EUROPEAN COMMISSION

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Office of Communications (Ofcom)
Riverside House
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United Kingdom

For the attention of:
Ms. Sharon White (CEO)

Fax: +44 20 7981 3504

Dear Ms White,

Subject: Case UK/2018/2062: Wholesale local access provided at a fixed location in the United Kingdom – full market review

Case UK/2018/2063: Wholesale local access provided at a fixed location and wholesale access to fixed analogue exchange lines in the United Kingdom – quality of service remedies

Article 7(3) of Directive 2002/21/EC: No comments

1. PROCEDURE

On 23 and 26 February 2018, respectively, the Commission registered notifications from the UK national regulatory authority, the Office of Communications (Ofcom)[1], concerning the wholesale markets for local access provided at a fixed location[2] and for access to fixed analogue exchange lines[3] in the United Kingdom (UK).

[1] Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33), as amended by Directive 2009/140/EC (OJ L 337, 18.12.2009, p. 37) and Regulation (EC) No 544/2009 (OJ L 167, 29.6.2009, p. 12).

[2] Corresponding to market 3a in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC (Recommendation on Relevant Markets) (OJ L 295, 11.10.2014, p. 79).

[3] Corresponding to market 1 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC (2007 Recommendation on Relevant Markets) (OJ L 344, 28.12.2007, p. 65).

Ofcom conducted 10 national consultations[4] concerning the various subject matters of these notifications.

The Commission sent Ofcom a request for information[5] on 5 March and received a response on 8 March.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

Wholesale local access provided at a fixed location

In 2010, Ofcom notified the Commission[6] of its second review of the market for wholesale local access (WLA) in the UK, comprising traditional copper loops, cable connections[7] and fibre-based local access. On the basis of a substitution analysis and the need to ensure adequate competition on retail broadband markets, Ofcom included a virtual unbundled local access (VULA) product in the market. It concluded that the VULA product offers features similar to physical unbundling.[8]

As regards local loop unbundling (LLU), Ofcom proposed to maintain the previously imposed charge control obligation. For VULA, it allowed pricing flexibility (including geographical variations, volume discounts and tiered pricing), while ensuring that VULA is provided on an equivalence of input (EoI) basis,

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4 In accordance with Article 6 of the Framework Directive. The national consultations were as follows:
(i) *Wholesale local access market review: consultation on possible approaches to fibre cost modelling* (9 May 2016);
(ii) *Wholesale local access market review* (6 December 2016);
(iii) *Wholesale local access market review: consultation on the proposed market, market power determinations and remedies* (31 March 2017);
(iv) *Quality of service for WLR, MPF and GEA* (31 March 2017) (March 2017 QoS consultation);
(v) *Wholesale local access market review: consultation on duct and pole access remedies* (20 April 2017);
(vi) *Wholesale local access market review: consultation on pricing proposals for duct and pole access remedies* (20 August 2017);
(vii) *Wholesale local access market review: further consultation on proposed charge control for wholesale standard and superfast broadband* (14 September 2017);
(viii) *Quality of service for WLR, MPF and GEA: further consultation on proposed quality of service remedies* (14 September 2017);
(ix) *Regulatory financial reporting: consultation on proposed directions to BT arising from the wholesale local access and wholesale broadband access market reviews* (20 November 2017); and
(x) *Wholesale local access market review – promoting network competition in superfast and ultrafast broadband: consultation* (1 December 2017).

5 In accordance with Article 5(2) of the Framework Directive.

6 Case UK/2010/1064 (C(2010) 3615).

7 Ofcom proposes to include cable-based services in the relevant market on the basis of indirect constraints, relying on the evidence available from previous reviews.

8 The key characteristics for VULA are:
– local (interconnection should occur locally);
– service-agnostic (should be able to support a range of services);
– uncontended (dedicated capacity should be available to the end-user);
– control of access (sufficient control of the access connection should be available); and
– control of customer premises equipment (CPE) (sufficient control of CPE should be available).

i.e. on the same timescales, terms and conditions (including price and service levels), by means of the same systems and processes and providing the same information as for its own downstream divisions. No VULA-specific margin squeeze test was proposed at the time.

