



MS3 Networks

MS3 response to Ofcom's broadband proposals in the HAR 2026

MS3

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1 Executive summary

- 1 Conditions in the Hull telecoms markets differ significantly from those in the rest of the UK. MS3 welcomes Ofcom's willingness to acknowledge the specific challenges in Hull in the Hull Access Review (HAR).
- 2 Consumers in Hull are starting to see the benefits from competition – choice is increasing and prices are falling. The HAR must have as its primary objective to ensure that the process of introducing competition in the Hull telecoms markets continues and strengthens. Preventing KCOM from abusing its dominance to halt or slow-down that process.

1.1 Broadband markets and regulation

- 3 With emerging competition at the network level, virtually no service competition through regulated access to the KCOM network and a retail market in which KCOM has a track record of over-charging, setting extremely high Early Termination Charges (ETCs), creating barriers to switching and designing targeted discounts to attract new customers without offering price reductions to their existing customer base, Ofcom faces a significant challenge in designing a regulatory framework that allows new competing networks to introduce effective competition to KCOM at both retail and wholesale levels.
- 4 By far the biggest challenges in the Hull broadband markets are at the retail level. KCOM retains >71% retail market share (and the same at the wholesale level). Yet, Ofcom proposes that KCOM does not have SMP at the retail level. MS3 considers this a significant error.
- 5 In the absence of retail regulation, Ofcom now faces the challenge of designing wholesale market remedies that can address the clear and evident retail market failures. It is unlikely that Ofcom's wholesale remedies will attract more ISPs to KCOM's network, those ISPs that are interested in the Hull market are already active on the competing networks. The purpose of wholesale remedies must therefore be to prevent KCOM from abusing its market power at both retail and wholesale levels from deterring more investment in competitive network expansion and in the take-up of services on those new networks by residential and business consumers in hull.

- 6 MS3 is particularly concerned that Ofcom's price squeeze tests assume that a Reasonably Efficient Operator (REO) in Hull has built its network using PIA. That is evidently incorrect as the PIA remedy does not yet exist. The REO cost base in Hull most therefore be adjusted to reflect the actual cost base for a Hull REO.
- 7 MS3 considers Ofcom's proposed remedies to be insufficient to address the competition issues identified. We present those issues clearly in this paper and ask that Ofcom makes the following adjustment to the remedies proposed for the Wholesale Local Access Market (WLA):
- Modify Upstream price squeeze remedy by
 - Apply the test to individual WLA products,
 - Adjust the relevant REO Fibre Costing Model (FCM) cost levels to reflect the absence of PIA in Hull at the time of competitive network build.
 - Introduce a prohibition against pricing that could harm competition and ultimately consumers.
 - Impose a mandatory 120 pre-notification requirements on all WLA pricing changes.
 - Presumption against and mandatory pre-notification of any WLA offers and/or discounts.
- 8 In addition, MS3 believes that Ofcom needs to define the broadband white label Wholesale Broadband Access (WBA) market as a market in which KCOM holds SMP and for which the following remedies should be applied:
- Regulatory Financial Accounting
 - No undue discrimination.

1.2 Leased lines markets and regulation

- 9 Although there is more retail competition in the Leased Lines Access (LLA) market, than in the WLA, KCOM still retains a significant retail market share. At the wholesale level, KCOM's has accounted for between 60% and 80% of new leased lines connections installed in Hull for the past three years,¹ supporting Ofcom's finding that KCOM retains SMP in the LLA market.

¹ HAR V2 Paragraph 3.50.

- 10 MS3 is unclear how Ofcom proposes to apply its proposed price squeeze remedy in the LLA, particularly the downstream price squeeze test. MS3 asks that Ofcom issue a further consultation explaining how this remedy would function.
- 11 MS3 believes it is premature for Ofcom to withdraw the Pricing Transparency Report remedy. With the introduction of Physical Infrastructure Access (PIA) in Hull, MS3 will be able to start addressing the connectivity needs in the main business areas of Hull, and MS3 anticipates that KCOM will likely engage in tactical pricing behaviour to defend its market share. It is essential that Ofcom retains the ability to react in a timely manner to any competition concerns raised by MS3 or other competitors.

1.3 Introduction of regulated PIA in Hull

- 12 MS3 welcomes Ofcom's proposal to introduce a PIA remedy in Hull and to base that remedy on the already established PIA remedy on BT/Openreach for the rest of the UK. The additional clarity provided in the HAR about Ofcom's expectations of the PIA terms are very welcome and MS3 hopes they will reduce the time needed to formalise and launch the PIA product in Hull.
- 13 MS3 considers that a more manual PIA product is appropriate and proportionate for the Hull market conditions.
- 14 MS3's most significant remaining concern in respect of PIA is that the HAR does not set out that the Hull PIA must mirror (or reflect to the extent practicable given the lack of automation) the many improvements to the Openreach PIA product that have been the result of many years of experience and negotiations between Openreach and PIA CPs, under the guidance of the OTA2.
- 15 MS3 asks that Ofcom take onboard MS3's recommendations for areas where it is particularly important that the Hull PIA product remedy specifies the inclusion of features of the current Openreach PIA product. Not doing so could result in several years of the Hull PIA product not being fit-for-purpose.
- 16 In particular, MS3 asks that Ofcom include the following provisions in the PIA reference offer scope for Hull:
 - Timescales for providing access to network information.
 - Mandatory and non-discriminatory access to 'sensitive sites'.

- Dispute resolution provisions.
- Network inaccuracies / Missing Inventory process.
- Fit-for-purpose invoicing and billing information.
- Provisions for setting SLAs, SLGs, KPIs and QoS parameters and the instruction that the OTA2 should oversee this process.

1.4 Regulatory financial reporting remedies

- 17 Ofcom proposes to apply a regulatory financial reporting (RFS) obligation on KCOM in both the WLA and LLA markets. MS3 agrees with Ofcom that it is essential that Ofcom has access to accurate and disaggregated data to enable it to sport any form of cross-subsidisation or other potentially anticompetitive pricing tactics by KCOM.
- 18 It is essential that both Ofcom and stakeholders can access sufficiently transparent financial data per regulated market and per product to be able to identify potentially anticompetitive pricing behaviours. MS3 has, therefore, called on Ofcom to increase the transparency of KCOM's published RFS data.
- 19 The lack of product-level data and the absence of clear transfer charges in the RFS means that some KCOM pricing tactics are likely to go unnoticed. Despite the introduction of PIA, MS3 is particularly concerned that lack of RFS data transparency will allow KCOM to engage in behaviour that cannot be traced and that will constitute significant deterrents to competitive network expansion as well as take-up on the existing competitive networks.
- 20 MS3 considers that accounting data at the retail level (both for broadband and for leased lines) could help stakeholders and Ofcom identify and stop behaviour that is likely to cause consumer harm through by preventing the establishment of sustainable network competition in Hull.

2 Introduction and context

- 21 MS3 started operations in Hull in 2012. Initially MS3's focus was on the business connectivity market, but since early 2022 MS3 has been building a competitive full fibre broadband network across Hull and the East Riding of Yorkshire, now with [X] premises ready for service within KCOM's original licence area

- 22 MS3 is a wholesale-only operator, offering both broadband and leased lines services to retail providers both inside Hull and in other neighbouring areas. MS3's network has passed [X] premises in Hull and [X] live services connected to our full-fibre network – [X] residential and [X] businesses. MS3's recurring revenues are split [X] between the business and residential markets respectively.
- 23 Despite MS3 offering high quality wholesale services to retail providers and those retail providers offering highly competitive retail broadband and leased lines products and services to end users, MS3 has only achieved a [X] penetration level of its RFS premises. This take-up rate should be seen in the context of KCOM charging significantly higher retail prices than operators in the rest of the UK.² and residents of Hull being amongst the lowest income groups in the country.
- 24 It is striking that such a small proportion of broadband users have chosen to take up a materially lower priced service. It is MS3's experience that KCOM has successfully erected very significant barriers to switching for consumers, including:
- Extremely high ETCs,
 - Complex switching and contract termination processes, including having to wait on the phone for several hours to only be asked to call back, and
 - Used the One Touch Switching notification process, to target low retail pricing to either retail customers intending to switch or to win back customers that have switched to ISPs using the MS3 network or other competing providers.
- 25 The low take-up, and the absence of PIA, have caused MS3 to pause its broadband network deployment. MS3 is hoping that the HAR will signal market circumstances where that decision can be reviewed and MS3 can expand its network to serve the remainder of Hull.

² Broadband price reductions in September 2025 have closed that gap to an extent, but the take-up rate discussion above relates to a period where the KCOM prices were very high.

3 Broadband markets and remedies

3.1 Introduction

- 26 MS3 operates in Hull and nearby locations. It has built a full-fibre network that can serve [X] premises in Hull and offers FTTP and leased lines services to residential and business premises respectively.
- 27 MS3 is a wholesale-only business, and, for more than three years, we have been competing head-to-head with KCOM in the wholesale broadband market and our retail ISPs have been competing with the KCOM retail business. During that period, we have experienced first-hand that the broadband market in Hull is dysfunctional at both retail and wholesale levels, and we have corresponded with Ofcom about how this has manifested itself and our pre-consultation submissions for the HAR process presented those concerns again, together with proposals for what action Ofcom should take to prevent them from causing continued harm to consumers.
- 28 The HAR consultation does not indicate Ofcom's assessment of MS3's pre-consultation submissions on these matters and MS3 has been advised by Ofcom to reiterate in its consultation response the points it wishes Ofcom to consider.

3.2 The Hull retail broadband market

- 29 We refer Ofcom to our pre-consultation submission as well as to the issues raised in MS3's draft competition complaint relating to KCOM's conduct in the Hull retail broadband market. We note that Ofcom has not referenced MS3's submissions on this matter at all, and we therefore feel obliged to reiterate our points and refer Ofcom to the pre-consultation submissions. MS3 would be grateful if Ofcom would articulate in the HAR statement its assessment of the points made in both this response and in the relevant pre-consultation submissions.
- 30 Ofcom does make references to the Hull retail broadband market, but only in a descriptive manner. The only reference to competition is a mention that Ofcom considers that OTS is having an impact in the Hull Area,³ and that recent KCOM price reductions may signal that KCOM is reacting to increased retail competition.⁴ Ofcom does not, however, assess whether KCOM remains able to

³ HAR V2 Paragraph 1.25.

⁴ HAR V2 Paragraphs 1.21 to 1.23.

engage in the types of behaviour described by MS3 in its draft competition complaint. MS3 maintains that, if KCOM is starting to feel the beginning of competitive pressure, it will have increased incentives to engage in as much protective and potentially anticompetitive behaviour as possible. It is important that Ofcom recognises that incentive.

