

Review of the Wholesale Local Access Market

Response by KCOM

1 June 2010

KCOM welcomes the opportunity to comment on Ofcom's conclusions on the wholesale local access market review. Our comments in this response are limited to Ofcom's review of the market in the Hull area.

In general we accept the conclusions which Ofcom has reached in respect of the Hull area and the proposed approach to regulatory remedies. We particularly welcome Ofcom's decision to only impose a general access remedy on KCOM recognising that the specific services which Ofcom is proposing BT be obliged to provide may not be appropriate or effective in the Hull market.

We provide our comments in relation to some specific issues below.

Market Definition and Market Power Assessment

Ofcom has stated that it believes that KCOM's market position will not change over the future period of the market review and that it is not aware of any firm plans by OCPs to invest in local access infrastructure in the Hull area. We would caution however it is possible that the situation may change quickly in the future.

Plans for the deployment of NGA networks have accelerated significantly over the past year. We see a framework emerging designed to address investment uncertainties and likely to encourage further deployment of NGA networks and services. We believe that many of these deployments will be regional in nature - variations in regional circumstances and needs will mean that locally based projects are best placed to assess appropriate project scope and scale and, consequently, use funds in the most efficient way. As such we believe we may well see the development of proposals for local deployment of NGA infrastructure in the Hull area which could pose a very real competitive threat.

The regional nature of any NGA deployments is likely to be driven by a number of factors such as the potential for first-mover advantage and the likely future availability of funds to enable roll-out in those areas where commercial deployment is not considered attractive. We would therefore stress that the deployment of NGA is an area which must be kept under close review and that no assumptions should be made that Ofcom's current analysis of the Hull market will hold over the period of the review.

Remedies

We welcome the fact that Ofcom is proposing to continue with the approach of not requiring KCOM to develop specific access products but rather is suggesting that a general access obligation condition continue to be imposed. In particular, we agree that



INVESTOR IN PEOPLE

ISO 9001
FS 502189ISO 14001
EMS 507164ISO 27001
IS 506165

Registered Office: 37 Carr Lane Hull HU1 3RE Registered Number: 2150618 England and Wales

KCOM Group PLC

given the specific demographics of the Hull area if demand were to materialise it is not clear that the products which might offer an appropriate entry route into the market would necessarily be the same as those in other parts of the UK. As we have argued in other markets, it is highly likely that there will be other commercial arrangements which offer alternative ways of providing access for competing CPs which are less burdensome in terms of regulatory obligations but still provide the service and functionality required.

With regard to Ofcom's proposal that KCOM should be subject to a new access requirement with a defined SoR process, we have no particular objections. This is something which KCOM is already required to do in the market for wholesale narrowband services so should not present an onerous task. We would however appreciate clarification from Ofcom as to when this new obligation will take effect as we will require some time to review our current process and complete any necessary updates to the documentation once a new obligation is confirmed.

We note Ofcom's comments regarding the potential for OCPs to take a significant market share over time in isolated geographic areas and the need to consider the proportionality of regulating OCPs in very small, sub-national markets. We also note Ofcom's comments regarding the provision of public funding and the difference between open access requirements specified contractually and/or by State Aid rules and access remedies imposed as a result of a finding of SMP. At this stage we would simply flag that should small regional deployments of NGA develop (as we anticipate) we expect that an approach consistent to that taken in relation to KCOM would be taken by Ofcom when assessing SMP and considering appropriate regulation for those new network deployments.

In paragraph 7.113 Ofcom refers to the new EU regulatory framework and amendments which, once enacted, will allow widen Ofcom's powers so that any CP could be required to share its physical infrastructure regardless of their SMP status. We query whether Ofcom has any plans to do once the new framework is transposed into UK law.

Related to the issue of open access and access to the physical infrastructure of non-SMP providers in its document "The Coalition: our programme for government" the new Government has said that it will introduce measures to ensure the rapid roll-out of superfast broadband and "will ensure that BT and other infrastructure providers allow the use of their assets to deliver such broadband...". We would welcome any insight Ofcom can provide on how these commitments will be carried forward and likely timing.

In terms of the specific remedies Ofcom is proposing, we have the following comments.

Definitions of "MDF Site" and "Metallic Path Facilities" have been included however these are not terms which are used in the specific Conditions placed on KCOM and can therefore be deleted.

We reiterate our comment regarding an effective date for new Condition FBB2 Requests for New Network Access. We will need some time to review and update existing processes which apply in respect of narrowband services.

In Conditions FBB5.7 (currently incorrectly numbered as Condition FBB4.7), FBB6.2 and FBB7.1 we are unclear why the proviso disapplying the need to give notice where Ofcom has made a direction or determination or issued a notification has been deleted. Similarly



INVESTOR IN PEOPLE



ISO 9001
FS 502189



ISO 14001
EMS 507164



ISO 27001
IS 506165

Registered Office: 37 Carr Lane Hull HU1 3RE Registered Number: 2150618 England and Wales

KCOM Group PLC

in Condition FBB5.8 (currently incorrectly numbered FBB4.8), the right to charge for providing a copy of the Reference Offer has been deleted without explanation. The equivalent provisions applicable to BT do not appear to have been amended in the same way.

Finally, Condition FBB5.7 (currently incorrectly numbered as Condition FBB4.7) requires that Ofcom be given at least ten days written notice of any amendment to the Reference Offer coming into effect. We are unclear of the need for this Condition given that under Condition FBB6.2 changes to Access Contracts are required to be notified to Ofcom with at least 28 days notice. A "Reference Offer" is by definition an "Access Contract" therefore the notice requirement in Condition FBB5.7 would seem to be unnecessary.



INVESTOR IN PEOPLE



ISO 9001
FS 502189



ISO 14001
EMS 507164



ISO 27001
IS 506165

Registered Office: 37 Carr Lane Hull HU1 3RE Registered Number: 2150618 England and Wales