect from [*the date of the notification published under sections 48(1) and 79(4) of the Act*] or such other date specified in any notification under sections 48(1) and 79(4) of the Act adopting the proposals set out in this notification.

7. The effect of, and Ofcom’s reasons for making, the proposals in relation to SMP conditions referred to in this notification are set out in the Main Document which accompanies this notification.

8. Subject to the savings in paragraph 9, Ofcom is (to the extent still extant) proposing to revoke with effect from [*the date of the notification published under sections 48(1) and 79(4) of the Act*] the SMP conditions applied to KCOM as set out in the November 2017 Notification in so far as they apply to: wholesale fixed analogue exchange lines services in the Hull Area; wholesale call origination on a fixed narrowband network in the Hull Area; Interconnect Circuits in the Hull Area; wholesale ISDN30 Exchange Line services in the Hull Area; and wholesale ISDN2 Exchange Line services in the Hull Area.

9. The savings in this paragraph relate to the SMP Conditions in Schedule 2 to Annexes 9 - 10 of the November 2017 Notification. In relation to the markets and interconnection specified in Column 1 of Table B below, the SMP Conditions listed in Column 2 shall, to the extent they apply to the market concerned, continue to apply in relation to the provision of services to the customers listed in Column 3 until they are revoked with effect on the day which is one year from [*the date of the notification published under sections 48(1) and 79(4) of the Act*].

Table B: Narrowband Markets/interconnection

Column 1: Market/interconnection	Column 2: SMP Conditions	Column 3: Customer
The supply of Wholesale fixed analogue exchange line services in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 2, 4, 5 (except 5.2B, 5.3B, 5.4B, 5.4C, 5.4D, 5.5B, 5.6B)	Existing Wholesale Fixed Analogue Exchange Line Customers
The supply of wholesale ISDN30 Exchange Line services in the Hull Area	Conditions 1B, 1C (except 1C.1B), 2, 4, 5 (except 5.2B, 5.3B, 5.4A, 5.4C, 5.4D, 5.5B, 5.6B)	Existing ISDN30 Customers
The supply of wholesale ISDN2 Exchange Line services in the Hull Area	Conditions 1B, 1C (except 1C.1A), 2, 4, 5 (except 5.2B, 5.3B, 5.4A, 5.4C, 5.4D, 5.5B, 5.6B)	Existing ISDN2 Customers

The supply of Wholesale call origination on a fixed narrowband network in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 4 (except 4.3, 4.9), 5 (except 5.2A, 5.3A, 5.4A, 5.4B, 5.4C, 5.5A, 5.6A, 5.7)	Existing WCO Customers
The supply of Interconnect Circuits in the Hull Area	Conditions 1A (except 1A.2B, 1A.3), 4 (except 4.3, 4.9), 5 (except 5.2A, 5.3A, 5.4A, 5.4B, 5.4D, 5.5A, 5.6A, 5.7)	Existing WCO Customers

10. Ofcom is also (to the extent still extant) proposing to revoke the SMP conditions applied to KCOM as set out in:

- a. the July 2018 Notification; and
- b. the June 2019 Notification in so far as it applies the wholesale market for CI Access services (as defined in that Notification) in the Hull Area.

with effect from *[the date of the notification published under sections 48(1) and 79(4) of the Act]*.

11. Section 16 of the Interpretation Act 1978 shall apply as if these revocations were a repeal of an enactment by an Act of Parliament.

Ofcom's duties and legal tests

12. In developing proposals for identifying and analysing the markets referred to in paragraph 5 above, and in considering proposals as to whether to make the corresponding determinations set out in this notification, Ofcom has, in accordance with section 79 of the Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of an EU instrument and which relate to market identification and analysis or the determination of what constitutes significant market power. In so doing, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

13. Ofcom considers that the proposed SMP conditions above comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition, and further that the proposed revocations of the SMP conditions referred to above comply with the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.
14. In making all of the proposals referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
15. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

Making representations

16. Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying consultation in the Main Document by no later than 24 September 2020.
17. Copies of this notification and the accompanying consultation in the Main Document have been sent to the Secretary of State in accordance with sections 48C(1) and 81(1) of the Act.

Interpretation

18. For the purpose of interpreting this notification —
 - (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 19 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
 - (b) headings and titles shall be disregarded;

- (c) expressions cognate with those referred to in this notification shall be construed accordingly; and
- (d) the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

19. In this notification—

- (a) "**Access Agreement**" means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with an SMP Condition requiring network access;
- (b) "**Act**" means the Communications Act 2003 (c. 21);
- (c) "**Existing ISDN2 Customer**" means a Third Party who ordered wholesale ISDN2 Exchange Line services from KCOM prior to 1 December 2018;
- (d) "**Existing ISDN30 Customer**" means a Third Party who ordered wholesale ISDN30 Exchange Line services from KCOM prior to 1 December 2018;
- (e) "**Existing WCO Customer**" means a Third Party which is either an Existing Wholesale Fixed Analogue Exchange Line Customer, and Existing ISDN2 Customer or an Existing ISDN30 Customer, with whom KCOM has an Access Agreement for the provision of Wholesale Call Origination as at [*the date of the notification published under sections 48(1) and 79(4) of the Act*].
- (f) "**Existing Wholesale Fixed Analogue Exchange Line Customer**" means a Third Party with whom KCOM has an Access Agreement for the provision of Wholesale Fixed Analogue Exchange Lines from KCOM as at [*the date of the notification published under sections 48(1) and 79(4) of the Act*].
- (g) "**Framework Directive**" means 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, as amended;
- (h) "**Hull Area**" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the

Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);

- (i) **“ISDN2 Exchange Line”** means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Basic Rate Access standard as defined by the International Telecommunications Union, providing two digital channels with a bandwidth of 64 kbit/s each plus a control channel of 16kbit/s over a common digital bearer circuit;
- (j) **“ISDN30 Exchange Line”** means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Primary Rate Access standard as defined by the International Telecommunications Union, providing up to 30 digital channels with a bandwidth of 64 kbit/s per channel plus a control channel of 64 kbit/s;
- (k) **“ISDN”** means the integrated services digital network which is an electronic communications network that provides for digital end-to-end connectivity to support a wide range of public electronic communications services, including voice and non-voice services, to which end-users have access by a limited set of standard multipurpose customer interfaces.
- (l) **“July 2018 Notification”** has the meaning given to it in paragraph 2;
- (m) **“June 2019 Notification”** has the meaning given to it in paragraph 3;
- (n) **“KCOM”** means KCOM Group Limited, whose registered company number is 02150618;
- (o) **“Main Document”** has the meaning given to it in paragraph 4;
- (p) **“November 2017 Notification”** has the meaning given to it in paragraph 1;
- (q) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- (r) **“Statement of Strategic Priorities”** means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services

designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019;

(s) “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (1978 c30); and

(t) “**wholesale leased lines access services**” means symmetric point-to-point uncontended business connectivity circuits between end-user sites and the first point of aggregation or between customer sites (without aggregation).

20. The Schedule to this notification shall form part of this notification.

Signed



David Clarkson

Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

16 July 2020

Schedule 1: SMP conditions

Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 1, except where specified otherwise, apply to the Dominant Provider in each of the following relevant markets listed in Column 1 of Table 1 below to the extent specified in Column 2 of Table 1. Save as otherwise specified in any condition, each condition will enter into force on the date of publication of a notification under sections 48(1) and 79(4) of the Act and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

Table 1: Relevant markets for the purposes of this Schedule

Column 1: Relevant Market(s)	Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1
The supply of wholesale local access at a fixed location in the Hull Area	Conditions 1, 3, 4, 5 (except 5.3), 6, 7 (except 7.3), 8, 9
The supply of wholesale leased lines access services in the Hull Area	Conditions 1, 2, 4, 5, 6, 7 (except 7.2), 8, 9, 10

2. The Conditions referred to in paragraph 1 above are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	Specific forms of network access
Condition 3	Requests for new forms of network access

Condition 4	No undue discrimination
Condition 5	Publication of a Reference Offer
Condition 6	Notification of charges and terms and conditions
Condition 7	Notification of technical information
Condition 8	Quality of service
Condition 9	Regulatory Financial Reporting
Condition 10	Provision of a Wholesale Pricing Transparency Report (PTR)

Part 2: Interpretation

1. In addition to the definitions set out above in this notification and in each Condition below (where relevant), in this Schedule 1—
 - a) **“Access Change Notice”** means a notice given by the Dominant Provider of an Access Change;
 - b) **“Access Change”** means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;
 - c) **“Access Circuit”** means network access providing uncontended bandwidth connecting an end user premises to—
 - (a) an ODF Site, including a building designated by the Dominant Provider for use as an ODF Site in future; or
 - (b) a Third Party premises;
 - d) **“Act”** means the Communications Act 2003 (c. 21);
 - e) **“Ancillary Services”** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of network access provided by the Dominant Provider in accordance with Condition 1 or Conditions 1 and 2 (as applicable).
 - f) **“Dark Fibre Access”** means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals;
 - g) **“Dominant Provider”** means KCOM Group Limited, whose registered company number is 02150618, and any of its subsidiaries as defined in section 1159 of the Companies Act 2006;
 - h) **“Dominant Provider’s Price List”** means a document containing the charges for the Dominant Provider’s products and services;

- i) **“Ethernet Services”** means services presented with the standard networking protocol defined under that name in IEEE 802.3 and published by the Institute of electrical and Electronics Engineers;
- j) **“Financial Year”** means the period from 1 April in a given year to 31 March in the following year.
- k) **“Framework Directive”** means 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, as amended;
- l) **“In-Building Handover”** means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party within an ODF Site of the Dominant Provider;
- m) **“ODF”** means optical distribution frame;
- n) **“ODF Site”** means the site of an operational building of the Dominant Provider that houses an optical distribution frame
- o) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11);
- p) **“Reference Offer”** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;
- q) **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- r) **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- s) **“Special Offer”** means a temporary price reduction for a particular product or service, applicable to all customers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is no higher than the price immediately before the start of that period;

- t) **“Specified Services”** means the services or groups of services that KCOM is required to report to Ofcom pursuant to Direction 4, Annexes 19 and 20;
- u) **“Third Party”** means a person, other than KCOM, providing a public electronic communications service or a person providing a public electronic communications network;
- v) **“Wholesale End-to-End Circuits”** means network access providing uncontended bandwidth connecting an end user premises and another end user premises;
- w) **“Wholesale Pricing Transparency Report”** means a report required under Condition 10 to be provided to Ofcom; and
- x) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

2. For the purpose of interpreting this Schedule, except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Schedule shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products or services which are in the opinion of Ofcom substantially similar to those products. These product definitions, including quality assurance information and pricing are as on the product information pages on the following websites as at 7 July 2020: as to WLA: http://pricing.kcomhome.com/media/1573/p13-s27_wholesale_fibreline_local_access.pdf; and as to LL Access http://pricing.kcomhome.com/media/1476/p13-s19_ethernet_connect_access_service.pdf and http://pricing.kcomhome.com/media/1475/p13-s10_ethernet_direct_access_service.pdf.