- 31 MS3 has severe concerns about the functioning of the Hull retail broadband market. KCOM retains >70% retail market share and is free to use pricing and other market tactics to create barriers to take-up for competing ISPs, whether using KCOM's or a competing network.
- 32 Additionally, whilst the existence of MS3 and other competing networks in the Hull area means that there are attractive wholesale access products in parts of the Hull area, KCOM's behaviour in the retail market represent significant barriers to expansion for ISPs offering competing broadband services to KCOM. MS3 also believes that the challenges with using KCOM's regulated WLA product and the pricing of KCOM's unregulated white label wholesale product mean that barriers to market entry remain for the remainder of the Hull Area.
- 33 The evidence of KCOM's retail market behaviour submitted in the draft competition complaint shows without doubt that the market has not been functioning well and that existing wholesale interventions have proven insufficient to address the market failures identified. MS3 does not agree that the recent price reductions from KCOM are material evidence to the contrary.
- 34 Given the above, the Hull retail broadband market continues to demonstrate the effects of material barriers to market entry and expansion and does not satisfy the first of the three criteria. It can therefore be defined as a relevant market susceptible to ex-ante regulation.
- 35 With regards to SMP assessment, MS3's draft competition complaint sets out the evidence of KCOM's retail market power and conduct that clearly evidences that KCOM has in the past, and remains willing to, abuse that market power in order to retain its very high retail market share. The EC SMP Guidelines suggest that a market share of >50% is in itself evidence of SMP, unless there is strong evidence to the contrary.⁵
- 36 MS3 understands that it would be a very unusual step for Ofcom to define and regulate the retail broadband market, when that market has been deregulated for some time. One of the reasons for

⁵ <https://digital-strategy.ec.europa.eu/en/library/staff-working-document-guidelines-market-analysis-and-assessment-smp-under-eu-regulatory-framework>.

MS3 asking Ofcom to do so, is that the existing wholesale remedies have clearly proven insufficient. If Ofcom were to introduce additional measures at the wholesale level, it is possible that retail market regulation would become unnecessary. Ofcom's HAR proposals, however, do not include any additional wholesale level remedies. We will expand in the relevant sections below to explain which wholesale remedies we believe could go some way towards remedying existing retail market failures.

37 In the absence of improved wholesale level regulation, MS3 maintains that Ofcom should consider the introduction of the following remedies in the Hull retail broadband market:

- Regulatory financial reporting, and
- Non-discrimination

38 MS3 remains concerned that KCOM's early termination charges (ETCs) are unduly high and represent a significant barrier to switching. As explained on MS3's draft competition complaint,⁶ although KCOM follows the standard formula for calculation of ETCs, the very high legacy pricing charges by KCOM to the majority of its existing customer base cause the resulting ETC to be significantly higher than would be the case in a market where retail prices are set at a level that reasonably reflects the underlying costs (as would be the case in a competitive market).

39 Ofcom notes initiatives it has taken, including the imposition of General Conditions covering OTS, ECNs, and ABTNs.⁷ KCOM's compliance with these requirements should form the core of such a proactive monitoring programme.

40 In addition, Ofcom should be prepared to investigate anti-competitive pricing behaviour in the retail market using its concurrent powers under Chapter 2 of the Competition Act 1998 and also monitor KCOM's compliance with Ofcom's guidance on Early Termination Charges under the Unfair Terms in Consumer Contracts regulations, which requires ETCs to "satisfy the test of **fairness**, i.e., not cause a **significant imbalance** in the parties' rights **to the detriment of the consumer**." [emphasis added] And that "ETCs must reflect the **actual economic loss** to the provider, not function as a punitive charge." [emphasis added].

⁶ MS3 Draft Competition Complaint paragraph 30 to 32.

⁷ HAR V3 Paragraph 1.54.

- 41 Further, despite the indications of KCOM price reductions presented by Ofcom, there can be no doubt that the Hull retail broadband market has not delivered choice and value for money to consumers. MS3 asks that Ofcom has the retail market and retail consumers firmly in mind when it makes its final decisions on the HAR. MS3 is not advocating for retail price regulation, as that would deter competitive entry and expansion and be to the detriment of consumers in the medium- to long-term. MS3 is simply asking that Ofcom consider carefully how it can best prevent KCOM from abusing its current retail SMP to undermine competition. One way of achieving that could be to impose no-undue-discrimination and RFS remedies in the retail broadband market.
- 42 MS3 notes that even KCOM recognises the value the emerging competition is starting to deliver to retail consumers in Hull.⁸ It is striking when even the incumbent openly acknowledges that it has not delivered value for money to its customers.

3.3 Wholesale broadband markets

- 43 As set out in our pre-consultation submissions, MS3 believes that Ofcom should define two relevant wholesale broadband markets in Hull:
- The currently unregulated white label wholesale broadband market (previously known as the WBA market), and
 - The currently regulated WLA market.
- 44 Whilst MS3 does not consume products from either of these markets, MS3's wholesale access products compete directly with them and ISPs using the MS3 network to compete with the resulting retail products and prices. For MS3 to have the confidence to continue investment in infrastructure to compete with KCOM, transparency and confidence that Ofcom is able to analyse and act on potentially anticompetitive behaviour is an essential precondition.

3.3.1 KCOM's white label wholesale broadband product market (WBA)

- 45 At the time of writing, MS3 has been unable to access KCOM's most recent (2024/25) regulated financial statement (RFS), despite the RFS deadline for publication being 1st January 2026.⁹ Based

⁸ KCOM Discussion Paper: The Evolving Landscape of Fixed Line telecoms in the Hull Area, Section 4.

⁹ MS3 has queried the delay in publication of KCOM's 2024/25 RFS with both KCOM and Ofcom, neither is in a position to confirm when the RFS will be published. Ofcom has, however, confirmed that MS3 will be allowed to supplement and update its HAR response once the RFS is available.

on the 2023/24 RFS, however, KCOM had zero external sales in the WLA market, and it was not possible to assess the level of sales in the white label market, due to that market being unregulated and not part of the RFS scope. Because no or little sales exist in the WLA market, MS3 considers it essential that Ofcom redesignate the white label market as an SMP market and introduce a low level of regulation, including an obligation to produce RFS.

- 46 MS3 does not consider that the existence of competing networks in parts of the Hull area means that the white label market does not satisfy the three criteria test. Given that Ofcom has defined and found SMP in the Hull WLA market, the same rationale should apply to the downstream white label market with regards to the existing of competing infrastructure in parts of the Hull area.
- 47 Nor does MS3 consider that the existence of the regulated upstream WLA market causes the white label market to fail the three criteria test. It is clear that the white label wholesale broadband product is either the only or at least by far the most important of KCOM's wholesale broadband products for external ISPs. Despite Ofcom having mandated changes to the regulated WLA product in the 2021 in WFTMR (which Ofcom may have hoped and assumed would cause ISPs to switch from the white label market to the WLA market), substantial barriers to the take-up of and switching to the (substantially cheaper) WLA product have evidently remained during the 5-year period of the WFTMR. As Ofcom proposes no changes to the WLA product, it is not clear that ISPs using the KCOM network are likely to make that switch during the HAR review period.
- 48 Despite these points being presented in MS3's pre-consultation submissions, Ofcom's HAR proposal does not reference the existence of the white label market at all.¹⁰ and MS3 asks that Ofcom perform the relevant analysis and includes the findings in the final HAR statement.
- 49 As KCOM is the only provider of resale-style wholesale broadband connections in Hull (thus has a 100% market share), and there is evidence of substantial barriers to switching to the regulated WLA product, MS3 believes that KCOM has SMP in the white label market. MS3 believes it is necessary for Ofcom to assess the reason for some or all of KCOM's wholesale customers not switching to the much cheaper WLA product. Without that analysis, Ofcom would not be able to assess whether to regulate the white label market, nor whether the proposed HAR WLA remedies are appropriate and proportionate for both existing and potential market failures.

¹⁰ Ofcom mentions the market in a descriptive manner in HAR V2 Paragraph 1.16 but does not reference it in its analysis or proposals.

50 For the white label wholesale broadband market, MS3 asks that Ofcom impose the following remedies:

- Regulatory financial reporting, and
- Non-discrimination

51 These remedies are necessary for Ofcom to deliver against its objective of transparency. If the white label product remains the only, or by far the largest, of KCOM's wholesale products for external ISPs to deliver broadband services over KCOM's network, then it is important that KCOM's wholesale customers and competitors can understand the size of that market in order to understand the total existing wholesale broadband market in Hull. It is also essential that Ofcom has access to information about this market and is able to act on potentially anticompetitive behaviour in a timely manner.

52 MS3 does not ask for price regulation or other forms of intrusive remedies in the white label market. The remedies requested are safeguard-style only and non-intrusive. MS3 considers that, as KCOM did have an RFS remedy for this market previously (the WBA market), the re-instatement of that obligation should not be unduly burdensome for KCOM.

53 MS3 asks that Ofcom actively consider the points it has raised relating to the white label market and present its analysis and conclusions in the HAR Statement.

3.3.2 The WLA market

54 MS3 agrees with Ofcom's proposal to define the WLA market and with Ofcom's finding that KCOM has SMP in that market. MS3 also agrees with Ofcom's proposed product and geographic market definitions for the WLA market.

55 If Ofcom were to apply the three criteria test to the WLA market, it would certainly find that there are enduring barriers to market entry and expansion. Apart from the traditional barriers to entry in an infrastructure market,¹¹ the most significant additional barrier to expansion in the Hull WLA market is that KCOM retail holds a > 70% retail broadband market share and only procures network access from KCOM. That immediately limits the contestable market to 30% unless and until

¹¹ Including high fixed investment that is not transferable (sunk cost), very long periods of investment return and high levels of risk including regulatory uncertainty.

retailers using MS3’s network can win retail market share from KCOM retail. This, once again, emphasizes the importance of barriers to expansion in the retail broadband market.

56 That same fact is also evidence for why the WLA market does not tend towards being competitive. As all three criteria must be satisfied for a market to be found not susceptible to ex-ante regulation, MS3 holds that the WLA market without doubt qualifies as a market susceptible to ex-ante regulation.

57 With regards to the assessment of whether KCOM has SMP in the WLA market, it could be tempting to accept the narrative from KCOM that, as both its network competitors are wholesale-only businesses, and they have a larger number of wholesale providers on their networks than KCOM, KCOM no longer has SMP and no longer requires to be regulated. That assessment, however, ignores one very material factor – namely that KCOM provides WLA services to its own downstream retail and white label wholesale businesses, and that the KCOM retail business holds a market share of >70%. Ofcom rightly states in the HAR consultation that KCOM holds a WLA market share of between 71% and 80%.¹²

58 Below we set out our comments on Ofcom’s proposed WLA remedies and, separately after that, we set out the additional remedies that MS3 consider essential to promote sustainable network competition in the Hull area to the benefits of consumers.