In 2014, Ofcom notified the Commission of its third-round review of the WLA market.[9] In line with its previous market review, Ofcom defined the relevant WLA market as including copper-based, cable-based and fibre-based local access at a fixed location. It did not distinguish between WLA used to provide business or residential services. Similarly, as in its previous market review, Ofcom considered that because of the retail competition between copper-based and cable-based services, at the wholesale level the cable networks exert indirect constraints on the provision of WLA by a network that uses copper/fibre lines.

Ofcom defined two distinct geographic WLA markets: (i) the UK excluding the Hull area and (ii) the Hull area,[10] and designated KCOM with SMP in Hull and BT with SMP in the rest of the UK on the basis of an analysis of the following main criteria: (i) high and stable market shares;[11] (ii) barriers to entry; and (iii) countervailing buying power.

Ofcom maintained the set of previously imposed remedies for both BT and KCOM. For BT, this includes the requirement to provide network access on an EoI basis. Regarding copper-based LLU, Ofcom maintained a charge control obligation covering the period to 31 March 2017. The charge control is based on a top-down cost model.[12]

In the case of the VULA product, Ofcom continued to allow pricing flexibility to BT, e.g. geographic variations, volume discounts and tiered pricing and refrained from imposing a charge control. However, BT was required to provide VULA to access seekers on an Equivalence of Input (EoI) basis. Due to concerns that BT may be incentivised to use this relative pricing freedom inappropriately in order to distort competition in the broadband market and, taking utmost account of the Commission's 2013 Costing and Non-Discrimination Recommendation,[13] Ofcom stated it would consider applying an economic replicability test (ERT) to ensure that BT does not abuse pricing flexibility in order to exclude (potential) competitors from the relevant broadband market.[14] The details of this test, however, were not part of the draft measures notified in 2014.

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9 Case UK/2014/1606 (C(2014) 4296 final).

10 'The 'Hull area'' refers to Kingston upon Hull and covers 0.7 % of UK premises.

11 According to Ofcom, BT's market share at the time was consistently very high (above 80 %), while in 2009 it was 84 %.

12 The cost model includes an efficiency target of 5 % per year and the engineering costs are increased by 3.9 % to enable Openreach to recover costs incurred efficiently in relation to the new QoS remedy. The weighted average cost of capital (WACC) is set at 8.6 %.

13 Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (2013/466/EU) (OJ L 251, 21.9.2013, p.13).

14 In the past three years, BT has gained a substantial share of VULA-based retail superfast broadband subscribers. Although net adds have slowed down to a degree, BT has consistently been able to gain

In 2015, Ofcom notified[15] the Commission of its draft decision proposing a general prohibition on setting VULA charges at a level leading to a margin squeeze. This approach covered the ongoing market review period. The proposal aimed to address the risk identified in its 2014 market review, i.e. that competition for superfast broadband could be dampened were BT to use its relative pricing freedom anti-competitively.[16] Ofcom considered it necessary to ensure that BT cannot use its SMP in the WLA market to set the VULA margin over the relevant market review period such that it causes retail competition in superfast broadband to be distorted. In particular, its measure attempted to ensure that BT does not set the VULA margin such that it prevents an operator with slightly higher costs than BT from being able to replicate economically BT's retail superfast broadband offers. The Commission commented on the proposed measure requesting Ofcom to re-visit the design of its proposed ERT in order to ensure that sufficient flexibility is given to BT to recover the considerable costs for BT Sport over a longer time horizon, in particular in light of uncertainties relating to scale and costs of future auctions.

