Ofcom Wales Advisory Committee
Response to Ofcom Consultations on the Wholesale Local Access Markets (WLA) and Wholesale Broadband Access Markets .

Members had difficulties with both the Wholesale Local Access Market (WLA) and the Wholesale Broadband Access Markets (WBA) consultations because in their view both documents are couched in technical terms for convenience and do not reflect, quantify or value the consumer benefits of voice, data or image services-- received or sent. Expressing products in these terms could produce a different analysis and it would mean that products from mobile suppliers (for example) would need to be included. This would enlarge the market definition and bring in players with significant market power who compete in retailing to business, domestic and the public sector (also not seen as a valid segment but 40% of GDP).

The retail market for services should be analysed in these terms and only services with significant market share/power (over 25% -normal threshold for power) should be considered. A view of whether over three years this share will fall below 25% should be taken, and if this would be so, they should be ignored. Services may fall below 25% market share but be still have patch specific SMP with more than 25% share. The use of exchange areas should be defined in terms of coverage with services given by several players.

Another problem with the approach taken in the consultation documents is that it does not consider whether the patch monopoly exists because of legal or administrative/regulatory barriers to entry rather than just private sector economics which can only be cured with justifiable `state aid`. The consultations should examine these factors. The review should explore whether having two direct substitute services from two different suppliers is competition or a new dominance if no others are available.

Finally there should be consultation on whether the entitlement of the citizen, business, charity and public sector is "*all voice, data and image services available everywhere with no supplier dominance in any patch for each service*".

Private sector markets are always unlikely to deliver this entitlement even if the supply side is perfectly competitive because the consumer side will never be. All this commentary is at a retail level because as both documents point out, retail dominance may be the result of wholesale power. (It might be more linguistically appropriate to use the description 'vertical market power' reflecting competition law).

Applying the logic from retail to the vertically integrated producers who have been found to have continuing 25% retail dominance for a service in a geographical patch, then it is possible to identify the specific economic points of dominant power and to examine it patch by patch. The instrument(s) for intervention could therefore be applied selectively, specific to a service and only its patch area of dominance at over 25%. The instrument could only be applied if dominance is resulting in a monopolistic profit, possibly a real return on investment above 15%. The instrument to be applied first could be to require price reductions at a retail level to cut patch returns to 15% in real terms. If power for price reduction is not possible then the regulator should require interconnect points at each electrical connect point in the vertical supply chain for that patch and the right to use common services and structures at these points, again for a 15% return to the supplier. Given the desire for increasing competition even where no 25% dominance exists, intervention rules could be applied to all vertically integrated providers with a UK retail turnover of more than £1000m and require them to provide the same interconnect freedom as apply to dominant patches. Finally, the regulator/administrator could also remove all restrictions on interconnect between vertically integrated providers (e.g. mobile roaming) and between technologies and open the availability of geographically licensed but unused capacity (spectrum).The regulator should not, as the consultations imply, try and classify ever more detailed market definition and intervention, but should pull back applying the above logic only when a complainant asserts there is 25% patch dominance for a service or a vertically integrated firm cannot demonstrate an absence of monopolistic profit.

The effect of this approach is likely to identify market power which actually causes excessive monopoly profit on a particularly patch and service to be cut but the greater likelihood of more choice and value for consumers from a wider range of entry points and players, particularly mobile and less regulation offers greater freedom for market forces. Logically this comment on the first two questions means that the remaining questions are not supported.

Ofcom Advisory Committee for Wales
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