3.3.2.1 *Ofcom’s proposed specific WLA remedies*

59 Ofcom proposes the following specific remedies in the WLA market:¹³

Table 3.1: Summary of the proposed specific remedies in the WLA market

Proposed specific remedies in the WLA market
• Requirement to provide PIA
• Direction requiring KCOM to amend its WLA reference offer

60 MS3 agrees with Ofcom’s proposed remedy to provide PIA and comments in more detail on the proposed PIA remedy in section 5 of this document.

MS3 considers that Ofcom’s proposed remedy for KCOM to ‘amend’ its WLA offer is confusing. This is because the reference offer was amended under the WFTMR, and it would seem that Ofcom is

¹² HAR V2 Table 2.1

¹³ HAR V3 Table 3.1.

not requesting any additional amendments in the HAR. For clarity, MS3 therefore proposes that Ofcom reword this remedy to say that it proposes an unchanged WLA product remedy and associated reference offer.

- 61 MS3, however, considers that the WLA reference offer remedy itself (even after the WFTMR amendment) is unlikely to be effective in promoting network competition and may also have limited impact for KCOM's external wholesale broadband customers. KCOM's external wholesale customers clearly have a preference for continued use of the white label (WBA) wholesale broadband service.¹⁴ Ofcom should, therefore, be acutely aware that the only wholesale customer likely to benefit materially from the WLA remedies, is KCOM's downstream retail business.
- 62 MS3 set out in its draft competition complaint and its pre-consultation submissions, why it believes that third party ISPs have not migrated from the white label service to the WLA service.¹⁵ MS3 believes it is important that Ofcom acknowledge this unusual and counter-intuitive situation, where wholesale customers are not taking up a significantly cheaper wholesale product. It would be inappropriate for Ofcom to pretend that amendments to the WLA reference offer introduced five years ago are likely to have any material impact on the Hull telecoms market in the next five years. That said, MS3 (and others) offer competitive WLA-equivalent access products that are competitively priced and can deliver material benefits and savings to residents and businesses in Hull.
- 63 Whilst MS3 agrees that Ofcom should impose a WLA access remedy with an associated reference offer, we urge Ofcom to not unduly rely on that remedy.

3.3.2.2 Ofcom's proposed general WLA remedies

- 64 In addition to the two specific remedies, Ofcom proposes that the following general remedies should apply in the WLA market:¹⁶

¹⁴ MS3 suggests that Ofcom investigate why that is the case.

¹⁵The cost of switching from the WBA product to the WLA product, the limited volumes of customers accessible in Hull and the KCOM retail behaviours which market competing against KCOM extremely hard are likely to be a significant contributing factor to the ISP decisions by to not move to the regulated WLA product.

¹⁶ HAR V3 Table 2.1.

Table 2.1: Summary of the proposed general remedies

Proposed general remedies
<ul style="list-style-type: none"> Requirement to provide network access on reasonable request, and on fair and reasonable terms, conditions and charges (WLA, excluding copper-based services, and LLA)
<ul style="list-style-type: none"> Requirement to publish and operate a process for requests for new forms of network access (WLA only)
<ul style="list-style-type: none"> Requirement for no undue discrimination (WLA and LLA)
<ul style="list-style-type: none"> Requirement to publish a reference offer (WLA and LLA)
<ul style="list-style-type: none"> Requirement to notify changes to charges, terms and conditions (WLA and LLA)
<ul style="list-style-type: none"> Requirement to notify technical information (WLA and LLA)
<ul style="list-style-type: none"> Requirement to publish quality of service information (WLA and LLA)
<ul style="list-style-type: none"> Regulatory financial reporting requirements (WLA and LLA)*

* Set out in Volume 4.

65 General network access remedy – MS3 agrees that this remedy should be maintained.

66 Fair and reasonable access and pricing – Ofcom proposes to impose a remedy that requires KCOM to not engage in excessive pricing and to not cause a price squeeze.¹⁷ MS3 does not object to the prohibition of excessive pricing remedy in principle and understands that it is important to protect ISPs seeking to use the KCOM wholesale access products, especially in areas where no alternative networks are yet present. MS3 considers that the prohibition of price squeezing could be critical to Ofcom’s objective of promoting network competition, although the Hull market structure presents challenges that limit the effectiveness of the proposed price squeeze remedies.

3.3.2.2.1 Excessive pricing

67 MS3 considers it appropriate and proportionate for Ofcom to link the prohibition of excessive pricing obligation on KCOM to a benchmarked value for the relevant corresponding Openreach price.^{18,19} It is important, however, to recognise two significant differences between KCOM and Openreach:

- The much smaller scale of operations of KCOM compared to Openreach and KCOM’s likely lower level of purchasing power and lack of the economies of scale that are likely to have reduced costs for Openreach, and

¹⁷ HAR V3 Paragraph 2.13.

¹⁸ This approach avoids separate costly and time-consuming costing and pricing analyses for the Hull area.

¹⁹ MS3 asks that Ofcom confirm that KCOM should benchmark to the WLA Area 2 pricing.

- That regulated PIA does not exist in Hull today and did not exist when the existing competitive networks in Hull were built.

- 68 With regards to KCOM's lack of economies of scale, MS3 is concerned that the Openreach 80/20 anchor price, which Ofcom proposes to use as the reference price for the KCOM equivalent product, is set at the Equinox offer price. MS3 considers that price would likely be below KCOM's costs and certainly below the costs of a reasonably efficient operator (REO) in Hull. MS3 is aware that there is concern in the rest of the UK by other Altnets (including MS3) that the maximum price to be set by Ofcom for the Openreach 80/20 WLA product is in fact below the costs of a REO, and does not reflect the true costs of PIA, the Altnet cost of debt/capital and other material factors. Those concerns apply even more strongly for Hull.
- 69 With regards to the absence of PIA as an input for the REO cost, the Openreach 80/20 WLA price is supposed to satisfy Ofcom's test against the fibre costing model (FCM), which reflects an REO using PIA. As PIA is not currently available in Hull, Ofcom needs to recognise that the REO cost base in Hull would be higher than for the rest of the UK. MS3 believes that there can be no question that REO costs using PIA would be lower than REO costs reflecting the full self-build of the physical infrastructure for the competing network operator. MS3 believes that Ofcom needs to take this into account and develop a compensatory factor to be used to adjust the Openreach benchmark for implementation in Hull. MS3 does not believe that Ofcom could reasonably conclude that an REO in Hull would be one that uses PIA for its entire network. Such a conclusion could only be made if the PIA remedy had been available for use at the time of network build.
- 70 MS3 notes that KCOM claims that "*The impact of wholesale price regulation has been to restrict competition, rather than to promote it*".²⁰ MS3 does not agree, providing that the regulated price is set at a level that allows headroom for investment by an REO such as MS3. As explained above, there is, however, a real risk that KCOM's statement could become true. MS3 urges Ofcom to review the suitability of the proposed 80/20 anchor price control as the benchmark for KCOM's equivalent WLA product and to develop an adjustment factor to make this benchmark appropriate and proportionate to the Hull circumstances.

²⁰ KCOM Hull Area telecoms access review discussion paper section 2.

- 71 Responses by MS3 and others²¹ to the TAR consultation on the Openreach 80/20 anchor price control set out in detail the concerns about assumptions used in the FCM that are equally (and perhaps even more) applicable in the Hull area.
- 72 As well as concern that the benchmarked WLA anchor price may be set at a price that cannot be replicated by a Hull REO that has not had access to PIA, MS3 is also concerned that the proposed WLA price control may not be effective for the purposes of enabling increased competition at both retail and wholesale levels. MS3 recognises the consumer protection benefit from the excessive price prohibition but does not believe it would assist Ofcom in its objective to promote network competition and delivering benefits to consumers through the resulting increase in retail competition.
- 73 Whilst recognising that a small number of KCOM WLA lines may be used by external ISPs for customer connections in Hull, by far the largest WLA customer in Hull is KCOM's own retail business. KCOM is unlikely to price excessively in a manner that disadvantages its own retail arm's ability to compete with retail ISPs using other networks. [§].
- 74 Ofcom must not underestimate the incentives on KCOM to preserve both retail and wholesale market shares, and Ofcom should look to past KCOM retail behaviour to confirm that KCOM is both able and willing to engage in potentially anticompetitive practices to preserve market share. MS3 is certain that KCOM will have both the incentive and the ability to engage in pricing behaviour designed to disincentivise further competitive fibre deployment and to limit the take-up of services on the existing competitive FTTP networks in Hull.
- 75 Any emerging competition faced by KCOM (at both wholesale and retail market levels) is driven by network competition from MS3 and others. MS3 is, therefore, concerned that prohibition of excessive wholesale pricing is not a form of price regulation that prevents KCOM from abusing its SMP to deter further network roll-out by its competitors or to prevent take-up of services on the competing networks.
- 76 MS3 does not object to the imposition of this remedy, and it is good that KCOM is prohibited from charging excessive WLA prices in locations where there is no competing network. It is, however, unlikely to be effective as a remedy to promote sustainable network competition.

²¹ Individually and through INCA.

3.3.2.2.2 Price squeeze prohibition

77 With regards to the prohibition of a price squeeze, Ofcom stated:

“2.28 We therefore propose to interpret our fair and reasonable pricing condition to mean KCOM should not set prices in the WLA or LLA markets that would equate to a price squeeze. While we would assess any complaint on the relevant facts, our proposed starting point for evaluating cost and margins in this context would be as follows:

a) where the potential squeeze could harm downstream competition, our starting point for evaluating cost and margins on individual services in this context would be to allow a long run incremental cost (LRIC) retail margin on each service, assessed by reference to an equally efficient operator (EEO) standard. For the avoidance of doubt, under our interpretation of this fair and reasonable requirement, KCOM is also required to cover its retail costs across a broader portfolio of broadband products, such that KCOM’s rivals can supply a comparable range of products.

b) where the potential squeeze could harm network competition, our starting point is that KCOM should not set prices that leave an insufficient margin between its weighted average wholesale FTTP prices and PIA prices. While we would assess any complaint on the relevant facts, our starting point for assessing a complaint is that a sufficient margin should be based on the costs of a reasonably efficient operator (REO).

