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Steve Perry  
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Competition Group  
Ofcom  
Riverside House  
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29 May 2010

Dear Steve,

## **Review of the wholesale broadband access markets**

I am pleased to set out in the following TalkTalk Group's ("TTG") response to the above market review consultation document.

- We agree overall with Ofcom's proposals around the product and market definition, SMP findings and the proposed imposition of suitable remedies. The market analysis appears to be based on solid economic data and the continuation of three sub-national markets (outside the Hull area) appears to be warranted.
- We strongly support the proposal to impose price controls on BT in Market 1. Given that BT is effectively the monopoly supplier in these geographic areas and there is limited prospect of entry (particularly with current LLU MPF prices), there is a clear incentive on BT to charge prices in excess of the "competitive level" and earn monopoly rents. We believe that an RPI-X style price control is the most appropriate way of avoiding consumer harm and distortion to competition. We look forward to responding to the charge control consultation which we trust will be done in a transparent manner (particularly around cost allocation between the three geographic markets).
- We would draw Ofcom's attention to BT Wholesale's recent proposals to levy a specific usage charge for its IPStream availability checker. We believe the proposed charge is excessive and potentially discriminatory in BT Retail's favour. Ofcom needs to clarify whether the proposed cost orientation and price control mechanisms would encompass this particular charge.
- We would also draw Ofcom's attention to the apparent price discrimination carried out by BT whereby some backhaul aspects of its WBC product is price more favourably than the equivalent aspects of its IPStream Connect product. BT appears to suggest that there is a cost difference between the two products

although we have been unable to establish exactly what that difference would justifiably be. We are still investigating this issue during the WBA consultation.

- With reference to the parallel WLA market review, we would note our support for the proposal that the VULA access product should not fall within market 5 but rather market 4 as defined by the European Commission.
- We are very concerned to learn that BT has failed to provide detailed revenue, cost and margin data for Markets 1 and 2. As Ofcom explains in sections 4.34 to 4.40 of the consultation document, BT has failed to allocate large amounts of revenue and costs to individual markets. It is difficult to see how this failure can be deemed compliant with BT's existing SMP obligation of accountancy separation and trust that Ofcom will be investigating this matter thoroughly as part of this review or separate investigation.
- We are not convinced that there is any real need of having a transitional period for regulation of exchanges that would move from Market 2 to 3 (at least as long a period as 12-months as suggested by Ofcom). It is hard to believe there would be any significant risk of BT suddenly increasing the IPStream prices for those exchanges or somehow ceasing supply. For instance, we are not aware of BT having made any such decisions in 2008 when Market 3 was first created. And if the economic theory is accurate, BT should have an incentive to supply IPStream in a competitive market at reasonable prices based on marginal cost.

Please do not hesitate to contact me should you have any questions regarding our response above.

Yours sincerely,

Rickard Granberg  
Head of Telecoms Regulation