Wholesale access to fixed analogue exchange lines

In 2014, Ofcom notified the Commission of its review of the markets for access to wholesale fixed analogue exchange lines (WFAEL) and wholesale ISDN30/ISDN2 exchange line services.[17] WFAELs were defined as intermediate products that are sold to access seekers to enable them to provide a telephone connection (typically a single 64-kbit/s channel) from a customer's premises to a local aggregation point in the access network. Again, Ofcom defined two separate geographic markets, the United Kingdom excluding the Hull area and the Hull area. Ofcom found that BT had SMP in the UK excluding the Hull area, while KCOM had SMP in the Hull area. Ofcom imposed a series of remedies on the two SMP operators.[18]

In addition, Ofcom defined markets for ISDN30 and ISDN2 as narrowband access services operating over analogue exchange lines. It defined the same two geographic markets, designated KCOM and BT as the undertakings with SMP in their respective markets[19] and imposed a series of access remedies on the two

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superfast broadband customers who switched from a third party retailer, and describes around 32 % of its new residential superfast broadband subscribers as 'new to BT', i.e. they had not previously had a BT broadband or public switched telephone network (PSTN) service.

15 Case UK/2015/1692 (C(2015) 992 final).

16 Ofcom is of the view that BT's ability and incentive to impose a price squeeze for VULA (as set out in the 2014 market review) is particularly significant for the coming review period given:
(i) the transition from standard broadband and the future role of superfast broadband (and VULA); and
(ii) the fact that the forthcoming market review period is likely to be a crucial stage in the migration to superfast broadband and competitive conditions in the future are likely to be significantly affected by developments in this period. This risk of weakening *future* competition is also a key factor leading Ofcom to conclude that *ex post* competition law alone is insufficient to achieve its regulatory aim of promoting competition.

17 Case UK/2014/1607 (C(2014) 4229).

18 The remedies on BT included a requirement to offer WLR, the access price for which was determined via a top-down cost model using BT's regulatory financial statements.

19 BT had market shares of 74 % in the ISDN30 market and almost 100 % in the ISDN2 market, while KCOM had close to 100 % in both ISDN markets.

operators. The Commission commented on the impact of IP technology on the WFEAL and ISDN markets and invited Ofcom to monitor closely developments in the market for IP-based services.

In 2017, Ofcom conducted a new analysis of the 'narrowband' markets, of which it notified the Commission under Case UK/2017/2024.[20] It proposed to continue to identify separate product markets for:

(i) WFAEL services;

(ii) wholesale ISDN30 exchange line services; and

(iii) wholesale ISDN2 exchange line services

with separate geographic markets for the Hull area and the rest of the UK, designating KCOM and BT, respectively, as the SMP operators.

While reducing the level of regulatory intervention in view of the increasing competitive constraint faced by BT and KCOM,[21] Ofcom maintained a number of the previous remedies in the WFAEL and ISDN markets on both SMP operators, including the requirement to provide general network access on fair and reasonable terms and (for BT only) specific access requirements in the form of wholesale line rental (WLR) in the WFAEL, ISDN30 and ISDN2 markets. BT is also subject to a transparency and quality of service (QoS) obligation.

2.2. Market definition

In line with its 2014 market review, Ofcom proposes to define a single product market for WLA comprising copper-based, cable-based and fibre-based local access at a fixed location. It does not distinguish between WLA used to provide business services and that for residential services. It continues to consider, as in previous market reviews, that cable-based access services should be included in the relevant market at wholesale level due to indirect constraints, i.e. as a result of the retail competition between copper-based and cable-based services. With regard to such indirect constraints, it explains that cable- and copper/fibre-based broadband access is offered in comparable retail packages featuring similar services at similar prices and that there is significant switching between cable-based retail offers and those that use Openreach's network as their wholesale input.

Ofcom proposes not to include other forms of access (such as mobile, satellite and fixed wireless access[22] in particular due to their very limited substitutability at the

[20] C(2017) 7966 final.