2.29 To inform any potential enforcement action in relation to margin squeeze, we may consider a number of sources of evidence that would be relevant at the time of any such action. These could include, but not necessarily limited to, relevant KCOM cost and pricing information, the proposed Openreach benchmarks as set out above, prevailing competitor market prices, and any cost modelling information such as Ofcom’s latest Fibre Cost Model, insofar as we consider these sources of evidence are relevant.”²²

78 MS3 welcomes Ofcom’s focus on this important issue, and we set out below our assessment of how the characteristics of the Hull broadband markets impact on the likely effectiveness of the proposed price squeeze remedy. Because of the very low level of external WLA sales by KCOM, it is necessary to consider the incentives KCOM has as a vertically integrated operator to use the multiple levels of pricing in the market, from retail prices through to PIA pricing. MS3 understands Ofcom’s proposed price remedies across these levels to be as follows:

²² HAR V3 Paragraph 2.28 – 29.

- PIA – individual prices regulated through benchmarking to equivalent Openreach PIA products and services.
- WLA – price ceiling on the KCOM equivalent to the Openreach 80/20 FTTP product (anchor pricing) and a price squeeze remedy on ‘both sides’ of the WLA product. That is – prohibition of upstream price squeeze between the WLA price and the PIA price and prohibition of downstream price squeeze between the WLA price and the corresponding retail price.
- Retail – no direct price regulation although indirectly constrained by the downstream WLA price squeeze prohibition.

79 We will address the PIA pricing remedy in the PIA section of this response.

80 With regards to the **upstream price squeeze prohibition**, MS3 notes that Ofcom articulates it as follows:

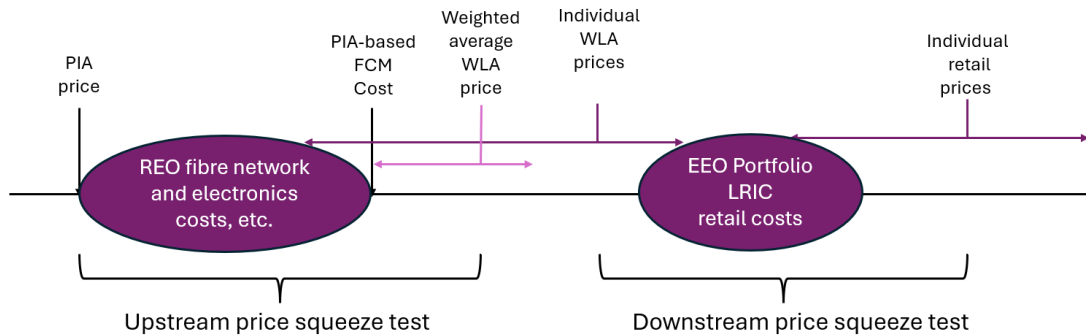
*“b) where the potential squeeze could harm network competition, our starting point is that KCOM should not set prices that leave **an insufficient margin between its weighted average wholesale FTTP prices and PIA prices**. While we would assess any complaint on the relevant facts, our starting point for assessing a complaint is that a sufficient margin should be based on the costs of a reasonably efficient operator (REO).”* [emphasis added]

81 For the **downstream price squeeze**, Ofcom proposes to impose an equally efficient operator (EEO) and assess individual services rather than perform the analysis on a full portfolio basis:

*a) where the potential squeeze could harm downstream competition, our starting point for evaluating cost and margins **on individual services** in this context would be to allow a long run incremental cost (LRIC) **retail margin on each service**, assessed by reference to an **equally efficient operator (EEO)** standard. For the avoidance of doubt, under our interpretation of this fair and reasonable requirement, KCOM is also required to cover its retail costs across a broader portfolio of broadband products, such that KCOM’s rivals can supply a comparable range of products.*
[emphasis added]

82 MS3’s understanding of the combined upstream and downstream price squeeze remedies is illustrated below.

Ofcom’s proposed price squeeze framework for Hull



83 It is important to note that, whilst there is significant room for manoeuvre for KCOM for individual product pricing at both wholesale and retail levels, there seems to be little risk of KCOM not complying with either of the price squeeze tests. This is primarily due to KCOM retail being the only (or by far the largest) WLA customer on KCOM’s network [3].

84 To assess how effective the combined upstream and downstream price squeeze remedies are likely to be in the Hull market, it is instructive to review specific Hull market conditions as well as the structure and incentives of KCOM.

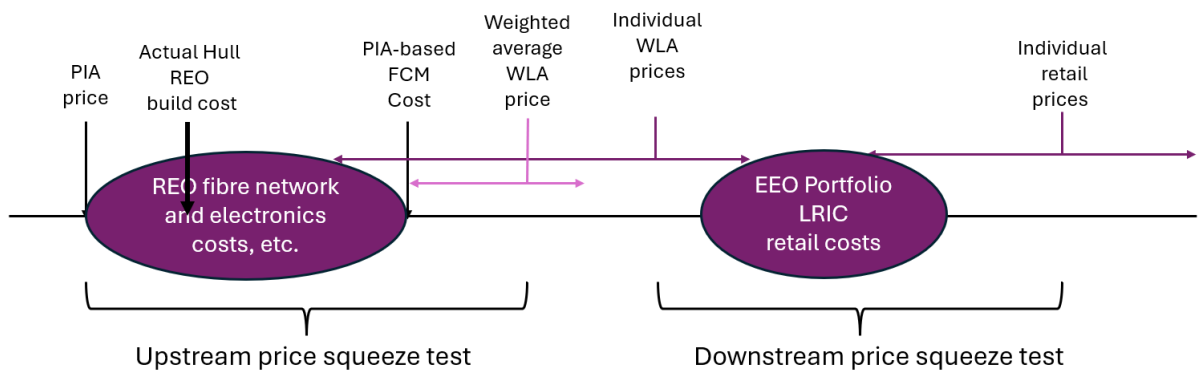
85 With regards to the **upstream price squeeze** test, MS3 has a number of concerns about how this remedy could be applied in practice, given that no REO costing analysis has been undertaken for Hull and historically there was no regulated PIA access available in Hull.

- For example, the absence of PIA in Hull when the majority of the competitive full-fibre networks were built, makes the use of the REO calculations applicable to the rest of the UK unsuitable. There can be no doubt that the network construction costs in Hull have been materially higher than in the rest of the country where regulated PIA was available. Using the newly introduced PIA price for the price squeeze test is clearly not appropriate if the purpose is to protect the business case of an REO that has a completely different cost base and structure.
- Additionally, the use of the weighted average WLA price would enable significant flexibility in KCOM’s pricing of individual WLA products at different speeds. If KCOM, for example, were to introduce a [3] could cause serious harm to the viability of the new competing networks.

Importantly, this style of pricing from KCOM also does not bring the benefits of competition to [redacted]. As illustrated above, there is significant scope for targeted price variations/offers for individual WLA products without these being likely to significantly change KCOM’s weighted average WLA price and, therefore, such pricing would not be caught by the upstream price squeeze test.

86 We illustrate below the impact of applying a PIA-based upstream price squeeze test in Hull.

Ofcom’s proposed price squeeze framework for Hull



87 The higher REO build cost in Hull means that a Hull REO would not be able to recover its efficient costs in accordance with Ofcom’s FCM. KCOM, on the other hand had the benefit of using its existing ducts and poles for its new full-fibre network – giving KCOM yet another competitive advantage over the new market entrants.

88 MS3 is also concerned that the lack of independent ISPs using the KCOM WLA product, means that KCOM could price in a manner that would [redacted]. Examples of such pricing include:

- [redacted] MS3’s understanding of the Ofcom proposals is that such pricing would not be in breach of the upstream price squeeze remedy
- [redacted] As long as the weighted average WLA price remained above the price squeeze threshold (the FCM unit cost?), Ofcom’s proposals would not prohibit KCOM for this style of pricing behaviour.

89 Reviewing the proposed **downstream price squeeze**, MS3 welcomes that Ofcom intends to apply this test on an **individual product basis**. MS3 asks that such individual product price squeeze

analysis should reflect the variation in backhaul costs for broadband connections of different speeds.

90 However, given KCOM's ability to discount significantly at the wholesale level, it is very unlikely that KCOM retail would fail the downstream price squeeze test, even when applied on an individual product variant level.

3.3.2.2.3 Conclusion

91 Despite being designed to address potential anticompetitive pricing by KCOM at both wholesale and retail levels, the proposed price squeeze tests are unlikely to be effective as designed. We set out our proposals in this regard later in this section.

92 New forms of access – MS3 agrees that the remedy is useful and should be retained for the WLA market.

93 No Undue Discrimination – Given that KCOM retail may be KCOM's only WLA customer, the application of a NUD remedy is unlikely to have any material impact. Whilst MS3 believes it is important that NUD remedies are applied in SMP markets, in this instance we urge Ofcom to not rely on it.

94 Publication of Reference Offer, Notification of changes to charges and terms, Notification of technical information – MS3 considers the notification of changes to terms and prices to be essential but believes that there should be additional and longer notification requirement for any form of WLA price discounts or special offers. We set out our rationale in the section below with proposed additional remedies.

95 Publication of quality of service information – MS3 believes this remedy to be important as it helps create transparent wholesale and retail markets.

96 Regulatory Financial Reporting – MS3 strongly supports the application of the RFS remedy and will set out separately why Ofcom should require additional reporting and transparency from KCOM in the WLA market as well as in other markets.

3.4 Additional WLA remedies proposed by MS3

- 97 Due to the unique market characteristics in Hull, MS3 asks that Ofcom looks carefully at the possibility of pricing and other behaviour that KCOM could engage in to deter further network competition and to erect barriers to take-up of services on the new competing networks in Hull.
- 98 MS3 is concerned that KCOM could engage in [redacted].²³ and which could lead to [redacted]. MS3 believes it would be attractive for KCOM to engage in such offers [redacted], for example. [redacted] but could significantly harm the ongoing viability of competing FTTP networks by depriving those networks of the levels of take-up required to justify the investments made and to enable future network expansion.
- 99 MS3 believes that KCOM's past history of retail market behaviour makes it clear that it will engage in tactical behaviour to harm both network and retail competition and to retain market share at both levels. MS3 considers it imperative that Ofcom takes action to prevent such behaviour. The HAR is a forward-looking review, and Ofcom needs to consider possible and likely future market failures and design remedies that prevent them from happening.
- 100 MS3 has reviewed the remedies currently imposed on Openreach and those proposed for the TAR review to assess whether the same remedies could be adjusted and applied effectively in Hull. Those remedies are based around the no undue discrimination principle and seeks to prevent a loyalty-inducing initiative or initiatives that tie different products together in a manner that is detrimental to the development of sustainable network competition.
- 101 The market conditions in Hull are, however, different. Loyalty-inducing pricing would not be relevant for KCOM in the WLA market. This is because KCOM's only (or by far largest) WLA customer is its own downstream retail business, and there is likely already strong loyalty between KCOM retail and KCOM wholesale. Likewise, KCOM retail is unlikely to purchase one wholesale product from KCOM and another from MS3 – that means that provisions to prevent product tying behaviours are also unlikely to be relevant or effective in the Hull market. These unusual market characteristics mean that, if unconstrained, a logical KCOM tactic could [redacted]. MS3 considers the 'risk' to KCOM of attracting new external wholesale customers with such [redacted] to be low. Should that happen, however, then KCOM could simply move to a different pricing approach.

