

**Openreach's response to
Ofcom's Consultation:
"Promoting competition
and investment in fibre
networks: Telecoms
Access Review"**

Document 1

12 June 2025

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Foreword

1. On 20 March 2025, Ofcom published its consultation document Promoting competition and investment in fibre networks: Telecoms Access Review (TAR) 2026-31 (the **Consultation**).
2. This response is provided by Openreach Limited - a wholly owned subsidiary of BT Group plc.
3. We are the UK's largest wholesale broadband network provider. We build and maintain an open network that is used by more than 680 Communications Providers (CPs), so they can offer broadband, phone, and TV packages to homes and businesses all over the UK.
4. Our network is made up of nearly 270 million kilometres of fibre optic cables and copper wires. To maintain and grow a network of this scale requires an exceptional team, and our 22,000 field engineers work around the clock, in all kinds of weather and in every community. Last year they completed around nine million engineering jobs, installing and maintaining the equipment that provides fast, reliable broadband to millions of people. Our work often involves liaising closely with local councils, highways agencies, energy suppliers and landowners, to solve complex engineering and logistical problems.

Realising the UK's full-fibre future will need adjustments to Ofcom's proposals

The fixed telecoms sector is a UK infrastructure success story

Ofcom's 2021 Wholesale Fixed Telecoms Market Review (WFTMR) framework is driving the country towards a competitive, full-fibre future. It has unlocked a wealth of competitive private sector investment, unlike most other regulated sectors. This investment is a vital underpin to the economic growth the UK so desperately needs.

Research commissioned by Openreach from Stantec and CEBR confirms overwhelmingly positive impacts of our full-fibre roll-out, supporting the government's growth mission. Taken together, the productivity and workforce boosts to Gross Value Added will total £66 billion per year by 2029 and £73 billion per year by 2034.¹ As Sir Chris Bryant, the Minister for Data Protection and Telecommunications recently said, "[t]here is no route to growth without digital infrastructure."²

Over seven in every ten UK customers are able to order full-fibre broadband: Openreach has made this life-changing technology available to over 18.5 million homes and businesses and the combined effort of Altnets such as CityFibre, Netomnia/brsk, Hyperoptic and Community Fibre – all using Openreach's passive duct and pole infrastructure – has reached more than 17 million homes. Virgin Media O2 (VMO2) has also extended its network – offering broadband over a combination of full-fibre and ultrafast-capable cable – to reach 18.3 million premises.

In two years' time, Ofcom expects 95% of the UK to have full-fibre access as networks expand and VMO2 upgrades its cable infrastructure. By the end of the decade, a combination of commercial and publicly subsidised builds will move the UK closer to universal full-fibre coverage.

All of this has been achieved thanks to a stable public policy and regulatory environment that's given encouragement and long-term certainty to investors – as well as a level-playing field for fair competition. But the job is not yet done. And there's a risk it won't be.

¹ [£66 billion broadband boost predicted for the UK Economy](#)

² [Sir Chris Bryant speech at TMT World Congress 2025 - GOV.UK](#)

At a time of significant economic volatility, market players face big strategic decisions about technology choices, innovation, expansion, consolidation and diversification. Massive investment is still needed to complete the build and connect customers. So, continuity and consistency with Ofcom's 2021 regulatory approach is key.

Ofcom's strategic focus on delivering a competitive, full-fibre future for the UK remains right, but this means it's vital that the TAR progressively rolls back regulation in the market reflecting the scale of competition that has emerged since 2021.

Encouraging elements

There's much to applaud in Ofcom's TAR proposals.

The regulator has resisted dangerous calls to radically change the way it mandates access to our ducts and poles. It has also rejected demands from some Altnets to establish price floors on our full-fibre services and, in many areas, has maintained its 'pricing continuity' focussed on ensuring prices of key wholesale inputs remain flat in real terms through this period of transition to a competitive, full-fibre future.

