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# Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26

Volume 1: Overview, summary and introduction

[Volume 1: Overview, summary and introduction](#) – Welsh translation

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## **CONSULTATION:**

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# 1. Overview

**This document explains how Ofcom is creating the conditions to transform the business case for investment in full-fibre broadband through how we regulate BT. We are removing barriers to help the rollout of fibre networks right across the UK – including areas that are hard to reach.**

Investment in the UK's telecoms infrastructure is needed to meet growing and future demand for ultrafast broadband. Since we set out a range of pro-investment measures covering 2018-2021, a number of companies have announced or begun new fibre rollout. Coverage of full fibre is increasing at its fastest ever rate and has more than tripled, from 3% to 10%, in three years.

Future broadband networks should provide choice, value and quality. Ofcom's approach to achieving that has been through encouraging competition between different networks.

In the less profitable parts of the country, where competing networks are not sustainable, our strategy is to set regulatory prices that support investment by Openreach. Public funding is also crucial here, and we welcome the UK Government's intention to invest £5bn to support infrastructure rollout in the most challenging 20% of the UK.

We are now setting out our plans for regulation from April 2021 of the fixed telecoms markets that underpin broadband, mobile and business connections.

## What we are proposing

We have identified BT to have market power in the provision of physical telecoms infrastructure and in broadband and leased line services. We propose to address that market power by regulating in a way that supports investment and protects customers.

**Different approaches to regulating Openreach's residential broadband products in different parts of the UK.** We propose to vary how we regulate Openreach's broadband products, depending on the level of current or prospective competition in a given area. This approach is consistent with the proposals we set out in March 2019. We propose to vary regulation by geography as follows:

- **In competitive areas** where there is established competition, we would not regulate Openreach's broadband products. We propose not to identify any such areas at this stage but expect to do so in the future. Customers in these areas would benefit from the choice of multiple networks, so we could remove regulatory restrictions, which will encourage investment and innovation.
- **In potentially competitive areas**, Openreach will continue to be required to provide wholesale access to its network. We would maintain flat, inflation-adjusted, regulated prices for Openreach's entry-level superfast broadband service, which has a download speed of up to 40 Mbit/s. This provides stability and certainty to investors and allows all companies the potential to earn a fair return. It follows a significant cut Ofcom made to the price of this product in our 2018 review. To help the fibre investment case, Openreach would be able to charge slightly more for these regulated products if they are delivered over full fibre. This reflects the additional customer benefits, such as speed and reliability, that fibre offers over copper. We would not regulate the prices of Openreach's higher-speed packages. To provide protection for new entrants, we plan to prohibit Openreach from offering geographically-targeted discounts, including on their fibre

services. We would also require Openreach to give 90 days' notice for the introduction of certain commercial terms which might create a barrier to using alternative network operators. This would allow us to assess their impact and acceptability before they take effect. Prior to our new proposals taking effect, we will monitor any commercial arrangements proposed by Openreach and would expect to use our existing powers to intervene to prohibit any arrangements which we consider would deter alternative network rollout.

- **In non-competitive areas** where Openreach is the operator providing a large-scale network, we are proposing regulation designed to support investment by allowing Openreach to recover its costs to build a new fibre network. It would recover these costs across a wider range of services (similar to a 'regulated asset base' model approach) which would reduce the risk of its investment. If Openreach provides a firm commitment to lay fibre in these parts of the country, we can include the cost of this deployment in its prices from the outset. If not, its prices would only increase *after* fibre has been built. We will also require Openreach to provide dark fibre links to support mobile and other network growth.

**Support for Openreach in retiring its old copper.** As it lays new fibre to replace ageing copper lines, Openreach should not have to incur unnecessary costs in running two parallel networks. Protecting customers during this phased transition will be essential. We propose to remove regulation on Openreach's copper products in an exchange area when fibre is built there, and transfer regulation (including price protections) from copper to fibre services.

**Greater access for rival companies to Openreach's telegraph poles and underground ducts.**

Network providers would be able to lay their own fibre networks using Openreach's infrastructure. This access can cut the upfront cost of building these networks by around half. Several firms are already using Openreach's ducts and poles to connect thousands of homes and businesses to faster, more reliable broadband without having to dig up streets multiple times.