²³ [redacted].

102 Given the specific market conditions in Hull, MS3 believes that an actual WLA price floor is likely to be the most appropriate remedy to prevent the types of pricing behaviour described above. If, however, Ofcom considers itself unable to impose a price floor, then it should consider how existing and proposed remedies could be strengthened and whether there are additional remedies available to Ofcom.

103 To assist Ofcom in the development and assessment of potential remedy structures, we explore some possible options below. It should be noted, however that these are shown as examples only and that Ofcom should not reject MS3's proposals simply because it may not agree with the examples presented. MS3 cannot know if some remedy structures are acceptable or not to Ofcom and the examples included are illustrative only.

3.4.1.1 Absolute and relative limits to price reductions in discounts and special offers

104 KCOM's current²⁴ WLA prices are:

Wholesale FibreLine Local Access End User Rental Charges

Service	WFLA FTTP Download Speed / Upload Speed	WFLA FTTC Download Speed / Upload Speed	Operative Date	Transition* End User Rental Charges Per Month Ex. VAT		Data Only End User Rental Charges Per Month Ex. VAT	
				Service Level 2	Service Level 3	Service Level 2	Service Level 3
FibreLine LA 33/33	33 Mbps / 33Mbps		06/01/25	£6.13	£9.23	£14.12	£17.22
FibreLine LA 53/53	53Mbps / 53Mbps		06/01/25	£7.94	£11.04	£15.93	£19.03
FibreLine LA 83/83	83Mbps / 83Mbps		06/01/25	£9.00	£12.10	£16.99	£20.09
FibreLine LA 106/106	106Mbps / 106Mbps	N/A	06/01/25	£9.97	£13.07	£17.96	£21.06
FibreLine LA 185/185	185Mbps / 185Mbps	N/A	06/01/25	£11.90	£15.00	£19.89	£22.99
FibreLine LA 318/318	318Mbps / 318Mbps	N/A	06/01/25	£13.98	£17.08	£21.97	£25.07
			16/01/25	£12.94	£16.04	£20.93	£24.03
FibreLine LA 440/440	440Mbps / 440Mbps	N/A	06/01/25	£15.24	£18.34	£23.23	£26.33
FibreLine LA 530/530	530Mbps / 530Mbps	N/A	06/01/25	£15.60	£18.70	£23.59	£26.69
FibreLine LA 795/550	795Mbps / 550Mbps	N/A	06/01/25	£17.23	£20.33	£25.22	£28.32
FibreLine LA 954/550	954Mbps / 550Mbps	N/A	06/01/25	£17.95	£21.05	£25.94	£29.04

* The Transition End User services are only available in conjunction with a KCOM Line Rental Service or other line rental services supplied by KCOM. Termination of the associated phone line service can only be accepted if the FibreLine End User Transition product is also being terminated.

Termination Payment

Termination of WFLA services to End Users are subject to one month's notice.

²⁴ Taken from KCOM's website on 16th February 2026. (https://www.kcom.com/pricing/media/1573/p13-s27_wholesale_fibreline_local_access.pdf)

Wholesale FibreLine Service Features & Service Level Table

Other Features	
Equipment provided	Optical Network Terminal (one power socket required)
IP Addresses	Not included. Provided by ISP's own allocation, from Ripe or from the End User's private IP range
KCOM Technical Support Team*	Second line support on 01482 604960
Proposed Start Date	To be confirmed when placing Order for Services.
Service Level 2	Time To Resolve (TTR): End of next Working Day after the CP reports the incident to KCOM, Monday to Friday 8am-5pm
Service Level 3	Time To Resolve (TTR): Same-day repair when the incident is reported before 12pm, 7 days per week

* For the avoidance of doubt, the CP agrees to provide first line support to the End Users. In the event of an incident for which the CP requires second line support, the CP should notify KCOM by contacting the KCOM Technical Support Team. Access to KCOM Technical Support Team is included as part of the Services, the CP must not provide this number to any End User.

For the purpose of this document, we will use the Service Level 2 prices, which range between £14.12 and £25.94 across a product range of 33/33 Mbps to 954/550 Mbps. MS3 notes that KCOM's current 83/83 product is priced at £16.99, whereas Openreach's current Equinix price for its 80/20 product is £16.58. Given that the KCOM product is symmetric and that KCOM does not benefit from the same levels of economies of scale as Openreach, MS3 considers that the current KCOM 83/83 WLA price should be considered compliant with the proposed HAR WLA anchor pricing-based prohibition of excessive pricing remedy. MS3 asks that Ofcom consider setting the KCOM anchor price level at least 10% above the relevant Openreach benchmark price.

105 MS3's pricing has evolved over time from a [redacted].²⁵ This is [redacted].

106 MS3 has to adopt this [redacted] pricing in order to support its retail ISPs in winning customers from KCOM. The reason this type of pricing is needed is that retail ISPs face extremely high barriers to expansion in the retail market including KCOM's extremely high retail early termination charges (ETCs). This level of pricing is effectively 'customer acquisition pricing' forced on MS3 due to the Hull market conditions.

107 If KCOM were to adopt a similar pricing strategy, then KCOM's retail business could likely squeeze out the competing retail ISPs and thus deprive MS3 of network utilisation. For KCOM to adopt this style of pricing, however, could only be motivated by a wish to prevent take-up on the new competitive fibre networks in Hull. As MS3 understands Ofcom's proposed price regulations, however, Ofcom's proposed upstream price squeeze test would allow KCOM to adopt such a tactic, [redacted] the (adjusted) benchmark anchor price level.

²⁵ [redacted]

108 MS3 believes that this example clearly demonstrates that the proposed WLA pricing remedies framework leaves significant opportunities for KCOM to game the system and cause real harm to its competitors. This would be to the ultimate detriment of consumers in Hull, who have already suffered through a long history of monopoly pricing by KCOM.

109 In addition to the fair and reasonable pricing and the price squeeze tests, Ofcom refers to the use of other sources of evidence. But, it is not clear how Ofcom would use such evidence as part of the price squeeze assessment or other powers to constrain KCOM's pricing. For example, how could Ofcom use evidence of prevailing competitor market prices²⁶ as part of the price squeeze test? The pricing approach MS3 has had to adopt to break into the market does not provide evidence that it is a pricing approach that should be considered acceptable if adopted by the dominant incumbent in a market where the objective is to promote network competition.

110 An incumbent would normally seek to profit-maximise at both retail and wholesale levels. However, as KCOM [redacted]. For Openreach on the contrary, as a stand-alone wholesale business, [redacted] would not be rational, as Openreach (or BT group) would not benefit from the [redacted].

111 From the analysis presented in this document, it is clear that Ofcom needs to look beyond the replication of pricing remedies applied on Openreach to address the existing and likely future competition problems in the Hull fixed telecoms markets. MS3 is, however, conscious that Ofcom's ex-ante powers are not unrestricted and that Ofcom must justify that any remedies applied are proportionate and appropriate and that the level of regulation applied is the lowest level necessary to prevent abuse of market power in the relevant market.

112 Ofcom has stated that it does not consider it has the legal powers to impose a price floor remedy, and MS3 assumes that this is the reason why the two combined price squeeze tests have been proposed instead.

113 Below we outline our proposed changes to Ofcom's proposed remedies together with our proposals for additional remedies, which we consider would strengthen the set of remedies proposed by Ofcom.

114 We first comment on modifications to the proposed price squeeze tests, which MS3 believe could make the remedies more effective in the Hull market.

²⁶ HAR V3 Paragraph 2.29.

115 For the upstream price squeeze test:

- Ofcom should apply the price squeeze test to individual WLA products, rather than the weighted average WLA price. MS3 considers that this could at least prevent [~~§~~] WLA pricing by KCOM. At present, it would be possible for KCOM to [~~§~~]. Given the incentives KCOM has to deploy tactical pricing, MS3 believes that this form of tactical pricing should be prohibited.
- Ofcom should adjust the REO FCM output to reflect that PIA has not been available to MS3 when building its network. That should result in a higher floor for the upstream price squeeze calculation.

116 If there is protection against KCOM setting its [~~§~~], then MS3 believes that the downstream price squeeze test would work as proposed by Ofcom. It is essential that it remains a test applied at the individual retail product variant level and that it must recover all relevant direct retail and portfolio costs.

117 For the excessive pricing prohibition, MS3 proposes that the Openreach benchmark price level be adjusted to reflect the fact that PIA is not, and has not been, available in Hull and therefore REO costs should reflect self-build costs. The benchmark price should also be adjusted to reflect the smaller size of Hull as described above.

118 In addition to adjustments to the existing proposed remedies, MS3 proposes the addition of the following:

- A general prohibition against pricing, discounts and/or offers that are likely to have a detrimental impact on network investment incentives and/or the take-up of services on new competitive networks.
- A mandatory 120-days pre-notification by KCOM of all WLA price changes. This is to allow for the more complex analysis required to determine whether the proposed changes could have an anti-competitive effect.
- A review of any proposed WLA price changes against industry practice for regulated access products, including the Openreach price structure and gradient. Ofcom should require that KCOM WLA pricing is consistent with a long-term rational incumbent pricing approach, not a short-term market-distorting approach.

- A general presumption against and a mandatory pre-notification (again 120 days) of all WLA discounts and special offers. As KCOM has completed its FTTP deployment and also largely completed its copper switch-off, and it does not need to persuade large external ISPs to support those processes, the legitimate needs for KCOM to launch WLA discounts and special offers are very limited. There should, therefore, be a presumption against WLA discounts and special offers in Hull until network competition has become established.

4 Leased lines markets and remedies

4.1 Introduction

119 MS3 operates in Hull and nearby locations. It has built a full-fibre network that can serve [X] premises in Hull and offers FTTP and leased lines services to residential and business premises respectively.

120 The Leased Lines Access (LLA) market is important to MS3, with [X] our revenues in this market. MS3 provides primarily conventional Ethernet connections in the LLA, but some businesses are opting for our high-quality broadband connections instead. MS3 expects the proportion of leased lines revenues to increase when PIA is introduced, as it has not previously been able to target the main business areas in Hull.