[21] Sky and TalkTalk have increased sales using their MPF networks. There is scope for the proportion of WFAEL lines supplied over those networks to grow within that footprint. This could be through greater self-supply by Sky and TalkTalk or through growth in the use of MPF in a 'merchant' market to supply retailers. Also, Virgin Media's cable network now covers 50 % of households and it expects to reach 60 %, which might lead to further erosion of BT's share of the WFAEL market. Out-of-market constraints from mobile access and voice over internet protocol (VoIP) – potentially over broadband only lines – also have the potential to grow further.

[22] As regards the potential substitutability of fixed wireless access (FWA) with wholesale local access, Ofcom confirmed in the Commission's request for information, that whilst it recognises that such access could lead to service offerings which consumers find to be closer substitutes for services provided over fixed access connections it does not consider that wireless services presently available will act as a

retail level and since such access products would not provide a sufficient indirect constraint at the wholesale level to justify their inclusion in the relevant market.

Ofcom proposes to define two geographic WLA markets:

(i) the UK excluding the Hull area; and

(ii) the Hull area.

Ofcom considered whether it would be justified to further delineate the geographic scope of the relevant market on a sub-national basis, but concluded that the competitive conditions in the UK excluding the Hull area are sufficiently homogenous to justify a single geographic market for that area. Ofcom justifies this finding with:

- the existence of a national pricing strategy by the proposed SMP operator, BT;[23]
- the fact that – even in cable areas – BT's service shares are high and likely to increase over the forthcoming market review period;[24] and
- the absence – when looking at non-price competition – of a clear distinction between BT's investment plans for cable and non-cable areas.

2.3. Finding of significant market power

For the wholesale market of local access provided at a fixed location in the UK excluding the Hull area, Ofcom proposes to designate BT has having SMP, on the basis of the following considerations:

- BT's market shares are high and expected to remain stable at levels consistent with a presumption of dominance throughout the period covered by this review. BT's share of the WLA market (when including both its copper and fibre lines) exceeds 80 %.[25] Ofcom considers that there are high barriers to entry to the WLA market exist, arising particularly from the scale of the investment needed to compete in the relevant market and the fact that a large part of the costs incurred are likely to be sunk costs.

- in Ofcom's view, BT's pricing and profitability is not compatible with effective competition in WLA, particularly considering that many existing charges are constrained by a charge control. This appears to be supported by the fact that BT has priced its price-regulated access services (metallic path facility (MPF),

significant constraint on services provided over copper/fibre and cable connections during this review period.

[23] The observed local variations in retail pricing appear to be due to relatively intense competition, in particular through the presence of LLU competitors, and not the presence of a single competitor or the parallel presence of cable infrastructure. In Ofcom's view, such variations would be unlikely in a modified greenfield scenario, i.e. in the absence of WLA regulation.

[24] According to Ofcom's analysis, current trends suggest that, even as regards fibre/cable connections in cable areas, BT's service share is likely to increase to around 50 % in 2020/2021.

[25] Even when looking at individual product or geographic segments of the relevant market in isolation, BT's service shares of local access connections tend to be well over 50 %. As stated above, even for the segment of fibre/cable connections in cable areas alone, BT's service share is expected to be around 50 % for 2020/2021. Moreover, BT holds considerable underlying market power linked to its ownership and control of the access network.

shared metallic path facility (SMPF) and WLR) consistently up to the cap provided for by the charge controls in place during the last review period;

- Ofcom considers that there is no significant countervailing buyer power which could constrain BT's position as a supplier of WLA services, as retail providers could not successfully use the threat of switching to other wholesale providers in such a way as to undermine BT's ability to act independently of its competitors and customers with regard to WLA. Retail providers remain dependent on BT for WLA if they wish to serve the majority of the country;[26] and
- Ofcom is of the view that constraints from services delivered over access networks outside the WLA market are weak.[27]

Based on an assessment of similar criteria, Ofcom also proposes to designate KCOM as having SMP in the wholesale market of local access provided at a fixed location in the Hull area.

2.4. Regulatory remedies

Wholesale local access market

In order to address the competition concerns it identified for the relevant WLA market, Ofcom proposes to impose a package of remedies with the explicit objective of promoting investment and competition.