**Regulating 'leased lines' in a similar way to residential broadband.** We propose to regulate Openreach's 'leased lines' – high-speed data connections used by large organisations, which form the backbone of the UK's mobile and broadband networks – in a similar way to residential broadband products, by varying our approach geographically to reflect the level of current or prospective competition.

**Maintaining quality of service safeguards.** To ensure that Openreach provides the quality of service customers need, we propose maintaining existing rules for how quickly it must carry out repairs and installations.

We recognise that there are some parts of the country which are significantly more expensive to serve. The UK and devolved Governments are actively working to design several schemes to help improve coverage of broadband services to these areas. Our proposals for these areas are designed to complement those public projects, and we are working closely with the UK and devolved Governments to ensure that is the case.

## **Next steps**

Responses to this consultation must be received by 1 April 2020. We will publish our statement setting out our decisions before the new regulation will take effect in April 2021. Depending on the responses to this consultation, we may consult on specific issues again in Q2 2020/21. This review does not cover the Hull area which will be subject to a separate consultation in Q1 2020.

## 2. Detailed summary of our proposals

- 2.1 This section describes the regulatory framework and sets out our legal duties, which we have taken into account in reaching our proposals. It also provides a detailed summary of our proposals on market definition, SMP findings and remedies.
- 2.2 In this review we are reviewing the following markets:
- Wholesale Fixed Analogue Exchange Line (WFAEL) market on which we made a statement in November 2017;<sup>1</sup>
  - Integrated Services Digital Network (ISDN) market on which we made a statement in November 2017;<sup>2</sup>
  - Wholesale local access market for which we made a statement in April 2018;<sup>3</sup>
  - Wholesale broadband access market (WBA) on which we made a statement in July 2018;<sup>4</sup>
  - Business connectivity market on which we made a statement in June 2019;<sup>5</sup>
  - Physical infrastructure market on which we made a statement in June 2019;<sup>6</sup>
- 2.3 We have committed to review these markets so that new regulation can take effect from April 2021 after the existing charge controls expire in March 2021.

### Legal and regulatory framework

#### Market review process

- 2.4 Annex 5 provides an overview of the market review process. As required by the regulatory framework, we have reviewed the markets listed above in three analytical stages:
- a) we have provisionally identified and defined the relevant markets, taking into account national circumstances;
  - b) we have assessed whether the markets are effectively competitive, which involves assessing whether any operator has SMP in any of the relevant markets; and
  - c) where we propose to find SMP, we are also proposing appropriate remedies, based on the nature of the competition problems identified in the relevant markets.
- 2.5 Consistent with our duties, we are taking due account of any applicable European Commission (EC) recommendations or guidelines. In particular, we are taking due account of the EC's Recommendation on relevant product and service markets (the 2014 EC Recommendation) and SMP Guidelines.

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<sup>1</sup> Ofcom, November 2017. [Narrowband Market Review: Statement](#) [accessed 17 December 2019].

<sup>2</sup> Ofcom, November 2017. [Narrowband Market Review: Statement](#) [accessed 17 December 2019].

<sup>3</sup> Ofcom, March 2018. [Wholesale Local Access Market Review: Statement](#) [accessed 17 December 2019].

<sup>4</sup> Ofcom, July 2018. [Wholesale Broadband Access Market Review: Statement](#) [accessed 17 December 2019].

<sup>5</sup> Ofcom, June 2019. [Business Connectivity Market Review: Statement](#) [accessed 17 December 2019].

<sup>6</sup> Ofcom, June 2019. [Physical Infrastructure Market Review: Statement](#) [accessed 17 December 2019].

## Forward look

- 2.6 Market reviews look ahead to how competitive conditions may change in the future. For the purposes of this review, we consider the period up to March 2026, reflecting the characteristics of the retail and wholesale markets and the factors likely to influence their competitive development.
- 2.7 The prospective nature of our assessment over this period means that we are required to gather a range of evidence to assess actual market conditions as well as to produce forecasts that we consider will appropriately reflect developments over time. This is particularly the case in our assessment of market definition and market power, and in our detailed modelling work underpinning the charge controls, PIA and QoS remedies we are proposing to impose. Where appropriate, we have exercised our regulatory judgement to reach proposals on the evidence before us with a view, ultimately, to addressing the competition concerns we identify in order to further the interests of citizens and consumers in these markets.