121 Historically, MS3 has not been able to address the needs of businesses in some parts of Hull. That was due to the lack of PIA in Hull and the specific characteristics of those parts of the city not making it viable for MS3 to install its own infrastructure. MS3 is hoping that the HAR proposals will remove those barriers and that businesses across all of Hull can start benefiting from the emerging competition.

4.2 Market definition and SMP

122 MS3 generally agrees with Ofcom's proposed LLA definition including the inclusion of leased line equivalent services. MS3, however, does not agree that dark fibre forms part of the LLA. Our rationale for that was presented in our pre-consultation submission.

123 MS3 also agrees that the Hull Area is a single geographic area. Even though there is not competitive network presence everywhere in Hull, there is a substantial presence, and it is likely that this will

increase over the HAR period. MS3 agrees that there is also no part of Hull where there is sufficient level of existing competition to warrant Ofcom designating those areas a High Network Reach (HNR) areas.

124 In our pre-consultation submission, we proposed that Ofcom define a separate market for mobile backhaul. That was because we thought Ofcom might find it difficult to withdraw the dark fibre access (DFA) remedy across the full LLA. As Ofcom now proposes to withdraw the DFA in the LLA as a whole, MS3 no longer believes there is a need, nor justification, for the creation of a separate mobile backhaul market.

125 Finally, MS3 agrees with Ofcom's application of the three criteria test for the LLA market and that KCOM has SMP in this market.

4.3 LLA Competition concerns

126 MS3 agrees with Ofcom that there is real risk that KCOM both could and would engage in exclusionary and exploitative behaviours. It is important to understand that the emergence of competition is relatively new to KCOM, and it is instructive to consider KCOM's behaviour in the broadband markets (in particular in the retail broadband market) to understand KCOM's ability and willingness to engage in a variety of tactics to preserve market share.

127 As such, MS3 agrees that it is necessary to apply remedies on KCOM to prevent it from engaging in such behaviours.

4.4 LLA Remedies

4.4.1 Specific remedies

128 Ofcom proposes the following specific remedies in the LLA..²⁷

²⁷ HAR V3 Table 4.1.

Table 4.1: Summary of the proposed specific remedies in the LLA market

Proposed specific remedies in the LLA market
<ul style="list-style-type: none"> • Requirement to provide PIA.
<ul style="list-style-type: none"> • Requirement to provide Ethernet network access in the following circuit configurations: <ul style="list-style-type: none"> i) connecting end-user premises and KCOM’s optical distribution frame (ODF)⁴⁹ site or third-party premises; and ii) connecting an end-user premises and another end-user premises.⁵⁰

129 We address the PIA remedy separately as it is common to the LLA and WLA markets.

130 **Ethernet network access** – MS3 agrees that this is a proportionate and appropriate remedy to address the competition concerns identified by Ofcom. This remedy is particularly targeted to address the risk of refusal to supply by KCOM.

131 MS3 also agrees with the configuration of the Ethernet network access remedy. Although there is an issue with the configuration of the parallel remedy in the rest of the UK because it excludes the use of the remedy for traffic aggregation by rural operators, that case is not applicable in Hull.

132 **Dark fibre access** – as set out in our pre-consultation submission, MS3 does not believe that a DFA remedy would be appropriate or proportionate in the Hull LLA given the emergence of network competition.

133 MS3 understands Ofcom’s rationale for proposing a transition arrangement. MS3 agrees that there should not be a cliff-edge termination for customers already using regulated DFA from Hull but considers that a five-year period is unnecessarily long.

134 MS3 proposes that Ofcom instead apply a two-year carry-forward period for the price benchmarking of KCOM’s DFA product and a three-year period for the obligation to provide the DFA product. Adopting this approach would return the Hull market to one where the full set of business connectivity products is contestable by the emerging network competitors. Implementing such a protracted transition period would reduce the contestable market for the competing networks and service providers, to the long-term detriment of all LLA customers.

4.4.2 General remedies

135 In addition to the two specific remedies for the LLA, some of the general remedies already listed in the broadband section of this response. We comment on some below.

136 **Fair and reasonable pricing** – Ofcom proposes to benchmark KCOM’s LLA products including installations, rentals and ancillaries against equivalent or near-equivalent products and services on the Openreach price list. MS3 believes this to be a reasonable, proportionate and practical approach. MS3 highlights that Ofcom should clarify that the price list referred to is that for the LLA Area 2 market in the rest of the UK.

137 **Pricing transparency report** – MS3 is disappointed that Ofcom proposes to remove this remedy. Given that the LLA market is particularly difficult to assess due to leased lines often forming part of larger more complex solutions, MS3 believes it is important that Ofcom ensures it has timely access to access potential issues as they arise. MS3 is expecting the regulated PIA remedy to reduce barriers to entry and expansion in the LLA, and it is, therefore, likely that KCOM will look to respond aggressively to the resulting increased competitive pressures. We set out our concerns about possible KCOM LLA pricing behaviour in our pre-consultation submission..²⁸

138 The WFTMR PTR includes the following data requirements for each LLA connection:

- – a specification of each of the service type, interface, bandwidth and circuit orientation;
- – the amount of the connection charge;
- – the date on which the rental charge was agreed;
- – any fixed or minimum term agreed by the dominant provider and a third party in respect of the rental charge;
- – the amount and the frequency of the rental charge; and
- – such characteristics of each connection as required to fully determine the connection charge and annual rental charge from the KCOM price list.

MS3 considers that all of this data should remain in the scope of the PTR.

139 **Price squeeze tests** – for the LLA market, it is not clear to MS3 how Ofcom intends to apply the two (upstream and downstream) price squeeze tests. In particular, if the upstream price squeeze test were to be applied to the weighted average LLA price, the result is unlikely to be meaningful. The very large variation in pricing across the LLA product portfolio means that testing against the weighted average price level would allow for a very large range of tactical pricing. MS3 believes

²⁸ MS3 Market definitions pre-consultation document paragraphs 71 and 79.

that the test as currently proposed would leave ample scope for tactical pricing to cause harm in specific locations or for specific customers where competitors are active.

140 Although KCOM has more wholesale customers in the LLA than in the WLA (so it has less room for [~~Σ~~] without commercial repercussions), MS3 still considers that KCOM's very high market share at both wholesale and retail levels would give KCOM scope and incentive to engage in practices to retain or increase both of those market shares.

141 MS3 suggests that Ofcom consult separately on the functioning of the price squeeze mechanisms during the period between receiving responses to this consultation and the preparation of the final HAR statement.

4.5 LLA Conclusion

142 MS3 agrees with Ofcom's overall approach to defining and regulating the LLA.

143 Specifically, MS3 supports the removal of the DFA remedy, but believes that the proposed transition period is unnecessarily long and should be shortened to two years for the continued price regulation and three years for the continued access regulation.

144 MS3 asks Ofcom to reconsider the removal of the obligation to provide Price Transparency Report. The LLA market is already less transparent than other regulated markets, such as the WLA market for example. The Price Transparency Report is an important tool for Ofcom to be able to assess and react to market developments in a timely manner.

145 MS3 asks that Ofcom consider in detail how the price squeeze remedies could and would be applied in the LLA. Due to leased lines often being inputs into more complex solutions, the specific pricing can be difficult to determine and the very widespread in prices across bandwidth variants makes testing against the weighted average LLA price less likely to be an effective deterrent from tactical pricing.

5 PIA

5.1 Introduction

146 MS3 operates in Hull and nearby locations. It has built a full-fibre network that can serve [redacted] premises in Hull and offers FTTP and leased lines services to residential and business premises respectively.

147 Due to Physical Infrastructure Access (PIA) not being mandated in Hull in the Wholesale Fixed Telecoms Market Review (WFTMR) introduced in 2021, MS3 has built its own stand-alone network. Despite several attempts to gain access to KCOM's physical infrastructure (PI) under the Access to Infrastructure Regulation (ATI), MS3 did not succeed in achieving meaningful access to the KCOM PI.

148 A formal request for PIA from KCOM resulted in trialling of what was termed the 'KPIA' product. To the best of our knowledge, MS3 is the only CP to have trialled the KPIA product, and the trials undertaken have been small:

- The Wave 1 Trial was for less than [redacted] premises in a pole fed area called Wawne, with a very low number of ducts used within the trial
- The Wave 2 Trial was for c [redacted] premises in a relatively recently built area (no more than 20 years old), so the ducts and poles were relatively new, compared to the average age of the KCOM pole and duct estate.

149 MS3's comments on Ofcom's proposals for a formal PIA remedy in Hull are based on experience of the KPIA trials, as well as use of the Openreach PIA product outside the Hull area.

5.1.1 Ofcom's PIA proposals

150 As set out in earlier sections of this response, MS3 agrees with Ofcom that KCOM retains SMP in the Wholesale Local Access (WLA) and Leased Line Access (LLA) markets and that PIA is an appropriate and proportionate remedy in both of those markets. As PIA is proposed as a remedy for both of these markets, we are setting out our response to Ofcom's proposals here rather than within our responses for the two markets under which it is proposed.

151 MS3 strongly supports Ofcom's proposal to impose the obligation to offer PIA services on KCOM. MS3 agrees with Ofcom that PIA as an appropriate and proportionate remedy to address existing and potential future market failures in the WLA and LLA markets.

152 MS3 agrees that it is necessary to impose a specific PIA access remedy on KCOM. This is based on our experience of negotiating and trialling the KPIA product over the past two years and our inability to achieve agreement on critical functionality and charging principles for the KPIA product. As Ofcom points out²⁹, there is also a real risk that KCOM could withdraw or amend the KPIA terms currently offered.

5.2 Network adjustments

153 MS3 agrees that it is essential that the PIA remedy includes the obligations to perform network adjustments (NAs). MS3 has experienced considerable difficulties agreeing the terms for NAs with KCOM and welcomes Ofcom's proposal to provide a clear framework for how NAs are performed and funded.

154 MS3 also agrees that it is essential that the NA framework creates equality between KCOM and PIA users in Hull, so as to not place MS3 and other competitors at a competitive disadvantage compared to KCOM.³⁰ MS3 further agrees with Ofcom's proposal that the NA obligation should be limited to adjustments that are necessary, feasible and efficient as set out in Ofcom's proposals.³¹

155 With regards to the funding of NAs, MS3 also supports Ofcom's proposals. The funding of NAs was one of the critical points on which MS3 and KCOM were unable to reach agreement and KCOM's unwillingness to accept the reasonable position presented by MS3 (similar to that now proposed by Ofcom) caused MS3 to not advance some aspects of the KPIA trials.

