Hull Area Wholesale Fixed Telecoms Market Review 2021-26

Volume 1: Overview, background and summary

Better broadband and mobile - *wherever you are*

STATEMENT:

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Contents

Section

1. Overview

This document sets out Ofcom's decisions for the regulation of the fixed telecoms that underpin broadband, mobile and business connections markets in the Hull Area.

Broadband consumers already benefit from the availability of KCOM's full-fibre network, which delivers a future-proofed gigabit-capable network to homes and businesses in the Hull Area. However, KCOM has retained a near monopoly at both the wholesale and retail level. On the residential broadband market, this has resulted in less retail choice and higher retail prices than the rest of the UK.

We have therefore improved our regulation to encourage providers to enter the market and compete with KCOM. We believe the evidence shows there is now a better prospect of market entry in the Hull Area, which ultimately should result in more retail choice and lower retail prices.

Our decisions today follow a thorough consultation process and takes account of the responses we have received.

Our decisions

We have found that KCOM has market power in local access and leased lines access services. We address that market power by regulating in a way that supports competition and protects customers.

Encouraging competition in the retail broadband market. The move to fibre in both the Hull Area and the rest of the UK has the potential to encourage new providers to supply broadband in the Hull Area using wholesale products. In addition to ensuring that competitors will continue to have access to KCOM's network on fair and reasonable terms, we will facilitate new entrants' use of KCOM's network by making improvements to the existing wholesale local access arrangements.

Promoting access for rival providers to KCOM's leased lines access services, using dark fibre. Network providers will be able to lease from KCOM just the fibre element of a 'leased line' – the high-speed data connections used by large corporations and mobile networks.

Deregulating the wholesale broadband access and fixed voice markets. Our focus is on regulating KCOM's fibre wholesale local access services, and we have deregulated the legacy wholesale broadband access market. We have also deregulated fixed voice telephone services, as in the future these services will be provided over broadband connections. Improving access to KCOM's fibre network will mean more companies can provide such services in the Hull Area – our existing regulation is therefore no longer required. We have also deregulated the ISDN markets because intervention is no longer necessary in this declining market.

The regulation will apply from 1 November 2021 for a five-year market review period and only covers the Hull Area.

The overview section in this document is a simplified high-level summary only. Our decisions and reasoning are set out in full in the document.

2. Background and framework

Background

2.1 The fixed telecoms markets in the Hull Area are regulated separately from the rest of the UK. This is because KCOM, rather than BT[1], is the incumbent telecoms provider, and is the owner of the only ubiquitous fixed network in the Hull Area.[2] The Hull Area has very different competitive conditions from the rest of the UK. Specifically:

- there is limited alternative fixed network build;
- there is no cable network;
- there is currently limited competition from telecoms providers using wholesale access to KCOM's network; and
- none of the larger retail broadband providers in the rest of the UK – such as BT, Sky, TalkTalk, Virgin Media and Vodafone – currently operate in the Hull Area.

2.2 In the Hull Area, KCOM operates two fixed access networks: a copper network and a fibre to the premises (FTTP) network and serves approximately 0.7% of UK premises (c.200,000 premises). KCOM has now completed the deployment of its fibre network.[3] While KCOM currently does not have plans to withdraw its copper network, it expects to no longer be able to maintain PSTN services after 2025 in line with BT.[4]

Approach

2.3 In the rest of the UK (excluding the Hull Area), our strategy for regulation, set out in the wholesale fixed telecoms market review 2021-26 (2021 WFTMR Statement)[5], focuses on securing network competition with Openreach and, where this is not possible, on incentivising Openreach to invest in a full-fibre network.

2.4 In the Hull Area, KCOM has already invested in building a full-fibre network. The main competition concern is the lack of competing entry at any level of the value chain. Therefore, our approach for this review is to further the interests of consumers by encouraging access-based competition at the wholesale level, including access to dark fibre. We consider that greater competition will have the long-term effect of reducing, in

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[1] BT's fixed network is run by Openreach Limited, a legally separate company but a wholly owned subsidiary of BT plc.
[2] Early telephone services were provided by private firms and local authorities but, by the early twentieth century, only a few municipal networks (including Kingston upon Hull) remained independent of the nationalised General Post Office (GPO). During the 1980s the Post Office (previously the GPO) telephone service was privatised as British Telecom (later BT). Following privatisation from the local council in 1999, Kingston Communications (now KCOM) operating in the Hull Area is the only part of the UK not served by BT.
[3] KCOM, 2019. Hull becomes UK's first city to complete rollout of ultrafast, full fibre broadband | KCOM [accessed 12 October 2021].
[4] KCOM response dated 14 October 2021 to the s.135 notice dated 7 October 2021, question 3.
[5] Ofcom, 2021. Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26 (2021 WFTMR Statement), Volume 1, Section 2.

particular, retail broadband prices and creating choice for consumers in retail telecommunications services.

