

# CWU RESPONSE TO OFCOM CONSULTATION: REVIEW OF THE WHOLESALE BROADBAND ACCESS MARKETS

## Introduction

It is important to note that since the consultation paper was published there have been two important developments.

First the Digital Economy Act had all elements stripped out of it which referred to the roll-out of the superfast broadband highway (Next Generation Access – NGA) and public investment thereof for more remote areas in the ‘wash-up’ of Government legislation at the end of the last Parliament.

Second the result of the General Election produced a change of political leadership in the form of a Conservative and Liberal Democrat coalition. The new Government is introducing secondary legislation for the broadband infrastructure that will support investment in new high-speed broadband internet connections. The content of the new proposals has yet to be disclosed but there can be no guarantee that the assumed levels of public investment in the roll-out of the NGA will be present in the new legislation to the same levels.

This being said the CWU fully supports the statement in Paragraph 1.11 that “...the specific characteristics of the UK markets and the need for regulatory certainty to incentivise investment justify a four year forward look.”

The CWU also notes Ofcom’s objective to “...assess whether any CPs (*Communications Providers*) have a position of significant market power (“SMP”), which essentially means power to influence markets to a significant degree in a way that could harm consumers. Then, if any CPs have SMP, we assess the regulatory remedies that need to be imposed to address the SMP that exists”.

The CWU would strongly argue that Ofcom considers that Virgin Media is treated as having SMP in many areas as Paragraph 3.22 states Virgin Media’s cable network now covers just under half of the UK. There will come a time when Virgin Media and other CPs should have to provide open access to their ducts, as British Telecom (BT) is required to do now, if competition is not be distorted in their favour and against BT’s.

## Market Definition

**Question 3.1:** *Do you agree with Ofcom’s proposed product market definitions? If not, please explain why.*

Yes the CWU agrees with the proposed product market definitions.

**Question 3.2:** *Do you agree with Ofcom's view of the relevant criteria for assessing the geographic market boundaries? If not, please explain why.*

The CWU agrees with Ofcom's view of the relevant criteria for assessing the geographic market boundaries, especially where Virgin Media has cable coverage in an exchange area of more than 65% of end user premises.

**Question 3.3:** *Do you agree with Ofcom's geographic market definitions? If not, please explain why.*

Yes the CWU agrees with the proposed geographic market definitions.

### **Market power assessment**

**Question 4.1:** *Do you agree with Ofcom's proposal that BT holds SMP in Market 1? If not, please explain why.*

Yes the CWU agrees with the proposal that BT holds SMP in Market 1.

**Question 4.2** *Do you agree with Ofcom's proposal that BT holds SMP in Market 2? If not, please explain why.*

Yes the CWU agrees with the proposal that BT holds SMP in Market 2.

**Question 4.3:** *Do you agree with Ofcom's proposal that no operator has SMP in Market 3? If not, please explain why.*

The CWU would strongly reiterate its point above that Ofcom considers that Virgin Media is treated as having SMP in many areas as Paragraph 3.22 states Virgin Media's cable network now covers just under half of the UK. There will come a time when Virgin Media and other CPs should have to provide open access to their ducts, as British Telecom (BT) is required to do now, if competition is not be distorted in their favour and against BT's.

**Question 4.4:** *Do you agree with Ofcom's proposal that KCOM holds SMP in the Hull Area? If not, please explain why.*

No comment.

### **Remedies**

**Question 5.1:** *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on BT in relation to the market for wholesale broadband access in Market 1? If not, please explain why.*

The CWU considers that the imposition of the requirement upon BT as stated in Paragraph 5.127 "...to publish information related to transparency as to quality of service" should also be applied to Virgin Media.

**Question 5.2:** *Do you agree with Ofcom's proposal to impose a basis of charges obligation and a charge control on BT in relation to the market for wholesale broadband access in Market 1? If not, please explain why.*

Yes the CWU agrees with the proposal to impose a basis of charges obligation and a charge control on BT in relation to the market for wholesale broadband access in Market 1.

**Question 5.3:** *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on BT in relation to the market for wholesale broadband access in Market 2? If not, please explain why.*

The CWU considers that the imposition of the requirement upon BT as stated in Paragraph 5.220 "...to meet reasonable requests for network access" should also be applied to Virgin Media.

Similarly the CWU considers that the imposition of the requirement upon BT as stated in Paragraph 5.264 "...to publish information related to transparency as to quality of service" should also be applied to Virgin Media.

**Question 5.4:** *Do you agree with Ofcom's proposal to impose a basis of charges obligation on BT in relation to the market for wholesale broadband access in Market 2? If not, please explain why.*

Yes the CWU agrees with the proposal to impose a basis of charges obligation and a charge control on BT in relation to the market for wholesale broadband access in Market 2.

**Question 5.5:** *Do you agree that Ofcom should allow a period of notice in the exchanges that move from Market 2 to Market 3 in which the above conditions should apply? Do you agree that 12 months is an appropriate period of notice? If not, please explain why.*

Yes the CWU agrees that Ofcom should allow a 12 months period of notice in the exchanges that move from Market 2 to Market 3 in which the above conditions should apply.

**Question 5.6:** *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on KCOM in relation to the market for wholesale broadband access in the Hull area? If not, please explain why.*

No comment.

**Question 5.7:** *Do you agree with Ofcom's approach to price remedies in the Hull area? If not, please explain why.*

No comment.

**Question 5.8:** *Are there other remedies that, if imposed by Ofcom, would promote entry into the market in the Hull area by other providers?*

No comment.

## **Contact**

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