156 It is critical that the funding of NAs reflect that fact that improved PIA will deliver benefits of competition and choice for telecom users (consumer and business) across the Hull area, even for those who do not switch away from KCOM. Those benefits are delivered through reduced KCOM prices and possible improvements to quality of service and customer handling processes. It is,

²⁹ HAR V3 paragraph 5.12.

³⁰ HAR V3 paragraph 5.26.

³¹ HAR V3 paragraph 5.30.

therefore, appropriate that reasonable NA costs are funded by KCOM and recovered through all its wholesale pricing (most of which is charged as self-provision to the KCOM retail businesses).

157 Specifically, MS3 supports Ofcom's proposals for NA cost recovery set out in paragraphs 5.58 to 5.89.

158 In particular, MS3 considers that the proposal to exclude NAs to support the attachment of dropwires from the financial NA limit is appropriate and important. MS3 agrees with Ofcom that it is important that Altnets do not have to install their own poles where KCOM's poles need to be changed or adjusted in order to accommodate Altnet dropwires.³²

159 In addition to the rules set out by Ofcom, MS3 proposes that it should be made possible to share the NA budget across multiple PIA orders in Hull. This allows the PIA user to average out the costs across parts of the areas that have high or low incidents of NAs and is consistent with the need to ensure a level playing field and competitive parity between PIA users and KCOM. This functionality exists in the Openreach PIA product and has been widely used by PIA users to distribute the NA funding across PIA orders with varying levels of NAs. MS3 consider it necessary that the Hull PIA product includes this facility – not doing so would disadvantage PIA users relative to KCOM and could deter PIA users from deploying competitive full-fibre networks into areas where the number of NAs is likely to be higher. This could include the central parts of Hull City.

5.3 PIA ancillary services

160 MS3 supports Ofcom's proposal that KCOM should provide ancillary services to support the PIA product. MS3 acknowledges that the network information availability is unlikely to be automated to the extent seen in the Openreach PIA product.

5.4 The PIA Reference Offer

161 It is important and appropriate that KCOM codifies its PIA product into a Reference Offer (RO), which becomes a standard contract for the use of the PIA product. MS3 considers this requirement to be appropriate and proportionate and believes that the effort to produce the RO is likely to be relatively small, given that there is already an RO for the KPIA product, which was (to an extent)

³² HAR V3 paragraph 5.87.

based on the Openreach PIA RO and which can, therefore be used as the base for the regulated KCOM PIA RO.

162 Ofcom proposes that the PIA RO includes (as a minimum) the following provisions:

163 a) *Conditions for:*

164 i) *telecoms providers to gain access to physical infrastructure including if appropriate training, certification and authorisation requirements for personnel to access and work in/on physical infrastructure.*

165 ii) *the provision of forecasts by telecoms providers in respect of their future requirements for PIA.*

166 iii) *the inspection of the physical infrastructure at which access is available or at which access has been refused on grounds of lack of capacity.*

167 iv) *reserving capacity.*

168 v) *the installation and recovery of cables and associated equipment.*

169 b) *The location of physical infrastructure or the method by which telecoms providers may obtain information about the location of physical infrastructure.*

170 c) *Procedures for the provision of information to telecoms providers about spare capacity, including arrangements for visual surveys of physical infrastructure to determine spare capacity.*

171 d) *The methodology for calculating availability of spare capacity in physical infrastructure.*

172 e) *Arrangements for relieving congested physical infrastructure, including the repair of existing faulty infrastructure and the construction of new physical infrastructure.*

173 f) *The information that a telecoms provider is required to provide to KCOM where that telecoms provider is requesting the repair of existing faulty infrastructure and/or the construction of new physical infrastructure necessary for SLAs and SLGs.*

174 g) *Conditions on which telecoms providers may elect to undertake repair or build works on behalf of KCOM.*

175 h) *Technical specifications for PIA, including;*

176 i) *Technical specifications for permitted cables and associated equipment;*

177 ii) *Cable installation, attachment and recovery methods;*

178 iii) *Technical specifications relevant to the repair of existing faulty physical infrastructure; and*

179 iv) *Technical specifications relevant to undertaking build works.*

180 i) *The arrangements for maintenance of cables and associate equipment installed by telecoms providers and of the physical infrastructure, including the provision for the temporary occupation of additional infrastructure capacity for the installation of replacement cables.*

181 j) *SLAs and SLGs in relation to timescales for:*

182 i) *KCOM to respond to a request by a telecoms provider for PIA including where relevant to relieve congested physical infrastructure other than a congested pole, where such a response confirms that the order has been accepted and includes how KCOM proposes to relieve that congestion.*

183 ii) *completion by KCOM of any works necessary to relieve congested physical infrastructure (including the repair of existing faulty infrastructure and the construction of new physical infrastructure) other than a congested pole.*

184 iii) *KCOM to respond to a request by a telecoms provider to undertake works itself to relieve congested physical infrastructure.*

185 iv) *KCOM to respond to a request by a telecoms provider to relive a congested pole where such a response confirms that the order has been accepted and how KCOM proposes to relive that congestion.*

186 v) *completion by KCOM of any works necessary to relieve a congested pole.*³³

187 MS3 agrees that the components set out above are important and must be included in the RO. There are, however, other components that MS3 consider to be equally important and critical to the successful introduction of the PIA remedy in Hull. We describe them below.

188 Timing for the provision by KCOM to provide network information (this should be subject to an SLA). This is essential as it is not envisaged that there will be a Map Tool that allows PIA users direct access to network information. Without timely access to network information, MS3 would not be able to respond to customers enquiries in the LLA market and the absence of predictable timing for network information access would make planning for broadband network expansion very difficult and cause MS3 to incur unnecessary costs.

³³ HAR V3 paragraph 5.42.

- 189 Conditions for access to sensitive sites. MS3's experience is that it has been KCOM's position that there can be no access to such sites and that would be very detrimental to the effectiveness of the PIA remedy in the LLA market. The current Openreach Reference Offer includes provisions for the definition of and access to sensitive sites, MS3 asks that this be a mandatory component in the KCOM PIA RO.
- 190 Provisions for dispute resolution. It is MS3's experience as a user of the Openreach PIA product that clear and balanced dispute resolution provisions are critical. MS3 asks that Ofcom make dispute resolution a mandatory part of the KCOM PIA RO and that the OTA2 be asked to support the parties when negotiating the dispute resolution provisions for the RO.
- 191 Provisions for communicating network information inaccuracies (known under the Openreach PIA product as missing inventory (MI)). This has again been highlighted as an important element in operating of the Openreach PIA product. MS3's experience as a user of the Openreach PIA product is that MI has grown to become a time-consuming, expensive and unwieldy process. Whilst MS3 accepts that there will be some level of inaccuracy in KCOM's network information, it is essential that an equitable and fair process is developed at the outset of the regulation KCOM PIA product becoming available.
- 192 Provisions for invoicing, including billing information to be provided to enable PIA users to reconcile invoices with their internal records of PIA usage. MS3 asks that Ofcom mandates that KCOM PIA invoices should include the equivalent of the Openreach PIA Object IDs and that invoices are reconcilable to NOIs (or the KCOM equivalent)
- 193 MS3 considers it essential that the above elements are added to the minimum scope of the PIA RO. The Openreach RO has evolved over 7-8 years to reach its current level of maturity, and it would be undesirable and inappropriate for the KCOM PIA product and RO to have to 'reinvent the wheel'. It would be highly inappropriate to make the telecoms users in Hull wait several years before they can benefit from effective network competition, given that there is a precedent on which to base the KCOM PIA PO to ensure that consumer benefits are delivered as quickly as possible.
- 194 MS3 welcomes that Ofcom has referenced the pre-consultation submissions from stakeholders, below we discuss Ofcom's positions and set out additional points that were not covered in the consultation document. For ease of reference, we have used the same paragraph numbering as in the HAR document.

- a. MS3 agrees that a simpler and more manual process than that seen for the Openreach PIA product is the right solution for the Hull PIA product.
- b. MS3 agrees with Ofcom that, due to the very limited size of KCOM's Hull network, there is no need for forecasting by PIA users. The rationale for Openreach requiring PIA forecasts is that Openreach needs to ensure it has the necessary resources located in the appropriate geographic locations to reflect PIA activities, but that is clearly not the case for KCOM in Hull. MS3 considers that the imposition of a forecasting obligation would be disproportionate and would constitute an unnecessary burden on PIA users.
- c. With the exception of 'whereabouts' information, MS3 does not believe that PIA users should be obliged to provide information to KCOM about where they plan to use the PIA product. MS3 is conscious that, due to its size, it would be disproportionate to require KCOM to introduce operational separation between the passive network parts of the business and the active wholesale and retail parts. Given this lack of separation, MS3 considers it essential that as little information is shared with KCOM as possible. We consider this to be the only way to ensure that commercially sensitive PIA plans do not seep into KCOM's downstream business units.
- d. The performance of site surveys in advance of ordering PIA for a specific location is essential. MS3 welcomes Ofcom's position on this subject.
- e. MS3 agrees that the PIA product should not restrict access to duct space and in any way reserve space for potential future KCOM use. That would not be compliant with the overall no undue discrimination obligation.
- f. MS3 considers that Ofcom is unduly optimistic if it believes it realistic that agreement can be reached between KCOM and PIA users on SLAs and SLGs. It would be much better to ask the OTA2 to work with the parties for this purpose. To the best of MS3's knowledge, no SLAs or SLGs have been agreed between Openreach and PIA users without the intervention and supervision of the OTA2.
- g. MS3 agrees with Ofcom's position in relation to NA cost recovery.
- h. With regards to contract length, as the PIA remedy is applicable in both the WLA and LLA markets, MS3 considers that it would be in breach of the no undue discrimination obligation if a PIA users would not be able to enter into a contract for LLA services for the

same duration as KCOM's downstream retail and wholesale business units can. This would necessitate several PIA contract length options, in addition to the basic 5-year duration, and MS3 proposes a 10-year and a 20-year contract length options.

- i. MS3 supports that the PIA RO should include provisions to enable consolidation between PIA users as well as the sale of network sections that would require contract novation.

195 In addition to the subjects covered above, MS3's pre-consultation submission also highlighted the unwillingness of KCOM to provide a process for PIA access to 'sensitive sites'. As a provider of leased lines, MS3 foresees that there will likely be several instances where a customer at a sensitive site wishes to purchase connectivity from MS3, but the absence of a process for allowing such access means that those customers would be denied the benefits of competition and MS3 would be denied those revenue streams. MS3 considers that this would be in breach of the no undue discrimination provision and, therefore, asks that Ofcom clarify this as soon as possible.

