Non-Confidential

KCOM's response to Ofcom's consultation for the Hull Area Wholesale Fixed Telecoms Market Review 2021-26

1. Introduction

1.1 KCOM Group Limited ('KCOM') welcomes the opportunity to provide comments on Ofcom's consultation for the Wholesale Fixed Telecoms Market Review ('WFTMR') for the Hull area 2021-26 (the 'Hull Consultation').[1]

1.2 This is the first Market Review for the Hull Area since the acquisition of KCOM by MEIF 6 Fibre Limited.[2] MEIF 6 Fibre Limited is a subsidiary of Macquarie European Infrastructure Fund 6 SCSp, which is an investment fund managed by Macquarie Infrastructure and Real Assets (Europe) Limited ('MIRA'). The strategic goal is to develop KCOM as a wholesale-focused business based on full-fibre services serving the Hull Area and surrounding locations. This is intended to maximise network utilisation while delivering increased retailer choice for customers in KCOM's full-fibre footprint. A new management team has been put in place to lead the business transformation and restructure.

1.3 Having completed its FTTP deployment in the Hull Area KCOM is now expanding its footprint into adjacent areas under the first phase of its Full Fibre Expansion ('FFE') investment programme.[3] This will provide additional scale and thereby improve the business case for potential new retail entrants considering delivering services over KCOM's expanding full-fibre footprint.

1.4 KCOM has also focused on implementing changes to build on the existing business aimed at increasing demand and driving network utilisation as key objectives of the wholesale strategy. KCOM's immediate priority was to develop KCOM wholesale as a distinct, effective commercial business unit and invest in developing capabilities and systems. We have:

- Consolidated effort across business into a single dedicated team, augmented by new senior specialist staff;

[1] Ofcom (2020), *Promoting competition in fibre networks – Hull Area Wholesale Fixed Telecoms Market Review 2021-26.* The Hull Area accords with the geographic boundary that is defined by KCOM's original licence granted on 30 November 1987 by the Secretary of State under Section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.
[2] See https://www.londonstockexchange.com/news-article/market-news/scheme-of-arrangement-becomes-effective/14172477?lang=en
[3] See https://www.kcomgroupltd.com/about-us/our-business/news-and-media/hull-becomes-uk-s-first-city-to-complete-rollout-of-ultrafast-full-fibre-broadband/ and https://www.kcom.com/about-us/our-business/news-and-media/kcom-announces-further-100m-full-fibre-broadband-investment/

- Appointed a Managing Director to lead the wholesale business;
- Created a separate identity for the wholesale business and demonstrated commercial intent through marketing and renewed engagement with CPs and the wider wholesale market;
- Carried out ongoing work with current and prospective wholesale customers to ensure that our product portfolio provides them with the right solutions to meet their needs; and
- Initiated a programme of investment in improved capabilities in IT systems to ensure OSS and BSS support our wholesale objectives, and with the first release of a new customer portal in March 2021.[4]

We need focus to deliver on our wholesale-focused strategy

1.5 KCOM recognises the importance Ofcom attaches to developing retail competition further in the Hull Area. We agree that there is scope to increase the presence of Communications Providers ('CPs') using KCOM access products to compete in the fibre broadband market in Hull. We support this objective and consider that our wholesale strategy can play a key role in bringing it about.

1.6 Whilst it will take time to complete the transformation of KCOM we expect that the impact of our wholesale strategy will start to be seen in the market review period. Over time, we believe KCOM's shift toward a wholesale fibre focused business has the potential to deliver a material increase in retail competition in the fibre broadband market in the Hull Area and the FFE, to the benefit of households and businesses.

1.7 This process will require considerable focus and effort by colleagues in our newly formed wholesale business unit to get right. Both MIRA and the senior leadership of the business are fully committed to doing so, building on MIRA's experience of implementing such a strategy in other countries.[5]

1.8 KCOM note that any remedy will have an opportunity cost and an impact on other services and customers. As we explain in our response, KCOM is concerned that Ofcom's proposals to develop a new Dark Fibre Access ('DFA') product and new interconnection arrangements in the WLA market will hinder our ability to deliver

[4] See https://www.kcom.com/regulatory/kcom-wholesale/service-information/new-services-and-strategic-it-developments/
[5] MIRA's telecoms portfolio includes TDC in Denmark and INEA in Poland, which were acquired by MIRA in 2018 and 2017 respectively. Since MIRA acquired TDC in 2018 it has committed to an extensive expansion of its FTTP network, and also reorganised TDC to separate the wholesale infrastructure business from the retail business. When MIRA acquired INEA it was a vertically integrated telco, and MIRA has since refocused it on the wholesale market with most major CPs in Poland now wholesale customers of INEA.

the significant body of work required to realise the benefits of our wholesale strategy for the market.

Structure of submission

1.9 The remainder of this submission sets out KCOM's comments on Ofcom's proposals in the Hull Consultation. The structure of the submission is as follows:

- Section 2 provides a summary of KCOM's comments on Ofcom's proposals
- Section 3 sets out our comments for the Leased Line Access market
- Section 4 sets out our comments for the Wholesale Local Access market
- Section 5 sets out our comments for the Wholesale Broadband Access market
- Section 6 sets out our comments for the voice markets
- Section 7 sets out our comments in relation to Regulatory Financial Reporting
- Section 8 sets out our comments on the draft Legal instruments

2. Summary

2.1 This section summarises our key comments on Ofcom's proposals. As noted above, KCOM is concerned that Ofcom's proposals to mandate DFA in the Leased Line Access Market and new interconnection arrangements in the Wholesale Local Access ('WLA') market will hinder efforts to deliver the significant body of work required to realise the benefits of our wholesale strategy for the market. Given KCOM's scale, we do not have the resources of much larger players such as Openreach and developing these products will require significant time and resources.

2.2 Moreover, KCOM is not aware that there is material relevant commercial demand in the Hull Area for DFA or new interconnection arrangements in the WLA market. We consider that the interests of consumers would be better served by allowing KCOM and CPs to establish an effective portfolio of commercial wholesale services that meet the needs of those wishing to compete downstream, backed up by the suite of existing regulated services. By disrupting KCOM's efforts to refocus the wholesale business, Ofcom's proposals risk unnecessarily hampering the development of greater downstream competition.

2.3 **KCOM disagrees with the DFA remedy and considers that it is unnecessary and disproportionate**. As we explain in Section 3, KCOM considers that DFA will be costly and disruptive for KCOM, not least because of its network architecture. Furthermore, we have seen no evidence to suggest there is significant demand for DFA or that it would lead to material benefits in the Hull Area, as claimed by Ofcom. KCOM is also concerned that the proposal to benchmark DFA charges against Openreach fails to recognise the significant differences between KCOM's network and Openreach's network.

