



Vodafone response to Ofcom's

Promoting competition in fibre networks – Hull Area Wholesale Fixed Telecoms Market Review 2021-26

September 2020

Non Confidential



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1 Summary

- 1.1 Vodafone agrees with Ofcom's analysis findings and the improvement to the remedies imposed. Whilst Ofcom's proposals are certainly a positive step forward in creating the potential to open up the Hull market to greater retail competition, implementation nuances can continue to create substantial market entry barriers. In the context of broadband, the wholesale offer will need to fit with the retailer's generic UK offer. Retailers will not wish to create Hull specific retail propositions. In the context of leased lines the outlook for newly provided circuits is highly positive. However the proposals do not address the legacy situation that is in particular complicated by Kcom's previous wider network ownership and the provision of connectivity for a single circuit that spans commercial and regulated geographies.

2. Wholesale Local Access

- 2.1 Vodafone welcomes this opportunity to comment on Ofcom's proposals for regulation in Kingston Upon Hull in the period to 2026. Over 200,000 premises reside within the boundaries of Kcom's regulated, original licenced area footprint, with no material access network competition existing today.
- 2.2 While we commend Kcom for investing in a full service fibre access network, removing the need for legacy copper, it is apparent that a combination of higher wholesale pricing and the comparatively low number of addressable end consumers served by the network (in comparison to the scale of Openreach's UK business) has resulted in fewer retailers seeking to enter the Hull market.
- 2.3 This has had a clear detrimental impact on consumer welfare within Hull, with higher retail pricing evident and the majority of fibre packages constrained by data caps that would appear to greatly restrict their usability. Ofcom's research highlights that KCOM's list prices for its unlimited data dual play (landline and broadband) products are the highest in the UK for each speed it offers.
- 2.4 Higher pricing isn't just evident in the residential broadband and telephony markets, with business connectivity users also suffering the cost consequences of a near wholesale monopoly that has had little success in enticing competing retailers into the Hull market. The reality is that Hull has had scale, universal fibre investment and while that is to be welcomed, it is therefore likely to deter future competitive market entry, with the first mover fibre advantage now achieved.
- 2.5 We do not share Ofcom's view that the prospect for competitive entry in the Hull Area is now greater than has previously been the case. We believe the evidence available points in the opposite direction. With build focus remaining in those areas where copper networks alone exist. The reality is, that while the threat of a rapid competitive pricing response from Kcom, together with the long planning and



build cycles for alternative fibre deployment mean that Hull is likely to be far down the list of any alternative builders' priority list.

- 2.6 It is therefore no surprise that CityFibre has made it clear that it has no current plans to build in the area. Small local competitor MS3, with less than 150 customers has modest build plans, but even that will only raise their coverage from just 3% of premises to 13%, and is unlikely to have a material impact on competition in Hull, even in the business connectivity sector. In broadband the prospects for competition remains bleak, with Kcom having nearly 100% market share of residential broadband fixed access connections.
- 2.7 We don't share Kcom's perspective, on why there is so little retail competition. [conf]
- 2.8 The reality is that in Hull other retailers face far higher costs than elsewhere, making it an unattractive area to retail consumer broadband services. [conf] With the area being unattractive to others for new alternative fibre rollout, given the presence of existing fibre assets and limited scope of additional demand, the only viable route to market for other retailers is using Kcom's wholesale offerings, however more is needed to reduce both the price of these services and the burden to consume them .
- 2.9 [conf].
- 2.10 [conf]
- 2.11 Rather than focusing on encouraging wholesale infrastructure competition, which is far more challenging in Hull than elsewhere, Ofcom should be targeting the emergence of effective retail competition based on sensibly priced wholesale inputs, where real effort is put into harmonising systems to ensure retailers can consume them with minimal additional investment.
- 2.12 The retail competitive environment in Hull lags considerably behind the rest of the UK. [conf] This requires urgent action on both the pricing of the wholesale services offered, but also considerably more work is needed on helping retail providers wishing to offer a UK wide proposition into the Hull market. This means work on systems and processes to minimise the burden of onboarding Kcom as an access provider for broadband, as well as minimising ancillary costs around accommodation, backhaul and interconnection. [conf]

Question 2.1: Do you agree with our proposed market definition of the WLA market? Please set out your reasons and supporting evidence for your response.