Part 3: SMP conditions

Condition 1 – Network access on reasonable request

- 1.1** Except insofar as Ofcom may from time to time otherwise consent in writing, and subject to condition 1.2 the Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2** Condition 1.1 does not apply to requests for copper-based network access.
- 1.3** The provision of network access by the Dominant Provider in accordance with this Condition must:
- (a) take place as soon as reasonably practicable after receiving the request from a Third Party; and
 - (b) be on:
 - (i) fair and reasonable terms, conditions and charges; and
 - (ii) such terms, conditions and charges as Ofcom may from time to time direct.
- 1.4** The provision of network access by the Dominant Provider in accordance with this Condition must also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.
- 1.5** The provision of network access by the Dominant Provider in accordance with this Condition shall also include such Ancillary Services as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.

1.6 The Dominant Provider must comply with any direction Ofcom may make under this Condition.

Condition 2 – Specific forms of network access

- 2.1** Without prejudice to the generality of Condition 1, except insofar as Ofcom may from time to time otherwise consent in writing, the provision of network access under that Condition must include, where the Third Party, in writing, reasonably requests, the form of network access specified in this condition.
- 2.2** Ethernet Services including the provision of the following services:
- (i) Access Circuits;
 - (ii) Wholesale End-to-End Circuits.
- 2.3** Dark Fibre Access including provision of the following services:
- (i) Access Circuits;
 - (ii) Wholesale End-to-End Circuits.
- 2.4** The provision of network access by the Dominant Provider in accordance with this Condition shall also include such other entitlements as Ofcom may from time to time direct.
- 2.5** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

Condition 3 – Requests for new forms of network access

- 3.1** The Dominant Provider must, for the purposes of transparency, publish guidelines, in relation to requests for new forms of network access made to it. Such guidelines must set out:
- (a) the form in which such a request should be made;
 - (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access;
 - (c) the timescales in which such requests will be handled by the Dominant Provider; and
 - (d) any provisions directed by Ofcom.
- 3.2** The guidelines must meet the following principles:
- (a) the process for consideration of requests shall be documented end-to-end;
 - (b) the timescales for each stage of the process shall be reasonable, including providing (where relevant) adequate time for interested persons other than the Third Party making the request to make representations;
 - (c) the criteria by which requests will be assessed shall be clearly identified;
 - (d) the process for determining, with a Third Party that has made a request, the information in that request that is to be treated as confidential, shall be documented end-to-end;
 - (e) the reasons for rejecting any request shall be clear and transparent;
 - (f) the avenues of redress for rejected requests shall be clearly identified; and
 - (g) any changes to the guidelines shall be agreed between the Dominant Provider and other communications providers in an appropriate manner.
- 3.3** The Dominant Provider must, upon reasonable request from a Third Party considering making a request for a new form of network access, provide that Third

Party with such information as may be reasonably required to enable that Third Party to make a request for a new form of network access. Such information must be provided within a reasonable period.

3.4 Except in so far as OFCOM may from time to time otherwise consent in writing, where the Dominant Provider receives a request from a Third Party for a new form of network access the Dominant Provider must:

(a) deal with the request in accordance with the guidelines described in Condition 3.1 above;

(b) inform the party making the request that the request falls within the scope of the guidelines described in Condition 3.1 above; and

(c) publish the non-confidential elements of the request no later than 5 days after receipt of the request.

3.5 Publication pursuant to Condition 3.4(c) shall be effected by the Dominant Provider placing a copy of the non-confidential elements of the request on any relevant publicly accessible website, which for the avoidance of doubt shall not require password access, operated or controlled by the Dominant Provider:

(a) prominently; and

(b) in such form and/or manner as OFCOM may from time to time direct.

3.6 A modification of a request for a new form of network access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, must be considered as a new request.

3.7 The Dominant Provider must, in accordance with the requirements of Conditions 3.8 and 3.9 below, publish in relation to requests the information specified in KPIs (i) to (x) below, and any such additional information as OFCOM may from time to time direct.

KPI(i) – Total number of requests received

the total number of requests that were received by the Dominant Provider during the corresponding Relevant Period;

KPI(ii) - Total number of 25-day Unanswered Requests

for the corresponding Relevant Period, the total number of requests received by the Dominant Provider in respect of which the Dominant Provider has not provided a response within 24 Working Days of that requests having been received;

KPI(iii) - Total number of 75-day Unanswered Requests

for the corresponding Relevant Period, the total number of requests received by the Dominant Provider in respect of which the Dominant Provider has not provided a response within 74 Working Days of that request having been received;

KPI(iv) – Total number of Accepted Requests

the total number of requests that were accepted by the Dominant Provider during the corresponding Relevant Period;

KPI(v) – Total number of Rejected Requests

the total number of requests that were rejected by the Dominant Provider during the corresponding Relevant Period;

KPI(vi) – Total number of 25-day Rejected Requests

the total number of requests that were rejected by the Dominant Provider more than 25 Working Days after being received by the Dominant Provider during the corresponding Relevant Period;

KPI(vii) – Total number of 45-day Rejected Requests

the total number of requests that were rejected by the Dominant Provider more than 45 Working Days after being received by the Dominant Provider during the corresponding Relevant Period;

KPI(viii) – Total number of Project Plans

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request during the corresponding Relevant Period;

KPI(ix) – Total number of 80-day Project Plans

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request more than 80 Working Days after being received by the Dominant Provider; and

KPI(x) – Total number of 95-day Project Plans

the total number of Project Plans agreed between the Dominant Provider and the Third Party making the request more than 95 Working Days after being received by the Dominant Provider.

3.8 The information required to be published under Condition 3.7 above must be published by the Dominant Provider no later than one month after the end of each Relevant Period.

3.9 Publication referred to in Condition 3.7 shall be effected by the Dominant Provider:

(a) placing the information prominently (including in such form as OFCOM may from time to time direct) on any relevant publicly accessible website operated or controlled by the Dominant Provider, which for the avoidance of doubt shall not require password access; and

(b) sending a copy of the information to OFCOM.

3.10 In this Condition 3:

(a) **“Project Plan”** means an agreed plan between the Dominant Provider and a Third Party on project execution and project control for the development for a new form of network access. For the avoidance of doubt, Project Plans are agreed between the Dominant Provider and a Third Party with a view to concluding an Access Agreement; and

(b) **“Relevant Period”** means the following periods of six months beginning either (as applicable) on:

- (i) 1 August and ending on 31 January; and
- (ii) 1 February and ending on 31 July.

3.11 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition requiring amendments to the guidelines.

Condition 4 – No undue discrimination

- 4.1** Except insofar as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Conditions 1 and 2, as applicable.
- 4.2** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

Condition 5 – Publication of a Reference Offer

- 5.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish a Reference Offer in relation to the provision of network access pursuant to Conditions 1 and 2 (as applicable) and act in the manner set out below.
- 5.2** Subject to Condition 5.11, the Dominant Provider must ensure that a Reference Offer in relation to the provision of network access pursuant to Condition 1 or Conditions 1 and 2 (as applicable) includes, where applicable, at least the following, and any other matters Ofcom may direct from time to time —
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
 - (b) the locations at which network access will be provided;
 - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
 - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
 - (e) any ordering and provisioning procedures;
 - (f) relevant charges, terms of payment and billing procedures;
 - (g) details of maintenance and quality as follows—
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, and for provision of support services (such as fault handling and repair);
 - (ii) Service Level Commitments, namely the quality standards that each party must meet when performing its contractual obligations;

- (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
- (iv) a definition and limitation of liability and indemnity; and
- (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (h) details of measures to ensure compliance with requirements for network integrity;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of providing Accommodation Services or location of masts);
- (n) the standard terms and conditions for the provision of network access;
- (o) details of interoperability tests; and
- (p) details of traffic and network management.

5.3

LL Access

Subject to Condition 5.11, and to the extent not already required by Condition 5.2, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Dark Fibre Access includes an explanation of differences (if any) between:

- (a) the matters set out in Condition 5.2 which apply to the provision of the Dark Fibre Access; and
- (b) the matters set out in Condition 5.2 which apply to the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Condition 2.2 above.

5.4

To the extent that the Dominant Provider provides to itself network access that:

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any Third Party, the Dominant Provider must ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Condition 5.2(a) to (p) and any other matters Ofcom may direct from time to time .

- 5.5** Subject to Condition 5.7 below, the Dominant Provider must, on the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force.
- 5.6** The Dominant Provider must update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided as soon as reasonably practicable after the date that this Condition enters into force.
- 5.7** In relation to publication of the Reference Offer relating to Dark Fibre Access, the Dominant Provider must publish a Reference Offer which includes all relevant matters set out in Condition 5.2 by no later than six months after the date on which this Condition enters into force.
- 5.8** Publication referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by the Dominant Provider.
- 5.9** The Dominant Provider must send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 5.10** Where Service Level Guarantees are required by this condition 5, any payments required by the Service Level Guarantees must be provided proactively, and without prejudice to the right of either party to claim for additional loss.

- 5.11** The Dominant Provider must make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 5.12** The Dominant Provider must provide network access at the charges, terms and conditions in the relevant Reference Offer and must not depart therefrom either directly or indirectly.
- 5.13** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

Condition 6 – Notification of charges and terms and conditions

- 6.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this Condition.
- 6.2** Where it proposes an Access Change, the Dominant Provider must send to Ofcom, and to every person with whom it has entered into an Access Agreement pursuant to Condition 1 or Conditions 1 and 2 (as applicable), an Access Change Notice.
- 6.3** The obligation in Condition 6.2 shall not apply where the Access Change is directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.

6.4

An Access Change Notice must:

- (a) in the case of an Access Change involving new network access, be sent not less than 28 days before any such amendment comes into effect;
- (b) in the case of an Access Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, the introduction of a Special Offer), be sent not less than 28 days before any such amendment comes into effect;
- (c) in the case of an Access Change relating to the end of a temporary price reduction in accordance with the terms of the Special Offer, be sent not less than 28 days before any such amendment comes into effect; and
- d) in the case of any other Access Change involving existing network access, be sent not less than 56 days before any such amendment comes into effect.

6.5

The Dominant Provider must ensure that an Access Change Notice includes—

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;
- (c) the current and proposed new charge and/or current and proposed new terms and conditions (as the case may be); and
- (d) the date on which, or the period for which, the Access Change will take effect (the "**effective date**").

6.6 The Dominant Provider must not apply any Access Change identified in an Access Change Notice before the effective date.