2.4 **KCOM considers that the proposed direction to require it to develop a new interconnection product is unnecessary and inappropriate.** KCOM is not aware of material demand for alternative interconnection arrangements, and we have not received any reasonable requests for such a product. In these circumstances, we consider that it is inappropriate for Ofcom to direct KCOM to commit resources to develop these new products and incur costs that it may not be possible to recover in charges if demand is low. As noted above, this risks impeding KCOM's planned improvements to its wholesale platform by diverting scarce resources to the development of a new set of interconnection products.

2.5 KCOM considers that the existing Statement of Requirements ('SoR') process provides an adequate and appropriate mechanism for managing requests from one or more CPs. KCOM stands ready to engage with CPs to understand better their interconnection arrangements and to work with them to develop appropriate alternatives if needed, including some form of distant interconnect product. However, to manage the demand risk faced by KCOM and to align incentives, KCOM believes that a more appropriate solution would be that CPs should be required to place a committed order before KCOM undertakes the work required to develop new products.

2.6 **KCOM supports deregulation of the Wholesale Broadband Access (WBA) market.** KCOM considers that resellers will continue to value our 'white label' Connect Fibre broadband product. This product provides a point of competitive entry for small, innovative companies, and our current intention is to continue to make it available. KCOM also currently intends to continue to offer an aggregated fibre wholesale broadband access service on commercial terms. Some CPs have previously expressed interest in purchasing wholesale bitstream services from KCOM, and we are keen to explore whether our Wholesale FibreLine Access product remains relevant for CPs.

2.7 **KCOM supports the deregulation of copper voice markets**. KCOM welcomes this deregulation given the static or declining volumes of these legacy products. We will develop transition plans to migrate customers onto new fibre services in a way that avoids undue disruption.

3. Leased Line Access Market

3.1 Ofcom proposes to find that KCOM has Significant Market Power (‘SMP’) in the market for leased line access (‘LL Access’) in the Hull Area and to mandate a specific Dark Fibre Access (‘DFA’) remedy.

3.2 Ofcom has previously considered whether to impose passive remedies (including DFA) in the 2019 Business Connectivity Market Review (‘2019 BCMR’). In its final statement in June 2019, Ofcom determined that it was not proportionate to impose an SMP obligation on KCOM to provide DFA due to the lack of demand in the Hull Area.[6] Ofcom also recognised the presence of sector-wide passive access remedies in the form of the ATI Regulation 2016 should a CP wish to make a reasonable request of KCOM for duct and pole access, which KCOM has demonstrated its willingness to do.

3.3 Given that the 2019 BCMR concluded a little over a year ago, KCOM is surprised that Ofcom now considers that it would be appropriate and proportionate to mandate a DFA remedy in the Leased Line Access market, rather than relying on KCOM’s SoR process.

3.4 Ofcom is proposing to require KCOM to provide Ethernet and DFA services in the following configurations:

- Connecting end-user premises and KCOM’s Optical Distribution Frame (‘ODF’) Site or Third Party premises; and
- Connecting an end-user premise and another end-user premise.

3.5 DFA will therefore replicate the circuit configurations provided by KCOM’s Ethernet Connect Assess Service (‘ECAS’) and Ethernet Direct Access Service (‘EDAS’).

3.6 Furthermore, Ofcom proposes:

- To require KCOM to provide DFA within six months of the publication of its final statement.
- To require that KCOM’s DFA charges must be ‘fair and reasonable’. Ofcom states that this entails charges that are consistent with making a reasonable return over costs, including a reasonable contribution to common cost recovery, and also do not result in a margin squeeze. To inform its enforcement priorities, Ofcom states that it will use Openreach’s DFA charges in Geographic Area 3 as a benchmark when assessing whether KCOM’s charges are consistent with

[6] Ofcom (2019), *Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets*, vol. 2, paragraph 16.18.

the 'fair and reasonable' requirement.[7] Ofcom currently proposes to set Openreach's DFA charges using a cost-based charge control.

3.7 Ofcom does not define the detailed specification of the DFA service. However, it proposes to "have regard" to the technical, operational (provisioning and repair) and commercial aspects of KCOM's EDAS and ECAS offers "as a starting point" in considering whether KCOM's DFA arrangements are fair and reasonable.

KCOM's comments on the proposed DFA remedy

3.8 KCOM considers that the proposed DFA remedy is disproportionate, inappropriate, and will distract KCOM from implementing its wider wholesale strategy to the detriment of customers, for the following reasons:

- Ofcom has not provided compelling evidence that there is material relevant commercial demand from CPs for a DFA remedy in the Hull Area. KCOM has not received any requests to provide DFA, nor is it aware of material latent demand for such a service. Should such demand arise either now, or during the market review period 2021-26, there is an existing and transparent mechanism (i.e. the SoR process) by which a CP could request DFA (either individually or as a joint request with one or more other CPs).

- KCOM's network structure means that introducing DFA will be costly and disruptive to introduce. KCOM's network architecture is such that the provision of DFA between exchanges would require KCOM to dedicate inter-exchange fibre strands that are currently shared to a specific user. The provision of DFA circuits would therefore lead to a substantial increase in the use of inter-exchange fibre/duct compared to active services. Since Openreach's wholesale leased line circuits do not have any shared fibre, these additional costs are not reflected in Ofcom's proposed price benchmark. DFA may also require additional fibre investment (which would reduce the efficiency of our network), and risk potential disruption to current services and future developments. This is particularly the case given the unrealistic timeframe Ofcom proposes for developing the DFA service.

- KCOM considers that Ofcom overstates the potential benefits of DFA in the Hull Area. In particular, Ofcom does not consider the availability of KCOM's Optical Wave Access Service ('OWAS') in the Hull Area which can be used to provide Radio Base Station ('RBS') backhaul to mobile operators deploying 5G networks. This 'grey fibre' product offers many of the innovation and flexibility (scalability) benefits that Ofcom attributes to DFA, with the added Quality of

[7] Hull Consultation, vol 3, paragraph 2.21

Service ('QoS') features of being capable of supporting higher grade Service Level Agreements ('SLAs').

- KCOM will be unable to recover its costs through DFA charges if demand is low, as KCOM expects.
- Benchmarking of DFA against Openreach charges is not appropriate given the differences in network architecture which implies that KCOM's costs are likely to be higher for DFA.
- SLA levels for DFA should be materially different from those for ECAS and EDAS services to reflect the relevant differences between them.
- Ofcom's proposed timetable for implementation is inappropriately short. The development of the technical specifications of DFA will take some time. KCOM does not have an 'off the shelf' product it can use. KCOM will need to invest considerable time and effort in developing the product. Ofcom is proposing a timetable for DFA implementation that is shorter than the time initially allowed for BT to develop its DFA product in 2016.