Significant concerns

But Ofcom has proposed two major departures from its 2021 approach that raise significant concerns:

- Effectively 'calling time' on competition in the leased lines market by taking a radically different approach to assessing the scope for future competition than was taken in the 2021 WFTMR or than Ofcom is taking in the Wholesale Local Access (WLA) market. It then proposes a return to cost-based price controls for active leased lines in almost half of the UK. This is despite clear evidence that the full-fibre networks that have and will be built over a much wider area can deliver competing leased lines services.
- Failing to reflect the strength of competition in the supply of WLA services in geographic areas where competition has evidently emerged and is strengthening in real time as wholesale Altnets like CityFibre and retail Altnets like Hyperoptic and Community Fibre grow take-up and win lines from Openreach. This results in Ofcom failing to roll back any regulation in the TAR or provide any clear route to roll back regulation before 2031. Instead, Ofcom

proposes to extend constraints on Openreach's commercial activity for the full five-year review period in a way that will prevent us from competing fairly on the merits with expanding rivals in the provision of broadband services, in the areas where they have built.

[X]

We provide a report from NERA alongside our response to the TAR which, among other things, sets out why the TAR *"does not deliver on Ofcom's 10-year strategy to boost competition and investment"* in which adjusting regulation to reflect the growth in competition was a key feature. NERA explains that Ofcom's analysis is too cautious in its forward look and that Ofcom adopts a *"wait and see"* approach in many areas when faced with opportunities to roll back rather than increase regulation.

Departing from the 2021 approach will undermine investor confidence in the regulatory framework and Ofcom's stated regulatory strategy of promoting investment and competition. Ofcom's proposals will actively disincentivise investment and competition, diluting choice for consumers and slowing the adoption of full-fibre services. This will put at risk the Government's growth mission.

Our proposed way forward

In this document, we offer comprehensive evidence and analysis explaining where and why we think Ofcom's approach is misguided. This covers the three issues above and several other important areas where changes are needed in the final Statement. We also highlight where Ofcom has got things right and for which stability is key.

In summary, we recommend that Ofcom makes the following key changes to its TAR proposals:

- In leased lines markets, Ofcom should:
 - define a significantly larger potentially competitive Area 2, consistent with the approach it proposes to take for WLA services; and
 - remove the proposal to apply cost-based regulation to active leased lines prices in Area 3.
- In WLA markets, Ofcom should:

- Revisit and adjust its forward-looking assessment of competition for WLA services to identify Area 1s where Significant Market Power (SMP) should be removed and define a separate geographic market for any areas where VMO2 is present;
- Remove restrictions on Openreach's ability to compete on the merits in geographic markets where competitive dynamics are strong and will strengthen over the TAR period;
- Take a dynamic approach to rolling back regulation over the TAR period as competition develops through additional rollout, increased wholesaling and/or industry consolidation; and
- [§<].
- Go further in supporting copper retirement by adapting supply obligations on copper services. Ofcom's summer consultation must set a clearer framework for supporting migrations to full-fibre networks wherever they're available.
- Correct identified errors and analytical flaws underpinning Ofcom's proposals for Physical Infrastructure Access (PIA) lead-in prices
- Correct identified errors and analytical flaws underpinning Ofcom's proposals for full-fibre Quality of Service (QoS) standards in Area 3.

We set out evidence in support of our position and we welcome the opportunity for further engagement with Ofcom during this consultation phase.

Mark Shurmer
MD Regulation
Openreach
12 June 2025

Executive summary

Ofcom's current approach is working

5. The Digital Communications Review (DCR) of 2015-17 resulted in a significant strategic shift in Ofcom's approach to regulating fixed network access in the UK.
6. Ofcom set a clear strategic objective: to drive the availability of ultrafast-capable networks across the UK. This culminated in the bold, radical, pro-competition and pro-investment approach that Ofcom took in its 2021 WFTMR.³
7. The WFTMR stepped away from traditional cost-based regulation of Openreach's existing legacy services, which failed to support risky investments with long paybacks. The focus was on supporting efficient competition in networks and creating the best conditions to invest through:
 - i. fair access to Openreach's physical infrastructure;
 - ii. limiting Openreach price controls to CPI-indexed caps on legacy anchor services;
 - iii. specific rules to oversee commercial behaviour by Openreach which could have the effect of deterring Altnet build during a period where competition was nascent; and
 - iv. providing assurances on longer-term stability and certainty around the role of regulation⁴ including in relation to the fair bet.
8. Ofcom's ambition for the WFTMR was clear: with the right regulatory framework offering clarity and stability for investors, there could be a 'decade of investment' in competing multi-service full-fibre networks that would deliver the UK's long term connectivity requirements for residential and business customers.⁵

³ [Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26 - Ofcom](#)

⁴ Moving to a 5-year review cycle but signalling an expectation of stability for a decade; supporting progress to copper retirement as FTTP was deployed.

