[GB] Ofcom takes steps to ensure BT provides level playing field for its rivals in the provision of superfast broadband

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On 19 June 2014, Ofcom proposed new measures in order to ensure that the major UK telephone and broadband provider, BT, takes steps to promote competition in the increasing market for superfast broadband amongst retail customers.

BT controls and maintains a significant part of the broadband infrastructure or network within the United Kingdom, and as such effectively influences the prices it charges to third party rivals, such as Virgin, to use its infrastructure- this use of BT's network by other providers is known as 'virtual unbundled local access' (VULA). BT can offer very competitive pricing for its own customers by pricing end-service prices close to the wholesale price of offering the service; in other words BT can work in theory on the narrowest of margins to offer cheap rates to its customers, and thus undercut rivals who rely on the BT network to provide broadband supply.

As such, to avoid BT having an unfair advantage in the market place and also to ensure both profitability and competition for broadband providers, Ofcom's recent proposals include BT maintaining a sufficient margin between its wholesale price and retail superfast broadband charges so as to enable parity for all broadband providers.

Ofcom proposes the introduction of a regulatory condition on BT to ensure that the margin between its wholesale VULA charges and its retail superfast broadband prices are set at a level that rival operators can compete with and make a profit from.

BT has established a sports channel, BT Sport, which is free to its superfast broadband customers, whereas for example Sky Sports charge a subscription. Effectively, BT are subsidising BT Sport or running it as a loss leader to win new broadband customers. The new proposed rules would mean that the costs and revenues of running BT Sport would need to be included when calculating the margin that BT has to maintain between wholesale cost and retail charges.

It should be noted that these Ofcom proposals are separate from their recent provisional decision, dated 19 June 2014, in which it rejected a complaint brought

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by broadband provider Talk Talk that BT were in breach of the Competition Act 1998, as well as Article 102 of the Treaty on the Functioning of the European Union by failing to maintain a sufficient margin between its VULA wholesale and superfast broadband retail prices. Ofcom investigated the complaint pursuant to section 25 of the Competition Act 1998 to see if BT had abused its dominant position under the UK and or EU competition law.

The provisional investigation indicates that on this occasion there was no abuse of a dominant position by BT to cause an abusive squeeze on margins so as to make providing services unprofitable for other broadband providers unless prices to retail customers were increased by non-BT providers with the consequence that they became uncompetitive as compared to BT.

Ofcom announcement, 19 June 2014

http://media.ofcom.org.uk/news/2014/vula-margin/

Complaint by Talk Talk Telecom Group Plc

http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01103/

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