Vodafone Response to Ofcom's

Wholesale Broadband Access Market Review

Consultation on Market Definition, Market Power Determinations and Remedies

SEPTEMBER 2017

EXECUTIVE SUMMARY

Ofcom has identified around 700,000[1] customers who have no choice of wholesale fixed broadband network provider and a limited choice of retail suppliers. During the last three year Market Review period, key retail suppliers have exited this market due to high costs and an inability to meet customers' expectations. As a result, retail prices are higher than elsewhere, investment levels have been low and quality of service remains poor. In all nations and corners of the United Kingdom the real experience of customers in this market illustrates clearly the day to day frustrations faced. These customers look to Ofcom, through this market review, to put forward a regulatory solution to help remedy the deeply unsatisfactory situation they face:

- The couple in the rural hamlet[2], who have Openreach fibre running past their front door, yet no means to access it.
- The rural small business owner[3] who struggles to run their flower business over an inconsistent 0.2Mbp/s connection that means orders take an age to upload and normal transactions like software updates and filing tax returns are a challenge.
- The Homeworker[4] who lives in a village two miles from a busy market town, yet struggles to run their home consultancy business as uploading and downloading work is difficult. Even simple email is torturous and online banking transactions take multiple attempts.
- The retired professor[5] running a community website, but having to rely on a satellite over the Congo as his Openreach line only provides 500kps.
- The families[6] who struggle to get more than 1.4Mb/s from their Openreach connections and can't access mainstream entertainment platforms to watch television or listen to music.

Ofcom's proposals do not address any of these very real market problems.

1. Regulation is not acting to constrain prices as if a competitive market were operating.
2. There is no incentive or obligations on BT to invest in network or quality or service.

This review fails to address the basic market failings in broadband: customers without a decent service. Even by Ofcom's own expected standards, BT has under-invested to the tune of £313 million as at FY 2017[7]. If BT

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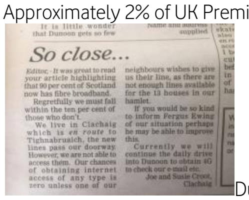
[1] Approximately 2% of UK Premises in WBA Market A

[2] 

It is little wonder that Dunoon gets so few

Name and address supplied

So close...

Editor, - It was great to read your article highlighting that 90 per cent of Scotland now has fibre broadband.

Regretfully we must fall within the ten per cent of those who don't.

We live in Clachaig which is *en route* to Tighnabruaich, the new lines pass our doorway. However, we are not able to access them. Our chances of obtaining internet access of any type is zero unless one of our neighbours wishes to give us their line, as there are not enough lines available for the 13 houses in our hamlet.

If you would be so kind to inform Fergus Ewing of our situation perhaps he may be able to improve this.

Currently we will continue the daily drive into Dunoon to obtain 4G to check our e-mail etc.

Joe and Susie Croot, Clachaig

Dunoon Observer & Argyllshire Standard– 23rd June 2017

[3] https://www.theguardian.com/money/2016/nov/12/slow-broadband-church-signal-fast-internet

[4] https://www.theguardian.com/money/2016/nov/12/slow-broadband-church-signal-fast-internet

[5] http://www.bbc.co.uk/news/uk-wales-mid-wales-40745533

[6] http://www.gloucestershirelive.co.uk/news/gloucester-news/10000-homes-businesses-gloucester-suffering-348873

[7] In Annex 3.2 of BT's 2017 regulated financial statements Ofcom require BT to publish their return on mean capital employed in the charge controlled WBA market A as though BT had invested at the levels Ofcom forecast and allowed them to do in the charge control model. http://www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2017/index.htm

had invested what Ofcom had expected in the last WBA charge control, there would be little need for the Broadband USO, public subsidies or customers failing to be connected to a Digital Britain.

Furthermore, Ofcom's proposals cut the market down artificially in size, which both reduces the number of customers who are subject to backstop pricing safeguards and diminishes the overall size of Market A, incorrectly leading to the conclusion that the market is insignificant in scale and is not worthy of ongoing price regulation. This is a mischaracterisation and a clear failure to make communication work for everyone. If you consider the regulatory scrutiny Ofcom exerts over Kingston Upon Hull (population ~250k), due to its unique supply arrangements, the WBA market serves far more consumers: suggesting it would be disproportionate for Ofcom *not* to put in place appropriate wholesale pricing remedies.

The market definition proposed is completely inappropriate and overly complex and leads to the wrong conclusions. It openly excludes many consumers who can't receive GEA, LLU or cable by virtue of the fact they reside within an exchange area where 65% of their neighbours have access to a more functioning market. This can result in up to 35% of the population within an exchange area who have no alternative to BT's aging ADSL kit being considered to be within a competitive market, when clearly they are not.

To make communications work for everyone Ofcom need to take a much simpler approach to market definition, abandoning exchange area classifications that are obsolete in a world of cabinet based delivery and instead revert to a streamlined approach that lets the individual premises / exchange line characteristics determine the market.

Wholesale Broadband for these customers should be subject to a charge control, with immediate starting charge adjustments introduced to eliminate the estimated annual £166M in excess returns BT is making across Market A today, moving pricing down to FAC in one step. A downward charge control trajectory should then be set to keep returns in check for the remainder of the control period.

It is clear there would be no need for a Broadband USO if this market was being regulated with consumers in mind: customers would receive better service, higher bandwidth and possibly cheaper services. This is a regulatory failure that we estimate effects over 1 million broadband customers in the UK and must be addressed as a priority.

1. Introduction

1.1 Vodafone is the fasted growing fixed broadband provider in Europe[8], with an expanding footprint across the territories we serve. The United Kingdom is our home market and we have a particular interested in making the market work for UK consumers, helping them to exercise choice and benefit from a fibre future that will serve their needs over the long term. In 2015 we launched a market-leading fixed broadband product underpinned by Openreach's wholesale GEA delivery. We aim to serve as wide a customer base as possible, helping as many customers experience the benefits for our broadband offering first hand. Today some customers remain inaccessible to us, mostly in rural areas where Openreach hasn't enabled cabinets for fibre. We hope that the number of these inaccessible customers will diminish over the next market review period, but in the meantime we believe appropriate wholesale price regulation is needed to safeguard the interests of these consumers.