⁵ Openreach broadly supported Ofcom's WFTMR 2021 decision, noting that it was intended as a package of measures. We had, however, some concerns including that Ofcom went too far in constraining our ability to fairly compete.

The success of the WFTMR framework is clear

9. The latest data shows that 74% of UK premises have access to a full-fibre network today,⁶ with choice growing in all geographic areas including those considered unlikely to see competition in the 2021 WFTMR.
10. Ofcom states in the TAR that full-fibre availability could reach 95% by January 2028,⁷ and that 85% of premises could have a choice of network provider by 2030, with further commercial and publicly subsidised build meaning very few areas will be 'Openreach only' in the long run.
11. Ofcom notes that *"This level of build exceeds what we expected in 2021"*.⁸
12. Take-up of full-fibre services, where available, has grown to around 35%⁹ - with Ofcom's analysis showing the strong consumer outcomes resulting from competitive prices for faster connectivity.¹⁰

Openreach has been central to this success

13. Access to our PIA products on non-discriminatory terms and at low prices to over 160 Altnets has been the bedrock of cumulative Altnet build reaching 17m homes to date and VMO2 expanding its coverage through its nexfibre joint venture to 18.3m homes.
14. Our own full-fibre build has reached over 18.5m premises across all parts of the UK and we're already building at the fastest pace ever seen in Europe, with plans to go faster still in the current financial year adding up to 5m additional homes by March 2026.¹¹
15. Openreach is on track to beat its target of reaching 25m homes by the end of 2026¹² and we won't stop there. We'll reach as many as 30m homes by 2030 with the right regulatory and investment conditions.

⁶ [Connected Nations update: Spring 2025 - Ofcom](#)

⁷ [Connected Nations - Planned Network Deployments 2025 - Ofcom](#)

⁸ TAR Vol 1 para 1.5

⁹ Table 2.3 [Connected Nations UK report 2024](#)

¹⁰ See, for instance, TAR Vol 2 Figures 2.5 and 2.6 tracking retail prices since 2021

¹¹ [Results for the full year to 31 March 2025](#)

¹² [Results for the full year to 31 March 2025](#)

16. We've driven take-up of full-fibre services by working with our wholesale customers to offer fair and competitive terms for higher bandwidth full-fibre speed connections relative to regulated legacy anchors via our Equinix offers that have shifted the broadband acquisition market to full-fibre propositions where available and provides the basis for our offering technology upgrades.

Competition across the UK is delivering strong choice for UK consumers and businesses

17. VMO2 is a long-established and successful retail provider of ultrafast broadband services and is currently engaged in expanding and upgrading their network and with ambitions to provide wholesale access to a potential customer base of over 20m homes.
18. Altnet entrants are taking market share from Openreach, both directly at the wholesale level and indirectly through competing at the retail level and winning business from Openreach's Internet Service Providers (ISPs). Openreach saw net line losses of over 800,000 lines in the year to March 2025, and many Altnets reported strong take-up, particularly on their oldest cohorts of build. For instance, Community Fibre with a footprint covering 1.3m homes is reporting take-up of 25%¹³ on the back of discounted offers in the market.
19. Our major external wholesale customers are now multi-sourcing their supply, with CityFibre securing wholesale supply arrangements with all major external ISPs to allow it to supply retail broadband offerings to its installed full-fibre footprint of 4.1 million¹⁴. Since Ofcom published the TAR consultation, we are aware that Sky has begun placing new end customer broadband orders with CityFibre in their footprint [X].
20. Increased consolidation and innovation across the Altnet sector will further strengthen competitive dynamics over the period to 2031. Full-fibre networks can deliver a wide range of connectivity services to UK end customers and businesses, and there will be ever-increasing convergence in competitive conditions for all customer solutions.