3.9 We expand on these points further below.

The demand for DFA in the Hull Area is unproven and highly uncertain

3.10 Ofcom has not provided compelling evidence that there is material demand for a DFA remedy in the Hull Area.

3.11 As set out above, in the 2019 BCMR Ofcom concluded that mandating the provision of passive access (which includes DFA) was not proportionate as there was insufficient demand for these products. In the limited period between completing its last review of the business connectivity markets last year, Ofcom now states to "*have now seen evidence of demand for passive access for both business connectivity and mobile backhaul*". This evidence appears to comprise of two informal enquiries to KCOM about whether DFA was available[8], and a call with Three in which it reportedly stated that passive access is very important for its 5G roll-out plans.[9]

3.12 KCOM does not consider that the evidence provided by Ofcom indicates that there is sufficient latent demand to imply that mandating DFA access is proportionate or appropriate:

[8] Hull Consultation, vol 3, paragraph 1.20.
[9] Hull Consultation, vol 3, paragraph 1.21.

- To the extent that there is reasonable demand for a DFA service, we would expect our CP customers to raise a SoR request.[10] This has not happened. The lack of such requests is consistent with our understanding that there is not reasonable demand for such services in the Hull Area. Consuming DFA requires a step-change in the engineering and related resources for the customer CP. We are not aware of any desire amongst our customers to establish these capabilities in the Hull Area, particularly given the limited scale of the market for such services in the area.

- The basis of the call with Three is unclear. In particular, it is unclear whether the discussion focused on the Hull Area, or whether it related to Three's more general views in the rest of the UK.[11] Furthermore, Ofcom does not provide any details on what supported Three's view.[12] KCOM's expectations, given that it has received no request from Three for DFA services in the Hull Area, are that the claims were not specific to the Hull Area. In any event, Ofcom does not seek to quantify the extent of potential demand from Three for such services or assess the relevance of that potential demand in the context of the material costs and disruption faced by KCOM to provide the service (as discussed further below).

3.13 We also note that Ofcom has not identified why the proposed SoR process remedy[13] would be insufficient to meet any requirement for DFA should it emerge over the market review period.

3.14 Furthermore, to the extent that there is latent demand for DFA, KCOM understands that there is existing commercial provision in the Hull Area (for example, via CityFibre and MS3). CityFibre operates a fibre network, with a particular focus on the city centre, and it offers DFA on a commercial basis.[14] Based on information Ofcom presents in the Hull Consultation and on press reports, KCOM understands that MS3 is adding to its full fibre network.[15]

3.15 As Ofcom recognises, an adverse impact of requiring KCOM to provide a DFA service is that it risks undermining investment in fibre networks and services by rival telecoms operators in the Hull Area.[16] Ofcom dismisses this risk on the ground that it does not consider further large-scale network expansion by alternative providers to be likely. However, it does not provide evidence that alternative providers are

[10] KCOM's SOR process can be followed whether there is a direct obligation to provide new forms of network access (as in the WBA and WLA markets) or not.
[11] KCOM understands that Three's DFA services are currently provided by CityFibre, who utilise their own network infrastructure to supply DFA services. CityFibre are a direct competitor to KCOM in the Hull Area and are source of competitive constraint in the supply of LL Access in the Hull Area.
[12] Other than noting that its views are consistent with its own general priorities (see Hull Consultation, vol 3, paragraph 1.21).
[13] Hull Consultation, vol 4, Condition 3.
[14] See https://www.cityfibre.com/wp-content/uploads/2016/08/Hull-map-550x420.png.
[15] See https://www.ispreview.co.uk/index.php/2019/01/ms3-upgrades-wholesale-fibre-optic-network-in-hull-uk-for-isps.html
[16] Hull Consultation, vol 3, paragraph 2.40.

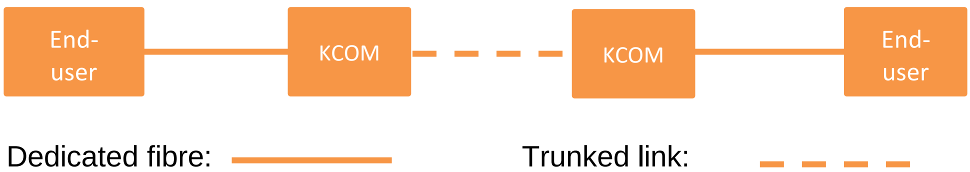
unlikely to compete in the provision of services such as the provision of RBS backhaul or the provision of higher value business connectivity and DFA services. Undermining such investment is not in the interests of consumers.

KCOM's core network design means that DFA will be particularly costly and disruptive to implement and will lead to inefficiencies

3.16 KCOM's network structure means that introducing DFA will be costly and disruptive to implement. Given this, developing a DFA service will inevitably result in our wholesale and networks teams being distracted from developing commercial access services that will better meet the needs of existing and potential CP customers.

3.17 KCOM's Ethernet network comprises a ring of connected "core" exchanges which are fed by "access" exchanges. KCOM's ECAS and EDAS leased line products may have one or two terminating segments plus inter-exchange connectivity. For example, an end-to-end circuit may be routed through a local exchange, across KCOM's core network, and through a distant local exchange. This is outlined in Figure 1 below.

Figure 1: KCOM Ethernet network architecture



Source: KCOM

3.18 KCOM understands that Openreach's EAD services are based on a dedicated end-to-end fibre.[17] This differs from KCOM's ECAS/EDAS services however, which are not based on an end-to-end dedicated fibre. Whilst the terminating segments in KCOM's ECAS/EDAS circuits comprise a single dedicated fibre, where circuits traverse KCOM's core network, several services are trunked together for transmission across a single fibre.[18] These inter-exchange circuits provide dedicated bandwidth, remain logically separate, and are not aggregated.

3.19 KCOM's network architecture means that an end-to-end ECAS/EDAS circuit will partially utilise the network equipment located at each of KCOM's exchanges (i.e. as part of the core network), in addition to the end-user equipment at either end of the circuit (i.e. the circuit termination points).

[17] Ofcom (2015), *Business Connectivity Market Review Consultation*, Annex 16, figure A16.5.
[18] Inter-exchange connectivity is supplied over 10Gbps or 100Gbps links.

3.20 Given the presence of shared fibre in KCOM's network, Ofcom's proposed DFA remedy will lead to productive inefficiency. This is because DFA will lead to an increase in the amount of duct/fibre being used compared to ECAS/EDAS circuits, which will result in increased costs.

