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Business Connectivity Market Review

KCOM Group PLC (KCOM) welcomes the opportunity to respond to the consultation regarding the Business Connectivity Market Review.

As well as being the incumbent operator in the Hull area under our Kingston Communications brand, KCOM has significant presence in the rest of the UK where we operate under the Affiniti and Eclipse brands. We have based our comments around the questions listed in the consultation document.

Kcom supports the response submitted by UKCTA and are therefore only making representations in this response in regard to Kcom specific issues.

Executive Summary

Kcom believe it is no longer appropriate to define Hull as a separate market at the retail level.

The Hull area is relatively small and only has a very limited number of businesses that require leased line connectivity. Therefore as leased lines by their very nature are point to point products, it is sensible to assume one end of the circuit will most likely be to outside of the Hull area. It is therefore our opinion that the retail market should be considered as a single national market.

Furthermore, Kingston is not convinced that there is any need for *ex ante* regulatory intervention in the "Hull area".

There is a strong emphasis in the EU framework on the need to minimise *ex ante* regulation and to use competition law remedies where possible. In its Recommendation on relevant markets, the European Commission concludes that *ex ante* regulation is justified where:

- there are high and persistent barriers to competition and

- there is no effective competition and the market is not tending to effective competition and
- competition law alone is not sufficient to remove the barriers to competition or restore effective competition.

The Recommendation notes that this analysis needs to be dynamic and should not concentrate purely on current market characteristics such as the number of competitors. Competition is not equal to the number of competitors active at any particular point in the value chain. Regulation can only be justified if there is a bigger problem that needs addressing.

It is Kingston's opinion that within the Hull area, imposing regulatory remedies that require continuous administration and have had little effect in encouraging more Service providers to operate in Hull is unduly burdensome and takes resources away from improving our services to our End Users within the Hull area.

We have based the remainder of our comments around questions listed in the consultation document in as much as Kcom has anything specific to say other than has already been stated in the response submitted by UKCTA. Should there be any comments in the two responses that conflict, this response should take precedence.

Question 4: Do stakeholders agree with our proposed retail geographic market definitions?

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Question 7: Do stakeholders agree with our proposed approach to SMP assessment?

Yes

Question 12: Do stakeholders agree with our assessment of SMP in the retail low bandwidth market in the Hull area?

As stated in our response to Question 6 above, it is in our view no longer appropriate to define a separate retail market for Hull.

Question 13: Do stakeholders agree with our assessment of SMP in wholesale TISBO markets in the Hull area?

It is true to say that Kingston enjoys a strong market position local to Hull, and if this were abused Ofcom would have a strong case for intervention. This abuse has not taken place as confirmed by Ofcom in the consultation document. We therefore suggest that there has been no market failure and no justification for any further ex ante regulatory intervention.

The regulatory measures imposed on Kingston are, we suggest, damaging. In part because of Kingston's small size. Such harm could inhibit Kingston's ability to invest in the provision of new services in the "Hull area" and, in the long term, prevent Kingston continuing to act as universal service provider.

Question 14: Do stakeholders agree with our assessment of SMP in wholesale AISBO markets in the Hull area?

Kingston is obliged under current regulation to develop wholesale products on reasonable request. It is still unclear what constitute "Reasonable" in this context as, on a number of occasions, Kingston has undertaken product development only to be informed after much expense has been incurred, that the wholesale product is not in fact required. This is a waste of funds that could otherwise have been spent on developing new and better products for our customers within Hull.

Therefore, in the absence of Ofcom removing of regulation in wholesale AISBO markets in the Hull area we would appreciate the opportunity to discuss voluntary undertakings at the earliest opportunity.

Question 15: For those markets where we have found no SMP and propose to deregulate, do you agree with Ofcom that the available evidence supports the finding of no SMP?

Within the Hull area yes, however we do assert that due to the number of contributing factors described above even where Ofcom's analysis does support the finding of SMP due to the nature of the Kcom business within the Hull area it is inappropriate to continue impose regulatory remedies.

Question 20: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale TISBO markets in the Hull area? In particular, do you think Ofcom should accept KCOM's proposed voluntary undertaking not to increase the prices of its wholesale TISBO services by more than RPI+0% over the next four years?

As stated above Kcom do not agree that the continued imposition of regulatory remedies in the Hull area is appropriate. Therefore in addition to our offer of a voluntary undertaking in regard to pricing we would appreciate the opportunity to discuss further voluntary undertakings to address Ofcom's competition concerns in the Hull area.

Question 21: Do stakeholders agree with our assessment of the appropriate regulatory option and our proposed remedies for the wholesale AISBO markets in the Hull area?

As stated above Kcom do not agree that the continued imposition of regulatory remedies in the Hull area is appropriate. Therefore we would appreciate the opportunity to discuss further voluntary undertakings to address Ofcom's competition concerns in the Hull area.

Question 22: Should Ofcom investigate further the case for introducing a dark fibre remedy by undertaking a market review of the relevant market? If such a review were to be undertaken, is it likely that BT or any other CP would be found to have SMP in that market? And if SMP were to be found, what would be the pros and cons of requiring the dominant provider to make dark fibre in the access network available to third parties?

Prior to any discussions or review of the dark fibre market Kcom requires clarity from Ofcom of what Ofcom believe constitutes such a market. Without an agreed and established definition of dark fibre any discussions would be completely pointless.

Should you have any questions relating to this submission, please don't hesitate to contact me.

Nancy Saunders
Regulatory and Interconnect Manager