¹³ [Full Fibre Broadband ISP Community Fibre Grows UK Take-up to 25 Percent - ISPReview UK](#)

¹⁴ 4.1m Ready for Service FTTP homes (4.3m homes passed) [CityFibre delivers first full year of profitability, with... | CityFibre](#)

Continuity of Ofcom's regulatory approach in the TAR is vital to completing the job this decade

21. Progress towards the full-fibre future under the 'decade of investment' is well ahead of reasonable expectations in 2021. But the job is not done, and we share Ofcom's ambition for the TAR to propel the UK to the final phase of the full-fibre revolution.
22. In this, we also agree with Ofcom that maintaining stability and clarity in the regulatory approach is vital in further boosting investment and competition. Regulatory rules set in the WFTMR should be reviewed and adjusted in the TAR to reflect the significant developments seen in the market, but there should be no shift in the core principles and policy framework established in 2021 that have underpinned progress to date. To do otherwise will not only have specific and direct effects on the market and industry decisions but will also undermine investor confidence about the longer-term direction of regulation, potentially leading to a loss in innovation and customer choice, to the detriment of the end customer.
23. Continuity of Ofcom's WFTMR approach will allow the market to play out and finish the job of building full-fibre networks as widely as possible, and competing on price and service to connect customers to the connectivity services they need and demand. And strengthening market dynamics will drive growth in the digital economy over the long term to the benefit of the UK.

There is much we like about Ofcom's initial TAR proposals...

24. We welcome many aspects of Ofcom's assessment and specific proposals in the TAR consultation. In particular, Ofcom:
 - i. Resists calls from some Altnets to radically change the approach to PIA regulation to require supply on Equivalence of Inputs (EOI) terms – which would be an unnecessary distraction and raise significant costs – and to significantly cut PIA charges – which would send inefficient entry signals, when PIA charges are already clearly below cost.
 - ii. Maintains the pricing continuity approach aimed at keeping prices of key wholesale inputs flat in real terms in most markets where SMP is found.

- iii. Resists calls from some Altnets for new constraints to establish price floors on Openreach services and limit the frequency of price changes and the ability to introduce offers, both of which would lead to higher prices for consumers and businesses, and shield inefficient entry.
- iv. Re-states in-principle support for copper retirement and the importance of limiting the costs of parallel running and provides additional in-principle support for Openreach's exchange exit plans, signalling that progress should not be delayed by unresponsive customers.
- v. Simplifies existing QoS standards on copper services to reflect the significant reductions in provision and repair volumes as services migrate to full-fibre.
- vi. Provides additional assurances about its longer-term regulatory approach including with regard to the application of the fair bet.

... but there are two fundamental changes proposed to Ofcom's 2021 approach that would undermine achievement of Ofcom's stated objectives

- 25. Despite Ofcom's stated ambition of providing stability and clarity for the market, we are concerned that two central parts of the TAR proposals would, in fact, represent fundamental shifts away from Ofcom's 2021 policy approach. That is:
 - i. Ofcom proposes to change its approach to identifying the scope for potential competition to emerge in the supply of leased lines:
 - ii. Despite the growth in deployment of full-fibre networks capable of supplying all forms of network access services to residential and business customers, Ofcom now sees significantly less scope for competition in leased lines services than in 2021 and is proposing to include almost half of UK postcode sectors in the 'non-competitive' Area 3;
- 26. On the back of this, Ofcom is proposing a premature return to cost-based prices for Openreach active leased lines services and increased obligations to supply dark fibre. This will blunt incentives to invest and reduce market entry;
- 27. These proposals would devalue all investments in the ground and deter further investment and innovation, contrary to Ofcom's strategic objective.

28. Ofcom proposes to tighten regulatory restrictions on Openreach's supply of WLA despite the clear growth in competition since 2021:
- i. There are no areas – even the 22% of postcode sectors where Ofcom identifies that there are two rival networks to Openreach in place and clear evidence of strong competitive dynamics – that Ofcom finds effectively competitive and that are therefore deregulated;
 - ii. Ofcom provisionally concludes that competitive conditions across a widely-defined Area 2, covering 90% of UK homes, are sufficiently homogenous such that it proposes to apply the same remedies in all geographic areas despite wide variances in current network presence and trends in market shares;
 - iii. Ofcom provides no route for any regulatory rules to be rolled back in the next five years as competition further strengthens;
 - iv. The proposed increased commercial restrictions on geographic pricing within the proposed wide Area 2 (including connection as well as rental prices) and on the introduction of terms conditional on the volume or mix of services purchased will significantly limit Openreach's ability to respond reasonably and proportionately to competitive challenges from individual Altnets at the wholesale or retail level, for instance by offering efficient localised discounting or terms that support increased adoption of full-fibre services to our wholesale customers.
29. The consequence of Ofcom's proposals would be to protect individual Altnet business cases from competition to allow them to grow take-up faster at Openreach's expense, but this means consumers experiencing higher prices to deliver higher returns to private investors. This amounts to protecting competitors not competition and is against Ofcom's stated aims.
30. In a world where more competition has emerged than expected, it seems odd that Ofcom feels the need to layer on more regulatory constraints. It is also very difficult to see how such increased regulation is necessary. To the contrary, the increased competition suggests that it might not be necessary to maintain all of the existing regulation on Openreach.
31. Against that background, in this response we set out why we believe Ofcom has erred in its overall approach to defining geographic markets, assessing competitive