3.21 KCOM's core network is scaled to efficiently meet the expected demand for the current portfolio of services given the network design for those services. We do not maintain inefficient spare capacity in the core. To provide end-to-end dedicated DFA services that traverse our core network, KCOM would need to use specific inter-exchange fibres that may require the installation of additional fibre. This would compromise the efficiency of KCOM's ethernet network. In addition, KCOM considers that, to the extent that KCOM would need to install additional fibre to meet the demand for DFA, this would require additional investment and management resources which are likely to disrupt current services and plans.

3.22 Ofcom does not appear to have considered the impact of KCOM's network structure in its assessment of DFA. KCOM considers that this is an important omission. As a consequence, we consider that Ofcom has not fully appreciated the additional cost and complexity that would be entailed in implementing DFA in the Hull Area.

3.23 A practical timing issue that needs to be considered for implementation is that [✂].

Ofcom's assessment overstates the potential benefits that Ofcom attributes to DFA

3.24 Ofcom argues that regulated DFA has the potential to deliver three benefits as follows:

- Users would be able to choose their own electronic equipment, enabling them to deliver services that better suit their needs and the needs of their customers;
- Users would be able to make efficient decisions on bandwidth upgrades based on the underlying costs of upgrades; and
- Users would be able to eliminate inefficient active equipment duplication.

3.25 KCOM considers the benefits of DFA are likely to be limited in the Hull Area since:

- **Any benefits of equipment choice will be small.** All leased line circuits with a speed of 1Gbps or below are delivered using exactly the same electronic equipment, with sub-1Gbps services being delivered through throttling. This equipment is commoditised, and there are therefore no benefits associated with customers choosing the electronic equipment. Services above 1Gbps, which are typically 10Gbps circuits, require more complex and expensive electronic equipment. However, within the Hull Area KCOM provides fewer than [✂]

ECAS or EDAS circuits above 1Gbps and they are all at 10Gbps. In addition, the availability of KCOM's OWAS product limits the potential incremental benefits from DFA, as explained below.

- **DFA will not result in a significant reduction in the duplication of active equipment in the Hull Area**. KCOM's customer-sited equipment for any existing active circuits which migrate to DFA is unlikely to be re-used and hence there is no avoidable cost saving. As noted, a DFA circuit that traverses two or more KCOM exchanges would use more inter-exchange fibre/duct than an equivalent KCOM leased line circuit due to the use of trunking in the core network by KCOM. This means that DFA would result in a less efficient core network architecture than the current active services. KCOM considers that this effect is likely to be significantly larger than any potential saving in the reduction of active equipment required in the network.

3.26 Moreover, Ofcom does not appear to have taken KCOM's OWAS product into account when assessing the potential benefits of its proposed DFA remedy. This product is a 'grey fibre' high-speed point to point WDM service that consists of a core 10Gbps lit and managed wavelength with the option for the CP to use additional wavelengths between sites using a CP's own additional termination equipment.[19]

3.27 The OWAS product has been available since November 2019 and was developed to provide a flexible connectivity product that allows users greater control of both bandwidth and equipment, and to complement KCOM's portfolio of active leased line services. It is subject to a Reference Offer and fair and reasonable pricing obligation. KCOM's OWAS product can be used to provide RBS backhaul to mobile operators deploying 5G networks and is currently purchased by BT.

3.28 The OWAS product allows CPs to realise many of the benefits of flexibility and scalability that Ofcom attributes to DFA. As explained above, users who wish to increase bandwidth to meet additional demand can purchase one or more additional 10Gbps wavelengths by installing their own electronic equipment. In this way, the OWAS product combines the advantages of a managed leased line service (i.e. guaranteed service levels backed by SLAs and SLGs) with the option to readily increase bandwidth to meet demand.

3.29 For these reasons, KCOM considers that Ofcom's proposal to mandate DFA in the Hull Area is disproportionate and inappropriate. The limited incremental innovation benefits obtained from DFA over and above the existing 'grey fibre' service do not justify the costs and disruption of mandating DFA in the Hull Area.

[19] See http://pricing.kcomhome.com/media/1584/p13-s37_optical_wave_access_service.pdf

KCOM will be unable to recover its costs in DFA charges if demand is low

3.30 KCOM welcomes Ofcom's recognition that, in principle, it should be permitted to recover its costs of providing DFA, including a reasonable return. However, KCOM is concerned that it will not have the opportunity to do so in practice. The highly uncertain nature of demand, as set out above, means that there is a material risk that KCOM will incur considerable costs if it is mandated to provide DFA. These relate to the costs of developing a DFA product, and the cost of making material changes to the core network architecture as required. KCOM is concerned that it faces a risk of being unable to recover these costs through DFA charges if demand is as limited as KCOM expects.

Benchmarking of DFA against Openreach charges is inappropriate

3.31 KCOM is concerned that it will not be able to sustain a set of charges for DFA which are at or below Ofcom's proposed benchmark of Openreach's DFA charges in Geographic Area 3 of the LL Access market.

3.32 Ofcom proposes to set a cost-based charge control for Openreach's DFA charges that is based on BT's network architecture. We understand that Ofcom has derived the cost of DFA from the fully allocated cost of BT's Ethernet Access Direct ("EAD") less the cost of active equipment (along with a number of other smaller adjustments).[20] This approach, which is sometimes referred to as 'boxless EAD', is based on the assumption that Openreach's DFA will use all the same inputs as an active EAD product except the active electronic equipment component. We understand that this involves the implicit assumption that each DFA circuit utilities one fibre circuit over its entire length.

3.33 KCOM understands that both Openreach[21] and CityFibre[22] have expressed serious concerns that Ofcom has not included all the relevant costs of DFA, meaning that the proposed wholesale pricing of DFA in Area 3 is not cost-reflective. This is of great concern to KCOM as it would result in a price benchmark that is artificially low and which would not provide a reasonable way to assess whether KCOM's DFA charges are fair and reasonable.

3.34 In addition to this, KCOM considers it likely that its costs of providing DFA would be materially higher than even a well-founded level of charges for Openreach for the following reasons:

[20] Ofcom (2020), *Promoting investment and competition in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26*, Annex 19, paragraph A19.11-A19.22.
[21] Openreach (2020), *Promoting competition and investment in fibre networks: WFTMR 2021-26,* paragraph 1.9.
[22] CityFibre (2020), *Response to the WFTMR Consultation,* section 6.4.

- Firstly, there are material differences between KCOM's and BT's network architecture that are not reflected in the proposed benchmark. As explained above, unlike Openreach, KCOM's ethernet network utilises shared fibre in the core. As a result, KCOM's costs of DFA would involve significant additional costs including, for example, inter-exchange fibre and duct required to deliver services.