6.7 To the extent that the Dominant Provider provides to itself network access that—

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party,

in a manner that differs from that detailed in an Access Change Notice in relation to network access provided to any Third Party, the Dominant Provider must ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 6.5(a) to (d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with network access, it must ensure it sends to Ofcom a notice equivalent to an Access Change Notice.

Condition 7 – Notification of technical information

7.1 Except in so far as Ofcom may from time to time otherwise consent in writing, where the Dominant Provider provides network access pursuant to Condition 1 or Conditions 1 and 2 (as the case may be) and proposes new or amended terms and conditions relating to the following—

(a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);

(b) the locations at which network access will be provided; or

(c) technical standards (including any usage restrictions and other security issues),

the Dominant Provider must publish a written notice (the “**Notice**”) of the new or amended terms and conditions within a reasonable time period.

7.2 The reasonable notice referred to in Condition 7.1 must be not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect.

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7.3 Save where the new or amended terms and conditions relate to or are a consequence of new or amended technical specifications determined by NICC Standards Limited (whose registered company number is 06613589), the reasonable notice referred to in Condition 7.1 must be not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect

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7.4 The obligation in Condition 7.1 shall not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act;

7.5 The Dominant Provider must ensure that the Notice includes—

- (a) a description of the network access in question;
- (b) a reference to the location in the Dominant Provider's Reference Offer of the relevant terms and conditions associated with the provision of that network access; and
- (c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access will be available or any amendments to the relevant terms and conditions will take effect (the "effective date").

7.6 The Dominant Provider must not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

7.7 Publication referred to in Condition 7.1 must be effected by the Dominant Provider—

- (a) placing a copy of the Notice on any relevant publicly accessible website operated or controlled by the Dominant Provider;
- (b) sending a copy of the Notice to Ofcom;
- (c) where the Notice identifies an amendment to existing relevant terms and conditions, sending a copy of the Notice to every person with which the Dominant Provider has entered into an Access Agreement pursuant to Conditions 1 and 2 (as applicable); and
- (d) sending a copy of the Notice to any person at that person's written request. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

Condition 8– Quality of service

- 8.1** The Dominant Provider must publish all such information as to the quality of service in relation to network access provided by the Dominant Provider pursuant to Condition 1, or Conditions 1 and 2 (as applicable) in such manner and form, and including such content, as OFCOM may from time to time direct.

- 8.2** The Dominant Provider must comply with any direction OFCOM may make from time to time under this Condition 8.

Condition 9 – Regulatory Financial Reporting

- 9.1** Except in so far as Ofcom may consent otherwise in writing, the Dominant Provider shall act in the manner set out in this Condition 9.
- 9.2** Ofcom may from time to time make such directions as they consider appropriate in relation to the Dominant Provider’s Cost Accounting System, Accounting Separation System and its obligations under this Condition 9;
- 9.3** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 9.
- 9.4** For the purpose of this Condition 9, publication shall be effected by
- (a) placing a copy of the relevant information on any relevant publicly accessible website, which for the avoidance of doubt shall not require password access, operated or controlled by the Dominant Provider; and
 - (b) sending a copy of the relevant information to any person at that person’s written request.

Requirements relating to the preparation, audit, delivery and publication of the Regulatory Financial Statements

- 9.5** The Dominant Provider shall in respect of the Market and the Disaggregated Activities (as applicable) for each Financial Year:
- (a) prepare such Regulatory Financial Statements as directed by Ofcom from time to time in accordance with the Accounting Documents (the relevant Accounting Documents to be identified in the Regulatory Financial Statements by reference to their date);
 - (b) secure the expression of an audit opinion upon the Regulatory Financial Statements as directed by Ofcom from time to time;
 - (c) deliver to Ofcom the Regulatory Financial Statements and corresponding audit opinion identified as directed by Ofcom from time to time and in accordance with Condition 9.6(a);

- (d) publish the Regulatory Financial Statements and corresponding audit opinion as directed by Ofcom from time to time and in accordance with Condition 9.6(b) and (c);
- (e) ensure that any Regulatory Financial Statements and corresponding audit opinion that it delivers to Ofcom and/or publishes are fit for such purpose (or purposes), if any, as notified by Ofcom in writing; and
- (f) in so far as it is reasonably practicable to monitor the effect of such changes, deliver to Ofcom a report detailing any changes in the Accounting Documents, any Process and any other methodology which caused any figure presented on any one of the Regulatory Financial Statements to change by more than 5% from the figure that would have been presented had such a change not been made. Any such report shall include details sufficient to render transparent such changes in accordance with any relevant direction Ofcom may make from time to time.

9.6 The Dominant Provider shall:

- a. deliver to Ofcom copies of the Regulatory Financial Statements and any corresponding audit opinion, each and all of which shall be in the form in which they are ultimately to be published, at least two weeks before they are required to be published;
- b. publish the Regulatory Financial Statements and any corresponding audit opinions within 9 months after the end of the period to which they relate; and
- c. publish with the Regulatory Financial Statements any written statement made by Ofcom and provided to the Dominant Provider commenting on the data in, the notes to or the presentation of any or all of the Regulatory Financial Statements and/or the Accounting Documents.

9.7 The Dominant Provider shall make such amendments to the form and content of the Regulatory Financial Statements as are necessary to give effect fully to the

requirements of this Condition 9. The Dominant Provider shall provide to Ofcom particulars of any such amendment, the reasons for it and its effect, when it delivers the Regulatory Financial Statements to Ofcom.

- 9.8** The Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of this Condition 9 on a current cost basis and shall be capable of doing so in relation to any period. Such Financial Statements, explanations or other information shall be, in the opinion of Ofcom, meaningfully reconcilable to the Statutory Financial Statements.
- 9.9** The Dominant Provider shall ensure that Accounting Policies shall be applied consistently within the same Regulatory Financial Statements, between Regulatory Financial Statements for the same Financial Year and from one Financial Year to the next. Each Regulatory Financial Statement shall include Prior Year Comparatives which shall be prepared on a basis consistent with Current Year Figures. The Dominant Provider may depart from this requirement in preparing the Regulatory Financial Statements for a Financial Year if there are reasons for doing so provided that the particulars of the departure, the reasons for it and its effect are stated in a note in the Regulatory Financial Statements in accordance with Accounting Standards and GAAP.
- 9.10** The Dominant Provider shall secure that sufficient checks, controls and meaningful reconciliations are performed between figures contained in the Regulatory Financial Statements and the accounting records (or between figures supplied by either the Cost Accounting System or the Accounting Separation System upon which the Regulatory Financial Statements rely and (i) other figures supplied by either the Cost Accounting System or the Accounting Separation System and/or (ii) the accounting records) to:
- a. enable the Regulatory Auditor to conclude that, in its opinion, both the Cost Accounting System and the Accounting Separation System complies with the Accounting Documents; and

- b. enable the Regulatory Financial Statements to be audited and an audit opinion expressed upon them in accordance with any relevant direction of Ofcom under this Condition 9.

9.11 The Dominant Provider shall preserve records sufficient to provide an adequate explanation of each Regulatory Financial Statement for a period of six years from the date on which each Regulatory Financial Statement is delivered to Ofcom.

Requirements relating to audit of the Regulatory Financial Statements

9.12 The Regulatory Auditor that the Dominant Provider from time to time appoints shall at all times be satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall notify Ofcom in writing of the Auditor appointed to secure compliance with this Condition 9 before the Auditor carries out any work for that purpose. The Dominant Provider shall notify Ofcom of any proposed change of Regulatory Auditor 28 days before effect is given to that change.

9.13 In the event that the Regulatory Auditor is in the opinion of Ofcom unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Regulatory Auditor that is at all times satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall ensure that the Alternative Regulatory Auditor:

- a. carries out such on-going duties as are required to secure compliance with this Condition 9;
- b. carries out work or further work, in addition to that performed by the Statutory Auditor and/or by the former Regulatory Auditor, in relation to such matters connected to compliance with this Condition 9 as are of concern to Ofcom and notified to the Dominant Provider in writing; and/or
- c. re-performs work previously performed by the Statutory Auditor and/or by the former Regulatory Auditor in relation to such matters connected to compliance with this Condition as are of concern to Ofcom and notified to the Dominant Provider in writing.

- 9.14** The Dominant Provider shall extend to the Alternative Regulatory Auditor such assistance and cooperation as would be extended to the Statutory Auditor and/or to the Regulatory Auditor and, to the extent similar assistance and co-operation may be required from the Statutory Auditor and/or from the former Regulatory Auditor, the Dominant Provider shall use its best endeavours to secure such assistance and co-operation.
- 9.15** The Dominant Provider's letter of engagement appointing the Regulatory Auditor shall include such provisions acknowledging the acceptance by the Regulatory Auditor of duties and responsibilities to Ofcom in respect of its audit work, audit report and audit opinion as are consistent with the ICAEW Guidance.
- 9.16** The Dominant Provider shall use its best endeavours to obtain from the Regulatory Auditor any further explanation and clarification of any audit opinion required under this Condition 9 and any other information in respect of the matters which are the subject of that audit opinion as Ofcom shall require.

Requirements relating to the Primary and Secondary Accounting Documents

- 9.17** The Dominant Provider shall review the Primary Accounting Documents as they exist before the coming into force of this Condition 9, and to the extent these documents do not comply with this Condition 9, the Dominant Provider shall by six months after the date on which this Condition 9 comes into force make changes to the Primary Accounting Documents to render them compliant. Such changes shall be delivered to Ofcom on or before nine months after the date on which this Condition 9 comes into force together with a copy of the Primary Accounting Documents marked up to show the effect of such changes. All such changes shall take effect on the date on which they are delivered to Ofcom.
- 9.18** Following the review of the Primary Accounting Documents in accordance with Condition 9.17, the Dominant Provider shall prepare the Secondary Accounting Documents in accordance with the Primary Accounting Documents and the requirements of this Condition 9. The Secondary Accounting Documents shall be delivered to Ofcom eight months after the date on which this Condition 9 comes into force.

9.19 The Dominant Provider shall,

- (a) publish the Primary Accounting Documents on or by nine months after the date on which this Condition 9 comes into force following their first review in accordance with Condition 9.17;
- (b) publish the Secondary Accounting Documents following their first review in accordance with Condition 9.18 on or prior to the date of publication of the Regulatory Financial Statements in accordance with Conditions 9.5 and 9.6; and
- (c) thereafter publish, and deliver to Ofcom, details of any amendment to the Accounting Documents as soon as practicable, and in any event within 28 days of the incorporation of such an amendment into the Accounting Documents. Such amendments shall take effect when delivered to Ofcom.