conditions, identifying competition concerns and proposing remedies across WLA, Leased Lines Access (LLA) and Inter-Exchange Connectivity (IEC).

32. We also attach a report from David Matthew at NERA where he sets out the reasons that the TAR *"does not deliver on Ofcom's 10-year strategy to boost competition and investment"* by failing to reflect the significant developments in competition across WLA and LLA markets.
33. We put forward an alternative approach that would:
 - i. Align LLA Area 3 to cover the same postcode sectors as WLA Area 3 and retain CPI-indexation of active leased lines across the UK until 2031 to ensure stability in the framework and maintain investor confidence;
 - ii. Properly assess forward-looking competitive dynamics in the proposed WLA Area 2 and identify:
 - a. Area 1s where at least two rivals to Openreach are present and where Ofcom has failed to capture the higher strength of competitive constraints compared to other parts of Area 2; and
 - b. VM02 overbuild areas as a separate geographic market (where not captured in Area 1s) on the basis that competitive conditions are clearly different;
 - iii. Apply proportionate remedies in defined geographic markets where SMP is found. Specifically, Ofcom should allow Openreach to compete on the merits with competitors in WLA markets by removing geographic and other pricing restrictions that are no longer proportionate remedies given the scale of Altnet competition and forward-looking competitive dynamics;
 - iv. Ensure remedies do not themselves hinder the competitive process, such as where obligations to publish a reference offer adversely affect the dynamics of LLA bidding markets;
 - v. Not create inefficiencies, such as the unjustified proposal to increase the number of exchanges where DFX applies in the IEC market;
 - vi. Take a dynamic approach to defining markets, assessing SMP and adjusting/removing remedies that allows Ofcom to capture changes in market dynamics over the period of the TAR to ensure regulation is rolled back at an appropriate pace.

[X]

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34. [X]

35. [X]

36. [X]

37. [X]

Ofcom should go further in supporting copper retirement and a clear path to exchange exit

38. Ofcom plans a further consultation on copper retirement rules in the summer: we welcome this and call on Ofcom to adopt a bolder approach on this that will roll back obligations on the supply of copper services wherever full-fibre is available.
39. We also need to continue to work closely with Ofcom and industry to ensure progress to closing the initial set of exchanges can be made before the end of the decade. Exiting the first 108 exchanges is increasingly time-critical if we are to fully realise the cost efficiencies and benefits for end customers. We need to exit all these exchanges by December 2030 [X].
40. We therefore welcome Ofcom's openness to look at new approaches both for exchange exit and copper retirement.

Ofcom should correct errors in its analysis and revisit its proposals to change PIA lead-in prices and introduce QoS standards in Area 3

41. Finally, we ask Ofcom to review the data and analysis it has relied upon to support proposals to set regulations in two important areas:
- i. Proposals to significantly **reduce lead-in prices for ducts and poles** are based on methodological errors and unevidenced assumptions.
 - ii. Proposals to introduce **QoS standards for FTTP provision and repair in Area 3** are based on a flawed understanding of why Openreach's FTTP service performance is lower in Area 3 than in Area 2. Ofcom's proposals are therefore neither justified nor proportionate.

42. Of course, completing the job and moving the UK towards universal availability of ultrafast connectivity services is not just about the regulatory framework. Targeted public funding will be needed, as will clearer support for network builders to access premises to install full-fibre connections where network is available. There should also be wider access to the passive infrastructure of VMO2 and Altnets where no alternatives are available, to enable efficient deployment of full-fibre in all parts of the UK and to the benefit of end customers everywhere.