1.2 The evidence of persistent market failure within the Wholesale Broadband Access market is clear, with consumers in the current Market A typically having to endure the slowest speeds for fixed broadband (both standard and GEA) and have the smallest range of suppliers to choose from, with many key suppliers now absent from the market for standard broadband (including Sky, Virgin, Talktalk & Vodafone). Prices for Wholesale WBC/IPstream remain stubbornly high and BT's excess returns (in excess of WACC) in Market A remain consistently at £216M in 2015/16 and £166M in 2016/17.

1.3 With many consumers getting a poor overall experience due to the limited capabilities offered by the ageing ADSL 2+ kit deployed by BT Wholesale, it is unsurprising that many retail suppliers choose not serve these consumers, wary of putting their name to an unsatisfactory service experience that largely sits outside of their control.

1.4 Those suppliers who do participate in the market can often ask consumers to pay more, this is true of BT brands EE and Plusnet, who both charge a Market A premium for standard broadband (eg. Plusnet's 'non low cost' tariff). This is in spite of the lower speeds and often higher fault rates experienced. While a future Broadband USO may offer some hope, it remains some way off and will not deliver for these consumers for much of the next review period, with funding, supplier and technology issues still to be resolved for many consumers. The threat of future BT price rises under the guise of encouraging technology migration are very real.

1.5 Consumers in this predicament need Ofcom to have their backs, ensuring that regulation is in place as competition isn't able to delivery for them. Key to this is the need for ongoing wholesale price regulation to ensure all consumers, regardless of their location can access retail services underpinned by at least one price regulated wholesale offering.

1.6 In this response we will examine issues impacting the functioning of the retail market, consumer experience and resulting consumer behaviour. We will look at the key differences in the rural market, asking why it differs from a nationally average picture, which is more weighted towards an urban/suburban experience. We'll seek to adequately capture the correct product and market definition for a market that is becoming increasing geographically disparate, but with consumers no less deserving of adequate pricing regulation.

[8] http://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2017/dl_prelim2017.pdf

2. Retailers do not want to provide services to rural customers

2.1 Since the last market review we've seen BDUK funding enable GEA in many parts of Wholesale Broadband Market A, giving many rural consumers acceptable broadband speeds for the first time. For others in this market the wait is not over, with cabinets still to be upgraded, or a solution required to deliver higher speed broadband over exchange only lines. Some have the hope of a future upgrade occurring through a positive update on the Openreach online availability checker, while others have no news and will have to put up with very low speeds on standard broadband for some time to come. For others, the wait for an upgrade might be over, but the GEA made available hasn't delivered on its promise, with the line speed actually delivered considerably below expectations.

2.2 However, even with this back drop we continue to witness real signs of market failure. Since the last review, we've seen three large operators (Virgin Media, Talktalk and Sky) exit the standard broadband market in WBA Market A, in doing so, choosing not to purchase IPStream/Wholesale Broadband Connect from BT either completely or for new supply. This has greatly reduced consumer choice, and as a result, the competitive intensity within the retail standard broadband market.

2.3 BT is making excess returns from the market and higher retail prices persist in this area of the standard broadband market, with two out of three of BT's own lines of business charging more to serve Market A consumers. A quick review of any reputable price comparison website demonstrates that there are almost twice as many standard broadband deals available in WBA Market B compared to a Market A postcode[9], with pricing for Market A often higher.

2.4 Even in the progression towards higher speeds, there is clear evidence of the retail market not functioning as expect, with very strong indications of retail market distortion in the standard broadband market within WBA Market A, with BT's lines of business having 90% market share. This retail market distortion has carried over to, and continues to contribute towards the already documented concerns over retail shares for GEA in the UK wide market, with BT able to sign-up a far higher market share in superfast than for standard broadband as a whole. In WBA Market A, with so few retail player active in standard broadband the problem is even more pronounced, with the lack the upgrade path from standard broadband to GEA based broadband likely to exacerbate the problem and favour BT lines of business.

2.5 A lack of proposed pricing remedies for all GEA speeds in the WLA is also likely to aggravate retail distortion across the wider WLA, with alternative CPs being far more cautious about selling into the retail market the full range of products across the speed range, particularly those underpinned by wholesale services that have no long term pricing stability. BT's retail businesses will be able to capitalise on this instability yet further, being the only CP able to retail services with any long term confidence which rely on wholesale offerings that aren't underpinned by a charge control.

2.6 The threat of price rises for standard broadband users reliant on WBC/IPStream is also a realistic prospect that might discourage suppliers from entering the rural standard broadband market, deterring price competition in the retail market. In the future BT may well use any pricing freedom granted over IPStream/WBC to push up prices under the guise of encouraging migration to GEA solutions, even when those solutions may not be available or fit for purpose from a consumer perspective.

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[9] uSwitch Price Comparison for Standard Broadband on 25/08/17 indicated 11 Standard Broadband Deals for rural Market A postcode PA23 8QT and 22 Deals for Suburban Market B postcode G61 1JB

2.7 This is a market where consumers have very mixed fortunes, some have benefited from the BDUK intervention able to access a range of new suppliers over their upgraded GEA connection and are now content with the service received, others, maybe near neighbours, remain dissatisfied on standard broadband with limited choice or if they have access to GEA, it hasn't performed for them, being more expensive without the expected speed benefit.

2.8 These mixed fortunes for consumers need to be addressed from regulatory perspective, with Ofcom delivering remedies appropriate for all, ensuring no one is left behind and regulation works for all rural consumers, regardless of their broadband circumstances.

3. Understanding the market: rural broadband customers have limited choice

3.1 As Ofcom rightly highlights, the approach to market definition should begin with an assessment of the retail market as this remains the point of origin for wholesale demand. Ofcom's preferred 'modified greenfield' approach seeks to take into account the availability of services regulated in the WLA market review, most notably the availability of retail services provided using Openreach's FTTC based assets (& part funded by the tax payer through BDUK within most of the current WBA Market A footprint). These services are seen to act as a constraint on pricing in the WBA market, as consumers can switch to a regulated WLA product if it is available. This logic holds, but only if two conditions are met:

I. That an alternative based retail product (provided using GEA, MPF or Cable) is in fact available to all or nearly all consumers in the market, leaving them with more choice than just the standard broadband retail offering using BT's underlying WBC/IPstream service. If a substantial number of consumers have no alternative and can only buy a retail service underpinned by BT's WBC or IPStream service, then BT will take this into account when setting prices for WBC/IPStream, incentivising them to set prices high due to the lack of any viable alternative products to act as an effective competitive constraint.