## Our duties under the Act

- 2.8 Annex 5 also describes our statutory duties and the matters we should have regard to in the performance of our functions.<sup>7</sup>
- 2.9 Our Strategic Review of Digital Communications (“DCR”) set out how we intended to approach the exercise of our functions to regulate communications markets in accordance with our duties.<sup>8</sup> We consider that the proposals set out in this Consultation, which reflect the DCR strategy, meet our duties in section 3 of the Communications Act 2003 (the Act). This includes our principal duty to further the interests of citizens in relation to communication matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition. In particular, we propose to further the interests of citizens and consumers by setting our regulation to create appropriate conditions to incentivise both Openreach and other operators to invest in fibre networks, through network competition where viable and appropriate investment incentives where not.
- 2.10 The resulting network competition should protect consumers in the long term and allow deregulation in certain areas. However, we also recognise the need to maintain retail competition and to protect consumers’ interests including in relation to pricing and quality of service in the period while network competition develops and in areas of the UK where network competition is unlikely to be economically viable.
- 2.11 We consider that our proposals are also consistent with the requirement on us to secure, in carrying out our functions, the availability throughout the UK of a wide range of

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<sup>7</sup> The UK is due to leave the European Union on 31 January 2020. A consequence of this is that some of our functions under the Act, including certain functions relevant to this review, will be amended. We consider that the proposals set out in this consultation would continue to fall within the scope of our powers and meet our duties.

<sup>8</sup> Ofcom, February 2016. [Strategic Review of Digital Communications](#) [accessed 14 November 2019].



communications services. As noted above, we consider that incentivising network investment, through both network competition and the right investment incentives, is the best way to meet the growing demand for high speed and data intensive communications services and will provide a platform for innovative new services to develop. The deployment of full fibre networks will also support the delivery of other communications services, such as the roll out of 5G mobile and fixed wireless access networks. As noted above, our objective is to incentivise widespread fibre investment to deliver these benefits across all parts of the UK.

- 2.12 In performing our duties, we have had regard, in particular, to the desirability of promoting competition in relevant markets, the desirability of encouraging investment and innovation in relevant markets, the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom and to the interests of consumers in respect of choice, price, quality of service and value for money.
- 2.13 We have also had regard to the principles under which our regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.
- 2.14 We consider that our proposals are also consistent with our duty to act in accordance with the European Community requirements set out in section 4 of the Act, in particular, and for the reasons set out above:
- the first Community requirement to promote competition;
  - the third Community requirement to promote the interests of all persons who are citizens of the EU;
  - the fourth Community requirement to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another (i.e. to be technologically neutral); and
  - the fifth Community requirement to encourage the provision of network access for the purposes of securing efficiency and sustainable competition, efficient investment and innovation and the maximum benefit for persons who are customers of communications providers and of persons who make associated facilities available.
- 2.15 In identifying and analysing the markets in Volume 2, we have taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of an EU instrument and which relate to market identification and analysis or the determination of what constitutes significant market power in accordance with section 79 of the Act.
- 2.16 In developing our remedies in Volume 3 we have taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive in accordance with our duties under section 4A of the Act. In each

case, pursuant to Article 3(3) of BEREC Regulation<sup>9</sup>, we have also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practices adopted by BEREC relevant to the matters under consideration in this review.

2.17 Where relevant, we explain how we have taken account of these instruments.

## European Electronic Communications Code (EECC)

2.18 Directive EU 2018/1972 entered into force on 20 December 2018. It established the European Electronic Communications Code (the EECC), which amends and replaces the current EU regulatory framework for electronic communications.<sup>10</sup> The relevant provisions of the EECC are set out in Annex 5 of this document.