2.5 If our approach is successful, it is likely to be some years before new competition emerges at scale and provides consumers in the Hull Area with benefits such as more choice and lower prices. In the interim, we will continue to monitor KCOM's retail pricing behaviour and intervene to protect consumers if necessary.

Scope of our review

2.6 In this review we have assessed the following markets in the Hull Area:

- the wholesale fixed analogue exchange line (WFAEL) market on which our most recent statement was published in November 2017 (the 2017 NMR Statement);[6]
- the wholesale call origination (WCO) market on which our most recent statement was published in November 2017 (the 2017 NMR Statement);[7]
- the integrated services digital network (ISDN) 2 and ISDN30 markets on which our most recent statement was published in November 2017 (the 2017 NMR Statement);[8]
- the wholesale local access (WLA) market on which our most recent statement was published in July 2018 (the 2018 WLA/WBA Statement);[9]
- the wholesale broadband access (WBA) market on which our most recent statement was published in July 2018 (the 2018 WLA/WBA Statement);[10] and
- the wholesale leased line access services market on which our most recent statement was published in June 2019 (the 2019 BCMR Statement).[11]

2.7 The new regulation set out in this statement will apply from 1 November 2021 for a five-year market review period.

Regulatory framework

Market review process

2.8 Annex 1 includes an overview of the market review process. As required by the regulatory framework, we have reviewed the markets listed above in three analytical stages:

a) we have identified and defined the relevant markets;

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[6] Ofcom, 2017. Statement: Narrowband Market Review. See Section 4 for market definition and three criteria test (WFAEL and WCO), Section 6 for SMP analysis for the Hull Area (WFAEL, WCO, ISDN30 and ISDN2) and Section 11 for remedies on KCOM (WFAEL, WCO, ISDN30 and ISDN2).

[7] 2017 NMR Statement. See Section 4 for market definition and three criteria test (WFAEL and WCO), Section 6 for SMP analysis for the Hull Area (WFAEL, WCO, ISDN30 and ISDN2) and Section 11 for remedies on KCOM (WFAEL, WCO, ISDN30 and ISDN2).

[8] 2017 NMR Statement. See Section 6 for SMP analysis for the Hull Area (WFAEL, WCO, ISDN30 and ISDN2) and Section 11 for remedies on KCOM (WFAEL, WCO, ISDN30 and ISDN2).

[9] Ofcom, 2018. Wholesale Local Access and Wholesale Broadband Access Market Reviews: Statement.

[10] 2018 WLA/WBA Statement.

[11] Ofcom, June 2019. Business Connectivity Market Review: Statement. See Section 9 for assessment of markets in the Hull Area and Section 16 for remedies in the Hull Area.

b) we have assessed whether the markets are effectively competitive, which involves assessing whether any operator has significant market power (SMP) in any of the relevant markets; and

c) where we find SMP, we apply appropriate remedies, based on the nature of the competition problems identified in the relevant markets.

Forward look

2.9 Market reviews look ahead to how competitive conditions may change in the future. For the purposes of this review, for each market we have conducted a forward-looking assessment of the market, taking into account expected or foreseeable developments that may affect competition in the market over the next five years.

2.10 The prospective nature of our assessment over this period means that we have gathered a range of evidence to assess actual market conditions that we consider will appropriately reflect developments over time. Where appropriate, we have exercised our regulatory judgment to reach decisions on the evidence before us with a view, ultimately, to addressing the competition concerns we identify in order to further the interests of citizens and consumers in these markets.

Our duties under the Act

2.11 Annex 1 also describes our statutory duties and the matters to which we should have regard in the performance of our functions. We consider that the decisions set out in this statement, meet our duties in section 3 of the Communications Act 2003 ('the Act'). This includes our principal duty to further the interests of citizens in relation to communication matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

2.12 In performing our duties, we have had regard, in particular, to the desirability of promoting competition in relevant markets, the desirability of encouraging investment and innovation in relevant markets, the desirability of encouraging the availability and use of high speed data transfer services throughout the UK and to the interests of consumers in respect of choice, price, quality of service and value for money.

