Vodafone's response to Ofcom's consultation

Fixed access market review further consultations

February 2014

VODAFONE

Headquartered in the UK, Vodafone is a global business investing and innovating in all the markets we serve to deliver for our customers. Our home market is no exception and Vodafone in the UK has now successfully integrated the former fixed line business of Cable & Wireless Worldwide resulting in the creation of a genuinely unique converged communications provider. With £2.5M being invested each day in our UK network, we remain committed to delivering the very best for our customers.

SUMMARY

The Fixed Access Market Review is the most significant market review in terms of monetary value (revenues generated) and the primary source of consumer access input services.

The services within this market continue to remain highly relevant for the review period and will continue on long into the future.

We welcome Ofcom's focus across all of the portfolio of services including the "smaller" line items such as TRCs and SFIs. Whilst in contrast to total WLR rental revenues these look like minor charges, for the individual users and the services they affect, these charges can add considerably and disproportionately to the annual cost of LLU and WLR services.

We continue to have serious concerns that focus is overly placed upon how these services are used for consumer markets and insufficient attention is given to the use of these inputs to serve businesses. It is essential that the differing requirements for business users are adequately addressed.

We have cause for concern that a lack of harmonised regulation across Openreach will result in further quality of service issues for less regulated services. In particular we consider that critical leased lines services remain at risk, with the potential for Openreach to divert resources away from business connectivity to LLU and WLR as the regulatory sanctions for failure in these markets will bite first. We do not consider it is a realistic proposition for Ofcom to wait until April 2016 to put in place backstop minimum services levels for BCMR services.

INTRODUCTION

This document is in response to both of Ofcom's further consultations concerning the Fixed Access Market Review. Our response made to the first consultation document continues to be fully relevant and should be considered in conjunction to these additional response points.

QUALITY OF SERVICE

We welcome Ofcom's proposals to introduce minimum standards in the fixed access market, this development is long overdue and is badly needed to counter Openreach's poor track record on service delivery. In this section we take each of Ofcom's specific questions in turn, highlighting where we feel Ofcom proposals could be enhanced. We have identified a number of key themes that need to be addressed before these proposals are finalised, including:

Special recognition is required to take account of the different needs of enterprise users of fixed access services and in particular their need for greater certainty for both planning and business continuity.

Business users purchase enhanced care levels to help them meet their business continuity needs, however the minimum standards regime will level all users to the same minimum standards. Thought must be given to ensuring that enhance care level customers are still afforded the priority status that they are paying for.

Ofcom must prevent a waterbed effect occurring that sees fixed access products QoS enhanced at the expense of BCMR products. Openreach must not be allowed to divert resources away from BCMR services for the period that BCMR services are left outside any minimum standards enforcement regime.

Ofcom must ensure that the introduction of minimum standards does not have a dumbing down effect on Openreach service delivery, with standards tracking at or just above the minimum level. Ofcom must make it absolutely clear to Openreach; that, these minimum standards are an ultimate backstop and not the threshold for delivery. If service delivery tends towards the minimum then action must be taken without delay to ensure that quality of service aspirations are raised within the Openreach business.

Q&A

> *Question 3.1: Do you agree that it is appropriate to use the existing SLAs as the basic standard around which to set the new minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.*

Although we view the existing SLAs as a very useful starting point, there are a significant number of gaps within the existing SLA structure that need to be addressed to limit any unintended consequences from these proposals. In particular, we are keen to build in safeguards that prevent the regime from being gamed with the result that particular customer segments or orders are disadvantaged. We therefore believe existing SLAs need to be enhanced and complemented with further safeguards to enable the regime to work without discriminating against particular types of customers or orders.

We would like to introduce a back stop safeguard that prevents orders which have not satisfied the initial provisioning or repair minimum standard from being disadvantaged yet further and being parked for prolonged periods while resources are diverted in order to fulfil newer orders/repair requests where there remains an opportunity to satisfy the request within the initial target period. A further absolute backstop remedy of 98% of provisioning or repair orders completed within 30 days would achieve this outcome and provide an end safeguard, providing BT with a clear incentive to fulfil already delayed orders before the absolute backstop deadline. We believe 30 days is the right period for such an absolute back stop, allowing sufficient time for the task to be completed without extending it to the point where the remedy would effectively be meaningless.

In conducting this market review we believe that it is important to draw out the clear differences between the needs of residential users and business users. In a business environment far more importance is placed on the certainty of the order being fulfilled within the pre-agreed time window, rather than just the speed of delivery.