- 2.13 We agree with Ofcom's market definition proposal on Wholesale Local Access within Hull. A single product market for fixed access, spanning copper, fibre and cable at all bandwidths to residential and business users, excluding higher grade leased line services and fixed radio access / fixed wireless solutions.

Question 2.2: Do you agree with our proposal that KCOM holds SMP in the supply of WLA products in the Hull Area? Please set out your reasons and supporting evidence for your response.



- 2.14 Yes. Kcom's near complete dominance of the supply of WLA products with the original Hull licenced area is clear from the evidence presented on market shares and pricing.

Question 4.1: Do you agree with our proposal not to regulate the WBA market in the Hull Area on the basis that the increased viability of use of KCOM's WLA FTTP product reduces the barriers to entry into the WBA market? Please set out your reasons and supporting evidence for your response.

- 2.15 Provided that WLA product market remedies exist to enable broadband retailers to enter the Hull retail market, there is no need for WBA level product to exist. More needs to be done to encourage utilisation of WLA products by a wider selection of broadband retailers, introducing a credible level of retail competition to Hull. This requires significantly lower wholesale pricing than is currently offered by Kcom today and work to harmonise the order and in-life management of end user services, minimising the administrative burden on broadband retailers who wish to offer services within the Hull area, but where proprietary Kcom systems and processes discourage supplier on-boarding, given the volume of addressable premises within the Kcom footprint. Broadband retailers realistically can't create a Hull only retail product and it is imperative that UK wide retail products are introduced within Hull. Consequently where proportionate, wholesale broadband from Kcom should be available on similar terms to best support retailers seeking to sell national product on UK wide tariffs and UK wide T&Cs. Without this, consumers in Hull will be unable to engage with national marketing and offers and retail competition will suffer.

Question 5.1: Do you agree with our proposal not to regulate WFAEL, ISDN2, ISDN30 and WCO markets on the basis that they no longer fulfil the three criteria test set out in the EC Recommendation? Please set out your reasons and supporting evidence for your response.

- 2.16 Given the universal nature of fibre coverage within Hull and the plan to remove copper based services at some point in the future, together with the very low take up of wholesale services and very modest level of retail competition within Hull, it would seem proportionate not to continue to regulate these services, provided transitional safeguards around price and service levels were implemented to prevent consumers being indirectly impacted by the withdrawal of regulation.

Question 1.1: Do you agree with our proposed approach to remedies? Please set out your reasons and supporting evidence for your response.

- 2.17 Given the lack of competitive entry and no evidence to suggest any material alternative build will occur in Hull over the review period, we believe it is important that a comprehensive set of wholesale product remedies are introduced without delay to encourage retail competition.

Question 2.1: Do you agree with our proposed remedies? Please set out your reasons and supporting evidence for your response.

- 2.18 For wholesale broadband, we would like Ofcom to go further and set the price of all Kcom Wholesale services up to 100Mbit/s, allowing retailers to emulate existing 40/10 and 80/20 offerings available



elsewhere in the UK. The pricing benchmark for these services must be the Openreach SOGEA 40/10 price (with a modest uplift for bandwidths above this).

Question 3.1: Do you agree with our proposed regulatory financial reporting SMP condition and directions? Please set out your reasons and supporting evidence for your response.

- 2.19 Given the poor take up of Wholesale services to date and the high wholesale prices set by Kcom in comparison to Openreach, more emphasis is needed on Regulatory reporting to ensure a better understanding of Kcom's costs. For the benefit of consumers, the debate should be turnaround, with Kcom having to justify why its efficient costs are set at a higher level than Openreach when setting wholesale costs.

Question 5.1: Do you agree with our proposed transitional remedies for the WFAEL, ISDN2, ISDN30 and WCO markets? Please set out your reasons and supporting evidence for your response.