2.13 We have also had regard to the principles under which our regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

2.14 We consider that our decisions are also consistent with our duties set out in section 4 of the Act, in particular, and for the reasons set out above:

- the first requirement to promote competition;
- the second requirement to promote the interests of all members of the public in the UK;
- the third requirement to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or

means of providing electronic communications networks, services or associated facilities over another (i.e. to be technologically neutral);

- the fourth requirement to encourage the provision of network access for the purposes of securing efficiency and sustainable competition, efficient investment and innovation and the maximum benefit for persons who are customers of communications providers and of persons who make associated facilities available; and
- the sixth requirement to promote connectivity and access to very high capacity networks by members of the public and businesses in the UK.

Strategic statement position

2.15 As required by section 2B(2) of the Act, we have had regard to the UK Government's statement of strategic priorities (SSP)[12] for telecoms, management of radio spectrum and postal services. In particular, we have had regard to the following priority areas covered by the SSP: world-class digital infrastructure, furthering the interests of telecoms consumers and ensuring secure and resilient telecoms infrastructure. We set out in Section 1 of Volume 3 further details of how we have done this.

[12] Department for Digital, Culture, Media and Sport, 2019. Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services [accessed 12 October 2021].

3. Detailed summary of our decisions

Market definition and SMP determinations

Market definitions relevant for wholesale local access (WLA) and leased lines access services (LL Access)

3.1 We have defined the WLA market as a single product market for wholesale local access at a fixed location which:

a) includes all fixed network technologies (copper, fibre and cable), all bandwidths and services provided to both residential and business customers; and

b) does not include leased lines access or wireless services.

3.2 We have defined the LL Access market as a product market for wholesale leased lines access services which:

a) is a single market for LL Access services at all bandwidths, which includes all wholesale fibre-based Ethernet and wavelength division multiplex (WDM) services;

b) includes dark fibre used to supply or self-supply LL Access in the product market;

c) includes mobile backhaul in the product market; but

d) excludes business-grade connectivity services provided over Ethernet in the first mile (EFM) and broadband (symmetric and asymmetric), from the product market.

3.3 For each of the WLA and LL Access markets we have defined the Hull Area as a distinct geographic market.

3.4 The telecoms technologies mentioned above are described in more detail in Annex 2.

SMP determinations

3.5 We have determined that KCOM has SMP in the WLA and LL Access markets.

Other markets within this review

3.6 We have also reviewed the markets for WFAEL, WCO, ISDN2/30 and WBA.

3.7 Given the changes to the markets since we last reviewed them and also prospective changes in how voice services are going to be offered in the future, we must deregulate them on the grounds that the three criteria test set out in section 79((2B) of the Act is not met.

3.8 We have not reviewed the physical infrastructure market.[13] We consider access to KCOM's network of ductwork, chambers and overhead poles (as well as access to its fibre network hosted in/on this infrastructure) in the Hull Area as a WLA SMP remedy in Volume 3.

Remedies

3.9 In the light of our SMP determinations, we are imposing a number of remedies in each of the relevant markets.

3.10 We are imposing a general network access obligation supplemented by transparency and non-discrimination requirements in each of the WLA and LL Access markets, as well as specific network access requirements in the LL Access market.

WLA and LL Access services markets

3.11 Figure 3.1 below summarises our general remedies for the WLA and LL Access markets. It sets out the network access requirements we are imposing and our approach to transparency, quality of service and non-discrimination.

3.12 As part of our general remedies, in addition to the remedies summarised below, we are requiring KCOM to modify its WLA reference offer so as to remove provisions which require access seekers to be located at KCOM's exchanges, and instead to provide appropriate interconnection arrangements anywhere in the Hull Area where a reasonable request for such interconnection might be made. We consider that this will have the effect of improving the existing WLA access arrangements and facilitating the use of KCOM's network by access seekers.

3.13 In the LL Access market, our remedies include a new requirement for KCOM to provide access to dark fibre as well as managed Ethernet leased lines services. Our specific network access remedy is summarised in Figure 3.2 below.

[13] We defined a single national (excluding the Hull Area) upstream product market for the supply of telecoms physical infrastructure in the 2021 WFTMR Statement.