For example, we frequently manage complex connectivity programmes for enterprise customers that may involve securing connectivity to a large number of sites, such as, UK-wide branch networks or ATM networks. In order for each site to be connected, co-ordination is required between the end user (for site access), Openreach, our own engineering resource and in some instances external contractors. If Openreach fails to keep to the appointment or cancels at very short notice this has a knock on impact, not only on our internal resourcing, with wasted man-hours for the requesting CP and the end customer, but also for the entire programme, with missed visits having to be rescheduled. If this occurs on multiple occasions the entire programme can be placed in jeopardy, which has reputational implications for the CP owning the relationship with the customer, as well as a profound impact on the end customer's own business. To this end, enterprise customers would often be willing to trade the need for quick implementation of provide orders, for far greater certainty over the order being completed on the pre-agreed date.

In contrast, residential users who have less complex buying arrangements with far fewer logistical considerations often put speed of delivery at the top of their wish list for better customer service. We would therefore like to see the minimum standard modified to reflect the differing needs of business and residential users.

The minimum standards also have to be unambiguous, with recognition of a job being completed, only occurring if the service has been left in a working state. In situations where appointments have been resourced, but the service has not been delivered for one reason or another, then these should not count towards compliance totals. To include these instances would act as an incentive for 'presenteeism', where appointments are kept, but services are not delivered at first instance.

> *Question 3.2: Do you agree that it is appropriate to use General Manager areas rather than forecasting regions in the minimum standards and the KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.*

Our preference remains that SOM patches are used for this purpose as we believe this granularity will drive real improvements in service performance in particular geographies. BT currently uses these 73 areas to delineate where MBORC has been declared, with a number of areas coming up repeatedly in the list for MBORC declaration. These are the areas that would benefit most from targeted improvements in QoS performance.

For example, based on our analysis:

- 12 of the 73 patches[1] in the UK have been in a state of MBORC for over 15% of the available days in the last 18 months;
- 12 of the 73 patches have had 4 or more separate MBORCs over the last 18 months;

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[1] It's probably 13 but one of the patches (Wolverhampton) got rebadged as Birmingham & Black Country in late 2012.

- 12 of the worst offenders, where MBORC is repeatedly declared, make up 30% of the UK's exchanges;
- Three of the regions in Scotland come up repeatedly, as does the North of England – Durham and Northumberland;
- The south coast, the southwest and North Wales also feature highly on the list. For example, North East Scotland, a region comprising 3.7% of the UK's exchanges, the following MBORC pattern has been witnessed:
    - MBORC declared 12th July 2012, lasts for 20 days.
    - MBORC declared 28th August 2012, lasts for 40 days.
    - MBORC declared 27th December 2012, lasts for 20 days.
    - MBORC declared 25th July 2013, lasts for 26 days.
    - MBORC declared 6th December 2013, lasts for 38 days.
- This means MBORC is being declared across a range of seasons, and we have no idea what remedial action is being contemplated by Openreach to break this appalling cycle of poor service. If a target remedy was focused at a patch level, it would have a significant beneficial impact on BT's QoS for customers in this area and as BT currently reports on these patches at an operational level, we do not believe this additional granularity would be at all onerous to implement.

Question 3.3: Do you agree that it is appropriate to apply the same minimum standards to all regions? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

We agree that a universal minimum standard is necessary. We cannot allow a situation where one part of the UK has to endure a poorer level of service than another. If such an arrangement were tolerated it would have wider economic consequences for the communities concerned and may lead to a flight of resources from the areas with lower minimum standards.

Question 3.4: We have set out the details of our analysis in Annex 5. In light of this analysis, do you agree that the 2011/12 resource deltas from the Resource Simulation Model provide a reasonable basis to assess the resource and associated cost increments associated with minimum standards? Please provide reasoning for your answer.

We are concerned that by focusing on recent year data where QoS performance has been extremely poor we are in effect hard wiring a background level of poor service into the new minimum standards regime. In doing so, we aren't being realistic enough over what is rightly expected by consumers and not setting ambitions higher will result in customer detriment. In a well-functioning market customers who are faced with poor levels of service vote with their feet, with competition occurring on price, quality and service features. In this situation where we have no alternative but to use Openreach infrastructure we should be careful to use figures that are more representative of a steady state, where Openreach was not enveloped in a service crisis as the realist marker of what is achieved without the incentive impact of minimum standards and make a deduction from that level on what a backstop safeguard should be.

