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Serafino Abate
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London SE1 9HA

21 August 2009

Dear Serafino,

Replicability and the regulation of BT's retail low bandwidth digital leased lines

Virgin Media is pleased to respond to the above consultation. We set out below our views on the proposals made by Ofcom.

Question 1: Do you agree with our assessment of the relevant competitive issues? Are there any other issues Ofcom should consider?

Whilst Virgin Media understands that the criteria by which replicability for PPCs will be measured have been established since the Replicability Statement, Virgin Media is still concerned that Ofcom had not adequately factored in the difference between the charges that Altnets actually pay to BT and the allocation of charges in the regulatory accounts.

Virgin Media believes that for there to be true parity between Altnets and BT's retail arm, BT retail must face internal transfer charges on a case by case basis in the same way that an Altnet must face charges on a case by case basis rather than merely an allocation at the end of the year in the regulatory accounts. Virgin Media is concerned that in setting the criteria for replicability Ofcom has not fully understood the differences that arise because of issues relating to POH charges.

Question 2: Do you agree with our assessment of the preferred options?

Virgin Media believes that Ofcom is taking an overly optimistic approach to the benefits that might be delivered to customers in the short term through the relevant options while downplaying the fact that competition may be harmed in the longer term.

In addition, Ofcom's assessment of the benefits is dependant on the fact that BT will use the bespoke pricing freedom only to deliver price reductions but as Ofcom itself notes the ability to bespoke price as an SMP player may mean that BT may choose to recover its common costs through higher prices in areas/segments where it faces little or no competition. Given BT's high market share particularly in Digital SDH 2 - 8 Megs, it is clear that despite the fact that PPCs are a well established part of the

wholesale market, competitors have still found it difficult to make an impact in this market. Whilst the nine issues that Ofcom has identified in the Replicability Statement may have proven to be a barrier to competitors ability to compete, it seems unlikely that BT's high market share will be substantially eroded over a short period even with the resolution of these issues. Price increases therefore in those areas where BT does not face significant competition are therefore likely in Virgin Media's view.

In addition Virgin Media queries Ofcom's assessment of the benefits of LRIC versus FAC in this instance. As Ofcom set out in the Replicability Statement, Virgin Media believes that in this instance retail FAC rather than retail LRIC is the appropriate price floor for all leased line services and in particular for the segment at and above 2 M/bits. Virgin Media particularly takes this view given that as Ofcom acknowledges itself there is a risk that BT's retail LRIC cost accounting is not fit for purpose. Given that Ofcom is relaxing SMP regulation which it has only confirmed still remains appropriate, Virgin Media's view is that until BT can demonstrate that its retail LRIC cost accounting is fit for purpose, the retail FAC floor should be adopted as a matter of caution.

Question 3: Do you think that a more cautious approach should be adopted for the segment at and above 2/Mbits than for the lower bandwidth segment?

Whilst Virgin Media's view is that a more cautious approach (namely the use of the retail FAC floor) should be taken for all low bandwidth leased lines, if Ofcom were to reject this option, it should clearly take a different approach for the segment at and above 2/Mbits given BT's significant market share.

Question 4: Do you consider the proposed governance is adequate? Should we consider other options or variations?

Virgin Media suggests that the governance requirement to retain information on the contracts should be amended to read 2 years or the length of the contract whichever is the longer. Virgin Media suggests this on the basis that most low bandwidth leased line contracts that it signs are generally signed for a period [~~X~~ - information redacted] years at least.

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

Annemaree McDonough
For and on behalf of Virgin Media