II. Secondly, in order to be an effective constraint, any alternative services must represent either an equivalent service to the WBA standard broadband offering in the case of MPF, or in the case of GEA, represent an improvement upon it, in order to justify the additional retail cost. This would require GEA based retail services to deliver a material speed uplift to justify its price. If the GEA retail product doesn't do this, then the extra retail price will not be justified and standard broadband prices will be left largely unconstrained as consumer behaviour will not alter and WBC/IPstream prices will either remain static or even rise to a price point closer to the higher price of the GEA based service, as consumers view both services in broadly similar performance terms.

3.2 This lack of a material speed uplift on GEA would prevent it acting as any real pricing constraint on WBC/IPStream standard broadband pricing. For example, if the 40/10 GEA service is being purchased, but delivers a speed closer to 10Mbit/s, perhaps only a few Mbit/s more than the current generation of IPStream/WBC standard broadband, then it would not act as an effective constraint on BT's pricing for wholesale standard broadband. In some cases, due to longer line distances GEA services can result in consumers actually securing lower speeds and having to revert to back to WBC/IPStream.

3.3 In the urban and suburban context, a material speed uplift is typically achieved for enough consumers to support the notation that a regulated GEA product is likely to act as a constraint. However in this market review Ofcom unwisely rely upon UK average speed data when proposing this conclusion[10]. As average WBA Market A speed trends are likely to look very different, with the rural broadband market giving rise to many examples where GEA technology has been deployed and material speed uplifts have not been achieved due to the characteristics of the line. This is borne out by recent research into rural broadband speeds, with large areas of the United Kingdom having a significant proportion (in some case the majority) of premises failing to achieve speeds at 10Mbit/s or more. For instance Ross, Skye and Lochaber

[10] See Figure 1.1 WBA Consultation

constituency in Scotland suffers from 65% of customers with connections below 10%, in Wales, Montgomeryshire has 58% of connections below 10Mb/s and in North Herefordshire, the figure is 54%[11].

3.4 Retail GEA services are typically priced on a national basis (regardless of the number of active principle operators in the market), and consumers expected to pay a premium over standard broadband (even above that paid for standard broadband pricing in higher priced WBA areas) in order to receive higher broadband speed, however this speed uplift is not a given in rural areas and means that the speed differential substitutability analysis Ofcom rely upon in the WLA market review[12] (which holds true in urban and suburban context), doesn't translate well for rural broadband users and isn't an accurate depiction of the market or indeed consumer behaviour in rural parts of the United Kingdom.

3.5 There is no robust research that allows us to assume that the national picture translates to Market A, and ad-hoc searches on reputable retail price comparison sites suggests the opposite. Ofcom's decision not to take account of rural factors in research into both the speeds achieved across the market and within its substitutability analysis will lead to a flawed conclusion being reached. Adopting a typical urban/suburban consumer experience, rather than one that accurate reflects the limited choices and lower line speeds facing rural broadband users results in the wrong answers being reached on the product definition proposed for the WBA market.

3.6 To understand the rural broadband market, the analysis needs to specifically take account of:

I. How much extra consumers in rural areas are paying in the retail market above those paid in urban and suburban Britain for Broadband.
II. The frequency of fault rates experienced in the rural broadband market and the instances of service interruptions, that leads to poor service outcomes.
III. Analysis of the speeds achieved for both standard broadband and GEA delivery in the rural areas (it would be completely disingenuous to label it 'superfast' in many cases).

3.7 In the next section we move on to discuss Ofcom's proposed geographic segmentation of the market as we believe the current proposals over-estimate the number of consumer who actually have the ability to select a GEA based broadband service and a more straightforward and consumer friendly approach to market definition is required, to ensure **all consumers** are protected with appropriate pricing remedies, especially those without direct access to a regulated service from the WLA market.

[11] http://www.britishinfrastructuregroup.uk/wp-content/uploads/2017/07/Broadbad-2.0-Final-2.pdf
[12] See WBA Consultation 3.14

4. Identifying the market: market definition

4.1 Since the last market review in 2014 we have seen BDUK funding help push GEA into many, but by no means all, rural areas. In some cases, it has been very well received, offering opportunities for new retail suppliers to enter the market and providing consumers with more choice. However, for many, improvement have yet to occur, with households and businesses having been missed from the roll out entirely by virtue of being in an inaccessible location, having too long a line length or having an exchange only line (without a cabinet to upgrade). For some that have received it, the end product falls considerably short of the broadband experience offered in other parts of the UK. Ofcom's market definition needs to take account of this inconsistent picture, addressing the needs and experiences of these consumers, not one tuned to take account of a sterilized UK average position, that bears no relation to, and is out of touch from, the actual market experience of many rural consumers.

4.2 While we can agree with Ofcom that there are two distinct markets[13] in the UK, we disagree with Ofcom that the segmentation between markets should be delineated based upon Openreach exchange areas (ie. using exchange areas as geographic units). This type of segmentation worked in the past, when MPF players were contesting individual exchange areas, but this is no longer appropriate if GEA based providers, using wholesale products regulated through the WLA market are to be included within the relevant market (and provide the largest percentage of retail market contestability). Given GEA is a cabinet based technology, exchange footprints have little value in this context and while we understand that Ofcom is reluctant to go down to cabinet level segmentation for reason of proportionately and administrative complexity, basing market definition upon largely obsolete exchange areas remains completely inappropriate for delineating market boundaries.

4.3 In recognition of the imperfection of this approach Ofcom has put forward a 65% relevance threshold, whereby 65% of premises in an exchange area must be able to receive services from at least two other principal operators. In reality, this market participation almost exclusively comes from retail providers using Openreach's GEA service, typically offering at least five retail supply choices were a cabinet has been enabled. However, it also leaves potentially 35% of premises within an exchange area classified as having a competitive choice, when in fact they have no choice at all, and the prospect of no price regulated wholesale broadband services accessible to them. This is both unacceptable from an individual consumer perspective and suppresses the true size of the market and the problem by masking the real number of consumers who lack realistic wholesale options in the retail broadband market.

4.4 If Ofcom genuinely aims to make *communications work for everyone*, then everyone must mean everyone. Abandoning up to 35% of consumers in particular exchange areas with no price regulated broadband supply is an unacceptable outcome and a failure to acknowledge the challenges that rural broadband consumers have to endure.