- In addition, KCOM's substantially smaller scale than Openreach means that, even in the event that there is demand for the service, the product-specific incremental costs (including product development and productisation costs) would be recovered over a much smaller demand base.

3.35 For these reasons, KCOM is concerned that the proposed benchmark for DFA charges may prevent it from setting appropriate charges to recover efficiently incurred costs whilst remaining within the benchmark. Moreover, if KCOM is unable to set charges that reflect incremental cost differences this may lead to the inefficient use of DFA by access-seekers and undermine cost recovery on ECAS and EDAS circuits.

KCOM considers that DFA SLA levels should be materially different from SLAs for ECAS and EDAS services

3.36 KCOM considers that the appropriate levels of provisioning and repair service for DFA should be materially different to those for EDAS and ECAS services to reflect the differences between them. In particular:

- KCOM's repair SLAs for ECAS/EDAS circuits are based on its ability to actively manage the service and to have visibility over the circuit on an end-to-end basis. Should there be a fault with an ECAS/EDAS, KCOM can readily identify the source of the fault and seek to correct it quickly. In contrast, KCOM has no visibility over an end-to-end DFA circuit because of its passive nature. Should a fault develop, KCOM could not readily determine the source of this fault (e.g. network equipment failure, fibre break). Therefore, repair timescales for DFA will necessarily be longer than for active services.

- Provisioning a new DFA service may require the building of additional fibre capacity in KCOM's core network. This is unlikely to be required for the provisioning of EDAS/ECAS services. This would add to the complexity and nature of activities used to provision DFA which will need to be reflected in provisioning timescales.

The proposed 6 month implementation period for the DFA remedy is unreasonable

3.37 Ofcom first imposed an obligation on BT to provide DFA services in the Business Connectivity Review Statement published 28 April 2016[23]. The timetable for implementation was a staged approach which would have resulted in the launch of DFA 18 months after publication of the statement (by 1 October 2017). The timetable reflected comments from BT regarding the significant operational impact of introducing a new DFA product.

3.38 KCOM will face similar challenges and believes the proposed 9 month period for launch of a DFA product is unrealistic. Technical specification of the product would need to be completed within 6 months to meet the 90 day notification period for launch 9 months after any obligation came into effect.

3.39 Alongside this, there will be significant work that needs to be undertaken to ascertain network availability, define product characteristics, update systems, put in place appropriate processes and develop a Reference Offer. We envisage there will be consultation with relevant stakeholders as we develop the product and associated Reference Offer in order to ensure that in addition to meeting KCOM's regulatory obligations, it meets the requirements of potential customers.

3.40 Furthermore, we will need to train employees who will be involved in the sale, delivery and ongoing support of the product and ensure that sufficient testing is undertaken before a product is launched.

3.41 The development of the DFA and modified WFLLA products will need to draw on the same scarce resource within KCOM, compounding the challenges faced and, inevitably, disrupting our efforts to develop commercial services which better meet customer needs.

3.42 For these reasons, we believe that Ofcom's proposal of a 6 month implementation period for DFA is unrealistic. Our current expectation is that, if a DFA remedy is imposed, a minimum timescale of 18 months from the final statement to product launch would be necessary.

Other issues

3.43 KCOM would welcome clarification on the scope of the remedy in relation to:

- **No requirement between intermediate nodes**: KCOM would welcome confirmation from Ofcom that KCOM would not be required to supply DFA between intermediate nodes in the KCOM network.

[23] Ofcom (2016), *Business Connectivity Market Review*

- **Clarification around network extensions in the local access network**: KCOM would welcome guidance on the requirement to modify its network in response to requests for DFA. The proposed obligation requires KCOM to provide DFA circuits on "reasonable" request. While KCOM has an extensive local access duct and fibre network in the Hull Area, there are still geographic locations that are outside its duct and fibre network. For example, Mobile Network Operator sites may not have fibre connectivity if they are not near other dwellings.

- **Clarification around the need for a DFA internal reference offer:** As explained above, ECAS/EDAS circuits are delivered over trunked circuits in the inter-exchange network. Each ECAS/EDAS circuit does not "consume" a DFA circuit, except in the access network. We therefore consider that DFA should not be subject to an internal reference offer requirement.

4. WLA market

4.1 Ofcom proposes to find that KCOM has SMP in the Wholesale Local Access ('WLA') market in the Hull Area. To remedy this, Ofcom proposes to require KCOM to provide fibre-based network access in the Hull Area on fair and reasonable terms and conditions, including pricing.

4.2 To inform its enforcement priorities, Ofcom proposes to set a specific benchmark rate for the price of KCOM's services at or around 40Mbps equal to the published price of Openreach's FTTP 40/10 service in areas where FTTC is not available, as set out in Ofcom's statement for the Hull WFTMR, and held constant in real terms during the review period. Ofcom does not propose to set a specific benchmark for WLA services at higher bandwidths and states that it will evaluate whether KCOM's prices are fair and reasonable taking into account the available evidence, including equivalent products offered by Openreach.

4.3 In addition, Ofcom proposes to direct KCOM to modify the wholesale Reference Offer ('RO') for its fibre WLA product ('WFLLA') by removing the provisions which require access seekers to be located at one of KCOM's five NGA serving exchanges, and instead to provide appropriate interconnection arrangements for access seekers anywhere in the Hull Area (we refer to this as 'distant WFLLA interconnect'). Further, Ofcom proposes that KCOM should publish its amended RO within three months of the publication of the final statement for the Hull WFTMR.

KCOM's comments on fair and reasonable pricing for KCOM's WFLLA prices

4.4 KCOM notes that in the final statement for the 2018 Hull Area market review of the WLA and WBA markets Ofcom stated that:

“*We recognise that incentives for investment require KCOM to be offered a ‘fair bet’, and this may mean that returns above the cost of capital are reasonable where risky investments turn out to be successful.[…] in assessing whether KCOM’s charges are fair and reasonable, we will consider whether they are consistent with making a reasonable rate of return and a reasonable contribution to the recovery of common costs, which includes taking account of a ‘fair bet’*.”[24]

4.5 KCOM considers that this principle remains relevant and we would welcome confirmation from Ofcom this is the case in the final statement.