9.20 Insofar as there is any inconsistency between any or all of the Primary Accounting Documents, the Primary Accounting Documents shall have the following order of priority:

- (a) the Regulatory Accounting Principles;
- (b) the Attribution Methods;
- (c) the Transfer Charge System Methodology;
- (d) the Accounting Policies.

Requirements relating to the up-dating of systems, Accounting Documents and form and content

9.21 The Dominant Provider shall make such amendments as are from time to time required to:

- (a) the Cost Accounting System and the Accounting Separation System; the Accounting Documents; and
- (b) the form and content of the Financial Statements, in order to ensure that they are consistent with, and give effect fully to:
 - i. any modifications of any SMP conditions;

- ii. any formal undertakings given by the Dominant Provider to Ofcom following investigations by them into possible contraventions by the Dominant Provider of any SMP conditions or any provisions of the Act and following any dispute considered by Ofcom under the Act; and
- iii. any enforcement notifications, directions, consents and determinations given or made by Ofcom from time to time under any SMP condition or under the Act or in relation to any dispute considered by Ofcom under the Act, and the Dominant Provider shall make such amendments, and notify Ofcom in writing of such amendments, within three months of the modifications, formal undertakings, enforcement notifications, directions, consents and determinations having been made, provided that the requirements of this paragraph shall be suspended pending the final disposal of any proceedings seeking to have any such modifications, enforcement notifications, directions, consents, or determinations, quashed, set aside, modified or varied.

Requirements relating to deficiencies in the Regulatory Financial Statements and the Accounting Documents

9.22 Where Ofcom have reasonable grounds to believe that any or all of the Regulatory Financial Statements and/or Accounting Documents are deficient, the Dominant Provider shall, where directed by Ofcom,

- (a) amend the Accounting Documents in order to remedy the deficiencies identified by Ofcom;
- (b) restate the Regulatory Financial Statements identified by Ofcom as requiring restatement in accordance with the Accounting Documents which have, where necessary, been amended pursuant to subparagraph (a);

- (c) secure in accordance with any relevant direction of Ofcom under this Condition the expression of an audit opinion on the restated Regulatory Financial Statements;
- (d) deliver to Ofcom the restated Regulatory Financial Statements and corresponding audit opinion; and
- (e) publish the restated Regulatory Financial Statements and corresponding audit opinion.

Requirements relating to the maintenance of sufficient accounting records

9.23 The Dominant Provider shall maintain accounting records in a form which, on a historical cost basis and on a current cost basis:

- (a) enables the Network Services, and, insofar as they have been disaggregated in terms of Network Activities, each of the Network Activities, to be separately identified; and the costs, revenues, assets and liabilities of the Network Services, and, insofar as they have been disaggregated in terms of Network Activities, each of the Network Activities, to be separately attributable;
- (b) enables the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, each of the Accounting Separation Activities, to be separately identified; and the revenues, costs, assets and liabilities of the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, the revenues, costs, assets and liabilities of each of those Accounting Separation Activities, to be separately attributable; and
- (c) shows and explains the transactions of the Accounting Separation Market Activities and, insofar as these comprise or use Accounting Separation Activities, the transactions of each of the Accounting Separation Activities.

9.24 The accounting records referred to in Condition 9.23 and all associated documentation shall be, as appropriate:

- (a) maintained in accordance with the Accounting Documents;
- (b) maintained in order to ensure compliance with this Condition 9;

- (c) sufficient to enable the Regulatory Financial Statements to have expressed upon them any relevant audit opinion required under this Condition 9;
- (d) sufficient to ensure that charges for Network Access can be shown to be fair and reasonable and not to be unduly discriminatory; and
- (e) sufficient to provide a complete justification of the Dominant Provider's charges for Network Access; and
- (f) sufficient, to provide a complete justification of the Dominant Provider's charges for the provision of services to End Users.

Requirements relating to the preparation and maintenance of a Wholesale Catalogue

- 9.25** The Dominant Provider shall ensure that by six months after the date on which this Condition 9 comes into force,
- (a) all of its Wholesale Services as at the date on which this Condition 9 comes into force are identified as either External Wholesale Services and placed on the External Wholesale Services List or Internal Wholesale Services and placed on the Internal Wholesale Services List or, where appropriate, are identified as being both External Wholesale Services and Internal Wholesale Services and placed on both the External Wholesale Services List and the Internal Wholesale Services List;
 - (b) an accurate description is prepared of all the Dominant Provider's Internal Wholesale Services, External Wholesale Services and Wholesale Activities as at the date this Condition 9 comes into force sufficient in the opinion of Ofcom to enable them to determine whether these activities have been appropriately identified and sufficiently described; and
 - (c) an accurate description is prepared of all of the Dominant Provider's Network Services and the extent to which these activities are used in the course of supplying Wholesale Services as at the date this Condition 9 comes into force sufficient in the opinion of Ofcom to enable them to determine whether these activities and their use have been appropriately identified and adequately described.

- 9.26** The Wholesale Catalogue shall be delivered to Ofcom as soon as practicable after the date on which this Condition 9 comes into force and in any event by nine months after that date.
- 9.27** The Dominant Provider shall ensure that when from time to time Wholesale Activities and Network Activities used in the course of supplying Wholesale Services vary from those as at the date on which this Condition 9 comes into force (including, amongst other changes, new activities and the cessation of former activities) it shall within 28 days of such variation:

- (a) amend the Wholesale Catalogue to reflect such variation; and
- (b) deliver to Ofcom the amended version of the Wholesale Catalogue marked up to show those amendments.

The revised version of the Wholesale Catalogue shall be sufficient to enable Ofcom to determine whether such activities have been identified appropriately and their use categorised correctly.

Further accounting separation requirements

- 9.28** The Dominant Provider shall maintain a separation for accounting purposes of the Accounting Separation Market Activities from other activities and of Accounting Separation Activities from other activities, so as to:
- (a) identify all elements of revenue, cost, assets and liabilities, with the basis of their calculation and the detailed attribution methods used, related to the Accounting Separation Market Activities and Accounting Separation Activities including an itemised breakdown of fixed assets; and
 - (b) ensure that Accounting Separation Market Activities and Accounting Separation Activities are identified and are recorded at an appropriate amount in accordance with the Accounting Documents.

Requirements relating to the demonstration of non-discrimination

- 9.29** The Dominant Provider shall ensure it is able to demonstrate that at any point in

time:

- (a) where a Network Service or combination of Network Services is used by the Dominant Provider in providing Internal Wholesale Services, the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in respect of the use of the Network Services is equivalent to the amount applied and incorporated for the use of the Network Services or combination of Network Services in the charge payable for an equivalent External Wholesale Service;
- (b) the same amount as applied and incorporated in the Transfer Charge for the Internal Wholesale Service in subparagraph (a) in respect of the use of the Network Services is applied to the Network Service or combination of Network Services whenever it is used by the Dominant Provider in providing an Internal Wholesale Service;
- (c) the same amount as applied and incorporated in the Transfer Charge for the equivalent External Wholesale Service in subparagraph (a) in respect of the use of the Network Services is applied to the Network Service or combination of Network Services whenever it is used by the Dominant Provider in providing an External Wholesale Service; and
- (d) the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in subparagraph (a) in respect of the use of the Network Services shall be the cost of those Network Services unless the Network Service concerned is one of the Accounting Separation Activities.

Definitions

9.30 For the purpose of interpreting this Condition 9 the following definitions shall apply:

“Accounting Documents” means together the Primary Accounting Documents, the Secondary Accounting Documents, and either the Wholesale Catalogue or the Retail Catalogue as appropriate, all as amended from time to time in accordance with this Condition 9;

“Accounting Policies” means the manner in which the requirements of the Companies Act 2006, the Accounting Standards and the accounting policies

whenever not superseded by the Regulatory Accounting Principles, are applied by the Dominant Provider in each of the Regulatory Financial Statements;

'Accounting Separation Activities' means Wholesale Services and those Wholesale Activities, Network Services and Network Activities used directly or indirectly in the course of supplying Wholesale Services;

'Accounting Separation Attribution' means the totality of all apparatus, data, procedures and activities which the Dominant Provider uses or holds for use to determine the costs, revenues, assets and liabilities to be attributed to an activity, either based upon data recorded by an Accounting Separation Measuring System or otherwise;

'Accounting Separation Market Activities' means all of the Wholesale Services supplied in the Market and all of the Wholesale Activities, Network Services and Network Activities used directly or indirectly in the course of supplying those Wholesale Services;

'Accounting Separation Measuring System' means the totality of all apparatus, systems, data, procedures and activities which the Dominant Provider uses or holds for use to determine the extent to which costs, revenues, assets and liabilities are to be attributed to activities related to Network Access;

'Accounting Separation System' means the Accounting Separation Attribution and Accounting Separation Measuring System taken together;

'Accounting Standards' means the accounting standards by reference to which the Dominant Provider are required to prepare the Statutory Financial Statements;

'Alternative Regulatory Auditor' means any Auditor not for the time being appointed as the Dominant Provider's Regulatory Auditor;

'Attribution Methods' means the practices used by the Dominant Provider to attribute revenue (including appropriate Transfer Charges), costs (including

appropriate Transfer Charges), assets and liabilities to activities or, insofar as those activities have been aggregated into Wholesale Segments or Retail Segments in a given Market, to each Wholesale Segment or Retail Segment;

'Auditor' means any auditor which could be appointed as the Dominant Provider's auditor in accordance with the requirements of the Companies Act 2006;

'Cost Accounting Attribution' means the totality of all apparatus, data, procedures and activities which the Dominant Provider uses or holds for use to determine the costs, revenues, assets and liabilities to be attributed to an activity, either based upon data recorded by a Cost Accounting Measuring System or otherwise;

'Cost Accounting Measuring System' means the totality of all apparatus, systems, data, procedures and activities which the Dominant Provider uses or holds for use to determine the extent to which costs, revenues, assets and liabilities are to be attributed to an activity related to Network Access or the provision of services to End-Users (as appropriate);

'Cost Accounting System' means Cost Accounting Attribution and Cost Accounting Measuring System taken together;

'Current Year Figures' means, in relation to any set of Financial Statements, the amounts relating to the Financial Year to which the accounts relate;

'Disaggregated Activities' means, in respect of a Market, the Wholesale Segments, Wholesale Services, Wholesale Activities, Network Services, Network Activities, Retail Segments, Retail Products, Retail Activities and/or Retail Support Activities used or carried out in the Market, as appropriate;

'External Wholesale Services' means services supplied or offered to any communications provider other than the Dominant Provider;

'External Wholesale Services List' means the list of External Wholesale Services prepared under condition 9.25 as amended from time to time under condition 9.27;

'Financial Year' means a financial year of the Dominant Provider in respect of which annual statutory accounts are required to be (or to have been) prepared and audited in accordance with the requirements of the Companies Act 2006;

