

**CONFIDENTIAL**



The CMA Transition Team on behalf of the CMA  
(C/o Easha Lam)  
Department for Business, Innovation and Skills  
3<sup>rd</sup> Floor, Orchard 2  
1 Victoria Street  
London  
SW1H 0ET

**SEND BY EMAIL**

18 November 2013

Dear Easha,

**Consultation on the CMA Transition Team's Proposed Guidance ("Proposed Guidance") on Concurrent Application of Competition Law to Regulated Industries**

BIS may recall that Virgin Media responded to the Consultation on a Competition Regime for Growth – A Consultation on Options for Reform in June 2011. A number of the points we raised in that response related to the issue of the concurrent application of competition law to regulated industries. Virgin Media has reviewed the Proposed Guidance in light of our earlier response and, whilst we do not intend to provide a comprehensive response to the current consultation, there are a couple of points we would like to raise for the Transition Team's consideration.

Our first point relates to the Transition Team's first consultation question regarding whether the proposed approach to dealing with the revised requirement that Regulators' exercise competition powers in favour of sectoral powers is clear and appropriate. Virgin Media understands that the sectoral regulator will make the initial assessment as to whether competition concerns may arise in any given case and whether it would be "appropriate" to apply its competition rather than sectoral enforcement powers. However, Virgin Media would welcome more guidance on the factors which the sectoral regulator will take into account when deciding whether or not to use its competition powers.

As it is currently drafted, the Proposed Guidance provides little clarity for businesses to understand how sectoral regulators will make such an important decision. This in turn raises an additional concern that different sectoral regulators will apply different criteria leading to a fragmented approach and causing confusion amongst industry players. Virgin Media considers that the CMA should play a more active role in assisting the sectoral regulators with their decision in order to ensure a greater degree of consistency and, in the event that a sectoral regulator decides to use their sectoral rather than competition law powers, Virgin Media calls for greater transparency as to the reasons for such a decision.

The second consultation question asks whether the Transition Team's proposed approach to allocation of cases between the CMA and Regulators, or between Regulators, is clear and appropriate. Virgin Media considers it critical that the decision as to which authority is the best placed to deal with the case is made as

**CONFIDENTIAL**



quickly as possible. Two months appears to be an excessively lengthy period to reach this decision in respect of complaints received. Competition cases are by their very nature lengthy processes; allocating protracted periods for non-substantive stages appears unnecessary. This is particularly key in fast moving sectors such as telecommunications, where the markets are in a state of constant, relentless evolution.

If you have any questions regarding the points raised, do please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "Helen Nicklin".

**Helen Nicklin**  
**Associate Counsel: Competition & Regulatory Affairs**  
**Virgin Media**