Virgin Media's response to Ofcom's Consultation on the Fixed Access Market Review : Further Consultation

18 February 2014

Introduction

Virgin Media is pleased to respond to this further consultation on the Fixed Access Market reviews. We have set out our views in relation to the revised proposals in relation to notice periods and VULA margin below. We have no additional comments to make in relation to the proposed regulation on TRC/SFI charges.

Virgin Media recognise that in relation to both notice periods and the VULA margin that a balance needs to be struck in focussing narrowly on new proposals, whilst fully considering the relevant issues that underpin those proposals. However, Virgin Media is concerned that in relation to this consultation, the consideration of relevant issues has been sacrificed in favour of publication of a short consultation. Relevant comments made in response to the July Consultation appear not to have been considered in making revisions to the original proposals, and therefore the basis upon which questions are asked in the context of this consultation is undermined.

Clearly, the nature of this consultation cannot be changed, but it is vital that, when considering the appropriate way to regulate these markets, Ofcom, in preparing its final statement in this review, fully takes account of not only direct responses to proposals made in this further consultation, but also considers the appropriateness of these further proposals in light of all the submissions made by stakeholders in the review as a whole.

Response to Questions

3.1 Do you agree with our proposal to reduce from 90 days to 28 days the notification period that BT and KCOM are required to give in respect of reductions to the WLR rental charge? Please provide reasons in support of your views.

Virgin Media understand that this revised proposal is made in response to comments from BT and EE in relation to the lack of consistency between the proposed regulatory treatment of WLA and WLR price reductions.

Virgin Media would agree that a consistent approach should be maintained, as this supports the underlying objective of Ofcom to maintain a level playing field between CPs utilising MPF and those utilising WLR+SMPF. However, the justification fails to consider whether the original proposal was appropriate in the first place. Ofcom proposed in July 2013 to make an adjustment to the notification period for WLA price reductions. Virgin Media responded to question 10.10 of that consultation to highlight the potential disruptive effects to industry and the lack of real explanation to justify the proposed change to notification regime, especially in light of views supportive of retaining the 90 day period.

In making this revised proposal Ofcom appears not to have considered whether the issue of a shorter period is appropriate. There were three clear options to be considered by Ofcom in seeking to address the comments from stakeholders on the asymmetry of approach as between MPF and WLR:

1. Align both notice periods at 28 days;
2. Align both notice periods at 90 days; and
3. Justify asymmetric treatment of the notice periods.

In revising the proposals, Ofcom has failed to assess those options and appears to have entirely ignored the possibility of retaining the current regime (with both periods aligned at 90 days), as a viable option.

Ofcom has not engaged with any of the reasons or comments made in relation to the proposal to reduce the WLA notice period, and has simply rehashed the justification, at paragraph 3.5, for that change as reason to propose the same change in relation to WLR. Virgin Media considers that for such a reduction to be made there should be a full justification by Ofcom of the effects of the change, taking into account all stakeholder comment. Whilst Ofcom has an opportunity to consider this in advance of publication of the final statement, this further consultation fails to have addressed these issues at all.

4.1 Do you agree with our proposals for BT to provide information on the VULA margin every six months and on request? Please provide reasons in support of your views.

Virgin Media would repeat its concerns[1] that Ofcom is premature in issuing guidance on how the network access obligation should be interpreted in relation to margin when setting fair and reasonable GEA charges, and the proposed guidance is not fit for purpose.

Whilst a reporting requirement to ensure compliance with a regulatory obligation is often appropriate, in this case it would only be proportionate if appropriate guidance was imposed.

Further, the issue of when the reporting would become relevant is also unclear given that Ofcom are still undertaking their assessment of the complaint from Talk Talk into alleged margin squeeze in superfast broadband pricing[2] (the Talk Talk complaint), and any relevant reporting metrics may well be derived as a result of that investigation. Ofcom state in this consultation that the first report would be sought shortly after the publication of the final proposals on the VULA margin. Whilst not entirely clear, this appears to be a reference to the Talk Talk complaint, the timing of which is far from clear. An update following the "initial phase" suggested for Autumn/Winter 2013 has not been published and no further information has been supplied by Ofcom on the progress of this matter. It can only be assumed that the "initial phase" is continuing, which suggests that the resolution of the matter is not to be expected in the near to medium term. Until there is further clarity on what Ofcom considers to be relevant to superfast pricing in the context of the Talk Talk complaint, it cannot be proportionate to impose explicit reporting requirements that may or may not be relevant depending on how that investigation shapes Ofcom's approach to the level of margin in superfast broadband.

Virgin Media
18 February 2104

[1] See Virgin Media's response to the July 13 consultation, particularly, Section 1 and responses to Q11.2 and Q11.4

[2] CCEB Case Ref : CW01103/03/13