First, it proposes to impose a set of general remedies[28] applying to all forms of network access provided by BT in the WLA market.

In addition, it intends to apply a set of specific remedies designed to ensure that BT provides certain specific forms of access to its network; these include:

(i) specific access obligations;[29]

(ii) obligations concerning pricing;

(iii) modifications to the physical infrastructure access (PIA) obligation;

(iv) specific non-discrimination obligations; and

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[26] This is compounded by the fact that Virgin Media does not seem to offer, or intend to offer, WLA services within its cable coverage area.

[27] Ofcom states that for access over mobile or fixed wireless access connections, take-up by consumers has been limited to date and is unlikely to develop sufficiently over the review period to exercise a meaningful constraint. Also, mobile broadband services are seen as complementary, rather than stand-alone, services.

[28] The general remedies include:
(a) a requirement to provide network access on reasonable request;
(b) a general non-discrimination obligation based on an EoI standard;
(c) a transparency obligation, including requirements to publish and operate a process for requesting new forms of network access, to publish a reference offer, to notify changes to charges, terms and conditions, and technical information; and
(d) regulatory financial reporting obligations, including accounting separation and cost accounting.

[29] These proposed specific access obligations include a requirement for BT to offer LLU (MPF), sub-loop unbundling (SLU) and VULA services (plus the relevant ancillary services). However, BT may request that Ofcom exempt it from its LLU obligations in relevant geographic areas where it seeks to deploy new technologies that are not compatible with LLU but which bring benefits to consumers.

(v) specific QoS obligations.

Ofcom argues that, in the absence of these remedies, BT (as a vertically integrated provider) would have the ability and incentive to refuse to supply certain forms of network access. Therefore, in Ofcom's view, the remedies have a role in promoting competition and are designed to benefit consumers through increased choice of providers and ultimately by reducing prices and improving services.

On **pricing**, Ofcom intends to change its previous approach with regard to BT's lower bandwidth VULA services (VULA 40/10)[30] and to introduce a charge control for BT's generic ethernet access fibre-to-the-cabinet (GEA-FttC 40/10) rentals and associated ancillary services. Ofcom justifies this change to its regulatory pricing approach on the basis that it considers that absent such regulation, BT would have the ability and incentive to set charges for these VULA services at an excessive level[31], in particular since – in Ofcom's view – the pricing constraint previously exercised by LLU access ('the copper anchor') is no longer sufficiently strong to constrain the VULA 40/10 pricing in a way that would avoid a negative knock-on effect for retail superfast broadband prices. Ofcom argues that this approach is in line with the Commission's 2013 Costing and Non-Discrimination Recommendation[32], which – in its recital (56) – acknowledges that the copper anchor could, in principle be, replaced by a basic NGA-based product where the access product offered by the SMP operator on the legacy (copper) access network is no longer able to exercise a demonstrable retail price constraint on the NGA product.

As a consequence of the above, Ofcom no longer considers it necessary to impose a specific access remedy on BT in the form of a requirement to offer an LLU SMPF, the wholesale copper input for basic broadband services. Instead, SMPF will fall within the scope of the general network access remedy and be subject to fair and reasonable terms, conditions and charges (i.e. no longer subject to a cost-based charge control).

However, Ofcom proposes to continue imposing copper-based MPF LLU as a specific access remedy, which is subject to a 'long-run incremental cost plus' (LRIC+) charge control (i.e. a cost-based charge control following a 'consumer (retail) price index minus X (CPI-X) model, with X set to align charges to forecast

[30] Virtual unbundled local access (VULA) is provided by BT/Openreach under the product name 'generic ethernet access' (GEA). Such VULA access comes in various variants, including GEA-FttC and GEA-FttP (fibre-to-the-premises). The lowest speed GEA product provides accessseekers with 40 Mbit/s download and 10 Mbit/s upload capacity (GEA 40/10 or VULA 40/10).