We look forward to engaging constructively with Ofcom on all our concerns during this important consultation phase.

Structure of this response

43. Ofcom's proposals for regulation from 1 April 2026 in the Consultation reflect its assessment of the strength of forward-looking competitive dynamics across fixed network access services and the competition concerns that could arise, absent regulation.
44. Ofcom's Consultation structure defines product and geographic markets across PIA, WLA, LLA and Inter-Exchange Connectivity (IEC), then identifies SMP in those markets before considering what pricing and non-pricing remedies to apply in each market in light of identified competition concerns. But there are clear linkages between these issues, in particular:
- i. the scope for supply-side convergence in WLA and LLA markets is relevant in considering product market definitions and in considering the potential area over which competition could develop during the TAR period in the supply of both WLA and LLA services; and
 - ii. the way in which geographic boundaries in the key WLA and LLA product markets are drawn, based on the extent to which competitive conditions may differ between geographic areas over the period of the TAR, is relevant to the way in which SMP is, or is not, set and decisions made about which remedies to impose.

45. We therefore start in this document below, with our overall view on Ofcom's provisional assessment of competitive dynamics across WLA and LLA services to identify where and why we believe this has resulted in Ofcom proposing some flawed remedies that will undermine Ofcom's strategic objective of delivering a competitive, full-fibre future for the UK. We also summarise our proposals for the changes Ofcom should make to market definitions, SMP findings and remedies in relation to WLA and LLA services in the final TAR Statement to address our concerns. This section should be read alongside our responses to questions on Volumes 2, 3 and 4 of the TAR.
46. Our responses to Ofcom's questions in the Consultation are being submitted in the following documents:

Openreach TAR Response Document 1 (this document)	Executive Summary and Overall view on Market Analysis and Remedies
Openreach TAR Response Document 2	Responses to questions in TAR Consultation Volume 2
Openreach TAR Response Document 3	Responses to questions in TAR Consultation Volume 3
Openreach TAR Response Document 4	Responses to questions in TAR Consultation Volume 4
Openreach TAR Response Document 5	Responses to questions in TAR Consultation Volume 5
Openreach TAR Response Document 6	Responses to questions in TAR Consultation Volume 6 and Annexes

47. Further evidence and analysis in support of our position is set out in the following accompanying reports which are cross-referenced in this submission:

- i. The NERA report: Response to Ofcom's TAR

NERA has conducted a review of Ofcom's market definition for WLA and LLA, and the remedies that follow from this. It should be read as a complementary companion document to our response, particularly this

Document 1, the discussion on market definition in Document 2, and the discussion on non-pricing remedies in Document 3 of our response.

The lead author of this report is David Matthew who was Economic Director at Ofcom.

ii. Network Technology report

This report by Trevor Linney, Openreach's Network Technology Director, provides a technical overview of how shared optical distribution networks can be used to supply both WLA and LLA services. This is referenced in this Document 1 regarding the overlap between the LLA and WLA geographic market definitions, as well as Document 2 on market definition.

iii. Criteria for Geographic Deregulation in Wholesale Broadband (Assembly Research report)

Provides an overview of the approach taken to market definition and SMP assessments by national regulating authorities across Europe (prepared by Assembly Research). This supports in particular our positions on WLA market definition in this Document 1.

This response includes commercially sensitive information which is highly confidential to Openreach, publication of which would significantly harm Openreach's legitimate business interests. The document is considered confidential in its entirety and its contents should not be published or disclosed to any third party without Openreach's prior agreement. This response has been provided on the basis that it will only be used for the purpose of Ofcom's Telecoms Access Review 2026-31 and for no other purpose, unless otherwise agreed in writing by Openreach.

