



SCOTTISH EXECUTIVE

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Our ref:

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Dear Mr Clarkson

Ofcom Consultation – Review of the Wholesale Broadband Access Markets 2006/07

Thank you for providing us with the opportunity to comment on Ofcom's proposals relating to its review of the wholesale broadband markets in the UK. The Telecoms Policy Unit within the Scottish Executive welcomes the proposals put forward in this plan and the valuable work which Ofcom is doing to help the development of the telecommunications sector in Scotland and the UK as a whole.

Product Markets, Geographic Markets, SMP Assessment & Remedies

The Executive broadly agrees with Ofcom's approach to the following:

- Definition of relevant retail and wholesale product markets and the methodology used to define these.
- General methodology used to assess and define the UK's geographic markets.
- SMP assessments of Markets 1, 2 & 3; and with its findings.
- Proposal to continue with comparable regulation in Markets 1 & 2 to that imposed in the last market review, and agree that the proposed *ex-ante* regulation defined in Option 2 (access and non-discrimination regulations) represents the most appropriate form of regulatory remedy for these Markets.

Additional Comments

Geographic Markets

The Executive would like to remind the regulator of the existence of the 148 Exchange Activate exchanges in Scotland, which could be viewed as a subset of Market 1. These exchanges were enabled for broadband in 2005 as part of the Executive's *Broadband for Scotland* supply-side

intervention. Exchange Activate is unique to Scotland in a subsidised capacity as part of our intervention, and on each exchange, there are restrictions on: types of wholesale broadband products offered to ISPs; the number of ISPs who can serve; and the number of customers that can be served. In addition, these exchanges cannot be unbundled. The Executive asks that the special circumstances of these exchanges be considered in any proposed regulatory changes affecting Market 1 and that the customers served by these exchanges are not disadvantaged by any such changes. If any disadvantages *are* found to Exchange Activate-served customers – which would not apply to the rest of Market 1 – the Executive asks that the regulator considers applying special conditions as appropriate to this subset of the Market.

Further Segregation of Market 2

We believe that Market 2 may benefit from further separation into smaller subsets (i.e. exchanges where there is only one unbundler in addition to BT and exchanges where there are 2 or more unbundlers) if not for the application of conditions/remedies set out in this consultation, but for the easier identification of exchanges where there is only one alternative to BT and those where consumers have a more extensive choice of services and bundled products.

We would go further than this and suggest that **OFCOM (or BT Openreach) consider creating a centralised resource available to the public which provides up to date details on which exchanges are unbundled, and also which LLU operators provide services on these exchanges.** Given the amount of unbundling taking place (as well as the fact that many cheap/bundled offerings are limited by operators to their unbundled exchanges), we believe such a resource would go a long way to OFCOM's agenda of empowering consumers with information and allowing them to make informed decisions on their telecoms options.

Unbundling in Market 1

We of course recognise that it may not be commercially viable to expect operators to unbundle the UK's most rural exchanges, however we must draw the regulator's attention to the fact that Inverness, Scotland's sixth city, has no (current or planned) LLU presence. From discussions with operators, we understand that "middle-mile backhaul" bottlenecks in the network could explain this position. We would therefore be keen to participate in discussions with the regulator to understand why such bottlenecks exist and how they might possibly be overcome in the future.

We hope these comments are helpful.

Yours sincerely

Harry Emambocus

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Telecoms Policy Unit