[31] In its notification to the Commission, Ofcom argues that BT's current pricing and profitability as regards VULA products indicate that, in the absence of price control, it would probably set VULA charges at excessively high levels. According to Ofcom, there is currently a significant delta between the rental fees charged by BT and Ofcom's estimate of unit costs (currently £1.97 per line, projected to rise to £2.48 by 2020/2021). In Ofcom's view this amounts to consumers paying up to £1.6 billion in higher retail prices compared to cost-based charges over the course of the review period. Furthermore, the reported profitability of VULA services, as measured by return of capital employed (ROCE), is currently high and rising (24.8 % in 2016/2017, up from 21.6 % in 2015/2016), and significantly above the benchmark cost of capital, which is below 10 % for BT Group's pre-tax nominal WACC.

[32] Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (2013/466/EU) — 'the 2013 Recommendation'; O.J. L251, p.13.

efficient costs).[33] This is also motivated by the fact that access seekers will need MPF access in addition to a VULA product in order to provide end-users with a retail high-speed broadband package.

The proposed charge control for the VULA 40/10 product is a LRIC+ cost-based charge control following a CPI-X model, with X set to align charges to forecast efficient costs by the penultimate year of the charge control. Given the proposed introduction of a charge control, Ofcom no longer intends to apply the detailed VULA margins squeeze control imposed in 2015.

In application of the proposed charge control, Ofcom intends to set the annual rental charge for VULA 40/10 at £68.69, significantly below the current charge of £88.80 and falling year-on-year over the review period to £59.04 in 2020/2021. Given that VULA 40/10 needs to be consumed together with MPF access in order to provide a retail connection, the combined annual rental charge for MPF plus VULA 40/10 amounts to £153.54 for 2018/2019 (down from £173.18 currently) – resulting in a monthly charge of £12.795 or approx. €14.40 for lower bandwidth wholesale VULA access.[34]

However, Ofcom proposes to continue to allow BT pricing flexibility on higher bandwidth VULA services, subject to the requirement that charges are fair and reasonable, which Ofcom interprets as a requirement not to impose a margin squeeze.

Ofcom is of the view that the introduction of a charge control on the lower bandwidth VULA service not only protects consumers but also preserves the incentives for BT and its competitors to invest. It considers that a charge control for VULA 40/10 is consistent with a ‘fair bet’ principle, as it allowed BT sufficient time to make a significant return on the capital employed for roll-out over a longer period of time after the introduction of VULA in 2010. In addition, in Ofcom’s view, it supports BT’s ongoing investment and may even increase incentives for investment in higher-speed services (which are not subject to the charge control). Furthermore, the charge control for lower bandwidth VULA services, combined with the continued pricing flexibility for higher bandwidth VULA services, does not, in Ofcom’s view, negatively affect competitive network investments in full fibre infrastructure for the duration of the current review period.

Ofcom considers that competition between different networks is likely to be the most effective driver for innovation and continued investment in high-quality fibre networks. A **physical infrastructure access** (PIA) requirement was originally introduced in 2010 and maintained as a remedy under the last market review. However, take-up has remained limited. As a result and in order to foster further infrastructure competition, Ofcom proposes a number of changes to the existing obligation to provide physical infrastructure access as part of the wholesale local access market. The key changes are:

[33] The charge control is based on a top-down cost model using BT’s regulatory financial statements, together with asset volume elasticities and cost volume elasticities, to forecast the costs of operating a hypothetical copper network. The proposed annual charge for LLU (MPF) rental fees will remain stable, starting at £84.85 for 2018/2019 (equating to a monthly rental charge of approx. €7.95) and decreasing slightly to £84.03 for 2020/2021 (the current charge is £84.38).

[34] Based on current prices, this is a reduction of approx. £1.64 per month per line, or approx. 11.5 %.