Question 3.6: Do you agree that the existing MBORC statistics form a reasonable basis for inclusion in the minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Question 3.7: Do you agree that it is appropriate to base the repair MBORC allowance on the statistics for 2012/13? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Question 3.8: Do you agree that it is appropriate to use 3% as the faults MBORC allowance and 1% as the provisioning MBORC allowance? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

<u>Answer to 3.6; 3.7 & 3.8:</u> We have deep reservations about what we consider to be a MBORC blackhole. There is currently no transparency around the criteria for an MBORC declaration, nor for its removal. What are the trigger events and what are the scale of the savings BT makes in SLG payments as a result of each MBORC declaration? We believe these are reasonable questions that all CPs should be given the answer to. However, despite repeated requests through the OTA, we remain uninformed of the facts.

At the very least, we would like to see Ofcom 'getting to grips' with this information to sanity check if current MBORC levels are appropriate. We suspect that with a strong commercial incentive to declare MBORC, it is used far too frequently. An MBORC declaration is not subject to challenge or an independent verification process. It has no direct foundation in the regulated contracts. There are also practical concerns that BT is abusing this unilateral right by ceasing repair work in dubious circumstances, without evidenced justification or accountability, or recourse by CPs. If we use existing MBROC statistics we risk locking in that MBORC gaming phenomenon within a new regime that is designed to drive service improvement. We don't think enough has been done to allow us to use the current MBORC statistics without modification and we'd like Ofcom to 'get to grips' with the criteria used by BT to declare and particularly stand down MBORC before any move is made to make use of current statistics, which, we believe; may be weighted down with the impact of adverse incentives that are counter effective to delivering a quality level of service.

Question 3.9: Do you agree with the minimum standards we have proposed for the third year? Please provide reasoning for your answer.

We believe the third year standards are not as ambitious as they could be and don't do enough to incentivise Openreach to deliver anything other than a poor level of service. While we accept that these are minimum standards and therefor a backstop safeguard with the hope that a higher standard will actually be delivered, we still think, that; the minimum bar hasn't been raised high enough. In a competitive environment a supplier delivering these outcomes would either haemorrhage customers or have to slash prices to try and retain them. In the case of Openreach, where the customer has nowhere else to go, that doesn't happen and the only safeguard will be these minimum standards. Given the scale of the improvement journey required, we accept the need to progress towards the target in stages, however, the end point shouldn't have the potential to leave 1 in 5 or 20% of customers, disappointed; rather it should be set with no more than a 10% allowance for failure. Indeed, in other industries or sectors a 10% first time failure rate would simply be deemed unacceptable and we must not fall into the trap of normalising bad service within our industry.

Thought needs to be given to the purchasers of enhanced care packages. These users pay considerably more to receive a priority repair service, yet, these typical business customers aren't recognised within the new minimum standards regime and it is unclear how the introduction of minimum standards will impact

them. It is important that they receive the priority service they are paying for and aren't simply slotted in within the general repair stack. At the very least, Ofcom needs to monitor the impact to ensure consumers receive value for money from these enhanced packages whilst ensuring business customers receive the highest level of service, in accordance with the premium rate they will become liable to

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Question 3.10: Do you agree with the range we have identified for the minimum standard in the first year and our proposed recommendation within that range? Please provide reasoning for your answer.

A higher target in year 1 would be an effective remedy in focusing the Openreach business in delivering for quality. Allowing too much latitude in the first year of the programme would be a mistake, which, may lead to complacency. While we accept the need to move in stages, the target in year 1 needs to be set at a level which recognises the urgent need for consumers to benefit from better QoS and for Openreach to put real effort into moving away from its cycle of poor performance. The targets should drive a culture change within the organisation about the way it delivers services to end users. Ofcom also need to be mindful of the waterbed impact in the first year of this new regime and great care must be taken to ensure that BCMR users don't become the collateral damage of a regulatory regime that put domestic users ahead of business customers in Ofcom's priorities.