KCOM’s comments on Ofcom’s proposed direction to amend the WFLLA RO

4.6 KCOM believes that Ofcom’s proposal to issue a direction to amend the existing WFLLA RO is unnecessary and inappropriate for the following reasons:

- KCOM is not aware that there is material demand for a distant interconnect product, and KCOM has not received any reasonable requests for such a product. KCOM considers that the current SoR process provides an appropriate and transparent mechanism for managing reasonable requests from one or more CPs, and it is not clear to KCOM why the SoR process hasn’t been used by CPs either individually or jointly to register such demand if it exists. KCOM has made CPs aware of the SoR process on multiple occasions, and no CP has raised concerns about its use.

- The proposed direction risks impeding KCOM’s planned improvements to its wholesale platform by diverting scarce resources to the development of a new set of interconnection products. KCOM considers that, in the absence of reasonable demand for these products, it is not appropriate for Ofcom to direct KCOM to modify the WFLLA product set (particularly alongside the proposed obligation to provide DFA).

- The choice of benchmark for the proposed distant WFLLA interconnect product is unclear, as KCOM is unaware of a comparable Openreach product.

- KCOM is also concerned that it may be unable to recover the cost of developing a new distant WFLLA interconnect product should there be limited demand for the product.

- Ofcom’s proposal that KCOM should publish an amended RO within three months of the WFTMR final statement is unrealistic and unreasonable. This would not allow sufficient time for KCOM to carry out the activities needed to

[24] Ofcom (2018): *Wholesale Local Access and Wholesale Broadband Access Market Reviews – review of competition in the Hull Area*, paragraph. 4.77.

work with customers to understand their requirements, develop the required products, and make the necessary operational and system changes.

4.8 We expand on these points further below.

Demand for a new WFLLA interconnection product in the Hull Area is unproven

4.9 Ofcom has not provided compelling evidence that there is reasonable demand for different interconnection arrangements for its WFLLA product in the Hull Area. Ofcom states that it has interviewed stakeholders to determine why no provider currently purchases this product and says that the 'evidence paints a mixed picture'.[25]

4.10 Ofcom suggests that there is a perceived lack of space in KCOM's NGA exchanges. This appears to be based on:

- A response in Ofcom's first RFI in which KCOM stated that it had informed a CP on 2 October 2019 that "*accommodation areas for such colocation facility, while scoped, do not currently exist as no provider chose to use KCOM's LLU offering*".

- A statement by Vodafone to Ofcom on 24 February 2020 indicating that one of the reasons it does not have a point of presence in the Hull Area may be because of the difficulties associated with being able to access colocation space.

4.11 Ofcom also suggests that access seekers are deterred from using WFLLA by a combination of cost (in particular the costs of building space in exchanges), and a perception that KCOM may be unwilling to work with access seekers.

4.12 KCOM does not consider that this provides compelling evidence that there is sufficient demand for a new distant WFLLA interconnection product for the following reasons:

- Historically KCOM has not provided colocation space as no CP has previously chosen to unbundle one or more of its exchanges. KCOM was previously required to publish a wholesale RO for copper-based services in the WLA, but there was no demand for this (LLU) network access service.

- KCOM has a space constraint at one of its five NGA serving exchanges which would make it difficult to provide colocation space at that single exchange. However, in the single instance where this was identified as a concern KCOM

[25] Hull Consultation, vol.3, paragraph 2.108.

considered an alternative colocation service to ensure that CPs are not disadvantaged by space constraints and could obtain network access.

- KCOM has not received a request from Vodafone for information on the WLA portfolio, including accommodation services.

- KCOM presented its draft WLA wholesale RO to CPs, which was consistent with CPs expectations, and benchmarked accommodation costs against those of Openreach.

- If, as Ofcom suggests, there are multiple providers that would choose to unbundle KCOM NGA exchanges there is clear incentive for them to do so jointly to share the costs of developing the colocation space amongst the relevant CPs. It is not obvious to KCOM from our indicative assessment of the cost of developing colocation that these costs would act as a material hurdle to the business case for unbundling. KCOM would encourage Ofcom to review the business plans of those CPs to understand their modelling assumptions.

4.12 As Ofcom notes, CPs that want a form of access that does not require colocation in NGA serving exchanges can submit a SoR to KCOM under existing SMP Condition 2. However, KCOM has received no SoR requests of this nature. Ofcom proposes to re-impose the SoR obligation on KCOM, and this will allow CPs to request modified interconnection arrangements during the 2021-26 period if required. Under both the current and proposed SMP obligations, KCOM would be under an obligation to provide network access on reasonable request.

The proposed direction risks impeding KCOM's planned improvements to its wholesale platform

4.13 The proposed direction will require KCOM to divert scarce resources and incur costs to develop a new set of interconnection products for which there is no proven demand. KCOM considers that, in the absence of clear demand for these products, this is inappropriate and risks impeding the implementation of the planned improvements to our wholesale systems and operations that are intended to promote uptake of wholesale access products in the Hull Area, particularly if KCOM is required to complete this alongside the proposed DFA remedy on the unrealistic timescales proposed by Ofcom.

4.14 Ofcom suggests that the development of an appropriate set of interconnection products should not be onerous since KCOM's existing Broadband Service Interconnect Link (BSIL) contains some of the elements that would be needed. Ofcom's reasoning appears to be that the point of interconnect ('POI') use case for BSIL is equivalent to an in-span interconnect ('ISI') variant which is similar to the type of arrangement that it envisages might be an alternative to KCOM's existing

WFLLA interconnection arrangements.[26] KCOM does not agree that this is necessarily an appropriate analogy and the cost of development is likely to depend on the exact product specification required by CPs.

The choice of benchmark for the proposed interconnect product is unclear

4.15 Ofcom proposes to benchmark KCOM's prices for interconnect products against Openreach's prices for equivalent products or combinations of products. However, KCOM is not aware of any Openreach interconnect products that are comparable to the proposed distant WFLLA interconnect product and would welcome further clarification on Ofcom's choice of benchmark.

KCOM may be unable to recover its development costs through charges if demand is low

4.16 KCOM is also concerned that it may be unable to recover the cost of developing a new distant WFLLA interconnect product if there is limited demand. Ofcom's proposed direction in effect places the demand risk on KCOM in a way that KCOM considers is unwarranted and inappropriate in the absence of clear evidence of material demand.

Ofcom's proposed implementation period is unreasonable

4.17 Development of a new interconnect product, while not as complex as the development of DFA, will require similar activities to be undertaken (i.e. consulting with customers to understand their requirements, developing the required products, and making the necessary operational and system changes). In addition, proposed SMP Condition 7 requires that technical information is notified 90 days in advance of taking effect. It is not reasonable to expect KCOM to have developed a technical specification in advance of having sight of Ofcom's final statement and the associated direction. Moreover, as discussed above in relation to the DFA remedy, development of DFA and the new interconnection products will both need to draw on the same resource within KCOM which will put significant pressure on a small team of people.