'GAAP' (Generally Accepted Accounting Practice(s)) means United Kingdom or international (as appropriate) conventions, rules and procedures that define currently accepted accounting practice (including, for the avoidance of doubt, not only broad guidelines of general application but also any detailed practices and procedures);

'ICAEW Guidance' means the technical release titled "Reporting to Regulators of Regulated Entities: Audit 05/03" issued by the Audit and Assurance Faculty of the Institute of Chartered Accountants in England & Wales in October 2003;

'Internal Wholesale Services' means services equivalent to the External Wholesale Services which, in the absence of horizontal or vertical integration, could be supplied within the Dominant Provider;

'Internal Wholesale Services List' means the list of Internal Wholesale Services prepared under condition 9.25 as amended from time to time under condition 9.27;

'Market' means each market to which this condition 9 applies;

'Network Activities' means any activities related to Network Access used directly or indirectly (or which in the absence of horizontal or vertical integration would be used directly or indirectly) in the course of supplying Wholesale Services and any activities used in the course of such activities, excluding those activities which are Wholesale Activities;

'Network Component' means, to the extent they are used in the Market, the network components specified in any direction given by Ofcom from time to time for the purposes of these conditions;

'Network Services' means those groups of Network Activities used directly (or which in the absence of horizontal or vertical integration would be used directly) in the course of supplying Wholesale Services;

'Primary Accounting Documents' means documentation setting out the Accounting Policies, the Attribution Methods, the Regulatory Accounting Principles, and the Transfer Charge System Methodology;

'Prior Year Comparatives' means, in relation to any set of Financial Statements, the amounts relating to the Financial Year immediately preceding the Financial Year to which the accounts relate, re-evaluated if necessary to ensure that such figures are comparable to the Current Year Figures;

'Process' means the series of inter-related activities or actions to obtain, record or hold data or information or to carry out any operation or set of operations on the data or information, including:

- a) organisation, storage, adaptation, or alteration of the data or information;
- b) retrieval, consultation, computation or use of the data or information;
- c) disclosure of the data or information by transmission, dissemination, or otherwise making available; or
- d) alignment, combination, blocking, erasing or destruction of the data or information;

'Regulatory Accounting Principles' means the principles applied or used by the Dominant Provider in the preparation of the Regulatory Financial Statements;

'Regulatory Auditor' means the Auditor for the time being appointed by the Dominant Provider in accordance with these conditions;

'Regulatory Financial Statement' means any financial statement in respect of a Financial Year prepared, or required to be prepared by the Dominant Provider in accordance with this Condition 9;

'Retail Activities' means any activities wholly and exclusively carried out (or which in the absence of horizontal or vertical integration would wholly and exclusively be

carried out) in the course of supplying Retail Products and any activities wholly and exclusively carried out in the course of such activities, excluding those activities which are Wholesale Services;

'Retail Products' means services used by or offered to any End Users (including The Dominant Provider);

'Retail Segments' means groups of Retail Products;

'Retail Support Activities' means any activities carried out directly or indirectly (or which in the absence of horizontal or vertical integration would be carried out directly or indirectly) in the course of supplying Retail Products and any activities directly or indirectly carried out in the course of such activities, excluding those activities which are Retail Activities or Wholesale Services;

'Secondary Accounting Documents' means documentation setting out details of the policies, methodologies, systems, processes and procedures for deriving or calculating the costs, revenues, assets and liabilities (including detailed attribution methods and detailed valuation methodology) used by the Dominant Provider in addition to the Primary Accounting Documents, the Wholesale Catalogue and the Retail Catalogue to prepare the Regulatory Financial Statements;

'Statutory Auditor' means the Auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 2006;

'Statutory Financial Statements' means any annual report required to be prepared by the Dominant Provider in accordance with the requirements of the Companies Act 2006;

'Transfer Charge' means the charge or price that is applied, or deemed to be applied, by the Dominant Provider to itself for the use or provision of an activity or group of activities. For the avoidance of doubt, such activities or group of activities

include, amongst other things, products and services provided from, to or within the Market and the use of Network Components in the Market;

'Transfer Charge System Methodology' means the methodology of the system employed by the Dominant Provider which enables an activity to use a service or good from another activity and to account for it as though it had purchased that service or good from an unrelated party (including accounting for it at an appropriate amount);

'Wholesale Activities' means any activities wholly and exclusively carried out (or which in the absence of horizontal or vertical integration would wholly and exclusively be carried out) in the course of supplying Wholesale Services and any activities wholly and exclusively carried out in the course of such activities;

'Wholesale Catalogue' means the documentation required to be produced by the Dominant Provider under condition 9.25 as amended from time to time in accordance with condition 9.27;

'Wholesale Segments' means groups of Wholesale Services; and

'Wholesale Services' means services related to Network Access used by or offered to any communications provider (including the Dominant Provider).

Condition 10 – Provision of a Wholesale Pricing Transparency Report

10.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall prepare and provide to Ofcom for each Relevant Period a Wholesale Pricing Transparency Report in relation to the provision of network access under Condition 1 or Condition 1 and Condition 2 (as applicable).

10.2 Subject to Condition 10.4 the Dominant Provider must, in each Wholesale Pricing Transparency Report, set out the following:

(a) each wholesale leased lines access service, including each Dark Fibre Access service, being provided to a Third Party by the Dominant Provider under Conditions 1 and 2 (as appropriate) on the last day of the Relevant Period;

(b) in relation to each wholesale leased lines access service, excluding Dark Fibre Access service, referred to in Condition 10.2(a) above:

- i) specification of each of the service type, interface, bandwidth and circuit orientation;
- ii) the amount of the connection charge;
- iii) the date on which the rental charge was agreed;
- iv) any fixed or minimum term which have been agreed by the Dominant Provider and a Third Party in respect of the rental charge;
- v) the amount and the frequency of the rental charge; and
- vi) such characteristics of each connection as required to fully determine the connection charge and the annual rental charge from the Dominant Provider's price list.

(c) in relation to each Dark Fibre Access service referred to in Condition 10.2(a) above:

- i) specification of each of the service type, presentation and circuit orientation; and
- ii) the information referred to in Condition 10.2(b)(ii) to (vi).

10.3 Provision referred to in Condition 10.1 shall be effected by sending the Wholesale Pricing Transparency Report in Excel spreadsheet format by email to the designated person in the form notified by Ofcom from time to time within one month after the

end of each Relevant Period to which the Wholesale Pricing Transparency Report relates.

10.4 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

10.5 In this Condition 10:

- (a) **“Relevant Period”** means the following periods of six months beginning either (as applicable) on:
 - a. 1 August and ending on 31 January; and
 - b. February and ending on 31 July.

Proposed Direction under SMP Condition 5 in respect of the Wholesale Local Access Market

Notification of proposals under section 49 and 49A of the Communications Act 2003 and Condition 5 (Publication of a Reference Offer) proposed to be imposed on KCOM relating to the requirement to publish a Reference Offer in relation to the provision of network access in respect of the wholesale local access market

Background

1. Ofcom is today publishing a consultation document entitled “Hull Area: Wholesale Fixed Telecoms Market Review 2020” (the “Main Document”). In this document, Ofcom is consulting on new proposals to identify markets in the Hull Area, make market power determinations and set SMP conditions with respect to KCOM.
2. In the Main Document, Ofcom proposes to impose SMP condition 5 (Publication of a Reference Offer) on KCOM in respect of the wholesale local access and wholesale leased lines access services markets. Pursuant to the proposed SMP condition 5, Ofcom may from time to time give certain directions relating to KCOM’s Reference Offer.
3. In the Main Document, Ofcom is consulting on a proposed direction to be imposed on KCOM pursuant to SMP Condition 5 in respect of the wholesale local access market. This notification contains its proposals for that direction.

Proposals in this Notification

4. Ofcom is proposing to give the direction set out in the Schedule to this notification under section 49 of the Act and proposed SMP condition 5.11.

Ofcom’s duties and legal tests

5. The effect of this proposed direction, and Ofcom's reasons for giving it, are set out in the Main Document accompanying this notification and, for the reasons therein, Ofcom provisionally considers that the directions would comply with the requirements of section 49(2) of the Act.
6. Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost

account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

7. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

Making representations

8. Representations may be made to Ofcom about the proposals set out in this notification and no later than 24 September 2020.
9. In accordance with section 49C(1)(a) of the Act, a copy of the notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

10. For the purpose of interpreting this notification:
 - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 11 below;
 - b. save where otherwise defined in this notification, and except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the notification of proposed SMP conditions, given on the same date as this notification;
 - c. otherwise any word or expression has the same meaning as it has in the Act;
 - d. headings and titles shall be disregarded;
 - e. expressions cognate with those referred to in this notification shall be construed accordingly; and
 - f. the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.
11. In this notification:
 - a. **“In-Building Handover”** means interconnection between the electronic communications network of the Dominant Provider and the electronic

communications network of a Third Party within an ODF Site of the Dominant Provider;

- b. **“ODF Site”** means the site of an operational building of the Dominant Provider that houses an optical distribution frame;
- c. **“Reference Offer”** means the terms and conditions published in accordance with SMP Condition 5 on which the Dominant Provider is willing to enter into an Access Agreement; and
- d. **“Third Party”** means a person, other than KCOM, providing a public electronic communications service or a person providing a public electronic communications network.

12. The schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style.

David Clarkson

Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

16 July 2020

SCHEDULE

[Draft] Direction under section 49 of the Communications Act 2003 and condition 5 relating to the terms on which KCOM publishes a reference offer

Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Condition 5.11.
2. This direction applies to the market for the supply of wholesale local access at a fixed location in the Hull Area.

Direction

3. The Dominant Provider must remove conditions in its Reference Offer which require or have the effect of requiring In-Building Handover.
4. The Dominant Provider must modify its Reference Offer, by adding conditions which enable a Third Party to interconnect its electronic communications network to the electronic communications network of the Dominant Provider outside of an ODF Site.
5. KCOM must comply with the requirement set out in this Schedule by three months from the date on which this direction comes into force.

Ofcom's duties and legal tests

6. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
7. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

8. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

9. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

[Date]

Proposed Directions under SMP Condition 9 in respect of the Wholesale Local Access and LL Access Markets

Notification of proposals under section 49 and 49A of the Communications Act 2003 for directions in relation to KCOM under section 49 of the Communications Act 2003.

Background

1. Ofcom is today publishing a consultation document entitled “Hull Area: Wholesale Fixed Telecoms Market Review 2020” (the “Main Document”). In this document, Ofcom is consulting on new proposals to identify markets in the Hull Area, make market power determinations and set SMP conditions with respect to KCOM.
2. Pursuant to the proposed SMP conditions, Ofcom may give certain directions relating to them.
3. Ofcom is today consulting on proposed regulatory financial reporting directions to KCOM in respect of the markets in which Ofcom has either found or proposed that KCOM has SMP in the Main Document and in relation to which it is today notifying proposals to imposing SMP conditions relating to regulatory financial reporting. This notification contains its proposals for those directions.