4.5 Ofcom's proposed approach is also overly simplistic because, as mentioned above, Openreach's GEA service may not deliver speeds materially in excess of the standard broadband offering (WBC / IPStream), so consumers with access to standard broadband and a more expensive GEA based retail service that

[13] In the rest of the UK, excluding Hull.

delivers similar performance to standard broadband have no effective pricing choice. They can either pay for standard broadband at a poor speed delivered over WBC / IPStream without any pricing protection, or pay for an GEA service that is subject to WLA regulation but fails to provide much of a speed uplift, but comes at an even higher retail price (albeit one that might be subject to some form of charge control under WLA in the case of 40/10), however while they are having to pay for the additional speed premium, in reality the service they are receiving may only be marginally better than their existing standard broadband offering (in some cases it could be worse).

4.6 In the many cases in the rural network simple laws of physics associated with BT's choices to sweat copper assets rather than deploying modern fibre mean that performance is likely to be considerably worse than many standard broadband services delivered in urban and suburban Britain. This is understandably an unattractive prospect for rural consumers caught in this situation. It can be summarised as a regression from circumstances where they previously had access to one bad choice that was at least price regulated to one where they have access to two bad choices, with price regulation removed from the WBA market and the price regulation in the WLA market failing to recognise the poor speed performance they are actually achieving.

4.7 Market definition needs to take account of these circumstance, to ensure the product and disparate geographic issues are adequately addressed within the market boundaries. This takes us back to a market with two distinct consumer experiences:

I. The first where there is a wider choice of retail suppliers for both standard and super-fast services and where there is bandwidth uplift between the two services; and
II. a second market where there is a lack of choice, with a smaller range of retail service available, higher average retail pricing and lower speeds evident for both standard and 'superfast' GEA delivered broadband (if available).

4.8 Ofcom's market definition does not do this, instead it relies on artificial parameters such as exchange areas to define geographic boundaries and thresholds, which leave up to one third of consumers at the mercy of monopoly supply and without regulatory safeguards. A much simpler, but more accurate approach to market definition would deliver better results. Exchange area classifications that are obsolete in a world of cabinet based delivery should be abandoned; reverting to a streamlined approach that lets the individual exchange line characteristics and access to cable determine the market in which a premises resides. There is no need to maintain a complex inventory, with each UK premises falling into one of the two markets:

I. Market X is for premises which can access Standard Broadband from both BT and at least one LLU provider or Cable provider or through a range of suppliers using Openreach's FTTC based GEA offerings and are capable of supporting a line speed of at least 24Mbit/s.
II. Market Y is for premises which don't have access to cable / LLU infrastructure (as a result of their exchange not being unbundled or living in a non-cabled area) and whose exchange line is either not enabled for Openreach FTTC based GEA or the line is unable to support a speed of 24Mbit/s or more, even if GEA is available.

5. Remedies to safeguard consumer: making communications work for everyone

5.1 The negative consequences of legacy copper reliance are apparent today for the many consumers whose copper line characteristics mean they can't achieve the speeds they need, leaving them frustrated and unable to fully participate in the range of digital services enjoyed by their fellow citizens. While policy initiatives like the Broadband USO aim to raise the speed floor for all to 10Mbit/s, the stark reality is that the gap between the best copper based broadband performance and the worse, is set to widen yet further, with the advent of G.Fast, pushing more from copper, but in doing so leaving millions of consumers behind who are unable to realise benefits from further copper acceleration technologies.

5.2 It is clear that a sizable number of consumers in WBA Market A still require price protection at the wholesale level. There remains significant evidence of BT over-recovery in the WBA (excess profits above BT's WACC in WBA Market A of £166M in 2016/17) and consumers who already suffer from a lack of choice and speed are over-paying. Ofcom should remedy this through a price control. The 40/10 anchor product proposed in the WLA Market Review isn't able to help many consumers in Market A. Even those in the current Market A who can get GEA may not be receiving the speeds necessary to justify the additional cost of the product.

5.3 In Market A remedies are needed to safeguard the rural consumer interest. This would require Wholesale Broadband pricing (in the form of IPstream / WBC) being subject to a charge control, with immediate starting charge adjustments introduced to eliminate the £166M of excess returns currently being generated. Wholesale prices should be set at FAC in one step to minimise harm occurring and eliminate excess returns going forward. A glidepath should then be set to keep returns in check for the remainder of the control period.

5.4 A charge control combined with a simple and dynamic approach to product and market definition allows exchange lines to fall in and out of regulation when network upgrades are in place, incentivising BT to invest in the network. It also allows consumers to fall into pricing protection if their speed performance is too slow on GEA, ensuing they have access to a sensibly priced standard broadband offering. It avoids the static inflexibility of setting exchange areas for the full duration of a market review and ensures all consumers that need protection on price receive it. It is neither onerous or complex to administer as there is no need to maintain a detailed inventory. It delivers on Ofcom's objective on making communications work for everyone. Should there be any dispute about which market a premises resides, a simple line check would determine it.

5.5 We continue to have a significant number of concerns around BT's proposals to require a WLA surcharge to deliver the BUSO, believing BT itself has both the resources and incentives to deliver this without additional funding from consumers who have already contributed to BT's ~£10BN in excess returns since 2005[14], with £552M in excess derived from WBA market A since 2014/15[15]. In

[14] https://mediacentre.vodafone.co.uk/pressrelease/planned-reforms-openreach-required-new-report-highlights-bt-excess-profits-increased/
[15] Excess profits in WBA Market A estimated at £170M in 14/15, £216M in 15/16 & £166M in 2016/17

2011 when the WBA market was first charge controlled Ofcom allowed BT a regulated return higher than the actual level of mean capital employed in the market. This was specifically to enable BT to invest in WBC equipment, and to ensure Ofcom's charge control did not dis-incentivise BT from investing in this market. Ofcom continued to allow this additional higher return when they next reviewed the market in 2014.

5.6 Although all of the detail has not been published for confidentiality reasons by Ofcom in the consultation, we can see in BT's regulated accounts the scale of the additional capital investment allowed through regulation compared to what BT has actually invested.[16] In 2017 the reported capital employed is some £311 million lower than the charge control allowed. Therefore, we can conclude that BT has not invested as Ofcom had forecast or expected under the previous charge control and as a result has enjoyed supernormal profits. The actual return on capital employed in the WBA charge control in rural areas (Market A) is reported as being over 60%. If we compare the capital employed in this market in 2016 with the actual in 2017 it can be seen that the capital employed only increased by £5 million. Therefore, we can comprehensively conclude that BT has in the last year, and in the prior 5 years made very little investment in this market and therefore enjoyed supernormal profits, yet it is now seeking an additional subsidy to fund the Broadband USO.