4.18 For these reasons, KCOM considers that Ofcom's proposed implementation period of three months is not appropriate. We suggest that a period of nine months to amend the WLA RO will be required to carry out the necessary work, should Ofcom decide to impose this remedy in the WLA market.

[26] Hull Consultation, vol. 3, paragraph 2.122.

KCOM will work with CPs to determine if there is real demand for a distant WFLLA interconnect product

4.19 As explained above, KCOM is not aware that there is material demand for a distant WFLLA interconnect product and is concerned that the proposed direction will result in KCOM expending scarce resources unnecessarily in developing an alternative that will not be used by CPs in practice. This would be inefficient and also risks diverting resources from the activities that KCOM is undertaking that will have a real impact in terms of promoting uptake of wholesale broadband access products in the Hull Area.

4.20 KCOM is keen to ensure that it provides wholesale products that meet CPs' requirements, and indeed this is fundamental to its wholesale strategy. To determine whether there is material demand for new interconnection products, KCOM is willing to commit to engage with CPs to better understand their interconnection arrangements and to work with them to develop appropriate alternatives if needed, including some form of distant WFLLA interconnect product. However, to manage the demand risk faced by KCOM and to align incentives, KCOM believes that a more appropriate solution would be that CPs should be required to place a committed order before KCOM undertakes the work required to develop new products.

4.21 KCOM considers that this approach would provide an appropriate solution and is willing to consider making a suitable commitment in lieu of the direction proposed by Ofcom.

5. WBA market

5.1 Ofcom considers that the Wholesale Broadband Access ('WBA') market in the Hull Area does not satisfy the three criteria test and is therefore not suitable for ex ante regulation. Ofcom therefore proposes to remove all regulatory obligations from the WBA market in the Hull Area.

KCOM's comments

5.2 KCOM agrees with Ofcom that the WBA market should be deregulated in view of the availability of KCOM's regulated wholesale local access product ('WFLLA'). We agree that this product is likely to reduce the cost of access-based entry in the Hull Area compared to potential entry based on KCOM's copper network.

5.3 While KCOM welcomes Ofcom's proposals in the WBA market, we are keen to assure our wholesale customers that there is currently no intention to withdraw our 'white label' wholesale fibre broadband product, which provides a point of competitive entry for small, innovative companies.

5.4 KCOM also currently intends to continue to offer an aggregated wholesale fibre broadband access service on commercial terms. Some CPs have previously expressed interest in purchasing wholesale bitstream services from KCOM and we are keen to explore whether our Wholesale FibreLine Access product remains relevant for customers.

6. Fixed voice transitional arrangements

6.1 Ofcom considers that the markets for wholesale fixed analogue exchange lines (‘WFAEL’), wholesale ISDN2/30, and wholesale call origination (‘WCO’) in the Hull Area do not satisfy the three criteria test and are not suitable for ex ante regulation. Ofcom proposes to remove all existing regulatory obligations from these markets in the Hull Area, subject to a transitional period of 12 months. A fair and reasonable charges obligation applies in relation to telecoms providers that currently purchase these services from KCOM.

KCOM’s comments

6.2 KCOM agrees that there is a clear case for the deregulation of WFAEL, ISDN2/30 exchange lines, wholesale call origination (‘WCO’) and interconnection circuits:

- The number of voice-only customers is declining and there is little opportunity to differentiate in the selling of voice only services. Volumes of KLR have been low, primarily because wholesale entry has been based on KCOM’s reseller products.

- Volumes of ISDN2/30 have been declining in recent years. In the period April 2019 to March 2020 there were only 46 new ISDN2 connections and 232 ISDN30 connections.

- Wholesale call origination is increasingly indirectly constrained by consumers’ ability to make voice calls via alternative methods (either mobile or via OTT providers).

6.3 KCOM recognises the importance of ensuring that telecoms providers that currently purchase these products have sufficient time to consider their business case and transition to alternative arrangements to avoid shocks to the market and harm to consumers. KCOM considers that the 12 month transition period is reasonable. However, we request that Ofcom considers a mechanism whereby KCOM can seek early termination of the transition period for analogue exchange lines and ISDN2/30 if alternative fibre based services become available with 12 months.[27]

6.4 KCOM considers that the 12 month transition period for WCO and interconnect circuits is not necessary. As Ofcom recognises there are alternatives to WCO available, and we expect migration of services to OTT/VoIP alternatives to accelerate. As volumes decline a continued obligation to supply WCO on a fair and reasonable basis is not appropriate. Additionally, KCOM has established interconnect arrangements with other CPs and has begun discussions concerning migration to IP interconnect. As these interconnects remain necessary to support the handover of calls for termination both within and outside the Hull Area, we have no incentive to withdraw interconnect circuits until an alternative interconnect arrangement is in place.

6.5 KCOM is also concerned that the fair and reasonable charges obligation should not prevent KCOM from recovering its efficient costs, or from setting prices that incentivise migration to alternative fibre services. As volumes decline in these legacy market, KCOM's average unit costs will rise due to the presence of fixed costs. In these circumstances we do not believe that a fair and reasonable obligation should preclude KCOM from increasing its prices if this can be justified.

6.6 Ofcom does not specifically state that it will continue to benchmark KCOM's prices to BT's prices post de-regulation. However, in the absence of any other guidance we assume that this will be the case. KCOM is concerned that this may not allow for cost recovery if the reduction in demand for BT's voice service declines more slowly than for KCOM, since this would mean KCOM's unit costs are likely to increasing more rapidly.

[27] For example, new products such as SIP trunking will increasingly constrain ISDN2/30 pricing. Over-the-top operators can provide SIP trunking over existing broadband connections. intends to launch a wholesale SIP trunking product in Q4 2020.

7. Regulatory financial reporting requirements

7.1 KCOM notes the financial reporting requirements proposed by Ofcom. We welcome the reduced RFS reporting burden and consider that this appropriately reflects the deregulation of relevant markets. KCOM also supports the proposed permanent change to the RFS submission date.

7.2 As KCOM previously stated in response to Ofcom's consultation on its 2019 KCOM Regulatory Financial Reporting (RFR) Statement (the '2019 RFR Statement')[28], it is important that the regulatory financial reporting requirements of an SMP operator should be sufficient to enable Ofcom to discharge its regulatory duties, to give credibility to the financial reporting regime, and to provide stakeholders with reasonable confidence that the regulated undertaking in question has complied with its SMP conditions.

7.3 KCOM agrees that effective RFS reporting should have the following attributes:

- Relevance. The information needs to answer the right questions, in the right way and at the right time.
- Reliability. The underlying data must be reliable, suitable rules for treatment of data must be chosen and those rules need to be followed.
- Transparency. The basis of preparation should be understood by the users of the reports and the presentation of the data should be clear.
- Proportionality. The reporting requirements should be proportionate to the benefits.

