

KCOM - Response to Ofcom's 2017 Narrowband Market Review

1. Summary

- 1.1 KCOM Group PLC ('KCOM') welcomes the opportunity to provide input in response to Ofcom's Narrowband Market Review ('NMR') consultation, which includes definition of proposed markets, market power determinations and remedies for wholesale call termination, wholesale call origination and wholesale narrowband access markets.
- 1.2 KCOM provides communications services to a range of businesses and consumers in the qualifying narrowband markets throughout the UK. Specifically:
- In the Hull Area (i.e. the Original License Area), we provide these services on an end-to-end basis using our own network infrastructure. We have previously been found to hold Significant Market Power (SMP) in the relevant markets in the Hull Area, and are the designated provider of universal services, which provides all consumers and business customers in the UK have the legal right to obtain access to basic telephone services (including functional internet access).
 - Nationally, we provide communications services to enterprise customers as well as a portfolio of communications services which serves a wholesale supply base and the retail SME market. We deliver those services to our wholesale and retail customers using our own network infrastructure as well as wholesale inputs from a number of partners, which include regulated wholesale narrowband inputs from BT.
- 1.3 In light of the solutions that we provide in Hull and nationally we have a clear interest in the outcome of the NMR as the regulation that flows from it has direct commercial and operational implications for our business. This is not least because it remains an important market for us and other communications providers given residential and business customers continue to value fixed analogue and digital narrowband access as well as call services. It is therefore right that Ofcom applies appropriate and proportionate regulation to address clearly identified competition problems in those markets.
- 1.4 KCOM is also an associate member of the UK Competitive Telecommunications Association (UKCTA), which has submitted a separate response to the Consultation on behalf of its membership.¹ We are in agreement with the submission made by UKCTA and for that reason as a signatory do not intend to duplicate the arguments contained within it in relation to the narrowband markets outside the Hull Area. To

¹ UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets.



the extent that there is any dissonance of views, we highlight them here. UKCTA's submission does not contain any commentary on the NMR as it relates to the Hull Area.

1.5 Our representations contained within this response focus on KCOM's business within that geographic boundary and is limited to a number of specific points, which we hope Ofcom find helpful. In summary:

- In relation to the Wholesale Fixed Analogue Exchange Lines (WFAEL) market in the Hull area, certain elements of Ofcom's competitive assessment appear to be incomplete. While it is possible that Ofcom's provisional conclusions hold we consider it important that the assessment is complete and which forms part of the three-criteria test. Specifically, while there may be an absence of entry based on cable and MPF in the Hull Area to date there is evidence of market entry based on competing end-to-end deployments (including next generation Fixed Wireless Access (FWA) and full fibre (FTTP)).
- Ofcom is proposing to retain a number of the current SMP remedies that were put in place as a consequence of its decisions taken as part of the NMR 2013 and the FAMR 2014² with respect to the wholesale ISDN30 and ISDN2 markets, WFAEL, and Wholesale Call Origination (WCO). Under the presumption that Ofcom's provisional competition assessment holds for the NMR markets we consider that the proposed SMP remedies package will address Ofcom's identified competition concerns.
- On Wholesale Call Termination (WCT), we agree with Ofcom's provisional market definition and that we hold SMP in WCT on that market. We consider the proposed SMP remedies package will address Ofcom's identified competition concerns.
- On KCOM's interconnect circuits in the Hull Area we agree with Ofcom's assessment of interconnect circuits and its proposed remedies.
- We welcome Ofcom's proposal to reduce certain regulations currently applying to KCOM in the Hull Area in light of market developments and the increased competitive constraints from mobile and IP services. Specifically:
 - The proposed removal of most remedies on newly connected lines in the wholesale ISDN30 and ISDN2 markets (after a 12 month transitional period);
 - The proposed removal of the new forms of access request remedy in the WFAEL market;

² Ofcom (2014), *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, Statement, 26 June 2014.



- The proposed removal of the requirement not to unduly discriminate in the Wholesale Call Origination (WCO) market; and
- The proposed removal of the requirement to notify technical information in all four of the above markets.
- We also welcome the proposed reduction of certain interconnection regulation currently applying to KCOM in the Hull Area in light of market developments and maturity of the technology used. Specifically:
 - The proposed removal of the no undue discrimination obligation in relation to KCOM; and
 - The removal of the requirement on KCOM to notify technical information.
- Ofcom is also proposing to re-introduce a cost accounting remedy to support the current accounting separation condition applying in the ISDN30, ISDN2, WFAEL, and WCO markets. This is designed to ensure that the cost attribution rules are fair, and do not unduly discriminate between different services or groups of customers. We consider that we already meet the cost accounting obligation on a *de facto* basis and so for this reason we view the addition of this condition formalises our current practice. We do not consider the condition adds a regulatory burden and therefore do not have an issue in meeting the obligation.
- Finally, we also note Ofcom's provisional view is that its decisions in the NMR 2013 and FAMR 2014 that *ex ante* retail regulation in the Hull Area was unnecessary.