5.7 Ofcom has a duty to stand up for rural consumers and correct the clear consequences of market failure that exist. The prospect of no pricing regulation in the WBA Market A would be unacceptable to many rural consumers, leaving them vulnerable to future price rises and further behind economically as the speed gap widens. Our proposals allow Market A to diminish in size as investment is made, but it also ensures no UK consumer is left in the unpalatable position of having no regulated wholesale pricing underpinning for their broadband service. It is an administratively simple and a proportionate solution that works for all.

5.8 If WBA Market A had been appropriately regulated in the past and over the next three years, there would be little need for a Broadband USO. Regulation could have either been used to **require** BT to spend the capital Ofcom allocated within past charge controls to deliver better broadband to benefit all consumers, without exception or this investment allowance it take into account going forward the Broadband USO debate. The reality has instead been that BT has been allocated considerable sums of money through a charge control, but has declined to spend it, or reduce prices and rural customers have been failed as a result.

[16] 'Appendix 3.3 Adjusted Performance Summary 2016;

Part B: Answers to consultation questions

Question 3.1: Do you agree with Ofcom's proposed product market definition? Please provide reasons and evidence in support of your views.

No, we don't believe Ofcom's proposals accurately capture the correct product definition.
The Rural Broadband market has particular characteristics which dictate consumer behaviour and make it distinct from other parts of the UK. Ofcom needs to ensure Wholesale Broadband Access consumer behaviour within these areas is captured and reflected in any wholesale product definitions. Please see part 3 of this response for further details.

Question 4.1: Do you agree with Ofcom's proposed geographic market definition? Please provide reasons and evidence in support of your views.

No. As they stand, Ofcom's proposals cut the market down artificially in size, diminishing the significance of the harm occurring, incorrectly leading to the conclusion that the market is insignificant in scale and is not worthy of ongoing price regulation.

The market definition proposed is completely inappropriate and overly complex. It openly excludes many consumers who can't receive GEA, LLU or cable by virtue of the fact they reside within a meaningless exchange area where 65% residents can. This can result in up to 35% of the population within an exchange area who have no alternative to BT's aging ADSL kit being considered within a competitive market.

Exchange area classifications are obsolete in a world of cabinet based delivery. A streamlined approach that lets the individual premises / exchange line characteristics determine the market is a far more straightforward approach. Please see part 4 of this response for further details.

Question 5.1: Do you agree with Ofcom's proposal that BT holds SMP in Market A? If not, please provide reasons and evidence in support of your views.

While we disagree with Ofcom's view of the size of Market A, believing it to contain a much larger number of consumers, we do believe there is clear evidence of market failure, with BT having SMP.

Question 5.2: Do you agree with Ofcom's proposal that no provider has SMP in Market B? If not, please provide reasons and evidence in support of your views.

Yes.

Question 6.1: Do you agree with the remedies that we propose for BT in Market A? If not, please set out what alternative remedies you consider should be implemented and provide your reasons and supporting evidence.

No. It is reckless not to impose some form of wholesale price regulation in Market A for standard broadband. This is the only option for many consumers and the prospect of leaving them at the mercy of an SMP provider on price is not an acceptable outcome. Ofcom's proposals will fail UK citizens.

Question 7.1: Do you agree with our proposals for BT's Regulatory Financial Reporting, including in particular the proposed Direction modifying requirements relating to the preparation, audit, delivery and publication of the RFS, and Direction modifying requirements relating to the form and content of the RFS? If not, what alternative would you propose and why?

It is essential that the regulatory accounts provide a clear view of both return and investment in this market, including details of which communication providers (internal or external) are purchasing regulated products (by bandwidth). This is essential if remedies are to be assessed and consumers are to be protected.

Part C: Comment on Draft Legal Instruments

In this Annex we focus on the draft legal instruments contained in Annexes 4 and 5 of Ofcom's wholesale broadband access (**WBA**) consultation document of 22 June 2017.[17]

To assist Ofcom, we make a number of policy suggestions, and also point out typographical errors where these occur. As such, this Annex is divided into two parts.

- In the first part, we give our comments on substantive changes that we would like to see in the legal instruments.

- In the second part, we suggest detailed drafting changes to the legal instruments where we believe that amendments are warranted.

Part 1: General comments

1. Gaps and insufficient granularity in the legal instruments

- Most of the legal instruments (SMP conditions and directions) that Ofcom imposes following a market review tend to be standard across the various markets that Ofcom regulates, and differ only in the extent to which Ofcom regulates particular products and services. With this in mind, Vodafone suggested a number of changes to the WLA SMP conditions earlier this year, which Ofcom appears not to have considered in relation to the WBA review, despite their obvious cross-portfolio relevance.
- There is also a lack of granularity in the WBA SMP conditions that is not justified from a policy perspective. For example:
  - There is no statement of requirements (**SoR**) process for new types of network access. It is unclear why Ofcom has not proposed to incorporate a new WBA SMP condition as Ofcom intends to do with Condition 3 of the draft WLA SMP conditions.
  - Ofcom has not sought to impose any quality of standards (**QoS**) obligations on BT's WBA products or to define any key performance indicators (**KPIs**) for BT to report against.
  - Ofcom is proposing to withdraw the charge control that is currently imposed on market A in spite of the fact that there is no or limited wholesale supply in these areas, which are invariably remote and rural.
- Even if WBA wholesale services are in decline, it is vital that Ofcom continues to afford extend regulatory protection where there is little or no wholesale competition.
- It is Vodafone's very firm view that Ofcom should not shy away from imposing robust *ex ante* regulation in smaller markets that are dominated by a single supplier. We accordingly suggest that:

[17] Ofcom, *Wholesale Broadband Access Market Review*, Consultation, 22 June 2017. https://www.ofcom.org.uk/__data/assets/pdf_file/0013/103180/wba-consultation.pdf.