Ofcom's proposed approach to regulation in the WLA and LLA markets

Introduction

48. A key pillar of the TAR is to consider the ongoing role of regulation in delivering Ofcom's strategic objective of promoting investment and competition in the provision of fixed network access services downstream of PIA.
49. The fixed telecoms sector has been transformed over the last 10 years as full-fibre networks have been deployed. The WFTMR accelerated this transformation. With extensive competing full-fibre networks in the ground, we have seen significant growth in network access competition since 2021.
50. We have had to respond to these growing competitive challenges over the WFTMR period. Our wholesale customers have choices in network supply across WLA and LLA services and face increased challenges in the retail space from both VMO2's growing ultrafast-capable network and new vertically-integrated full-fibre challengers. Their desire to be competitive on price and line speed has driven Openreach to provide price assurances to ISPs on higher bandwidth FTTC services via extensions to our 2018 '112' offer and on FTTP at all bandwidths via our Equinox offers. These assurances go well beyond regulatory requirements to supply and reflect the strength of commercial constraint we face.
51. Market dynamics are shifting in real time: since Ofcom published its TAR consultation:
- i. Sky has begun placing end customer broadband orders with CityFibre instead of Openreach within the CityFibre footprint; joining TalkTalk, Vodafone and Zen in dual-sourcing their wholesale requirements.
 - ii. Hyperoptic has announced that it plans to use Openreach FTTP products to extend its customer reach by an additional 1m homes which will help broaden and strengthen its retail presence, increasing revenue and opportunities to improve its financial position.
 - iii. VodafoneThree has announced a new partnership with Community Fibre to extend its ability to provide full-fibre services¹⁵.

¹⁵ [VodafoneThree begins a new era of connectivity for the UK](#)

52. This flow of market changes will likely continue through the period until March 2026 and then into the TAR period. There will be changes in market strategies of networks operators and ISPs and the potential for VMO2 to start wholesaling, for individual Altnets to refinance and/or restructure and for the pace and scale of industry consolidation to grow. This will all lead to further shifts in dynamics and increased competitive constraints on Openreach.
53. In this environment, our customers look to us to engage effectively to understand their challenges, needs and options and develop propositions that enable them to compete in the evolving retail broadband space to support acquisitions, retentions and technology and speed upgrades. But current regulatory rules on discrimination, geographic discounting and conditionality all limit our commercial options in developing customer solutions and constrain our agility in responding to market conditions.
54. It is vital that these regulatory restrictions remain relevant in the face of changing market conditions.
55. Our overarching concern with Ofcom's analysis and proposals in the Consultation is that it fails to capture and reflect the nature and full extent of this growth in competitive dynamics downstream of PIA. This means that forward-looking competitive conditions by product and geography have not been appropriately identified, leading Ofcom to propose a flawed and restrictive set of remedies across LLA and WLA services. These proposed remedies risk producing outcomes which are inconsistent with Ofcom's strategic objective, reducing investment, innovation and the level and effectiveness of competition.
56. This section outlines our concerns with Ofcom's overall analysis and approach. Specifically:
- i. Ofcom substantially under-calls the potential for competition to develop in the provision of leased lines services from the full-fibre networks that have been or are expected to be built in the period to 2031:
 - a. This is a problem with how Ofcom proposes to define the boundary between Area 2 and Area 3 in LLA. This results in a significant gap between what Ofcom views as the boundary of Area 3 for LLA – i.e. the limit of where it sees scope for potential competition – and the boundary of Area 3 for WLA.

- b. This insufficiently forward-looking analysis then results in proposals to apply disproportionate regulation to Openreach's supply of services in the LLA market.
 - ii. Ofcom substantially under-calls the strength of competitive dynamics in the supply of WLA services within what it proposes to define as Area 2 in the TAR and under-calls the likelihood that those dynamics will strengthen further over the 5-year period of the TAR in certain geographic areas.
 - a. This is a problem caused by Ofcom proposing to define a wide Area 2, covering 90% of UK premises on the basis that competitive conditions across this area are "sufficiently homogeneous".
 - b. This leads Ofcom not to define any Area 1, notwithstanding the considerable variations in competitive conditions (as discussed further at paragraph 106 onwards) – and not to define additional geographic markets within the proposed Area 2 to reflect clear differences in competitive conditions.
 - c. This results in unnecessary and disproportionate regulation of Openreach WLA services in the TAR as Ofcom proposes to set a framework of rules which is even tighter than in 2021, notwithstanding a considerable influx of infrastructure competitors in the market in this review period. These tighter rules include extending restrictions on any geographic discounting, and terms that are conditional on the volumes and/or mix of services purchased. These remedies would serve to constrain Openreach from competing on the merits for the 5-year period of the TAR: a period in which significant change in competitive dynamics is anticipated.
- 57. To summarise our critique of Ofcom's assessment of market dynamics and proposed approach to remedies downstream of PIA, in this section we set out:
 - i. Brief views on Ofcom's proposed Product market definition across WLA and LLA services;
 - ii. Our concerns with where Ofcom has set the boundary for Area 3 in LLA;
 - iii. How/why the proposed remedies for WLA Area 2 fail to reflect competitive conditions within Area 2 and why this supports a further disaggregation of geographic areas;