Proposals in this Notification

4. Ofcom is proposing to give the directions set out in the Schedule to this notification under section 49 of the Act and the SMP conditions set out below.
5. Pursuant to proposed Condition 9.2, Ofcom may make directions in relation to KCOM’s obligations under the proposed conditions.
6. Pursuant to proposed Condition 9.3, the Dominant Provider must comply with any direction Ofcom gives in relation to the Dominant Provider’s Cost Accounting System, Accounting Separation System and its obligations under Condition 9.
7. Pursuant to proposed condition 9.5(a), the Dominant Provider must prepare such Regulatory Financial Statements as are directed by Ofcom from time to time.
8. Pursuant to proposed condition 9.5(b) the Dominant Provider shall secure the expression of an audit opinion upon the Regulatory Financial Statements as directed by Ofcom from time to time.

9. Pursuant to proposed condition 9.5(c), the Dominant Provider shall deliver to Ofcom the Regulatory Financial Statements and corresponding audit opinion identified as directed by Ofcom from time to time.
10. Pursuant to proposed condition 9.5(d), the Dominant Provider must publish the Regulatory Financial Statements and corresponding audit opinion as directed by Ofcom from time to time.
11. Pursuant to proposed condition 9.30, “network components” means, to the extent they are used in the Market, the network components specified in any direction given by Ofcom from time to time for the purposes of the proposed conditions.
12. The proposed directions set out in the Schedule to this notification shall apply in relation to the markets specified in each proposed Direction.
13. The proposed directions set out in the Schedule to this Notification shall take effect on the date of a subsequent notification under section 49 of the Act adopting the proposals set out in this notification.

Ofcom’s duties and legal tests

14. The effect of these proposed directions, and Ofcom's reasons for giving them, are set out in the Main Document accompanying this notification and, for the reasons therein, Ofcom provisionally considers that the directions would comply with the requirements of section 49(2) of the Act. Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
15. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

Making representations

16. Representations may be made to Ofcom about the proposals set out in this notification and no later than 24 September 2020.
17. In accordance with section 49C(1)(a) of the Act, a copy of the notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

18. For the purpose of interpreting this notification:

- a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 19 below;
- b. save where otherwise defined in this notification, and except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the notification of proposed SMP conditions relating to regulatory reporting, given on the same date as this notification;
- c. otherwise any word or expression shall have the same meaning as it has in the Act;
- d. headings and titles shall be disregarded;
- e. expressions cognate with those referred to in this notification shall be construed accordingly; and
- f. the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

19. In this notification:

- a. **“Gross Replacement Cost”** or **“GRC”** means the cost of replacing an existing tangible fixed asset with an identical or substantially similar new asset having a similar production or service capacity;
- b. **“Mean Capital Employed (MCE)”** means total assets less current liabilities, excluding corporate taxes and dividends payable, and provisions other than those for deferred taxation. The mean is computed from the start and end values for the period, except in the case of short-term investments and borrowings, where daily averages are used in their place; and
- c. **“Net Replacement Cost”** or **“NRC”** means the Gross Replacement Cost less accumulated depreciation based on Gross Replacement Cost.

- d. “**Usage Factor**’ means the average usage by any communications provider (including the Dominant Provider itself) of each Network Component in using or providing a particular product or service or carrying out a particular activity;

20. The schedules to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style.

David Clarkson

Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

16 July 2020

Schedule

[Draft] Direction 1 – Network Component Direction

Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Conditions 9.2 and 9.30.
2. This direction applies with respect to the following markets unless otherwise specified:
 - a. WLA
 - b. LL Access

Direction

3. Ofcom hereby directs KCOM that the following network components must apply, in relation to the markets to which this direction applies:
 - a. Electronics;
 - b. Field provision;
 - c. Field maintenance;
 - d. Local Loop infrastructure
 - e. Exchange concentrator;
 - f. Exchange-exchange Transmission link;
 - g. Back-office Provision;
 - h. Back-office Maintenance;
 - i. Sales and Product Management;
 - j. PPP for narrowband call services;
 - k. Net Current Assets; and
 - l. Other.

Ofcom's duties and legal tests

4. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
5. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification,

Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

6. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
7. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

[Date]

[Draft] Direction 2 – Transparency Direction

Background

1. This direction is **made** under section 49 of the Communications Act 2003 and SMP Services Condition 9.2.
2. This **direction** applies with respect to the following markets unless otherwise specified:
 - a. WLA
 - b. LL Access

Direction

3. Ofcom hereby directs KCOM to ensure that any data, information, description, material or explanatory document prepared under SMP Condition 9 in respect of accounting and other methods used in the preparation of the accounting records and Regulatory Financial Statements shall be sufficiently transparent and prepared such that a suitably informed reader can gain a clear understanding of such data, information, description, material or explanatory document, and, if necessary, the overall structure of KCOM's financial and information systems from which regulatory accounting data is derived and in particular the sequence of the processing and 'cascade' effect of the intermediate cost centres; gain a detailed understanding of all the material, methodologies and drivers (e.g. Systems, Processes and procedures) applied in the preparation of regulatory accounting data; and make their own judgement as to the reasonableness of these methodologies and driver data and any changes to them, in relation to the markets listed in paragraph 2 above.

Ofcom's duties and legal tests

4. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
5. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

6. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

7. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

[Date]

[Draft] Direction 3 - Preparation, audit, delivery and publication Regulatory Financial Statements Direction

Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Conditions 9.2 and 9.5.
2. This direction applies with respect to the following markets unless otherwise specified:
 - a. WLA
 - b. LL Access

Direction

3. Ofcom hereby specifies that KCOM shall prepare, secure an audit opinion in respect of, deliver to Ofcom and publish the Regulatory Financial Statements in accordance with the Annex to this direction for the markets listed above in paragraph 2.

Ofcom's duties and legal tests

4. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
5. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
7. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of
Communications Act 2002**

[Date]

Annex to the preparation, audit and delivery of Regulatory Financial Statements direction –

For the purposes of this annex:

- a) the scope of these statements are set out in the matrix of obligations that follows;
- b) references to **annexes** are to the form and content direction dated [*date of Statement*]; and
- c) the following abbreviations are used:

In the table below, “X “means that the financial statement set out at the head of the column is required for the market on that row to be published, “O” means it is provided on a confidential basis.

	Financial statements												Audit
	SD R	CCPS	RFR	SoAC FA (market)	SoAC FA (consolidated)	Notes	RTS A	RT W	RTR	IMT	SLI	SLC	PPIA
KCOM wide / Wholesale market													
KCOM wide	X	X	X		X	X	X/O	O	O	O			X
Wholesale Local Access		X	X	O							O	O	X
Leased Line Access		X	X	O							O	O	X

- SDR – statement of responsibility, as set out in annex 2 [NB – no audit opinion is required for the SDR];
- PPIA – Audit opinion required for published statements, for inclusion in audit report as set out in annex 3;
- CCPS = ‘current cost primary statements’, current cost profit and loss statement (CC P&L) and statement of current cost mean capital employed (CC MCE), as set out in Annexes 4 & 5 in relation to consolidation of markets subject to cost accounting and as set out in Annexes 8 & 9 in relation to individual wholesale markets;

- RFR – regulatory financial review, as set out in annex 7 [NB – no audit opinion is required for the RFR];
- SoAC FA (market) = Market network activity statement costs on a current fully allocated cost basis for the market (as set out in Annex 10) [NB to be provided on a confidential basis];
- SoAC FA (consolidated) = Consolidated network activity statement costs on a current fully allocated cost basis (as set out in Annex 6 [NB to be published]);
- SOS – notes to the financial statements (as set out in annex 11) in relation to sufficiency of separation, in particular assurance that activities to which accounting separation applies have been sufficiently separated from each other and from activities to which separation does not apply;
- RTSA = ‘reconciliation to statutory accounts’, reconciliation of consolidated CC P&L and CC MCE for wholesale markets subject to cost accounting to the profit and loss account and balance sheet of the operator shown in their statutory financial statements (as set out in annexes 12 & 13 [NB to be published], supported by annexes 14, 15, 16 & 17 [NB to be provided on a confidential basis]);
- RTW = ‘wholesale residual’, CC P&L and CC MCE to - consolidation across group of markets covered by wholesale residual markets (as set out in Annexes 14 & 15) [NB to be provided on a confidential basis];
- RTR = ‘retail residual’, CC P&L and CC MCE - consolidation across group of markets covered by retail markets (as set out in Annexes 16 & 17); [NB to be provided on a confidential basis];
- IMT – Inter-market turnover, reconciliation of the source and destination of inter market turnover, to verify that transfer charges are self-cancelling overall (as set out in annex 18); [NB to be provided on a confidential basis];
- SLI – Service level Information - Information on the volume of specified services sold, the average prices, revenues and FAC costs. (as set out in annex 19); [NB to be provided on a confidential basis]; and
- SLC – Breakdown of Service level Cost - Information on specified services on a fully allocated costs (FAC) basis by network cost component. (as set out in annex 20); [NB to be provided on a confidential basis].

[Draft] Direction 4 - Form and content of Regulatory Financial Statements Direction

Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Condition 9.2 and 9.5(a).
2. This direction applies with respect to the following markets unless otherwise specified:
 - a. WLA
 - b. LL Access

Direction

3. Ofcom hereby specifies that except where KCOM is entitled to amend the form and content of the Regulatory Financial Statements in accordance with Condition 9, KCOM shall ensure that the Regulatory Financial Statements, required by condition 9 and the direction for the preparation, audit, delivery and publication of the Regulatory Financial Statements, shall be prepared, as appropriate, as to form and content in the manner set out in the Annexes to this Direction for the markets listed above in paragraph 2.

Ofcom's duties and legal tests

4. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
5. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

6. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
7. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of
Communications Act 2002**

[Date]

Annexes to Direction

Index of form and content annexes

Annex 1 – Statement by Ofcom

Annex 2 – Statement of responsibility

Annex 3 – Report of the Regulatory Auditors

Annex 4 – Consolidation Profit and Loss (P&L) Statement

Annex 5 – Consolidation Mean Capital Employed (MCE) Statement

Annex 6 – Consolidated Network Activity statement

Annex 7 – Regulatory financial review

Annex 8 – Market P&L statement

Annex 9 – Market MCE statement

Annex 10 – Market Network Activity Statement [provided on a confidential basis]

Annex 11 – Notes to financial statements

Annex 12 – Reconciliation statement, P&L

Annex 13 – Reconciliation statement, MCE

Annex 14 – Wholesale residual, P&L [provided on a confidential basis]

Annex 15 – Wholesale residual, MCE [provided on a confidential basis]

Annex 16 – Retail residual, P&L [provided on a confidential basis]

Annex 17 – Retail residual, MCE [provided on a confidential basis]

Annex 18 – Inter-market turnover [provided on a confidential basis]

Annex 19 – Service Level Information AFI for each specified market [provided on a confidential basis]

Annex 20 – Breakdown of Service Level Costs AFI for each specified market [provided on a confidential basis]

Annex 1

Statement by Ofcom (KCOM)

Ofcom is entitled, to comment on the data in, the notes to, or the presentation of any of the Financial Statements, in relation to each of the markets

Annex 2

Statement of Responsibility (KCOM)

The Board of Directors of the dominant provider (or if this includes a group of companies, the ultimate holding company) have responsibility for setting out the basis of preparation of the Financial Statements, confirming compliance with its responsibilities under the Conditions, and any other information relevant to carrying out its obligations under those conditions.