- The WBA SMP conditions should contain an SOR process, even if it's not likely to be used. This is a cross-portfolio issue that can be easily implemented across all regulated markets where BT has SMP.
- Ofcom should impose robust QoS obligations and KPI reporting obligations in market A – to ensure that repairs happen on time, engineers honour their appointments and thus that consumers in remote areas are not neglected.
- Ofcom should maintain a charge control in market A, which we discuss separately below.

2. Replacement of charge control with fair and reasonable charges

- Ofcom has proposed to withdraw the charge control in market A on the basis that "*retail competition in these areas … is limited*" and Ofcom does not "*expect that putting wholesale remedies to promote entry or expansion in this market would be likely to significantly increase retail competition.*"[18]
- The effect of this is proposal that Condition 1.2(b) of the SMP conditions will take the place of the charge control, which merely requires BT's charges to be fair and reasonable (**F&R**). This is problematic as Ofcom has never defined a cost standard for F&R charges, which means that Ofcom must determine this on an ad-hoc basis through its dispute resolution powers under s185 of the Communications Act. This is a very inefficient regulatory approach.
- To facilitate the referral and satisfactory resolution of disputes, Ofcom should prescribe a F&R cost standard, either in the SMP conditions themselves or by way of a legally binding direction.

3. Unilateral variations to contracts for regulated products

- Ofcom's proposal to discontinue the charge control in market A is worrying, particularly as there is nothing in the legal instruments (particularly in SMP conditions 5 and 6) to preclude BT from unilaterally amending the terms and conditions of contracts for regulated products. BT is merely required to give advance notice to other CPs within the prescribed time periods when it amends a charge.
- This is highly problematic, as both of BT's WBA contracts for IP Stream and Wholesale Broadband Connect (**WBC**) allow BT to increase its prices, including the prices of (1) products that are not subject to a price control or basis of charges obligation, and (2) unregulated services. These are as follows:

	WBC	IP Stream
Unilateral price rises	✓	✓
Unilateral changes to SLAs / SLGs	✗	✗
Other powers to change contract unilaterally	✓ (qualified)	✓ (qualified)

- Unilateral contract variations are a cross-portfolio issue that Vodafone and other CPs have repeatedly raised in the context of BT's other reference offers – most recently in the context of the dark fibre contract and access locate agreement. As Ofcom is aware, CPs have also asked BT to amend paragraph 12 of the standard interconnection agreement (**SIA**) so as to restrict BT's to restrict its rights to unilaterally amend interconnection charges.

[18] Ofcom, *Wholesale Broadband Access Market Review*, 2017. §1.12.

- BT's right to unilaterally increase prices in particular is highly problematic as:

  a. A number of BT's contracts apply to deregulated services as well, such as products in deregulated geographic markets (as is the case with market B in the context of WBA, which Ofcom is proposing to enlarge). Some services have never been regulated, even though BT has *de facto* SMP (such as UK-wide MEAS and a number of interconnection products). This effectively allows BT to unilaterally increase the price of unregulated products, which is inconsistent with normal commercial behaviour in a fully competitive market.

  b. Following the Supreme Court's ladders judgment,[19] Ofcom has become less and less willing to accept disputes about unregulated products or to rule against BT – leaving CPs without protection where a service is unregulated, or where there is no charge control or a basis of charges obligation.

- It is important to place on record that a number of assumptions that underlay the Supreme Court's decision were patently wrong. In particular, the Court assumed that the terms of the SIA (which is BT's reference offer for voice services) were "*freely negotiated*" in a "*competitive market*"[20] and that the terms of the agreement were "*unchallenged*"[21] This is simply not true. CPs have opposed BT's insistence on including unilateral variation clauses several times:

  a. In the context of interconnection (which formed the backdrop to the Ladders judgment), Three challenged the fairness and reasonableness of paragraph 12 of the SIA (which allows BT to unilaterally vary prices) by referring a dispute to Ofcom in 2013, which Ofcom determined in BT's favour.[22] CPs have also asked BT to modify paragraph 12 on a number of occasions, but without any success.

  b. In Vodafone's experience of negotiating other reference offers and in periodic reviews of reference offers, it is BT's practice to simply finalise reference offers / amendments in its favour if negotiations fail to yield a consensus about material terms. Most recently, BT published its final reference offer for dark fibre access (**DFA**), which contained a number of provisions that CPs vigorously opposed. Predictably, the DFA contract included a right (insisted upon by BT) to increase the prices of unregulated products unilaterally.

- The negotiating position of BT relative to other CPs remains hugely unequal, often even where services are unregulated. In the circumstances, Vodafone recommends that:

  a. The SMP conditions should prohibit BT from being able to unilaterally increase prices for services that are not subject to (1) a charge control or (2) basis of charges obligation.

  b. The SMP conditions should also explicitly reserve Ofcom's rights to determine contractual terms in BT's reference offers where BT and is unable to come to a consensus with other CPs in the industry.

  c. Because there is no accepted F&R cost standard, BT should not be able to increase the prices of products that are subject only to a F&R charging obligation without CP consent.

- The SMP conditions should similarly restrict BT's ability to unilaterally vary other material terms of its reference offers without the consent of CPs, except in very limited circumstances (such as where there has been a change in law or regulation).

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[19] *British Telecommunications Plc v Telefónica O2 UK Ltd & Others* [2014] UKSC 42.
[20] See §33 of the Ladders judgment.
[21] See §46 of the Ladders judgment.
[22] See Ofcom's final statement and determination at:
https://www.ofcom.org.uk/__data/assets/pdf_file/0018/84123/2013august_sia_determination.pdf.

4. Directions relating to regulatory financial reporting

- The legal instruments contain a number of directions relating to financial reporting requirements that are common to most, if not all SMP conditions that Ofcom publishes following a market review.[23]
- For the sake of consistency and for ease of administration, Ofcom should consider (1) publishing one set of financial reporting requirements to deal with cross-portfolio matters common to all market reviews, and (2) incorporating these by reference into each fresh set SMP conditions following a market review, together with any pertinent amendments applicable to particular regulated services.

Part 2: Vodafone's detailed drafting comments on the draft WLR legal instruments

The following tables set out the issues and errors that Vodafone has identified in the draft legal instruments. We separately identify

(i) substantive errors – e.g. where we consider that Ofcom's underlying policy assumptions are incorrect, or where Ofcom has for example failed to consider an issue in sufficient detail,

(ii) policy recommendations to reflect best practice – e.g. where we take the view that Ofcom could regulate in a more efficient manner,

(iii) drafting errors – where the current drafting is unclear or where there are typographical errors.