5.5 PIA Non-discrimination and transparency

196 When considering non-discrimination provisions for the Hull PIA product, it is important to acknowledge that KCOM has completed its FTTP deployment. This means that there is little scope for discrimination on activities to build, but it also means that it could be tempting for KCOM to develop PIA terms and conditions that would make using the product very difficult – simply because there would be no ongoing KCOM network deployment with which to compare the PIA conditions.

197 Because there is no comparison and KCOM will not be deploying in parallel with PIA users, it is important that the SLAs and SLGs for the Hull PIA product are clear and reasonable to allow PIA users to deploy in an effective and cost-efficient manner.

198 MS3 agrees that it would be disproportionate to impose an Equivalence of Inputs (EOI) obligation on KCOM for the PIA product, but experience with the Openreach PIA product suggests that it would be both appropriate and proportionate to impose near-EOI for some of the on-going product use and manage aspects such as response to incidents and network failures, reporting and resolution of disputes, joint survey visits and compensation payments both ways between KCOM and PIA users.

199 Ofcom proposes that changes to systems must deliver Equivalence of Outputs (EOO). MS3 considers that this requirement should be reconsidered in light of the fact that KCOM is no longer deploying its FTTP network, and EOO may therefore not be a sufficient standard to ensure that systems and processes are fit-for-purpose for PIA users that are actively building their networks. A poor deployment process would not harm KCOM, so EOO would not incentivise KCOM to ensure that PIA processes are efficient and reasonable.

200 MS3 further notes that Ofcom proposes that KCOM should develop and publish an Internal Reference Offer (IRO). Whilst an IRO should, in principle, be a useful tool to compare internal provision with external provision, it has proven of little or no value in relation to the Openreach PIA product. This is primarily because Openreach does not consume the PIA product. As KCOM will also not be consuming PIA and is not actively deploying its FTTP network, MS3 questions the value of the PIA IRO and considers that the cost and effort for KCOM to comply with this requirement may be disproportionate to the (likely) very low benefits expected from the IRO.

201 MS3 considers that, should an IRO be mandated under the HAR, it should be limited to activities actually undertaken by KCOM and for which meaningful comparison can be made to the external PIA RO.

202 Publication of comparative/non-discrimination data would likely not be meaningful for some time, although MS3 believes it to be critical that data is shared with MS3 and other PIA users as soon as possible. Such data is more likely to reflect the quality of service provided by KCOM for the PIA product.

5.6 PIA Quality of Service

203 MS3 notes that Ofcom proposes to not impose any specific QoS remedies on KCOM for PIA at this time because it is not yet clear whether there will be issues in relation to the KCOM PIA QoS. We do not agree with that logic and consider that it effectively relies on the need for things to go wrong before any precautionary measures are taken.

204 MS3 consider that the reporting of QoS would be a more useful and proportionate remedy than to require KCOM to develop and publish an IRO. Experience in Hull shows that KCOM's wholesale remedies have not performed well. This is, for example, demonstrated by the fact that there is little or no use of the regulated WLA access remedy. Ofcom should rely on past behaviour to inform the need for collection of data and reporting of QoS parameters. It is particularly concerning that any

reporting would be delayed by the need for KCOM to collect the relevant data, defining the relevant data should happen at the earliest possible time.

205 MS3 understands that it would not be possible for KCOM to start reporting on QoS parameters until the product is fully launched and there is some experience in its use and operation. What is important, however, is that the QoS parameters are set out as early as possible to allow KCOM to design in the necessary data collection from the outset.

206 MS3 would expect the quality standards for the new Hull PIA product to, where appropriate, be aligned with those in place for Openreach in the rest of the country. MS3 understands that there would be some differences to reflect the lesser degree of automation of the Hull PIA product. For others it is likely that the smaller geographic footprint of KCOM's network would make it possible for KCOM to deliver a better quality of service than Openreach.

207 MS3's priorities in this area are:

- Mean time to repair live services. KCOM already commits to this level of service to its own customers and MS3 would expect the same for PIA.
- Less than 5 days for KCOM to approve network adjustments for MS3 to be able to complete the work and claim the costs from KCOM.
- Minimum guaranteed notice of KCOM planned works that could affect PIA CPs.

5.7 PIA Implementation and compliance

208 MS3 agrees with Ofcom that it will be important for KCOM to work with the existing and prospective PIA users to ensure that the product is implemented effectively and as quickly as possible. MS3 is ready to participate in that process.

209 MS3 urges Ofcom to ask the OTA2 to accept a role in this process and that they should be involved from the outset.

5.8 PIA New builds

210 MS3 agrees with Ofcom that supply of network connections to new housing developments must be strictly non-discriminatory between KCOM and PIA users. This is an area where users of the

Openreach PIA product have enduring concerns and where the Hull PIA product could potentially be designed to benefit from that experience.

5.9 Reliance on experience from the Openreach PIA product implementation

211 MS3 believes that there are aspects of the PIA product where it would be unproductive to ‘reinvent the wheel’. Where experience from using and operating the Openreach PIA product can be leveraged to prevent weaknesses in the product that can be designed out at the outset, that should be done. MS3 believes that this is best achieved through the assistance of the OTA2.

6 Regulatory Financial Accounting remedies

6.1 Introduction

212 MS3 operates in Hull and nearby locations. It has built a full-fibre network that can serve [X] premises in Hull and offers FTTP and leased lines services to residential and business premises respectively.

213 MS3 operates across the WLA and LLA markets and has found the information available in the current regulatory financial statements (RFS) published by KCOM to be at such a high level as to not provide insight into the market nor into KCOM’s profitability with individual products and product groups.

214 MS3, therefore asks Ofcom to mandate additional disaggregation of the KCOM RFS.

6.2 The purpose of the RFS

215 Throughout this response MS3 has highlighted the complexity of the Hull fixed telecoms markets and the challenges that exist in designing effective remedies given the vertical integration of KCOM and the small number of wholesale customers on the KCOM network.

216 That complexity, and the associated increased scope for KCOM to engage in pricing and other behaviour that could cause harm to network investment incentives or create barriers to take-up of services on these networks, means that it is absolutely essential that Ofcom has access to sufficiently transparent data to allow it to perform timely and accurate investigations.

217 Ofcom needs accurate and transparent RFS data to be able to monitor ongoing compliance by KCOM with costing, pricing and non-discrimination remedies, and stakeholders need accurate and transparent RFS data to be able to alert Ofcom to potential non-compliance.

218 MS3 does not believe that the proposed RFS remedy would meet those objectives.

6.3 Ofcom's RFS proposals

219 The RFS remedy currently imposed on KCOM, which Ofcom proposes to retain largely unchanged for the HAR period, provides very limited insight into KCOM's costs and revenues in individual markets and for individual products.

220 Whilst Ofcom requires KCOM to provide service-level information for the WLA and LLA markets confidentially to Ofcom, the market-level data published does not provide stakeholders with insight that would enable them to identify potential concerns relating to KCOM's pricing activities at the service level.

221 Although Ofcom may not expect the level of external take-up of LLA and WLA wholesale services to increase significantly, and Ofcom may therefore not believe it is important for stakeholders to see service-level RFS data, MS3's primary concern is the self-provision by KCOM of the WLA and LLA wholesale products to KCOM's downstream retail business. As KCOM retail is the dominant incumbent in both the broadband and leased lines retail markets, the terms on which KCOM provides access services to that retail business is critical to the development of retail competition in Hull – which is in turn critical to achieving the required levels of take-up to make competitive full-fibre networks economically viable.

222 MS3 notes that Ofcom explains the need for the service-level RFS data to assess the fair and reasonable pricing remedies applied.³⁴ But MS3 sees no justification in that table for why the service-level data cannot and should not be published.

223 MS3 asks Ofcom to modify the proposed RFS remedy to require publication of service-level RFS data in both the WLA and the LLA market. Ofcom has provided no rationale for why it should not be published, and MS3 sees no reason for why it cannot be published as the equivalent data is

³⁴ HAR V4 Table 3.5.

published by BT. The data has to be produced for Ofcom's consumption, so it would add no incremental regulatory burden to KCOM.

224 In the HAR, Ofcom states that the purpose of the RFS reporting and publication is that it *"helps stakeholders assess the effectiveness of our remedies and contributes to an open and competitive market by allowing stakeholders to bring issues to our attention."*³⁵

225 In our pre-consultation submission, we stated that the following improvements should be made to the KCOM RFS for the WLA and the LLA markets:

226 "For wholesale SMP markets, accounting separation should be mandated to provide:

- Separate profit and loss (P&L) accounts for each market showing revenues, volumes and costs separately for internally and externally sold products, along with the achieved return on capital employed.
- Statement of mean capital employed for each market.

227 Where PIA is mandated as a remedy in any of the wholesale markets, the related revenues, costs and usage should be clearly identified within the relevant P&L and capital employed statements.

228 Similarly, this should also apply to situations where a wholesale market draws on inputs from other wholesale markets; for example, if the WBA market makes use of WLA then this should be shown in the relevant statements."³⁶

229 MS3 asks that Ofcom actively consider these amendments and explain why (or why not) it decided to accept MS3's proposed improvements to the KCOM RFS remedy.

6.3.1 PIA reporting

230 MS3 notes that Ofcom proposes to include a new requirement for KCOM to report its external PIA revenues, but not its underlying costs and not revenues from self-provision of the equivalent of PIA.

231 The data Ofcom proposes KCOM should publish, however, is highly aggregated, with PIA rentals to be reported on a 1Km and 1 pole basis, rather than asking for rentals and ancillary revenues reported separately. MS3 understands that this level of reporting is the same for publication and

³⁵ HAR V4 paragraph 3.19 a).

³⁶ MS3 Hull TAR RFS pre-submission section 2.1.

for Ofcom internal use, with no additional breakdown propose for Ofcom’s internal and confidential use.

232 Likewise, Ofcom proposes a requirement for KCOM to report total network adjustment costs, broken down into external volumes, average price and total costs.

233 MS3 has not been able to identify the use to which this proposed PIA RFS data could be applied and has the following requests and comments:

- KCOM should be required to report and publish both internal and external use of its ducts and poles.
- KCOM should be required to report and publish service-level PIA revenues.
- KCOM should be required to report and publish average external network adjustment cost as well as the average external network adjustment price..³⁷
- KCOM should publish the individual Openreach PIA prices on which it benchmarks each of its PIA prices.

234 MS3 understands that KCOM would not be able to publish PIA-related costing data, as the KCOM prices would be set through benchmarking of the corresponding Openreach prices.

³⁷ Omitted from the proforma in HAR V5 Annex 22.