2.19 The UK Government consulted in July 2019 on its proposed approach to implementing the EECC into national law.<sup>11</sup> Its consultation included proposals on the key legislative changes that will be required to implement the EECC in the UK. The deadline for transposition is 21 December 2020. There remains some uncertainty over the UK's future relationship with the European Union. Ofcom takes no view on the means or merits of Brexit. However, the requirement to transpose EU Directives may still apply to the UK by the time the deadline for transposing the EECC is reached. We therefore anticipate that the Act may be amended to reflect the EECC's provisions before we reach our final decisions on the matters set out in this consultation (our final statement is currently planned for early 2021). We have therefore also considered whether our proposals are consistent with these provisions of the EECC.

2.20 Article 3 of the EECC sets out the general objectives that national regulatory authorities should pursue. These mirror to a large extent the objectives currently set out in Article 8 of the Framework Directive, which are reflected in our existing duties under section 4 the Act (such as the promotion of competition and citizens' interests). However, Article 3 of the EECC introduces a new objective to promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union (we refer to this below as the "connectivity objective"), and related amendments to the other objectives.

2.21 We consider that our proposals are also consistent with Article 3 of the EECC. We have explained above that we are seeking to incentivise investment in full fibre networks by both Openreach and other operators with the aim of delivering widespread roll-out of full

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<sup>9</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators of Electronic Communications (BEREC) and the Office (the BEREC Regulation)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0001:0010:EN:PDF> [accessed 20 June 2019]

<sup>10</sup> Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, 7 March 2002 (as amended) (**Access Directive**); Directive 2002/20/EC on the authorisation of electronic communications networks and services, 7 March 2002 (as amended) (**Authorisation Directive**); Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, 7 March 2002 (as amended) (**Framework Directive**); Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, 7 March 2002 (as amended) (**Universal Service Directive**).

<sup>11</sup> Department for Digital, Culture, Media and Sport, [Implementing the European Electronic Communications Code](#), 16 July 2019.

fibre across the UK. We consider that this is consistent with the EEC's new connectivity objective and, as noted above, will further the interest of citizens and consumers, including those in smaller communities and rural areas which do not currently benefit from high speed access.

## Strategic Statement Position

2.22 As required by section 2B (2) of the Communications Act 2003, we have had regard to the UK Government's Statement of Strategic Priorities (SSP) for telecoms, management of radio spectrum and postal services. In particular, we have had regard to the following priority areas covered by the SSP: world-class digital infrastructure, furthering the interests of telecoms consumers and ensuring secure and resilient telecoms infrastructure. We set out in Section 1 of Volume 3 further details of how we have done this.

## Market definition and SMP findings

### Proposed market definitions relevant for physical telecoms infrastructure, broadband and leased lines services

2.23 We propose to define an upstream product market for the supply of telecoms physical infrastructure and that this is a single national market.

2.24 We propose to define three product markets downstream of the physical infrastructure market:

- a product market for the supply of wholesale local access (WLA) at a fixed location;
- a product market for the supply of leased line access (LL Access); and
- a product market for the supply of inter-exchange connectivity (IEC).

2.25 For the wholesale local access and leased line access markets, we have identified geographic markets in which the conditions of competition are different.

2.26 For wholesale local access we have defined two geographic markets:

- WLA Area 2 Market - where there is already some material commercial deployment by rival networks to Openreach or where this could be economic; and
- WLA Area 3 Market - where there is unlikely to be material commercial deployment by rival networks to Openreach.

2.27 For leased lines access we have defined four geographic markets:

- Central London Area - where there are extensive rival networks to Openreach covering the area;
- High Network Reach Areas – where there is high degree of rival networks to Openreach covering the areas;
- LL Access Area 2 Market - where there is already some material commercial deployment by rival networks or where this could be economic;

- LL Access Area 3 Market - where there is unlikely to be material commercial deployment by rival networks.
- 2.28 The premises covered by the Area 2 and Area 3 geographic markets are similar for WLA and LL Access, except for those postcode sectors that are included in the Central London Area or High Network Reach areas reflecting the specific circumstances of those areas which have a number of rival leased line specific networks.
- 2.29 For the Inter-exchange connectivity market we have defined each BT exchange as a distinct geographic market. We exclude BT exchanges with two or more rivals present from our review having previously found these to be effectively competitive. We group the remaining exchanges based on the presence of rival network operators at Openreach exchanges:
- BT+1 rival network operator exchanges;
  - BT only exchanges.