Document	Para	Issue	Potential rectification	Category
SMP conditions	Condition 4	Reference offers	By operation of the law, terms and conditions that BT imposes on CPs in its reference offers are already subject to the SMP conditions. However, BT's reference offers do not always make this clear. We suggest making this explicit in condition 4.9 as follows: The Dominant Provider must provide network access at the charges, terms and conditions in the relevant Reference Offer and these SMP conditions and must not depart therefrom either directly or indirectly. These SMP conditions shall prevail to the extent that they conflict with the relevant Reference Offer.	Drafting error.
SMP conditions	Condition 5	Unilateral changes to reference offers	There is nothing in condition 5 which restricts BT's rights to unilaterally vary the terms of its reference offers. This is problematic, as the WBC and IP Stream contracts both contain unilateral variation clauses. This leaves CPs who rely on WBA as inputs for their retail broadband services in remote areas vulnerable to abusive conduct by BT. This is particularly as, in addition to diminishing the size of market A, Ofcom has proposed to replace the charge control in	Substantive error.

[23] See directions 2.1-2.9.

Document	Para	Issue	Potential rectification	Category
			market A with an undefined obligation to levy F&R charges on regulated products. Possibly to facilitate contract management, BT generally extends the scope of its reference offers to unregulated services as well. The ideal scenario would be for BT to excise all unregulated products from the scope of its reference offers, and to supply these to CPs on separate, commercial terms that are consistent with a truly competitive market. Given this practice, BT's rights to vary material provisions in its reference offers relating to unregulated products should be severely restricted. In particular, BT should be prohibited from increasing the prices of unregulated products unilaterally. Because Ofcom has never prescribed a F&R cost standard, BT should be prevented from unilaterally increasing charges which are subject to a F&R obligation until such time as Ofcom prescribes a F&R standard. BT should also be prohibited from unilaterally varying other material terms without the consent of other CPs – such as by unilaterally decreasing service levels. Because variations to charges are more complex, the SMP conditions should specify two distinct processes for (1) charge changes and (2) other (non-pricing) variations. As unilateral variations are a cross-portfolio issue, impose similar SMP conditions restricting BT's rights to unilaterally vary its reference offers in other regulated markets. On this basis, Vodafone proposes that Ofcom makes the following changes to condition 5: Condition 5 – Notification of charges and terms and conditions 5.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this Condition 5. 5.2 Where it proposes an ~~WBA~~Access Change or an Access Charge Change, the Dominant Provider must: (a) send the Access Change Notice or an Access Charge Change Notice to every person ("Third Party") with whom it has entered into an Access Agreement pursuant to Condition 1,~~, a WBA Access Change Notice~~ (b) publish the Access Change Notice or Access Charge Change Notice on its website.	

Document	Para	Issue	Potential rectification	Category
			5.3 The obligation in Condition 5.2(a) shall not apply where the ~~WBA~~ Access Change or Access Charge Change is directed or determined by Ofcom (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act), is a consequence of such direction or determination or is required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act. 5.4 ~~Subject to Condition 5.5, a WBA Access Change Notice must be sent not less than 28 days before any such amendment comes into effect.~~ Where the Dominant Provider wishes to increase or introduce any new charges under a Reference Offer, then the following shall apply: 5.4.1 For charges which: (a) are subject to Condition [XXX]; or *[Retain if Ofcom agrees to retain charge control]* (b) are otherwise subject to a condition or determination that sets a direct, specific charge for the service to which it relates, the Dominant Provider must publish an Access Charge Change Notice on its website within not less than 28 calendar days of the date on which the Access Charge Change is due to take effect or within such other notice period that Ofcom may direct. 5.4.2 For charges that are subject to a condition obliging the Dominant Provider to ensure that a charge is derived from the cost of provision of a service: *[Retain if Ofcom decides to replace the charge control with a cost-orientation obligation]* (a) The Dominant Provider must publish an Access Charge Change Notice on its website and send a copy to each Third Party within not less than 90 calendar days of the date on which the Access Charge Change is due to take effect (the "effective date"). (b) The Access Charge Change shall take effect on the effective date unless a Third Party objects in writing to the change within 28 calendar days after the date of publication of the Access Charge Change Notice. (c) If a Third Party does object, the Access Charge Change shall be deemed to be disputed from the date on which the Third Party sends its written objection to the Dominant	

Document	Para	Issue	Potential rectification	Category
			Provider (the "**objection date**"), in which case: (i) the Dominant Provider and the Third Party must use their best endeavours to resolve the dispute within 60 calendar days of the objection date (the "**negotiation period**"). (ii) If they do not agree, either the Dominant Provider or the Third Party may refer a dispute about the Access Charge Change to Ofcom, a court or any other judicial or quasi-judicial body within [XXX] after the negotiation period ends, failing which the Dominant Provider may implement the Access Charge Change thereafter. 5.4.3 For charges to which neither condition 5.4.1 nor 5.4.2 applies: (a) The Dominant Provider must publish an Access Charge Change Notice on its website and send a copy to each Third Party within at least 90 days of the effective date specified in the notice. (b) The Access Charge Change shall come into effect on the date specified in the Access Charge Change Notice unless a Third Party sends a written objection to the Dominant Provider within 60 days of the publication of the Access Charge Change Notice on the Dominant Provider's website, in which case, the Access Charge Change shall not come into effect. 5.4.4 Condition 5.4.1 shall apply if an Access Change Charge falls within the scope of both conditions 5.4.1 and 5.4.2. 5.4.5 Condition 5.4.3 shall apply to all of the Dominant Provider's charges that Ofcom requires to be fair and reasonable. [*Retain only if Ofcom rejects our suggestion to prescribe a F&R cost standard*] 5.5A If the Dominant Provider wishes to decrease the price of existing network access, it shall publish an Access Charge Change on its website not less than 28 days before the amendment is due to take effect. 5.4B The Dominant Provider may implement an Access Change at any time by publishing an Access Change Notice on its website not less than 28 calendar days if Ofcom so directs, in order to comply with any legal or regulatory obligation. Such Access Change shall	

