



**SKY'S RESPONSE TO  
REVIEW OF THE WHOLESALE BROADBAND ACCESS MARKETS  
UPDATE ON THE IMPACT OF FIBRE ROLL-OUT AND FURTHER CONSULTATION ON THE PROPOSED  
CHARGE CONTROL**

- 1.1 In this response we comment briefly on Ofcom's January 2014 consultation ("the Consultation") as part of its Wholesale Broadband Access market ("WBA") review.
- 1.2 Sky mainly uses WBA services, predominantly in Market A, to offer broadband services to customers in areas of the UK not covered by its LLU network. In many parts of these areas Sky is BT's principal retail competitor: [Confidential]
- 1.3 Although these areas of the UK comprise a relatively small percentage of households, in absolute terms they contain a significant number of UK consumers and small businesses. Many of these are located in areas of the UK which are geographically isolated and where, therefore, it is arguable that competitive supply of telecommunications services, including access to high quality, reasonably priced internet access, is particularly important.
- 1.4 [Confidential].
- 1.5 [Confidential].
- 1.6 [Confidential].

**Ofcom's proposals do not enable sustainable competition**

- 1.7 At paragraph 4.11 of the Consultation, Ofcom describes the following objectives for the setting of charge controls for WBA services in Market A, namely that the charge control should:
- "[promote] efficiency, sustainable competition and be in the best interests of citizens and consumers as the end-users of those services."*
- 1.8 Sky considers that the approach adopted by Ofcom in setting charge controls for WBA services in Market A does not and will not, in fact, enable sustainable competition; nor is it in the best interests of citizens and consumers as the end-users of those services. Currently, both the basis for and levels of wholesale charges for WBA services do not enable effective competition to BT in significant parts of the Market A area.
- 1.9 Sky considers that a key reason for the excessive levels of wholesale charges for these services is Ofcom's decision to use an anchor pricing approach, based on the costs of a hypothetical ongoing network using legacy technologies, for the maximum wholesale charges that BT is permitted to set.<sup>1</sup> We set out our reasons for this view fully in response to Ofcom's 2010 consultation on WBA charge controls, which is annexed to this response.
- 1.10 The weakness of effective competition in Market A, together with Ofcom's duty to further the interests of consumers where appropriate by promoting competition, necessitates

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<sup>1</sup> Paragraphs 4.21 -4.27 of the Consultation.

Ofcom giving careful consideration to alternative approaches to regulation in these parts of the UK – approaches which may, in principle, be significantly different to those adopted in relation to other parts of the UK, where effective competition based on infrastructure investment by other CPs in is viable. These include, but are not limited to, the option of setting charges based on a MEA approach, which we consider Ofcom rejects for inappropriate reasons.

- 1.11 We appreciate that the current WBA Market Review is at a stage at which it is not possible to radically alter Ofcom’s proposed approach. However, Sky considers that it is important to raise these concerns at this stage. Sky considers that, following the conclusion of the current review, Ofcom should undertake an urgent review of competition in the provision of telecoms services in these areas of the UK, and potential ways in which competition could be strengthened. If Ofcom waits until the commencement of the next WBA market review to examine these issues, there is a significant risk that competition in Market A will be diminished, with such diminution difficult to reverse.

#### **Other options**

- 1.12 In its July WBA consultation Ofcom indicated that BT’s wholesale charges are subject not only to caps, but also to (i) the SMP requirement that they are fair and reasonable, and (ii) competition law.<sup>2</sup> [Confidential]

**Sky**

**27 March 2013**

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<sup>2</sup> See, for example, paragraph 6.68.