### Proposed SMP findings

- 2.30 We propose to find BT has SMP in the physical infrastructure market.
- 2.31 For wholesale local access we propose:
- WLA Area 2 Market – BT has SMP; and
  - WLA Area 3 Market – BT has SMP.
- 2.32 For leased lines access we propose:
- Central London Area – BT does not have SMP and market is effectively competitive;
  - High Network Reach Areas – BT has SMP;
  - LL Access Area 2 Market – BT has SMP; and
  - LL Access Area 3 Market – BT has SMP.
- 2.33 For IEC we propose:
- BT+1 rival network operator exchanges – BT has SMP; and
  - BT only exchanges – BT has SMP.

### Other markets within this Review

- 2.34 We have also reviewed the markets for WFAEL, ISDN and WBA. Given the changes to the markets since we have last reviewed them and also prospective changes in how voice services are going to be offered in the future, we are proposing to deregulate them on the grounds that they are no longer markets suitable for *ex ante* regulation.

### Remedies

- 2.35 In the light of our provisional SMP findings we are proposing a number of remedies in each of the relevant markets.

2.36 In each of these relevant markets we have imposed a general network access obligation supplemented by transparency and non-discrimination requirements. We also propose a number of specific network access remedies, requirements on Openreach to provide particular forms of network access in each product market. For each of the product markets, the following tables set out the specific network access requirements we are proposing and our approach to transparency, charge controls, quality of service, equivalence of inputs (EOI)/non-discrimination, and prohibition of geographic discounts in each case.

## Physical infrastructure market

2.37 The table below sets out our proposals for addressing BT's SMP in the Physical infrastructure market.

**Table 2.1: Summary of our proposed remedies for Physical infrastructure market**

| PIA Specific Access Remedy     | Network access <sup>12</sup> | Trans-<br>parency <sup>13</sup> | Charge control | Quality of Service  | EOI / Non-discrimination | No geographic discounts |
|--------------------------------|------------------------------|---------------------------------|----------------|---------------------|--------------------------|-------------------------|
| Physical infrastructure access | ✓                            | ✓                               | Cost based     | ✗<br>Voluntary KPIs | Non discrimination       | ✗                       |

## Wholesale local access and leased line access

2.38 As noted above, for the wholesale local access and leased line access markets, we have identified geographic markets in which the conditions of competition are different. Whilst we have identified separate markets for wholesale local access and leased line access, we consider that it is appropriate at times to consider our approach to remedies across product markets. This is because we have observed an increasing trend towards investment in networks that service both markets and for competition in one market to provide new opportunities for competition in the other.

2.39 Accordingly, we propose to consider our approach to remedies for the product markets WLA and LL access in the following three groupings:

- Area 2 - This refers to the WLA Area 2 Market and the Leased Line Area 2 Market, where in both cases our market analysis has indicated that there is already some material scale commercial deployment by rival networks to BT or where we consider it could be economic for deployments based on engagement with potential investors;
- Area 3 - This refers to the WLA Area 3 Market and the Leased Line Area 3 Market where in both cases there is unlikely to be material scale commercial deployment by rival networks to BT; and

<sup>12</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>13</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.

- Separately leased lines access in High Network Reach areas.

2.40 The following three tables summarize our proposed remedies in each of these groupings.

2.41 In Area 2, in addition to our proposals to prohibit geographic discounts, we are also concerned to ensure that Openreach does not introduce other loyalty-inducing commercial terms that could undermine competitive network entry. Under existing regulation Openreach is required to give 28 days' notice for changes to terms and conditions including prices. We are proposing to require a longer notice period of 90 days for changes. This will allow us sufficient time to review whether they are likely to threaten the emergence of competition and whether there might be offsetting benefits to consumers, and if we have concerns to take action before the changes would come into effect.