Figure 3.1: Summary of our general remedies in the WLA and LL Access markets

General remedies in the WLA and LL Access markets
Requirement to provide network access on reasonable request, and on fair and reasonable terms, conditions and charges (excludes copper-based services in the WLA market).
Requirements relating to requests for new forms of network access [WLA only]
Requirement not to discriminate unduly
Requirement to publish a reference offer
Requirement to notify changes to charges, terms and conditions
Requirement to notify technical information
Requirement to publish quality of service information as directed by Ofcom
Regulatory financial reporting (general accounting separation and cost accounting)
Requirement to produce a wholesale pricing transparency report [LL Access only]

Figure 3.2: Summary of the specific network access remedy

Specific remedy in the LL Access market
Requirement to provide Ethernet and dark fibre network access in the following circuit configurations: • connecting end-user premises and KCOM's optical distribution frame (ODF) site or third-party premises; and • connecting an end-user premises and another end-user premises.

WFAEL, WCO, ISDN2/30 and WBA markets

3.14 Although we are deregulating the WFAEL, WCO and ISDN2/30 markets, we have decided to maintain aspects of the existing regulation on KCOM for a 12-month transitional period. See Section 5 of Volume 3.

3.15 We have not imposed any transitional remedies in the WBA market.

4. Structure and recent consultations

4.1 In this section we set out the structure for the rest of the document, and our approach to impact assessment.

Structure of the statement

4.2 Our decisions are set out in four volumes and four annexes, which together set out our analysis of and remedies for the fixed telecoms access markets in the Hull Area:

a) **Volume 1** provides an overview, background and summary of our decisions;

b) **Volume 2** sets out our market analysis for WLA and LL Access. It also includes the analysis leading to our decision to deregulate the WBA, WFAEL, WCO and ISDN2/30 markets;

c) **Volume 3** sets out our approach to, and decisions on, remedies for the WLA and LL Access markets and transitional arrangements in the WFAEL, WCO and ISDN2/30 markets;

d) **Volume 4** sets out the detail of the SMP conditions; and

e) **Annexes 1-4** contain details which are referred to in each of the volumes. These annexes support the analysis in Volumes 1 to 3 and are an integral part of our reasoning.

Consultation

4.3 In reaching the decisions set out in this statement, we published a consultation in July 2020.[14] We have considered all the responses[15] to the 2020 Hull Area WFTMR Consultation, and our consideration of those responses is set out in the discussion of the issues in Volumes 2 and 3.

Impact assessment and equality impact assessment

Impact assessment

4.4 The 2020 Hull Area WFTMR Consultation constitutes our impact assessment for the purposes of section 7 of the Act.

4.5 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policymaking. This is reflected in section 7 of the Act, which means that, generally, we have

[14] Ofcom, 2020. Consultation: Promoting competition in fibre networks – Hull Area Wholesale Fixed Telecoms Market Review 2021-26 (2020 Hull Area WFTMR Consultation).

[15] A list of respondents is at Annex 4. Non-confidential stakeholder responses to the 2020 Hull Area WFTMR Consultation have been published on our website.

to carry out impact assessments in cases where our conclusions would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions.

Equality impact assessment

4.6 Section 149 of the Equality Act 2010 (the '2010 Act') imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

4.7 Section 75 of the Northern Ireland Act 1998 (the '1998 Act') also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.[16]

4.8 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our remedies on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.

4.9 It is does not appear to us that our remedies will have any particular impact on any of these matters. We anticipate that our remedies will not have a differential impact on people of different sexes or ethnicities, consumers with protected characteristics in Northern Ireland[17] or disabled consumers compared to consumers in general.

4.10 The intention behind our approach to regulating the WLA and LL Access markets is to promote competition to the ultimate benefit of consumers.

WLA services

4.11 We regularly monitor the take-up and use of fixed line services by different groups within society. While this on-going research does show evidence of variation in consumption, we do not consider that the wholesale regulation imposed in this statement is likely to have a disproportionate impact on any of the groups as our regulation is aimed at promoting competition across the range of services for all equality groups that rely on WLA.

[16] Ofcom, 2014 (updated 2019). Revised-NI-Equality-Scheme.pdf (ofcom.org.uk).

[17] In addition to the characteristics outlined in the 2010 Equality Act, in Northern Ireland consumers who have dependents or hold a particular political opinion are also protected.

LL Access services

4.12 We do not have detailed sectoral information on the businesses that purchase wholesale LL Access services. However, given the nature of the services – core network services which support a variety of retail services – we do not have any reason to suspect that there would be a disproportionate impact on any of the above defined equality groups through modification of the regulation on these services.