

Review of the Wholesale Broadband Access Markets

Response by KCOM

1 June 2010

KCOM welcomes the opportunity to comment on Ofcom's conclusions in the context of the wholesale broadband access markets 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. In particular we appreciate Ofcom's explicit recognition that imposing additional wholesale regulation is not the appropriate approach to encourage investment by other providers. We also welcome Ofcom's conclusion that customers in the Hull area have access to products that are comparable in terms of price and specification to those available to many consumers in the rest of the UK and that as a result there is no need to carry out a review of the retail market. We provide our comments in relation to some specific areas below.

Market Definition and Market Power Assessment

KCOM agrees with Ofcom's assessment that it is possible that the WBA market may change quickly in the future, particularly as NGA deployment develops, but that for the purposes of this review competitive and technological developments should not materially affect Ofcom's proposed market definitions.

However, 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. We would therefore caution that this is an area that must be kept under close review.

Linked to this we note Ofcom's comment that to date no operator has taken LLU from KCOM in the Hull area and that no operator plans to over the period considered by this review. We are unaware of who Ofcom has spoken to in this regard, however, we have seen increasing expressions of interest from smaller and more local players who are interested in not only WBA services but also LLU. We do not therefore believe that Ofcom can rule out the possibility of market entry using LLU over the period covered by this market review.



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Remedies

We welcome Ofcom's pragmatic approach to the imposition of remedies in the Hull area, specifically the recognition that the introduction of charge controls and/or a cost orientation obligation would not have the effect of encouraging others to enter the market. We agree with Ofcom's view that the introduction of a cost orientation obligation would simply impose additional regulatory obligations and costs on KCOM which would result in information being produced which was not particularly useful.

KCOM has long argued that the imposition of specific access remedies would not be useful in the Hull area where a requirement to develop a defined service would not necessarily provide an efficient solution for either KCOM or potential competitors wishing to enter the market. For this reason we believe that the continued imposition of a general access remedy is the most appropriate approach to take. 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.

In this regard we believe that flexibility is key and therefore do not believe that there are any additional remedies which Ofcom might consider which would have the effect of stimulating competition.

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

A new Condition EAA3.7 has been proposed which 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 EBB4.2 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 EAA3.7 would seem to be unnecessary.

We note Ofcom's comments on QoS reporting, specifically that a proportionate remedy would only require KCOM to publish QoS information in the event that Ofcom were to direct it to and demand were to materialise. However, we also note that proposed Condition EBB5.1 differs from the existing QoS Condition. The existing requirement to publish QoS information only applies "Where the Dominant Provider is providing Network Access to Third Parties..." **and** "...as Ofcom may from time to time direct". In the proposed new Condition EBB5.1 the pre-condition of provision to Third Parties has been removed and simply leaves it at the discretion of Ofcom to direct that publication of QoS information is required. We are unclear as to why this wording has been deleted and would appreciate further clarification from Ofcom about the circumstances in which publication might be required, i.e. what level of demand would be sufficient for Ofcom to consider directing KCOM to publish?



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