**Table 2.2: Summary of our proposed remedies for WLA and access leased lines in Area 2**

| WLA Specific Access Remedies - Area 2                    | Network access <sup>14</sup>                                       | Transparency <sup>15</sup> | Charge control                                  | Quality of Service  | EOI / Non-discrimination | No geographic discounts |
|--|--|----------------------------|---|---------------------|--------------------------|-------------------------|
| <b>MPF</b> <sup>16</sup><br>(anchor)                     | ✓<br>Removal of General Access requirement for new copper services | ✓                          | Flat prices in real terms                       | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTC 40/10</b><br>(anchor)                            | ✓  | ✓                          | Flat prices in real terms                       | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTC</b> (all other bandwidths)                       | ✓  | ✓                          | ✗   | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTP or G.fast</b> (all bandwidths)                   | ✓  | ✓                          | ✗<br>40/10 where no copper service is available | ✗<br>KPIs only      | EOI                      | ✓                       |
| Leased lines Specific Access Remedies – Area 2           | Network access <sup>12</sup>                                       | Transparency <sup>13</sup> | Charge control                                  | Quality of Service  | Eoi / Non-discrimination | No geographic discounts |
| <b>CI Leased lines</b> <sup>17</sup><br>(all bandwidths) | ✓  | ✓                          | Flat prices in real terms                       | As at 31 March 2021 | EOI                      | ✓                       |
| <b>Dark fibre</b>  | ✗  | ✗                          | ✗   | ✗                   | ✗                        | ✗                       |

<sup>14</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>15</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.

<sup>16</sup> There is also a SLU network access requirement. See Section 4 of Volume 3 for further detail on SLU and any associated regulatory obligations and requirements.

<sup>17</sup> Contemporary Interface (CI) refers to Openreach's Ethernet and WDM products.

Table 2.3: Summary our proposed remedies for WLA and access leased lines in Area 3

| WLA Specific Access Remedy - Area 3          | Network access <sup>18</sup>                                    | Trans-<br>parency <sup>19</sup> | Charge control   | Quality of Service  | EOI / Non-discrimination | No geographic discounts |
|--|---|---------------------------------|--|---------------------|--------------------------|-------------------------|
| <b>MPF</b> <sup>20</sup><br>(anchor)         | ✓ Removal of General Access requirement for new copper services | ✓                               | <b>Cost based:</b><br>If Openreach provides sufficient commitment, indexed as in Area 2; <b>else</b><br>If no commitment, charge uplift after deployment | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTC 40/10</b><br>(anchor)                | ✓   | ✓                               |  | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTC</b> (all other bandwidths)           | ✓   | ✓                               |  | As at 31 March 2021 | EOI                      | ✓                       |
| <b>FTTP or G.fast</b><br>(all bandwidths)    | ✓   | ✓                               | ✗<br>40/10 where no copper service is available  | ✗<br>KPIs only      | EOI                      | ✗                       |
| Leased lines Specific Access Remedy – Area 3 | Network access <sup>12</sup>                                    | Trans-<br>parency <sup>13</sup> | Charge control   | Quality of Service  | EOI / Non-discrimination | No geographic discounts |
| <b>CI Leased lines</b><br>(all bandwidths)   | ✓   | ✓                               | Flat prices in real terms  | As at 31 March 2021 | EOI                      | ✗                       |
| <b>Dark fibre</b>                            | ✓   | ✓                               | Cost-based   | As per Ethernet     | EOI, external sales only | ✗                       |

<sup>18</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>19</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.

<sup>20</sup> There is also a SLU network access requirement. See Section 4 of Volume 3 for further detail on SLU and any associated regulatory obligations and requirements.

**Table 2.4: Summary of our proposed remedies in LL Access High Network Reach (HNR) Areas**

| Leased lines<br>Specific Access<br>Remedy - HNR | Network<br>access <sup>21</sup> | Trans-<br>parency <sup>22</sup> | Charge<br>control                  | Quality<br>of<br>Service | EOI / Non-<br>discrimination | No geographic<br>discounts |
|---|---------------------------------|---------------------------------|------------------------------------|--------------------------|------------------------------|----------------------------|
| CI Leased lines<br>(all bandwidths)             | ✓                               | ✓                               | ✗<br>Fair and<br>reasonable prices | ✗<br>KPIs<br>only        | EOI                          | ✗                          |
| Dark fibre                                      | ✗                               | ✗                               | ✗                                  | ✗                        | ✗                            | ✗                          |