Annex 3

Report of the Regulatory Auditors (KCOM)

The report of the independent regulatory auditors produced in accordance with the SMP Condition and Directions.

The statement by the regulatory auditor shall set out the responsibilities of the Dominant Provider and of the auditor, the basis of audit opinion in accordance with current auditing standards, to whom a duty of care is owed and their opinion in respect of each Financial Statement.

For reasons of simplicity and understandability the auditor may have a single opinion covering Accounting Separation Financial Statements and Cost Accounting Financial Statements, provided that their opinion clearly identifies the nature of the assurance given in relation to each.

Annex 4 - Consolidation Profit and Loss (P&L) Statement

KCOM Consolidation Statement

Consolidated Total - For all markets where cost accounting and accounting separation obligations apply

CURRENT COST PROFIT AND LOSS ACCOUNT		Restated (cross refer to notes)		£'k Change Year on year	% Change Year on Year
	Notes	£k CY	£k PY		
for the year ended 31 March 20xx					
Turnover (identifying Gross, Discounts and Net turnover for external sales if applicable)					
Internal Sales [Note]					
External Sales					
Total Turnover					
Operating costs					
Operating costs					
- Engineering Support					
- Finance & Billing					
- General Management					
- Bad Debts					
- Back Office Support					
- Other Costs (total of items below 5% of operating cost)					

Subtotal operating expenditure

Depreciation

- Duct
- Copper
- Fibre
- Transmission
- Exchange
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

Total operating costs

Return

MCE

RETURN ON MEAN CAPITAL EMPLOYED

for the year ended 31 March 20xx

CY	PY	
%	%	%

Return on mean capital employed

[Note - All sales to be based on actual volumes x price]

Annex 5 - Consolidation Mean Capital Employed (MCE) Statement

KCOM Consolidation Statement

STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED		Restated (cross refer to notes)			
for the year ended 31 March 20xx				£'k	
	Notes	£k CY	£k PY	Change	% Change
Fixed assets					
Tangible fixed assets					
- Land & Buildings					
- Duct					
- Fibre					
- Copper					
- Transmission					
- Exchange					
- Other					
Investments					
Total fixed assets					
Current assets					
Stocks					

Debtors
- internal
- external

Total current assets

Creditors: amounts falling due within one year

Other creditors
- internal
- external

Total creditors: amounts falling due within one year

Net current assets

Total assets less current liabilities
Provisions for liabilities and charges

Closing capital employed

Annex 6 - Consolidated Network Activity statement

KCOM Consolidated Statement of Costs

Network Activity Statement for year ended 31st March 20xx

Consolidated current costs (this is a consolidation of all markets where there are cost accounting obligations)

Fully Allocated Cost	HCA operating cost	Supp. Dep.	Holding gain and other CCA adj	Total CCA operating costs	CCA MCE	Applicable ROCE %	Capital costs	Total costs	Unit of measure	Volume	Ave CCA unit cost
----------------------	--------------------	------------	--------------------------------	---------------------------	---------	-------------------	---------------	-------------	-----------------	--------	-------------------

Components

- Electronics;
- Field provision
- Field maintenance;
- Local Loop infrastructure
- Exchange concentrator;
- Exchange-exchange
- Transmission link;
- Back-office Provision;
- Back-office Maintenance;
- Sales and Product Management;
- PPP for narrowband call services;

Net Current Assets; and
Other.

Totals

Annex 7

Regulatory Financial Review (KCOM)

The Dominant Provider will prepare a Regulatory Financial Review (RFR) to encompass all markets for which cost accounting and/or accounting separation obligations apply.

The RFR should assist the user's assessment of the regulatory financial statements as produced under condition 9 and provide commentary on compliance with this regulatory condition.

The RFR should focus on those matters which are relevant to the users of the information, be clearly written and readily understandable.

It should include discussions of the regulatory financial performance of each individual market, in which the Dominant Provider has accounting separation or cost accounting obligations, in the period and the main influences on performance, including known trends and the effect of risks facing each market.

The information and analysis contained within the RFR should be complete and free from bias.

Disclosure should make clear any issues of comparability that would assist the reader's understanding of the review. It should highlight accounting policies that are the key to the understanding of performance, focusing on those which have required the particular exercise of judgment in their application and those accounting policies which have changed in the year.

When using financial and non-financial measures in the RFR, it is important these are defined and explained, assumptions set out and prior year comparatives are disclosed on the same basis as current year figures.

A key aim of the operating review is to ensure its to enable the users to understand the dynamics of the products and services in each market where the Dominant Provider has SMP status and specific regulatory accounting obligations, and the main influences on financial performance and how these interrelate.

The review should explain the main factors that underlie each market and in particular those which have either varied in the past or are expected to change in the future. It should set out an analysis of the effect of changes in each market or the environment in which it operates and of developments within each market. For example changes in the market conditions, introduction or announcements of new products and services, new and discontinued activities, other acquisitions and disposals.

The RFR should also analyse the main factors and influences that may have an effect on future performance, whether or not they were significant in the period under review. There should be a discussion on the principal risks facing activities and markets, with commentary on the approach taken to manage them.

Annex 8 - Market P&L statement

KCOM Market A (there will be a statement for each wholesale market where cost accounting and accounting separation obligations apply)

CURRENT COST PROFIT AND LOSS ACCOUNT

for the year ended 31 March 20xx

Restated
(cross refer to
notes)

	Notes	£k CY	£k PY	£'k Change Year on year	% Change Year on Year
Turnover (identifying Gross, Discounts and Net turnover for external sales if applicable)					
Internal Sales [Note]					
External Sales					
Total Turnover					
Operating costs					
Operating costs					
- Engineering Support					
- Finance & Billing					
- General Management					
- Bad Debts					
- Back Office Support					
- Other Costs (total of items below 5% of operating cost)					
Sub total operating expenditure					

Depreciation

- Duct

- Copper

- Fibre

- Transmission

- Exchange

- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

Total operating costs

Return

MCE

RETURN ON MEAN CAPITAL EMPLOYED

for the year ended 31 March 20xx

CY

PY

%

%

%

Return on mean capital employed

[Note - All sales to be based on actual volumes x price]

Annex 9 - Market MCE statement

KCOM Market A (there will be a statement for each wholesale market where cost accounting and accounting separation obligations apply)

STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED		Restated			
for the year ended 31 March 20xx		(cross refer to notes)			
	Notes	£k CY	£k PY	£'k Change	% Change
Fixed assets					
Tangible fixed assets					
- Land & Buildings					
- Duct					
- Fibre					
- Copper					
- Transmission					
- Exchange					
- Other					
Investments					
<hr/>					
Total fixed assets					

Current assets

Stocks

Debtors

- internal

- external

Total current assets

Creditors: amounts falling due within one year

Other creditors

- internal

- external

Total creditors: amounts falling due within one year

Net current assets

Total assets less current liabilities

Provisions for liabilities and charges

Closing capital employed

Annex 10 - Market Network Activity Statement [provided on a confidential basis]

KCOM Consolidated Statement of Costs

Network Activity Statement for year ended 31st March 20xx

KCOM Market A Statement of Costs (there will be a statement for each wholesale market where cost accounting and accounting separation obligations apply)

	HCA operating cost	Supp. Dep.	Holding gain and other CCA adj	Total CCA operating costs	CCA MCE	Applicable ROCE %	Capital costs	Total costs	Unit of measure	Volume	Ave CCA unit cost
Fully Allocated Cost											

Components

- Electronics;
- Field provision
- Field maintenance;
- Local Loop infrastructure
- Exchange concentrator;
- Exchange-exchange
- Transmission link;
- Back-office Provision;
- Back-office Maintenance;
- Sales and Product Management;

PPP for narrowband call
services;
Net Current Assets; and
Other.

Totals

Annex 11

Notes to the Regulatory Financial Statements

These will contain notes, modelled on statutory accounting conventions, to assist the user in the interpretation of the individual statements.

The notes will address issues necessary to ensure that they are properly prepared including, to the extent necessary, the basis of accounting, accounting policies, changes for restatement, non compliance with UK GAAP and any other information that will enable users to properly understand the individual financial statement.

Among other things, the necessary notes would be expected to include:

- a description of the basis on which revenue from sales to other operators arise and other related matters necessary to understand how financial performance has been measured
- a commentary setting out how the principle of non discrimination and the calculation of usage factors have been applied in the preparation and presentation of the factual statements in respect of wholesale services

Annex 12 - Reconciliation statement, P&L

KCOM Reconciliation Statement

Consolidated profit and loss account For the year ended 31 March 20xx	Turnover £k	Operating Costs £k	HCA Return or Profit before taxation £k	Holding gain/(loss) and other Adjustments £k	Supple- mentary depreciation £k	CCA Return or Profit Before Taxation £k
Market/Area						
Wholesale SMP Markets						
<u>Residual activities</u>						
- Wholesale residual activities						
- Retail residual activities						
Total						
Adjustments (as necessary)						
Elimination of Inter Business turnover and costs						
Other operating income						
Goodwill						
Group's share of profits of associates and joint ventures						
Profit on sale of fixed asset investments						
Profit on sale of Group undertakings						
Amounts written off investments						

Profit on sale of property fixed assets before exceptional items

Profit on sale of property fixed assets

Net short term interest payable

Long term interest payable

As per the KCOM Annual Report (pxxx)

Annex 13 - Reconciliation statement, MCE

	CY	PY
KCOM Reconciliation statement		Restated (cross refer to explanatory notes)
Consolidated mean capital employed For the year ended 31 March 200XX	£k	£k
Shareholders' funds as in the Annual Report (pxxx)		
CCA adjustments		
Adjustments		
Corporation taxes payable		
Provision for dividends payable		
Deferred tax /(ACT recoverable)		
Long term borrowing:		
Due in less than one year		
Due in more than one year		
Adjustments to closing capital employed		
Goodwill		
Minority interests		
Closing CCA capital employed at 31 March	_____	_____
Opening CCA capital employed at 1 April		
Adjustment to opening capital employed		