7.4 Generally, KCOM considers that Ofcom's proposed regulatory financial reporting proposals reflect the attributes detailed above and broadly agrees that the remedies are appropriate and proportionate. In particular:

- KCOM agrees that it appropriate to remove the reporting requirements in those markets where Ofcom proposes to find that KCOM has no SMP (i.e. the WBA, WFAEL, ISDN2, ISDN30 and WCO markets). Furthermore, we agree with Ofcom's proposal not to impose cost accounting or accounting separation reporting requirements for the proposed transition period in voice markets.

[28] https://www.ofcom.org.uk/__data/assets/pdf_file/0020/124067/KCOM.pdf

- KCOM agrees with Ofcom's proposal to extend KCOM's reporting deadline. KCOM considers it is appropriate to adjust the deadline for KCOM to publish its RFS, requiring that for the reporting year 2021/22 and subsequent years KCOM publish and deliver to Ofcom the RFS and the corresponding audit opinion within a period of nine months after the end of the financial year to which the RFS relates.[29] There are clear reasons for making this proposed change given changes to KCOM's Group Limited's ongoing financial reporting obligations following the acquisition of the company by MEIF 6 Fibre Limited on 1 August 2019 and the subsequent de-listing from the London Stock Exchange on 2 August 2019.

7.5 KCOM agrees with Ofcom proposal to leave the requirements unchanged from the 2019 RFR Statement. In particular:

- The proposed Network Component Direction continues to be appropriate. As Ofcom notes, it is important to preserve the integrity and consistency of KCOM's RFR and that the network components used by KCOM reflect cost attributions of services in regulated markets. KCOM concurs that the network components identified continue to support the presentation and usability of the RFS and will provide ongoing confidence to all stakeholders about the absence of bias in the preparation of KCOM's RFS.

- The proposed Transparency Direction continues to be appropriate. It is important to provide Ofcom and other stakeholders with a clear understanding of the financial information presented in the RFS. KCOM concurs that it is necessary to publish a sufficiently transparent description of KCOM's regulatory cost accounting system (including attribution and valuation methodologies), such that a suitably informed reader can gain a clear understanding of the information presented in KCOM's RFS.

- The proposed form of the Properly Prepared In Accordance With (PPIA) Audit Opinion for the RFS Direction continues to be appropriate. KCOM concurs that it is important that Ofcom and other stakeholders are given reasonable confidence that KCOM's RFS is free from material error and has been prepared following the DOCAS published by KCOM and relevant directions issued by Ofcom.

[29] KCOM's current financial year ends on 31 March. The proposal therefore provides KCOM up to 31 December of each year to which the RFS relate to provide Ofcom with its RFS and corresponding audit opinion.

KCOM agrees that the reporting requirements in relation to the preparation, audit, delivery and publication of KCOM's RFS direction and the form and content direction

7.6 KCOM agrees that in respect of the markets where Ofcom has made a provisional SMP finding (WLA and LL Access (including where required DFA)), it is appropriate to maintain the current requirement on KCOM to publish KCOM wide and market level information, as well as providing specified private information to Ofcom (consistent with Ofcom's proposed regulatory findings[30]).

7.7 KCOM notes that Ofcom is proposing to direct the recording of service levels and as a consequence require two new schedules relating to service level information specific to services in the WLA and LL Access (including where required DFA) markets in confidence to Ofcom. This introduces a significant additional level of information to be recorded and reported by KCOM. KCOM has concerns with this and therefore wishes to discuss the rationale for this requirement and the associated reporting requirements in further detail with Ofcom.

KCOM notes that Ofcom is proposing to direct KCOM to maintain accounting records for Network Services and Network Activities for both the WLA and LL Access markets

7.8 KCOM has the following specific points in respect of the five directions that Ofcom is proposing to make under section 49 of the Communications Act (the 'Act') and the Regulatory Financial Reporting SMP condition proposed in relation to the WLA and LL Access markets:

- As KCOM has noted elsewhere in its response, it does not consider that the introduction of DFA in the LL Access market is either appropriate or proportionate. By extension, KCOM does not consider that the RFS reporting obligations are required. To the extent that Ofcom reaches a decision to the contrary and chooses to implement the DFA remedy, KCOM considers it important that Ofcom recognises that it will be necessary to undertake new activities to accurately record this information. For example, KCOM does not currently have accurate records of dark fibre lengths. This will incur cost and will be a time-consuming activity.

- KCOM will need to build new service charges for the proposed DFA product and report against these in the RFS. To the extent that Ofcom reaches a decision to the contrary and chooses to implement the DFA remedy, KCOM considers it important that Ofcom recognises that it will be necessary to

[30] For example, in respect of WLA, KCOM currently reports WLA services within the WBA market. As set out in Volume 2 Section 4, of the Hull Consultation Ofcom proposes to deregulate the WBA market. Consistent with that proposal, Ofcom is proposing to require that WLA market should only contain information relating to WLA services.

undertake new activities to adjust its systems.

- On the above basis, should Ofcom continue to consider the introduction of DFA to be appropriate, KCOM considers that the reasonable period of time that KCOM proposes for the introduction of DFA is in part reflected in the RFR activities that KCOM needs to undertake (including systems updates).

8. Comments on draft Legal Instruments

8.1 KCOM's comments on the draft Legal Instruments are set out below.

Regulatory Financial Reporting for Narrowband Services

8.2 It is unclear whether Paragraph 9 of the recitals has the effect of revoking the current Regulatory Financial Accounting Direction published as part of the SMP conditions applied to KCOM in the November 2017 Notification[31]. As the Direction relates to SMP conditions set out in the July 2004 (KCOM) Notification contained in Ofcom's July 2004 Statement[32], KCOM requests confirmation from Ofcom that no further amendments are required in order to revoke this Direction.

Condition 10 Provision of a Wholesale Pricing Transparency Report (PTR)

8.3 As drafted, Condition 10.5 defines the relevant period for the provision of a Pricing Transparency Report in respect of leased line services as once every 6 months. This requires amendment to reflect Ofcom's proposal to require KCOM to produce a Pricing Transparency Report on an annual basis.[33]

[31] Ofcom (2017), *Narrowband Market Review: Statement*, Annexes 9 and 10.
[32] Ofcom (2004), *The regulatory financial reporting obligations on BT and Kingston Communications final statement and notification – Accounting separation and cost accounting: final statement and notification*.
[33] Hull Consultation,vol. 3, paragraph 2.178.