## Inter-exchange connectivity (IEC)

2.42 The following two tables set out our proposed remedies for the inter exchange markets.

**Table 2.5: Summary of our proposal for IEC in BT only areas**

| IEC Specific<br>Access Remedy<br>BT Only | Network<br>access <sup>23</sup> | Trans-<br>parency <sup>24</sup> | Charge<br>control            | Quality of<br>Service  | EOI / Non-<br>discrimination | No geographic<br>discounts |
|--|---------------------------------|---------------------------------|------------------------------|------------------------|------------------------------|----------------------------|
| CI Leased lines<br>(all bandwidths)      | ✓                               | ✓                               | Flat prices in<br>real terms | As at 31<br>March 2021 | EOI                          | ✗                          |
| Dark fibre                               | ✓                               | ✓                               | Cost based                   | As per<br>Ethernet     | EOI External<br>sales only   | ✗                          |

<sup>21</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>22</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.

<sup>23</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>24</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.



Table 2.6: Summary of our proposal for IEC in BT+1 areas

| IEC – BT + 1<br>Specific Access<br>Remedy | Network<br>access <sup>25</sup> | Trans-<br>parency <sup>26</sup> | Charge<br>control            | Quality of<br>Service  | EOI / Non-<br>discrimination | No geographic<br>discounts |
|---|---------------------------------|---------------------------------|------------------------------|------------------------|------------------------------|----------------------------|
| CI Leased lines<br>(all bandwidths)       | ✓                               | ✓                               | Flat prices in<br>real terms | As at 31<br>March 2021 | EOI                          | ✗                          |
| Dark Fibre                                | ✗                               | ✗                               | ✗                            | ✗                      | ✗                            | ✗                          |

## Copper retirement

- 2.43 We want our regulation to support a smooth transition from the legacy copper network to the new fibre network while protecting consumers and ensuring that there are not households left behind.
- 2.44 We propose to move regulation from copper to fibre on an exchange area by exchange area basis using a staged approach. When Openreach has deployed ultrafast services to 75% of the premises within an exchange area, for those premises where fibre is available, we propose to remove the obligation to provide new copper services. Once complete ultrafast coverage has been reached in any exchange, for those premises where fibre is available, we expect to remove charge controls on copper services and rely on a charge control on fibre.
- 2.45 We are proposing a charge control for fibre 40/10 services at a price uplift from the copper 40/10 charge of £1.50 – £1.85 per month (see Annex 22), to reflect the additional value that fibre offers. This control will apply nationwide wherever fibre is the only service available at a premises, and in exchanges where Openreach has deployed ultrafast services to 75% or more of premises (in parallel with the copper 40/10 charge control); and will be the sole charge control in an exchange area where copper controls have been removed following complete ultrafast deployment to an exchange.

<sup>25</sup> Network access includes a requirement for Openreach to have a Statement of Requirements (SoR) process under which access seekers can request new forms of access.

<sup>26</sup> Transparency includes requirements to publish a reference offer, provide notifications for changes to existing terms and conditions and for new forms of network access, and notify technical information. A separate upcoming consultation will set out proposed requirements for cost accounting and accounting separation.

## 3. Structure and recent consultations

3.1 In this section we set out the structure for the rest of the document, the consultations we have conducted to inform our market review, and our approach to impact assessments.

### Structure of the consultation document

3.2 The proposals of our review are published in five volumes and 24 Annexes, which together set out our analysis of and proposals for fixed telecoms access markets in the UK excluding the Hull Area:

- **Volume 1** provides an overview and summary of our proposals;
- **Volume 2** sets out our market analysis for physical infrastructure, wholesale local access, leased lines access and inter-exchange connectivity services. It also includes our proposals for the deregulation of wholesale broadband access, integrated services digital network market, and wholesale fixed analogue exchange lines market;
- **Volume 3** sets out our approach to remedies and details for our non-pricing remedies for all the markets;
- **Volume 4** sets out details of our pricing remedies including proposals for the charge controls for PIA, metallic path facility (MPF), and the virtual unbundled local access (VULA) 40/10 Mbit/s service, ethernet services and dark fibre together with a range of ancillary services supporting use of these access services;
- **Volume 5** sets out the details of our proposed SMP conditions.
- **Annexes** containing details which are referred to in each of the volumes. These Annexes support the analysis in Volumes 1 to 4 and are an integral part of our reasoning.