Question 3.11: Do you agree with the proposed glide path? Please provide reasoning for your answer

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We believe the proposed glide paths lack ambition and should be reset at a more challenging gradient. Customers rightly have high expectations of what service quality they expect to receive. These service expectations are formed from first hand and shared experiences when buying a range of goods and service such as cars, consumer goods, comestibles and utility services. While we acknowledge that some things are easier to supply than others, the fact remains that; if you purchase a car you wouldn't expect it not to start on 4 out of 10 occasions or indeed 20% of the time at the highest end of the glide path. Openreach as a business, has a significant number of management and organisational challenges to overcome, before, it becomes a genuinely customer centric provider of services. We therefore, don't think we should reflect the current practices and mind-set of the business within the proposed standards. We are realistic and believe we have to start somewhere, however, Openreach is aware that it is only a matter of time before binding QoS targets are implemented and is ,therefore, already on notice that; improvement is expected. If years 1 and 2 aren't more of challenge, with a higher end point then we may witness sedentary behaviours that do nothing to drive QoS and benefit end consumers.

Question 3.12: Do you agree with our analysis of the risks of unintended consequences in the setting of the minimum standards and our proposed approach to addressing the risk, including the use of new KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

It is vital that KPIs exist to monitor the 'tail' of repairs over time in order to ensure that there are no unintended consequences arising from the introduction of minimum standards. Ofcom and industry needs a range of KPIs covering different care levels & parts of the UK to inform purchasing decisions. In our answer to 3.13 we identify where further KPI reporting is required to maximise consumer benefit.

> *Question 3.13: Do you agree with the set of KPIs proposed? Is it sufficient that they are national rather than regional? Do you agree they should be publically available? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.*

Further KPIs are needed to improve transparency and help consumers make informed purchasing decisions. While we support the need to have national KPI standards (i.e. the same KPIs reported in each area), consumers would benefit greatly from a regional breakdown of KPIs to see if specific problems are occurring in different parts of the country (using the same geographic segmentation as the minimum standards reporting). This would ensure that appropriate fixes can be put in place to remedy any shortcomings in particular parts of the country. We don't think this would be at all onerous to provide as BT would need to collect data from each area and it would bring considerable consumer benefit. In the absence of a geographic breakdown CPs would be unable to identify problem patches let alone investigate them.

Enterprise consumers need additional KPI reporting around enhanced care level packages to ensure they are providing value for money. The impact of the minimum standards regime may result in service performance for enhance care levels being harmed and without KPI reporting on these care levels, purchasers will be unable to see if they are actually getting the enhanced service they are paying for. Enhanced care level charges are considerable and it is only right that consumers have visibility of their effectiveness. If the impact of Ofcom's minimum standards results in enhanced care level service performance dipping, then it is only through robust KPI reporting that the issue will be identified and then remedied.

We would like to see a KPI introduced to accompany our proposal on the further absolute backstop remedy of 98% of provisioning or repair orders completed within 30 days. This would act as an end safeguard, providing BT with a clear incentive to fulfil already delayed orders before the absolute backstop deadline.

Service Level cost differential

Ofcom proposes to set a cost differential of 14.1% between the costs of service level 1 and service level 2 as its base case assumption for the charge controls for WLR and MPF.

Vodafone purchases from all the service level options 1 - 4, selecting the solution required by the individual customer. Our primary requirement is that BT delivers against the proposition of the service level purchased and that we are able to select the service level appropriate to the customer's requirements.

At present Openreach does not offer service level 1 as an option for MPF. Clearly if demand emerges for this Openreach ought to be required to provide that option.

At present we would however categorise our needs as having demand for improved service levels rather than reduced service levels. As PPCs continue to decline and we near PPC low bandwidth switch over it is

essential that inputs used from the FAMR services have service levels which match ex PPC customer expectations. Despite long industry discussions and past SoRs a MPF service level wrap matching that of PPCs remains unavailable.

It is important that the FAMR framework adequately incentivises Openreach to provide the required service levels and that Openreach is resourced to deliver against the expectations of each service level.

Fault rates

Ofcom concludes that Openreach is best placed to assess the balance between investment, preventative maintenance and the cost of fixing faults that occur. However where Openreach reduces investment in preventative maintenance, this may have an implication for future charge controls. In particular where Openreach had underinvested and as such fault levels increased, Ofcom would consider making an adjustment to the base year costs. We welcome and support this proposal.

In response to the first phase of Ofcom's FAMR consultation we identified the massive super normal profit that BT has generated over recent years across regulated services. It is simply wrong for BT to benefit from these super normal profits while underinvesting in adequate service provision: a situation which then sees CPs foot the bill to rectify underinvestment in successive charge controls merely gives regulatory approval to BT's actions.

We consider there is a strong case for Ofcom to discount considerably any additional costs included in the charge control base data which are required to get BT's network back to a fit state for 21st Century service provision.

We support Ofcom's conclusion that weather related faults will not lead of any significant rises in fault volumes for the coming charge control period.

