

BASIC DETAILS

Consultation title: Review of the Wholesale Broadband Access Market: Second Consultation on Market Definition, Market Power Determinations and Remedies

To (Ofcom contact): Steve Perry

Name of respondent: Andrew Wileman

Representing (self or organisation/s): Virgin Media

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

| | | | |
|----------------------|-------------------------------------|---|--------------------------|
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| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? | |

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DECLARATION

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Name Andrew Wileman

Signed (if hard copy)



Virgin Media
Communications House
Bartley Way
Bartley Way Business Park
Hook
RG27 9UP

Steve Perry
Ofcom
Floor 4
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA

1st October 2010

Dear Steve,

Review of the Wholesale Broadband Access Market: Second Consultation on Market Definition, Market Power Determinations and Remedies

Virgin Media is pleased to respond to the above consultation. We set out below our overall thoughts on the matter, with our responses to the specific questions posed by Ofcom contained in the section that follows.

In general, our original comments as made in response to the first consultation¹ remain applicable, and we broadly continue to be of the views set out in that response.

As previously, we generally concur with the proposed suite of remedies proposed and believe that as Ofcom's focus in this second consultation has been on the geographic market definition, there is no need to revisit them. We believe however that for those remedies to have their full desired effect, it is absolutely vital that obligations relating to transparency and the provision of information are robustly enforced. Stakeholders' ability to assess BT's compliance with its obligations is critically dependent upon BT's regulatory financial information containing the necessary level of transparency and accuracy – and this dependency is particularly critical in this case.

Given that the markets in which the remedies will be applied are not currently subject to Basis of Charges obligations or Charge Controls, there is no specific external visibility of BT's costing structures or allocations. BT has therefore not hitherto been required to publish costing information on a market specific basis, and no

¹ Virgin Media response to the Ofcom Review of the Wholesale Broadband Access Markets, dated 1st June 2010

methodology for the allocation of costs between or across markets has been agreed. Thus in order to afford stakeholders the ability to monitor compliance with the aforementioned obligations, not to mention the ability for Ofcom to set controls in the first instance, sufficient transparency and visibility of information is required, and an appropriate approach to the allocation of costs must be agreed. Accordingly we encourage Ofcom to ensure that such a situation prevails.

Answers to Specific Questions

Question 1: *Do you agree with our revised geographic market definition? If not, please explain why.*

We have no comment to make as regards Ofcom's amended approach to geographic market definition, however we note that the application of the proposed methodology results, amongst other aspects, in an increase in the size of the de-regulated market (Market 3). While we recognise that a number of factors have contributed to this effective re-setting of the market boundaries, it seems apparent that this particular effect is principally a consequence of the re-allocation of certain Market 2 exchanges at which three POs are present to Market 3. Given that this further decreases the number of exchanges that will be subject to regulation, we believe it will be important for Ofcom to monitor competitive conditions in Market 3 – particularly in those exchanges at which three POs are present – with a view to taking action if it becomes apparent that those exchanges are not sufficiently competitive.

Question 2: *In light of the revised geographic market definition presented in this consultation, do your previous comments on SMP remain appropriate? If not, please explain why.*

Virgin Media has not changed its view or position on SMP, as set out in its response to the first consultation, as a result of the revised geographic market definition.

Question 3: *Do you have any further comments to add in relation to the SMP assessment?*

Virgin Media has no further comments to add in relation to Ofcom's assessment of SMP.

Question 4: *In light of the revised geographic market definition and SMP analysis presented in this consultation, do your previous comments on remedies remain appropriate? If not, please explain why.*

Virgin Media's view on remedies remains as set out in our response to the first consultation. As stated above, we broadly concur with the suite of remedies proposed, but believe that transparency and accuracy of BT information will be critical in assessing and thus enforcing compliance with its regulatory obligations.

Question 5: *Do you have any further comments to add in relation to remedies in Market 1 and Market 2?*

Virgin Media has no further comments to add in relation to remedies in Market 1 and Market 2. Our view on remedies remains as set out in our response to the first consultation.

Question 6: *Do you have any further comments to add in relation to the period of notice that should apply to exchanges that move from Market 2 to Market 3?*

Virgin Media remains of the view that rather than the proposed approach of setting a twelve month period of notice during which a reduced set of remedies will be applicable, Ofcom should instead mandate a shorter transitional period – in this case six months - during which the full set of existing remedies remains in effect. At the end of this six month period, the full set of remedies should then cease to be applicable.

We believe that this approach will provide sufficient time for purchasers of WBA products from BT to make alternative arrangements, should that prove necessary. Furthermore, we believe that an interim period during which a reduced set of remedies is applicable would effectively establish a short term 'micro market' between Markets 2 and 3, which could lead to distortionary effects – and that this risk is now amplified given the increase in the number of exchanges that will be subject to transition. We consider, therefore, that a single, absolute removal of regulation at an earlier point in time than that proposed by Ofcom, would represent a more prudent approach.

Virgin Media welcomes the opportunity to respond to this consultation, and we would of course be happy to discuss the matter further or expand on any of the points that we have made. Please do not hesitate to contact me should you wish to do so.

Yours sincerely,

Andrew Wileman

For and on Behalf of Virgin Media