### Consultations

3.3 The below table summarises the previous consultations we have published in the lead up to this consultation.

**Table 3.1: Summary of previous consultations**

| Date             | Consultation  |
|------------------|---|
| 11 December 2018 | Promoting investment and competition in fibre networks: Approach to geographic markets <sup>27</sup>          |
| 29 March 2019    | Promoting investment and competition in fibre networks: Initial proposal – Approach to remedies <sup>28</sup> |

<sup>27</sup> Ofcom, March 2019. [Consultation: Promoting investment and competition in fibre networks](#) [accessed 17 December 2019].

<sup>28</sup> Ofcom, March 2019. [Consultation: Promoting competition and investment in fibre networks – Initial proposals – Approach to remedies](#) [accessed 17 December 2019].

21 June 2019

Consultation: Promoting competition and investment in fibre networks – Initial consultation on the approach to modelling the costs of a fibre network<sup>29</sup>

- 3.4 In determining the proposals set out in this consultation we have considered all the responses to these earlier consultations. Our consideration is set out in the discussion of the issues in volumes two, three, four, and relevant annexes.

## Impact assessment and equality impact assessment

### Impact assessment

- 3.5 This consultation document constitutes our impact assessment for the purposes of section 7 of the Act.
- 3.6 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that, generally, we have to carry out impact assessments in cases where our conclusions would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions.

### Equality impact assessment (EIA)

- 3.7 Annex 10 sets out our EIA for this market review. We are required by statute to assess the potential impact of all our functions, policies, projects and practices on equality. We have a general duty under the 2010 Equality Act to advance equality of opportunity in relation to age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. We also have complementary duties under Northern Ireland's equality legislation. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 3.8 It is not apparent to us that the outcome of our review is likely to have any particular impact on race, disability and gender equality. More generally, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or sex equality or under our Northern Ireland Equality Scheme.

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<sup>29</sup> Ofcom, June 2019. [Consultation: Promoting competition and investment in fibre networks – Initial consultation on the approach to modelling the costs of a fibre network](#) [accessed 17 December 2019].

## Duct and pole access consultation – lead ins

- 3.9 While the focus of this consultation is on the future (post March 2021) regulation for the Physical Infrastructure, WLA and Leased Line markets, our costs and charging assessment for the PIA product also provide us with an opportunity to consult on a change, by direction, of our current charge control with respect to a key element of the PIA product set, the underground Lead-in rental. This is the duct that provides the last few metres of access to a premise. We plan to make changes to this element of the PIA product set before April 2021.
- 3.10 Our current charge control for deployment of underground lead-in cables identifies multiple chargeable elements and is complex and burdensome for CPs to determine and imposes administrative burdens such as lead-in charging verification and record-keeping.
- 3.11 After consultation with its customers, Openreach has proposed a simplified model for charging for underground lead-ins, one based on a single annual rental charge that combines the costs, on a nationally-averaged usage basis, of the constituent lead-in elements (and revenue neutral compared to the current approach). This proposal removes operational cost for both CPs and Openreach and provides a much greater degree of certainty for CPs in developing the investment case for FTTP build in a particular area. This proposed charging has received strong support from CPs.
- 3.12 Given the importance of this product for FTTP deployment we would want the regulation of the service to be unambiguous and for this clarification to be in place as soon as possible. Accordingly, we are in parallel with the main forward-looking consultation, consulting today on a change to the charge controls to move the regulated charge from the various associate lead-in products to this new consolidated service. The closing date for the consultation is the same as the main consultation. The discussion of the proposed change is set out in Volume 4, Section 5 and the draft direction is set out in Volume 5.
- 3.13 We plan to confirm our approach on this issue in Q1 2020/21.