1.6 If Ofcom wished to discuss any of the points that we have made in the submission we will be happy to do so.

2. KCOM's position on the NMR markets in the Hull Area

Wholesale Fixed Analogue Exchange Lines (WFAEL)

2.1 The infrastructure provision in the Hull area could change materially over the course of the current review period (i.e. 1 October 2017 - 30 September 2020). In particular, end-to-end infrastructure investments that have been made, or may be made³, means that:

- competing next generation FWA technology ("fibre-over-wireless") deployed by Connexin⁴ is used by the supplier to offer retail internet-based

³ The business case for making alternative investments may be supported over the review period in light of the business rate tax relief on full fibre deployments. (See: https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0142/cbill_2016-20170142_en_2.htm)

⁴ <http://www.connexin.co.uk/for-home/broadband/fibre-over-wireless/>



(IP) voice services to residential and business customers. Similarly, purebroadband⁵ offer broadband-only FWA solutions that do not require a fixed voice access line to be purchased; and

- competing full fibre technology (FTTP) deployments, in addition to MS3⁶, in the form of CityFiber,⁷ which offers wholesale services to business ISPs such as purebroadband^{8,9}.

- 2.2 While it is possible that Ofcom's key findings will remain valid i.e. that KCOM holds a position of Significant Market Power (SMP) in the provision of WFAEL, we consider it appropriate that Ofcom review whether FWA should fall within the relevant market definition and the extent to which FWA and FTTP networks will act as a competitive constraint on KCOM over the period of the current NMR.
- 2.3 However, under the presumption that Ofcom's provisional competition assessment holds for the WFAEL market we consider that the proposed SMP remedies package will address Ofcom's identified competition concerns.
- 2.4 We note Ofcom's intention to re-introduce a cost accounting remedy to support the proposed accounting separation condition. In light of our current preparatory practice in meeting our accounting separation obligation and the investments that we are currently making in our accounting systems that generate our Regulatory Financial Statements (RFS) we do not consider this obligation to present a regulatory burden.

Wholesale Call Origination

- 2.5 Given the points that we have noted above in relation to the competitive constraints imposed by alternative infrastructures in the Hull Are, we consider it appropriate that Ofcom consider the relevance of this to its WCO analysis for the Hull Area.
- 2.6 However, under the presumption that Ofcom's provisional competition assessment holds for the WCO market we consider that the proposed SMP remedies package will address Ofcom's identified competition concerns.
- 2.7 We note Ofcom's intention to re-introduce a cost accounting remedy to support the proposed accounting separation condition. In light of our current preparatory practice in meeting our accounting separation obligation and the investments that we are currently making in our accounting systems that generate our RFS we do not consider this obligation to present a regulatory burden.

⁵ http://www.purebroadband.net/buying_guide

⁶ <http://www.ms-3.co.uk/pages/about-us.html> and <http://www.connecthull.co.uk/>

⁷ <https://www.cityfibre.com/gigabit-cities/hull/>

⁸ <http://www.purebroadband.net/>

⁹ This is in addition to Ofcom's assessment of MS3's deployment (<http://www.ms-3.co.uk/pages/about-us.html> and <http://www.connecthull.co.uk/>) that is already contained in the NMR consultation.



ISDN30 and ISDN2

- 2.8 We agree with Ofcom's provisional competition assessment for both ISDN30 and ISDN2 and we consider that the proposed SMP remedies package will address Ofcom's identified competition concerns.
- 2.9 In our view it is appropriate and proportionate for Ofcom to apply a transitional period of 12 months from Ofcom's defined start date to introduce the proposed remedies on new ISDN30 and ISDN2 lines installed in the Hull Area.
- 2.10 We note Ofcom's intention to re-introduce a cost accounting remedy to support the proposed accounting separation condition. In light of our current preparatory practice in meeting our accounting separation obligation and the investments that we are currently making in our accounting systems that generate our RFS we do not consider this obligation to present a regulatory burden.

Wholesale Call Termination

- 2.11 On Wholesale Call Termination (WCT), we agree with Ofcom's provisional market definition and that we hold SMP in WCT on that market. We further agree with Ofcom's provisional conclusion that all calls terminated in the UK should be subject to the fixed termination rates (FTRs) charge control set at LRIC, regardless of origin (including from non-EEA countries). We also agree with Ofcom that 'differential regulation' for FTRs would be disproportionate and unnecessarily complex, with little benefit for consumers. Noting this, we consider the proposed SMP remedies package will address Ofcom's identified competition concerns.

Interconnect circuits

- 2.12 We agree with Ofcom's approach to the regulation of interconnect circuits applying under General Condition 1, its assessment of potential leverage of SMP in WCO into the provision of interconnect circuits that link our customers' access lines in the Hull Area that we are required to provide WCO.
- 2.13 We further agree that it is appropriate and proportionate for KCOM to be required to be required to provide interconnect in the form of In-Span Interconnect Interconnect (ISI) and Interconnect Extension Circuits (IECs), but not to requires us to provide Customer Sited Interconnect (CSI).
- 2.14 We concur with Ofcom that it is unnecessary to impose obligations on KCOM to provide specific interconnect circuits as a result of the SMP finding in WCT in the Hull Area.