(i) an adjustment to the ability for operators to access BT's ducts and poles, making such infrastructure 'ready to use', requiring Openreach to repair faulty infrastructure and relieve congested sections where necessary;

(ii) greater flexibility in the use of ducts and poles, removing the restriction to allow PIA access only for the provision of downstream products such as broadband and fixed telephony services. Consequently, 'mixed usage' is to be permitted, enabling access seekers to offer both broadband- and non-broadband-based (e.g. business) services with PIA input, provided the primary purpose of the network deployment remains the delivery of broadband services;

(iii) the application of a non-discrimination obligation requiring strict equivalence in respect of all processes;

(iv) access to digital maps to support large-scale network planning; and

(v) a price-cap on PIA rental charges which results in significant reductions compared with current rental charges,[35] thus making physical infrastructure access more competitive.

As part of its **non-discrimination obligation**, Ofcom proposes to include in the remedy package a specific obligation that would restrict BT's ability to offer geographically targeted price reductions for VULA where it is provided using GEA-FttC or G.fast. Ofcom argues that such a restriction is warranted in order to address concerns that BT could (and would have the incentive and ability to) offer geographically targeted price reductions for VULA in the early stages of rivals' network roll-out to deter investment in new networks. Ofcom intends to ensure that BT is prohibited from targeting areas of competitive entry by the geographical targeting of price reductions. However, in response to the Commission's request for information, Ofcom confirmed that the measure would include an exemption mechanism under which it could allow BT to introduce differential pricing that does not, in its view, give rise to such competition concerns. It confirms that the proposed obligation is not intended to stop BT from differentiating its pricing in response to the market behaviour of a competing network operator that is already established in a given geographical area.

Lastly, Ofcom proposes to modify the QoS requirements applicable to a number of products, including WLR, MPF and GEA, so as to improve the reliability of the Openreach network, and to give access seekers and their customers greater certainty that Openreach's performance will meet their needs.

In summary, Ofcom proposes to require BT to comply with specified QoS standards and reporting requirements in relation to Openreach's QoS performance for WLA services and to impose or amend a number of key performance indicators and reporting requirements in relation to WLR, MPF and GEA, as part of a wider review of BT's quality of service in fixed networks. As part of the improved QoS requirements, Ofcom intends to raise the standards first applied to Openreach in 2014, requiring more services to be installed and repaired promptly through the introduction of a standard to ensure that the vast majority of repairs are completed within a reasonable timeframe. In addition, these standards will now also cover

[35] The reductions on the various PIA access products range from 5 % (for the rental charge to run a cable up a pole) to 62 % for the 'facility in spine duct per metre – 3+ bores'.

broadband delivered over Openreach's FttC services to reflect market developments that have seen consumers increasingly adopt superfast broadband services. More specifically, Ofcom proposes to require that, for voice and broadband services, Openreach should by 2020/2021:

(i) complete 88 % of fault repairs within two working days of being notified, as compared with 80 % currently;

(ii) complete 97 % of repairs no later than five working days after the date promised;

(iii) provide an appointment for 90 % of new line installations within 10 working days of being notified, as compared with 80 % within 12 days currently;

(iv) install 95 % of connections on the date agreed between Openreach and the telecoms provider (up from 90 % currently); and

(v) reduce the amount it charges for its services to account for improvements in the reliability of its network.

Wholesale access to fixed analogue exchange lines

Ofcom intends to apply the above specific QoS requirements for the WLA market also to the WLR remedy , which was imposed as part of its market review for wholesale access to fixed analogue exchange lines in order to improve the reliability of Openreach's network performance also with regard to voice services.

3. No comments

The Commission has examined the notifications and the additional information provided by Ofcom and has no comments.[36]

Pursuant to Article 7(7) of the Framework Directive, Ofcom may adopt the draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

[36] In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC[37] the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[38] within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.[39] You should give reasons for any such request.

Yours sincerely,

For the Commission,
Roberto Viola
Director-General

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

[37] Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC (OJ L 301, 12.11.2008, p. 23).

[38] Your request should be sent by email (CNECT-ARTICLE7@ec.europa.eu) or by fax (+32 2 2988782).

[39] The Commission may inform the public of the result of its assessment before the end of this three-day period.