Charge control cost allocations and modelling

Question 7.5 Do you agree with our proposal to update the cost model base year information for the most recent 2013 RFS cost information (adjusted as proposed in this consultation) while retaining the 2012 RFS allocation methodologies?

It is general practise for Ofcom to update cost model data during a charge control consultation proceedings should more up to date data become available during that period. In this instance Ofcom commenced with the 2012 RFS and subsequently the 2013 RFS have become available.

The standard process is confounded by BT's 2013 RFS incorporating an alarming number of methodological alterations which largely appear to have the incentive of increasing the cost base for FAMR and WBA services. Ofcom has sought to examine these changes and has sufficient concern around the large majority to consider it appropriate not to adopt them for the charge control cost base. We fully agree with this approach. Vodafone (as part of a group of interested CPs) has commissioned the Berkley Research Group (BRG) to examine the RFS 2013 changes on our behalf. The findings of BRG are not dissimilar to those of Ofcom's experts. Of the 22 methodological changes put forward for the first time by BT for the 12/13 Regulatory Accounts, a number of changes appear to fail to satisfy the principle of cost causality, including Provisions for Health & Safety claims, internal reorganisations costs for setting up the

TSO division, funding for the Careers Transition Centre (CTC) and the allocation of costs associated with vacant space.

In addition, a number of other changes appear to lack justification and without further insight into costs and decision options available, it remains questionable if those changes should ever be considered justifiable. These include the treatment of DSLAM costs, 21CN charges, WBA changes, Openreach overheads, Ethernet 'switch' costs and 'other' changes.

Appended is a summary BRG report highlighting concerns with BT's 12/13 RFS output.

> *Question 7.6 Do you agree that BT's provision for claims for deafness arising from the use of copper line testing equipment used in the past by engineers should be excluded from the cost base of the charge controls?*

We agree with Ofcom's proposals and rationale for not including this cost within the cost base.

Question 7.7 Do you consider that BT's career transition centre costs should be included in the cost base for the charge control?

We do not agree that CTC costs should be included in the cost base for the charge control. We consider that CTC is a unique employment approach adopted by BT and there is absolutely no rationale for its costs to be distributed to regulated services. We consider that similar rationale exists for the exclusion of this cost as it does for claims for deafness – it is not an efficiently incurred forward looking cost associated with the provision of FAMR services.

> *Question 7.8 Are you aware of any other specific BT RFS cost items which merit further investigation by Ofcom to establish whether they properly constitute efficiently incurred forward looking costs?*

We draw Ofcom's attention to the BRG summary report which is attached.

> *Question 8.1 Do you agree with our proposal to set the main rental charges such that the differential in charges between WLR+SMPF and MPF is equal to £10 by 2016/17 rather than moving more rapidly to reflect our now lower estimate of the LRIC differential of £0 - £4?*

Yes, we agree with Ofcom's policy decision in this regard.

VULA margin compliance

> *4.1 Do you agree with our proposals for BT to provide information on the VULA margin every six months and on request? Please provide reasons in support of your views.*

Within the first consultation Ofcom proposes the basis of a forward looking VULA margin test. Ofcom does not in this consultation discuss any further detail or developments regarding its approach to the margin squeeze test and this further consultation relates solely to the power to obtain data for the conduct of the test. Availability of data within reasonable time periods is essential to effective functioning of the test.

Within our response to the first consultation we discuss the need for a compliance regime which requires BT to confirm that the test has been passed and provide Ofcom with the associated data to prove this in situations where BT changes its pricing or launches new product variants. We continue to believe that it is a missed opportunity if Ofcom does not require BT to test and confirm compliance with the test as

products are launched. We would urge Ofcom to adapt the requirement to incorporate self-regulatory compliance checking by BT within the SMP condition.

Time Related Charges and Special Fault Investigations

5.1 Do you agree with the charge control proposals for TRCs? Please provide reasons in support of your views.

TRCs can result in significant additional charges for service provision. We agree fully with Ofcom's proposal to charge control these services. We consider that all measures must be undertaken to ensure that the costs for these services are limited to efficiently incurred costs.

5.2 Do you agree with the charge control proposals for SFIs? Please provide reasons in support of your views.

SFIs can result in significant additional in life service charges. Without the deployment of these services customer faults are not readily resolvable making these services essential to the provision of the basic service. We consider that all measures must be undertaken to ensure that the costs for these services are limited to efficiently incurred costs.

Vodafone Limited

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