Revised opening CCA capital employed at 1 April	_____	_____
Average CCA capital employed		
Daily averaging adjustment		
Deferred costs		
Total CCA mean capital employed	=====	=====
<u>Mean capital employed of SMP Markets</u>		
Wholesale Market A (where cost accounting and accounting separation obligations apply)		
Wholesale Market B etc (where cost accounting and accounting separation obligations apply)		
Sub total markets	_____	_____
<u>Residual activities</u>		
- Wholesale residual activity		
- Retail residual activity		
Total CCA mean capital employed	=====	=====

Annex 14 - Wholesale residual, P&L [provided on a confidential basis]

KCOM Wholesale Residual Activities

CURRENT COST PROFIT AND LOSS ACCOUNT for the year ended 31 March 20xx		Restated (cross refer to notes)			
	Notes	£k CY	£k PY	£'k Change Year on year	% Change Year on Year
Turnover (identifying Gross, Discounts and Net turnover for external sales if applicable)					
Internal Sales [Note]					
External Sales					
Total Turnover					
Operating costs					
Charges from Other KCOM Markets					
Operating costs (to show all cost categories that exceed 5% of operating cost including)					
- Engineering Support					
- Finance & Billing					
- General Management					
- Bad Debts					
- Back Office Support					
- Other Costs (total of items below 10% of operating cost)					

Sub total operating expenditure

Depreciation

- Duct
- Copper
- Fibre
- Transmission
- Exchange
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

Total operating costs

Return

MCE

RETURN ON MEAN CAPITAL EMPLOYED

for the year ended 31 March 20xx

CY

PY

%

%

%

Return on mean capital employed

[Note - All sales to be based on actual volumes x price]

Annex 15 - Wholesale residual, MCE [provided on a confidential basis]

**KCOM Wholesale Residual
Activities**

STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED		Restated (cross refer to notes)			
for the year ended 31 March 20xx		£k	£k	£'k Change	% Change
	Notes	CY	PY		
Fixed assets					
Tangible fixed assets					
- Land & Buildings					
- Duct					
- Fibre					
- Copper					
- Transmission					
- Exchange					
- Other					
<hr/>					
Total fixed assets					
Current assets					

Stocks
Debtors
- internal
- external
Cash

Total current assets

**Creditors: amounts falling due
within one year**

Other creditors
- internal
- external

Total creditors: amounts falling due
within one year

Net current assets

Total assets less current liabilities
Provisions for liabilities and
charges

Closing capital employed

Annex 16 - Retail residual, P&L [provided on a confidential basis]

KCOM Retail Residual Activities

CURRENT COST PROFIT AND LOSS ACCOUNT		Restated (cross refer to notes)			
for the year ended 31 March 20xx		£k	£k	£'k Change	% Change
	Notes	CY	PY	Year on year	Year on Year
Turnover (identifying Gross, Discounts and Net turnover)					
Internal Sales [Note]					
External Sales					
Total Turnover					
Operating costs					
Charges from Other KCOM Markets					
Operating costs (to show all cost categories that exceed 5% of operating cost including)					

- Marketing
- Sales
- Customer Services
- Bad Debts
- Other Costs (total of items below 5% of operating cost)

Sub total operating expenditure

Depreciation

- Land and Buildings
- Other

CCA adjustments:

Holding (gain)/loss

Supplementary depreciation

Other adjustments

Total operating costs

Return

MCE

**RETURN ON MEAN CAPITAL
EMPLOYED**

for the year ended 31 March 20xx

CY
%

PY
%

%

Return on mean capital employed

[Note - All sales to be based on actual volumes x price]

Annex 17 – Retail residual, MCE [provided on a confidential basis]

KCOM Retail Residual Activities

STATEMENT OF CURRENT COST MEAN CAPITAL EMPLOYED		Restated (cross refer to notes)			
for the year ended 31 March 20xx					
	Notes	£k CY	£k PY	£'k Change	% Change
Fixed assets (to show all asset categories that exceed 5% of operating cost including)					
Tangible fixed assets					
- Land & Buildings					
- Other (total of items below 5% of fixed assets)					
Total fixed assets					
Current assets					
Stocks					
Debtors					
- internal					
- external					
Cash					
Total current assets					

Creditors: amounts falling due within one year

Other creditors

- internal

- external

Total creditors: amounts falling due within one year

Net current assets

Total assets less current liabilities

Provisions for liabilities and charges

Closing capital employed

Annex 18 – Inter-market turnover [provided on a confidential basis]

KCOM Inter Market Turnover
for year ended 31st March 20xx

	The supply of wholesale local access at a fixed location in the Hull Area	The supply of wholesale leased lines access services in the Hull Area	[any other market for which cost accounting and accounting separation obligations apply]	Residual Wholesale	Residual Retail	Total 20xx
	£k	£k	£k	£k	£k	£k
Turnover originating in:						
The supply of wholesale local access at a fixed location in the Hull Area						
The supply of wholesale leased lines access services in the Hull Area						
[any other market for which cost accounting and accounting separation obligations apply]						
Residual Wholesale						
Residual Retail						
Total 20xx						

Annex 19 – Service Level Information AFI for each specified market [provided on a confidential basis]

Service Level Information AFI for year ended 31st March 20xx

Service Level Information	Internal Volume	External Volume	Internal Price	External Price	Internal Revenue	External Revenue	Total Revenue	Internal Cost FAC	External Cost FAC	Total Cost FAC	Internal Unit Cost	External unit cost
name of service (split between internal and external if cost differences)												
Service 1	x	x	£x.xx	£x.xx	£xk	£xk	£xk	£xk	£xk	£xk	£x.xx	£x.xx
Service 2	x	x	£x.xx	£x.xx	£xk	£xk	£xk	£xk	£xk	£xk	£x.xx	£x.xx
Service 3	x	x	£x.xx	£x.xx	£xk	£xk	£xk	£xk	£xk	£xk	£x.xx	£x.xx
Other services (aggregated)					£xk	£xk	£xk	£xk	£xk	£xk		
Total					£xk	£xk	£xk	£xk	£xk	£xk		

Note 1

These total should agree to Market Summary

Note 2

The unit costs should agree to breakdown of service level costs. Can be combined if internal and external are identical

In respect of the LL Access market, the required services are

Dark Fibre Services

- i) Single Fibre Rental Charges

- ii) Fibre Pair Rental Charges
- iii) Single Fibre Connection Charges
- iv) Fibre Pair Connection Charges
- v) Charge per Right When Tested*
- vi) Charge per cessation*
- vii) Patch Panels*
- viii) Dark Fibre Excess Construction Charges
- ix) Other dark fibre services in the LL Access Market (not specified).

Active Services

- x) ECAS 1Gbit/s rentals
- xi) Other ECAS rentals
- xii) ECAS ECCs
- xiii) Other ECAS services in the LL Access Market (not specified).
- xiv) EDAS 1Gbit/s rentals
- xv) Other EDAS rentals
- xvi) EDAS ECCs
- xvii) Other ECAS services in the LL Access Market (not specified).
- xviii) Connection Charges**
- xix) Other services in the LL Access Market

* Single and Pair Fibre charges reported together unless different prices are charged

**ECAS and EDAS charges reported together unless different prices are charged

Annex 20 – Breakdown of Service Level Costs AFI for each specified market [provided on a confidential basis]

Breakdown of Service Level Costs AFI

for year ended 31st March 20xx

Breakdown of service level costs

	Service 1		Service 2		Service 3	
	Int	Ext	Int	Ext	Int	Ext
Electronics	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Field provision	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Field maintenance	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Local Loop infrastructure	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Exchange concentrator						
Exchange-exchange Transmission link						
Back-office Provision	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Back-office Maintenance	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Sales and Product Management	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
PPP for narrowband call services						
Net Current Assets	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Other	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx
Total FAC	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx	£x.xx

Note 1

These totals should agree to Service level information

Note 2

Where internal and external service costs are identical, can amalgamate

Note 3

Network Components not used by services within that market can be omitted

In respect of the LL Access market, the required services are

Dark Fibre Services

- i) Single Fibre Rental Charges
- ii) Fibre Pair Rental Charges
- iii) Single Fibre Connection Charges
- iv) Fibre Pair Connection Charges
- v) Charge per Right When Tested*
- vi) Charge per cessation*
- vii) Patch Panels*
- viii) Dark Fibre Excess Construction Charges
- ix) Other dark fibre services in the LL Access Market (not specified).

Active Services

- x) ECAS 1Gbit/s rentals
- xi) Other ECAS rentals
- xii) ECAS ECCs
- xiii) Other ECAS services in the LL Access Market (not specified).
- xiv) EDAS 1Gbit/s rentals
- xv) Other EDAS rentals
- xvi) EDAS ECCs
- xvii) Other ECAS services in the LL Access Market (not specified).
- xviii) Connection Charges**
- xix) Other services in the LL Access Market

* Single and Pair Fibre charges reported together unless different prices are charged

**ECAS and EDAS charges reported together unless different prices are charged

[Draft] Direction 5 – Audit Opinion for Regulatory Financial Statements

Background

1. This direction is made under section 49 of the Communications Act 2003 and SMP Services Condition 9.2 and 9.5(b)
2. This direction applies with respect to the following markets unless otherwise specified:
 - a. WLA
 - b. LL Access

Direction

3. Ofcom hereby directs KCOM to secure to the satisfaction of Ofcom, an appropriate audit opinion in respect of the published Regulatory Financial Statements as a whole, in respect of each Regulatory Financial Statement and in respect of each Regulatory Financial Statement for the markets listed in paragraph 2 above, to the “properly prepared in accordance with” (“PPIA”) standard, as determined following consultation with Ofcom and the Regulatory Auditor. KCOM shall ensure that the Regulatory Auditor shall state whether in their opinion:
 - i) each Regulatory Financial Statement complies with the requirements of Condition 9.5;
 - ii) each Regulatory Financial Statement has been properly prepared in accordance with the Accounting Documents, including the Prior Year Comparatives;
 - (1) having reviewed the Accounting Documents in forming his opinion under (ii) above, anything has come to his attention that would lead him to conclude that the Accounting Documents have not been properly applied in the preparation of the relevant Regulatory Financial Statement, disclosing where practicable any adjustments he considers to be required in respect of any such matter; and
 - (2) having reviewed the Accounting Documents, nothing has come to his attention that would lead him to conclude that the Accounting Documents are unreasonable.

Ofcom's duties and legal tests

4. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
5. For the reasons set out in the explanatory statement accompanying this direction and [*relevant text of Statement*], Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
7. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Signed

[signature]

[NAME]

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of
Communications Act 2002**

[Date]