Document	Para	Issue	Potential rectification	Category
			come into effect within not less than 28 calendar days after it has been published or within any other period that Ofcom may direct. 5.4C Excluding the circumstances referred to in condition 5.4B, the Dominant Provider may implement any other Access Change at any time by publishing an Access Change Notice on its website and by sending a copy to every person with whom it has entered into an Access Agreement pursuant to Condition 1 not less than 90 calendar days before the change is due to take effect, in order to: (a) maintain the integrity or security of any network access services supplied by the Dominant Provider and/or the Dominant Provider's electronic communications network; or (b) introduce or withdraw Service features (but only to the extent permitted by law or regulation, and subject to such notice that may be required by law or regulation); or (c) introduce improved service levels, service level guarantees and compensation payments payable on a breach; or (d) introduce process changes to improve the quality of any network access services supplied by the Dominant Provider; or (e) make corrections to typographical errors. 5.4D An Access Change referred to in condition 5.4C shall come into effect on the date specified in the Access Change Notice unless: (a) the Access Change materially adversely affects the supply of any network access services that the Dominant Provider provides to any Third Party under a Reference Offer; and (b) a Third Party sends a written notice of objection to the Dominant Provider [XXX] before the effective date, in which case, the Access Change shall not come into effect. 5.4E The Dominant Provider or any Third Party may propose any other change to a Reference Offer at any time by giving written notice to the other. Where the proposer is the Dominant Party, it must also publish a proposed Access Change Notice on its website and send a copy to each Third Party. 5.4F The Dominant Provider may implement Access Changes proposed by it or a Third Party or Access Charge Changes proposed by Third Parties in accordance with the following procedure: (a) The Dominant Provider must negotiate to vary its Reference Offer in good faith with a group	

Document	Para	Issue	Potential rectification	Category
			of customers which it reasonably believes is representative of Third Parties and/or potential customers for its products (the "Third Party Contracts Group"). (b) The Dominant Provider must record all agreed changes in an Access Change Notice and/or Access Charge Change Notice and publish the notice on its website and by send a copy to each Third Party at least 90 calendar days before the effective date specified in the notice. (c) For the avoidance of doubt, the Dominant Provider may only vary its Reference Offer in accordance with this condition 5.4F to the extent it and the Third Party Contracts Group agree to the variation. 5.5 The Dominant Provider must include the following in each ~~ensure that a WBA~~ Access Charge Change Notice and Access Change Notice ~~includes~~ (as applicable) — (a) a description of the network access in question; (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access; (c) the current and proposed new charge and/or current and proposed new terms and conditions (as ~~the case may be~~applicable); and (d) the date on which, or the period for which, the Access Change or ~~WBA~~ Access Charge Change will take effect (the "**effective date**"). 5.6 The Dominant Provider must not apply any Access Change or Access Charge Change before the effective date specified in the applicable Access Change Notice or Access Charge Change Notice.~~WBA Access Change identified in a WBA Access Change Notice before the effective date~~ 5.7 Subject to Conditions 5.4 and 5.4A to 5.4F, to the extent that the Dominant Provider provides ~~to itself~~ network access to itself that— (a) is the same, similar or equivalent to ~~that~~ any network access services that the Dominant Provider provides~~d~~ to any Third Party; or (b) may be used by the Dominant Provider for a purpose that is the same, similar or equivalent to that used by ~~provided to~~any Third Party, in a manner that differs from that detailed in an ~~WBA~~ Access Change Notice or Access Charge Change Notice ~~in relation to network access provided to any Third Party~~, the Dominant Provider must send	

Document	Para	Issue	Potential rectification	Category
			written notice to Ofcom specifying ~~ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant,~~: (i) at least those matters detailed in Conditions 5.5(a) to (d), and~~,~~ (ii) where the Dominant Provider amends the charges, terms and conditions on which it provides ~~itself with~~ such network access to itself, it must ~~ensure it~~ sends~~ to~~ Ofcom a notice equivalent to an ~~WBA~~ Access Change Notice or an Access Charge Change Notice (as applicable). [*The meaning in this clause was unclear, so we have suggested improvements to the drafting*] 5.8 In this condition 5: (a) "**Access Change**" means any amendment to the terms and conditions on which the Dominant Provider provides network access, other than an Access Charge Change; and (b) "**Access Change Notice**" means a notice given by the Dominant Provider or a Third Party of a proposed Access Change. (c) "**Access Charge Change**" means any amendment to the Dominant Provider's charges for the provision of network access or for new network access; (d) "**Access Charge Change Notice**" means a notice given by the Dominant Provider or a Third Party of a proposed Access Charge Change; ~~(a) "**WBA Access Change**" means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access; and~~ [*This terminology is confusing*] ~~(e) "**WBA Access Change Notice**" means a notice given by the Dominant Provider of a WBA Access Change.~~ [*This terminology is confusing*]	
SMP conditions	Condition 6	Notification of technical information	This clause allows BT to alter the technical characteristics of its network, network access locations and technical standards with Ofcom's consent. However, the basis on which Ofcom may grant consent are not defined. This is problematic, as such changes could have a material impact on other CPs, particularly if they need to upgrade their own systems or change the configuration of their own networks as a result. As a matter of law and policy, Ofcom should only be able to consent to changes	Substantive error.

Document	Para	Issue	Potential rectification	Category
			where it is objectively reasonable to do so, measured against a set of predefined criteria. BT should also bear the onus of justifying the change to Ofcom. Where permitted, technical changes should be notified sufficiently in advance to CPs. Where practicable, BT should be required to workshop major changes in technology, technology standards and network access locations with BTs in advance.	
SMP conditions	Condition 7	Quality of service	This condition gives Ofcom the discretion to prescribe QoS conditions or to issue directions "*from time to time*". It is not acceptable for Ofcom to avoid protecting consumers in remote and rural areas in this way. Moreover, (1) Ofcom is unlikely to ever exercise this power and (2) this lacuna means that BT is effectively unregulated in circumstances where there is no or very limited choice of supply.	Substantive error.
SMP conditions (Annex 3) Regulatory financial reporting directions (Annex 4)	Condition 8	Regulatory financial reporting	A substantial portion of the wording in these legal instruments is common to most, if not all legal instruments that govern regulatory financial reporting in applicable regulated markets. For the sake of consistency and for ease of administration, Ofcom should consider (1) publishing one set of legal instruments on regulatory financial reporting that is common to all market reviews, and (2) incorporating these by reference into each fresh set legal instruments following a market review, together with any pertinent amendments applicable to specific regulated services.	Policy suggestion.

- END -