



Vodafone non confidential version

November 2015

Response to Ofcom's Consultation:
BCMR 2015
Supplemental 1



EAD v EAD LA

During the BCMR 2013 process we raised concerns over the lack of clarity around the investment required to achieve optimal EAD LA coverage and a concern that BT could extend its EAD LA network further than its competitors.

Our concerns about lack of investment policy have played out, and Ofcom feels there is now a need to intervene and set policy. However investment has occurred in the intervening period and Ofcom's proposals to regulate the differential between EAD and EAD LA will overnight undermine these investments made by BT's competitors. Lack of acknowledgement of our investment contrasts unfairly with Ofcom's position on regulatory investment risk in other markets (such as BT's investment in VULA).

We understand that Ofcom's proposals are based upon the analysis of historic data which suggests that take up of EAD LA is heavily skewed in BT's favour and therefore this is a problem which needs to be addressed. However, more recent operational purchasing data evidences a more even distribution of EAD LA sales to non BT CPs and illustrates that there is a more equal take up of EAD LA.

We believe that the standard charge control and market forces will drive down the differential between EAD and EAD LA over the course of the charge controlled period such that proactive additional action by Ofcom is not necessary.

In the event that Ofcom does proceed with a specific proposal we suggest that the requirement does not take effect until the end of the coming charge control period. Vodafone has [confidential text removed] short notice change in regulatory approach.

During the last BCMR process we raised concerns over the ongoing increase of EAD LA exchanges enabled by BT. We were keen for the establishment of a ceiling of exchanges that could be LA enabled so that we could plan appropriate investment to achieve our optimal coverage within such a framework. We were seeking to improve the knowledge base around our investment so that we could make investments in the knowledge that they were correct and optimal. Ofcom did not take any action at that time. Vodafone has of course had to make that investment in order to remain competitive in the markets for the supply of services to end customers and wholesale customers. The rollout program to enable local exchanges for LA presence is a long process which requires the creation / upgrading of accommodation space and the installation of appropriately sized backhaul capacity. Consequently [confidential text removed] sudden change proposed by Ofcom.

We find that Ofcom has for this review reconsidered the issue. Ofcom has based its forward looking proposals upon historic data (which is the only publicly available data) which shows that BT has a significantly higher take up of LA services.

We agree with Ofcom that BT has benefited from the advantage of LA pricing longer than its competitors:

- This is because it takes competitors time to identify the importance of having the LA coverage.
- LA has only recently been reported within the RFS and prior to this CPs have suspected that LA makes up a greater proportion of BT's costs in retail bids but lacked real evidence.



- CPs were aware of BT's LA rollout from industry briefings so while we had a view of the number of exchanges at which BT might offer LA pricing the magnitude of effect was less clear.
- The difficulty of winning bids against BT has promoted CPs to rollout comparable access.
- This requires business cases to be signed off and then the lengthy process of space acquisition at the local exchange along with the appropriate backhaul capacity installation.

More recently as CPs investment in LA presence has increased we believe that the difference in benefit between BT and other CPs has substantially reduced:

- In the intervening period between the market review consultation and conclusion, Vodafone has invested substantially in LA presence and enabled significantly more LA capability within exchanges. Furthermore this investment continues to be made as we are still within the rollout program.
- At present our run rate of orders of LA variants sits at [%] of orders and as our investment in LA presence completes we expect this to rise to [%].

It is extraordinary, in response to our desire to achieve a safe and knowledgeable investment environment, to find a proposal that whisks away the benefits of our investment (made in a risky environment – {text removed}). We do not believe that Ofcom would erode BT's investment without consideration of the opportunity to recoup or enjoy that investment. Indeed we do not believe that it is Ofcom's intention to erode our investment in this manner but consider that the proposals have been made in light of the conclusions of the historic data analysis and without full sight of how investment in LA accessibility by CPs has evolved. We would still welcome the establishment of a ceiling of LA coverage as this would provide retrospective certainty for our investment.

In any event we believe that the differential between EAD and EAD LA is likely to erode / get smaller naturally over the course of the review period as a result of the charge control proposals. We therefore do not believe that further proactive action to encourage or speed up the reduction in the differential is required.

In the event that Ofcom does not agree that the charge control is adequate to bring charges in line with the appropriate costs we believe that specific focus on the difference in differential should be adopted as a safeguard taking effect at the end of the charge control period. This would at least allow us to recoup our investment for a small period of time before market forces, the charge control and Ofcom intervention took place.