- 2.20 Transitional arrangements are important and it is vital to ensuring that existing regulatory underpinnings are not removed suddenly to the detriment of consumers who rely upon them. Leaving pricing to be set by an SMP provider, where few if any alternatives exists, or migration to a new technology platform is required (which takes time and resources to accomplish) is likely to harm consumer welfare in the short to medium term. It is important to signal to all market players when regulation will be withdrawn and avoid sharp cliff edges, by maintaining pricing and safeguards for realistic timeframes that enable migrations to occur. We believe 24 month transitional arrangements are appropriate in these circumstances, allowing communication providers reliant on these services time to both plan and implement migration plans to new services or suppliers (where they exists). A 12 month transition period offers insufficient time for planning and an orderly migration. Given the relatively modest burden of a 24 month transition period, we believe this is an entirely proportionate measure that helps to guard against consumers being disadvantages during the transition. We note that it is typically more vulnerable consumers who are most reluctant to embark on a technology change and they often require a greater level of intervention and support before any technology transition can occur. If safeguards are removed after just 12 months, it leaves these consumers vulnerable to unnecessary wholesale price increases.

3 Business Connectivity in Hull

- 3.1 In this section we outline:
- a) the importance of a robust retail market analysis in order to properly understand the relationship between the retail and wholesale market.
 - b) that we agree with the wholesale and geographic market analysis and the proposed market remedies. Vodafone, however, purchases a substantial number of long tenure circuits from Kcom which combine circuits that originate / terminate in Hull but then traverse outside of Hull via Kcom's ex network assets



that are now owned by Cityfibre but leased back to Kcom. It is not apparent how these circuits are regulated or how without substantial rearrangement that they fit within the regime defined by Ofcom.

Retail market analysis

- 3.2 Ofcom has not conducted any retail business connectivity market analysis within this consultation. We have consequently returned to the analysis of BCM 2019 where more information was provided. The analysis of the retail market in BCM 2019 appears to have been conducted after the analysis of the wholesale market. A large number of questions regarding how the retail market functions are consequently left unanswered. Understanding the retail market and retailers services requirements – ‘where have services been handover historically?’ and ‘how is this expected to trend in the future?’ is essential if the correct wholesale remedies are to be set to enable retail competition to flourish.
- 3.3 Given the a) the maturity of the market and b) the limited size of the Hull addressable market, retailers/potential retailers are likely to obtain low service volumes. Consequently they would be deterred from supplying customers in the area if the overall costs of purchasing the wholesale service (eg DFA + collocation + backhaul) in aggregate result in a high cost to serve. We would expect retailers to have a requirement to minimise costs by having a very limited number of points of interconnection within Hull and interconnections solutions to reflect the far lower volumes of circuits that can be aggregated..
- 3.4 Ofcom need to remedy the omission of a thorough retail market analysis. The EU Commission guidelines¹ stipulate that:
- NRAs will conduct a forward-looking, structural evaluation of the relevant market over the relevant period.
 - NRA should assess specific market characteristics and market developments.
 - The starting point for the identification of wholesale markets susceptible for *ex ante* regulation should always be the analysis of corresponding retail market(s)
 - NRAs should determine whether the underlying retail market(s) is (are) prospectively competitive in absence of wholesale regulation based on a finding of single or collective significant market power, and thus whether any lack of effective competition is durable.
- 3.5 BEREC explains² that:
- The Explanatory Note emphasises that any geographic analysis should be carried out by NRAs following a modified Greenfield approach. This specifically means that the competitive conditions at the retail level are to be examined applying suitable criteria under the assumption that no SMP-based regulatory intervention occurs at the most upstream-level of related wholesale services (e.g. market 3a, wholesale local access provided at a fixed location).

¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507\(01\)&rid=7](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507(01)&rid=7)

² BoR (18) 213



- After imposing regulatory remedies at the most upstream wholesale level, a "modified Greenfield approach" should be carried out at retail level in order to determine whether ex ante regulation of a more downstream market is necessary as well in order to remedy any remaining competition problem (e.g. market 3b, wholesale central access provided at a fixed location for mass-market products). Depending on the product or service market concerned, suitable criteria for this task might be the number and size of potential competitors, the distribution of market shares, price differences or variation in prices across geographic areas, differences in commercial offers and marketing strategies. To assess supply-side substitutability, actual competitors have to be identified, while potential entrants under SSNIP-conditions should be taken into account either (preferably) at the level of SMP analysis or in market definition.

3.6 It is our expectation that a Retail Market Analysis would present a detailed understanding of the products that are being purchased. A Retail Market Analysis requires a detailed understanding of whether there are any key differences in the services or market segments that retailers are engaged in and why this might be. It is necessary to understand customer behaviour, how and why they chose their retailer. For example, how important are delivery timescales and therefore how does this drive the behaviour of the various retailers and how these decisions trend over time? A Retail Market Analysis could identify market players and their relative market positions, either via market shares or by other methods such as a ranking by size and by market segment.

Wholesale market analysis

Question 3.1 Do you agree with our proposed market definition of the LL Access market? Please set out your reasons and supporting evidence for your response.

- 3.7 Ofcom proposes to find a product market for the supply of leased lines access. Vodafone agrees there is a single wholesale product market spanning bandwidths for leased lines access. We agree with Ofcom's finding that there is a leased lines access market for dedicated fibre services. We agree with Ofcom that any dedicated fibre service including dark fibre together form a single market.
- 3.8 Vodafone agrees with Ofcom that there is a single leased lines access product market. With respect to the supply side characteristics of this single product market, the key input is the underlying fibre, which can be provided as simply fibre or which can be turned by the vendor (Kcom) or the purchaser (the CP retailer) into an active service and subsequently be used to offer any bandwidth within the product set³. We agree therefore agree with the finding that dark fibre is part of the market. Ofcom excluded Ethernet First Mile (EFM) from the market due to its legacy nature as a copper-based non-fibre product. We agree with this.

³ Our reports by SPC and Frontier for the BCM2019 and WFTMR equally apply to the situation in Hull. These reports set out that broadband and leased lines are separate markets and will continue to be for the period of the review, and that fibre is the key underlying input placing dark fibre and all bandwidth in a single product market.



Geographic market analysis

- 3.9 We agree with Ofcom that the geographic market analysis for Hull is uncomplicated and with the finding that Hull is a distinct geographic market. Hull is a distinct area with obvious differences in market conditions compared to the rest of the UK and any of the sub geographies which Ofcom proposes to define in the rest of the UK.

SMP analysis

Question 3.2 Do you agree with our proposal that Kcom holds SMP in the supply of LL Access in the Hull Area? Please set out your reasons and supporting evidence for your response.

- 3.10 A SMP assessment must consider the following:
- Trend in market shares data;
 - Profitability data of the dominant firm;
 - Pricing data of the dominant firm;
 - Pricing data of the competitor firms;
 - Buying behaviour of purchasers of the services;
 - Entrenched links to other markets (in the context of Hull this relates to historic purchases when Kcom operated in the wider UK market merging services between the regulated and unregulated portion of its network. These services continue to exist via the arrangement that Kcom has with Cityfibre the new owner of its old assets outside Hull.)

We discuss these in turn.

Market share data

- 3.11 We agree with Ofcom that “*market shares provide a useful first indication of competitive conditions in the market as the greater the number of rival networks that have managed to attain a material share of supply, the stronger is the indication that the intensity of competition is greater*.” Ofcom shows that KCOM has a high share of 60- 70% in 2019. Ofcom does not provide data post 2019 nor does Ofcom present the values of the relative shares of other market players. To obtain a clear understanding of how the market is functioning Ofcom should present full data on how market shares are trending over time, across at least the key, infrastructure owners / wholesalers in the Hull market.

Control of infrastructure not easily replicated by other network operators

- 3.12 At the “heart” of Ofcom’s SMP assessment for the review covering the rest of the UK is the presence of rival infrastructure and potential for competition based on network expansions. Ofcom considers the coverage of rival infrastructure as the most important factor affecting the strength of competition in an area.

⁴ WFTMR20



3.13 Within Hull there is no DPA remedy⁵ and therefore network extension costs would incur the full cost of digging new duct and installing new fibre. Ofcom's data shows that rival network built to data is limited, with businesses on the whole not having the choice of competing network alternatives "The average number of alternative networks within 50m and 100m of businesses within the Hull area is 0.22 and 0.49 respectively". We note that 0.22 in 50m is even lower than the BCM19 BT only geographic area which had 0.3 rivals within 50m.

Profitability

3.14 The profitability of services is a useful measure of market competitiveness and Ofcom has considered service profitability in prior market reviews. We illustrate this below.

Table A17.4: KCOM's reported ROCEs in wholesale leased lines markets in the financial years 2011/12 to 2014/15

Market	2011/12	2012/13	2013/14	2014/15
Low-bandwidth TISBO	13%	13%	13%	13%
AISBO	13%	13%	13%	13%

Source: KCOM RFR's 2012, 2014 and 2015 covering the financial years 2011/12 to 2014/15.

Source: https://www.ofcom.org.uk/data/assets/pdf_file/0022/55462/final-annexes-14-25.pdf⁶

3.15 It is interesting that the ROCE of CISBO circuits in 2018 and 2019⁷ appears, according to KCom's regulated accounts to be well over 30%. It will be interesting to see how this profitability changes with the implementation of dark fibre, however if product reporting is reduced or only provided to Ofcom on a confidential basis this transparency could be eroded. In such a niche area of the country such as Hull operators require transparent information to aid their understanding of the operating environment and encourage them to enter the market.

⁵ We are unaware of the ATI regulations being used in Hull to obtain duct access

⁶ A17.15 sets out the WECLA data is a reasonable substitute for CLA and LP specific data

⁷ https://www.kcom.com/media/1493/ofcom-statements-2018_19.pdf



Assessing wholesale competition barriers

- 3.16 Kcom has “ubiquitous infrastructure across the Hull area that means it can supply LL Access to almost any site in the Hull Area relatively quickly and without incurring substantial costs”⁸. In our experience customers are very reluctant to pay to have another network connected to their premises if they already have network connection from the dominant supplier. In order to accommodate demand for circuit resilience Kcom should offer an equivalent RO2 service to Openreach.
- 3.17 Whilst we do not doubt the conclusion that Ofcom has arrived at – that Kcom has SMP - properly understanding the severity of that SMP and the exact reasons for the SMP is important for assessing the suite of remedies that are required. In the case of Kcom there are additional historical factors of Kcom having both regulated and unregulated network facilities and selling circuits – that remain insitu today that continue to combine regulated with unregulated inputs.

Remedies

Question 2.1: Do you agree with our proposed remedies? Please set out your reasons and supporting evidence for your response.

- 3.18 Ofcom proposes that Kcom continues to provide:
- 1) Active Ethernet services with the “*alignment of KCOM’s charges for active leased lines with Openreach’s equivalent active leased lines products (namely, the LL Access products in Area 2 and Area 3 subject to a charge control) would be fair and reasonable*” and
 - 2) That Kcom introduces a dark fibre access product within 6 months of the final decision priced on a fair and reasonable basis. Ofcom sets out “*In our consideration of whether KCOM’s dark fibre charges are fair and reasonable, we would consider their alignment with the charges proposed for Openreach provision of dark fibre in Area 3*”.
- 3.19 We agree with these proposals. These remedies recognise that Hull is highly unlikely to progress to a model of network competition and therefore it is Ofcom’s role to put in place the range of remedies that facilitate the prospect of service based competition. By imposing an appropriate dark fibre remedy Ofcom will ensure that there is an ability for retailers to innovate and differentiate their services from that of Kcom. [conf]
- 3.20 With a very small market area such as Hull with just 200k of premise and few enterprise sites requiring leased lines there is a risk that small issues with the wholesale offering would deter retailers from entering and properly engaging in the market. There are substantial costs associated with onboarding an additional wholesaler. Where there are differences between the products sold and the processes for ordering and managing the service, costs for a retailer to serve Hull will rise.

⁸ 3.12 of this consultation document



3.21 Another important issue is the addition of ancillary cost beyond the wholesale service rental costs. Ofcom has recognised this problem in relation to its WLA proposals.

“2.108 We have interviewed stakeholders in order to determine why KCOM’s fibre WLA product is not currently purchased by any provider. The evidence paints a mixed picture. There is a perceived lack of space in KCOM’s NGA exchanges. Stakeholders suggest that a combination of cost (in particular, the one-off costs associated with building space in exchanges), and a perception among access seekers that KCOM may be unwilling to work with them all play a role.

2.109 Evidence from some [] providers suggests that the cost associated with the build of accommodation services may be prohibitive to certain entrants. Some access seekers have looked at ways of accessing KCOM’s WLA services that do not involve locating their equipment in exchanges.

Our provisional position is that since it is now not technologically necessary for an access seeker to locate in an exchange, there is no regulatory reason why the Reference Offer should list in advance all the locations where KCOM will provide access, and no economic reason why the access seeker should be forced to locate in KCOM’s exchanges rather than in space it owns itself or space it rents from a third party. SMP regulation should therefore secure that KCOM provides suitable interconnect products that allow traffic to be handed over from KCOM’s network to the access seeker’s network anywhere in the Hull Area.”

3.22 We consider that there is a requirement for Kcom to enable hand over of dark fibre services and active Ethernet services in a similar fashion. Our expectation is that we would choose up to two Point of Interconnections to be able to offer suitable route and site resilience for the handover. As Ofcom proposes for Openreach this would be akin to the LA or non-LA variant which includes a distance charge.

3.23 This aggregated approach to remedies in Hull is necessary to encourage take up, reducing the practical and administrative burden of consuming regulated products. Without sufficient take up of wholesale services, we will not see the badly needed improvement in the level of retail competition.

3.24 [conf]

3.25 [conf]

3.26 We agree that there is a need for the supplementary information obligations upon Kcom to ensure that the services are being provided in a pro competition manner:

- the RO for dark fibre must set out an explanation of any differences between KCOM’s provision of dark fibre services and its provision of corresponding active leased lines access services. This is intended to offer transparency within the RO and help achieve appropriate parity between dark fibre access and active wholesale leased lines services. Such transparency in the RO will also assist in detecting any anti-competitive behaviour and provide visibility of the terms and conditions on which other telecoms providers will purchase dark fibre services.



- KCOM to publish QoS information. Particularly as dark fibre access is a new service not previously provided by KCOM, there is a risk that KCOM will favour its downstream retail business in the provision of this service, and it has the ability and incentive to reduce QoS where such action would reduce its costs (thus increasing its profits). Such action by KCOM would undermine other telecoms providers' ability to compete with KCOM's downstream business.

Question 3.1: Do you agree with our proposed regulatory financial reporting SMP condition and directions? Please set out your reasons and supporting evidence for your response.

- 3.27 We consider Regulatory reporting for the Hull area of fundamental importance in attempting to remedy the SMP and significant market share held by the incumbent operator.
- 3.28 We agree with Ofcom's proposals and believe that clear, transparent, comprehensive reporting will facilitate market entry in the Hull area.
- 3.29 We also agree with the requirement for KCOM to provide us with two new schedules specific to services within the WLA and LL Access markets. We believe this service level information is very useful for operators that are potentially thinking about entering the market to understand the dynamics of the. The huge market share of Kingston causes potential market entrants alarm and serves as a barrier to market entry, any additional information is extremely useful. For these reasons, we do not understand why this additional service level information is proposed to be given to Ofcom on a confidential basis and not published alongside the main RFS. We believe it would be both beneficial for potential market entrants and consumers in the Hull area if this additional service level information was published.