- iv. Our proposed approach to segmenting the proposed WLA Area 2 into different geographic markets based on evidence and analysis of different competitive conditions

Product market definition across WLA and LLA services

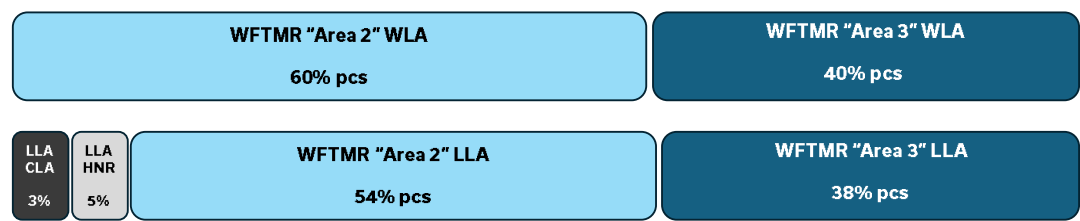
58. In previous market reviews, over a number of years, Ofcom has defined separate product markets for:
- i. WLA services providing the network connectivity inputs to support the provision of broadband services to end customers covering a range of different fixed technologies and bandwidths; and
 - ii. LLA services providing end customers with high quality, high speed connectivity between two fixed locations, often at the same upload and download speeds and over uncontended, dedicated physical connections.
59. These markets have largely been defined by reference to demand-side factors to date. We observe that Ofcom's proposed approach in the Consultation gives more weight to supply-side factors in defining the WLA market than in previous reviews, although, in effect, this simply strengthens the demand-side 'chains of substitution' basis for defining the WLA market to include all bandwidths – i.e. it is now even clearer that competitive conditions for the supply of low bandwidth WLA services will be sufficiently similar to conditions for the supply of high bandwidth WLA services given the growth in full-fibre networks.
60. However, we are concerned that Ofcom fails to clearly and extensively recognise the trend towards supply-side convergence between LLA and WLA services, reflecting the technical capability of operators of full-fibre networks currently offering WLA services to offer LLA services in addition. Ofcom does recognise that there is demand-side substitutability of XGS-PON broadband services for uncontended point-to-point leased line services but does not give weight to the ability of any supplier of WLA services over full-fibre networks to extend their range of services to meet the needs of leased lines customers.
61. This trend to convergence should be reflected both in Ofcom's forward-looking definition of product markets in the TAR and, as set out further below, when considering the geographic scope of areas with the potential for competition to grow – i.e. in setting the limits of the Area 2/Area 3 boundary for both the WLA and LLA product markets.

Geographic market definition: (i) boundary of Area 2 and Area 3 in LLA and WLA

Ofcom's approach in 2021

62. Prior to the 2021 WFTMR, it had already been established that there was a greater level of competition in LLA markets from dedicated providers of leased line services focused on London and other city centres and business hubs. Ofcom had used its Network Reach Model (**NRM**) to identify the extent to which the specialised leased line only providers were capable of providing competition to Openreach in different areas. This had resulted in Ofcom defining separate geographic markets in parts of London and across parts of other UK towns and cities.
63. In the 2021 WFTMR, Ofcom looked to identify areas where there was the potential for further competition to develop with the aim of setting regulation in a way that could best promote this competition. Ofcom's approach to defining the scope of this potential area of competition looked at the WLA and LLA markets together. That is, Ofcom recognised that over time there would be convergence in the suppliers of different forms of network access serving the customers of WLA and LLA services as full-fibre networks were deployed. Full-fibre networks could be configured to supply a range of services from contended broadband services at various speeds (depending on the PON technology deployed) and various service standards to meet the needs of residential and business customers, to uncontended point-to-point connectivity services meeting the greater data connectivity needs of traditional leased line customers, and backhaul requirements of fixed and mobile network operators.
64. Ofcom's approach to identifying where there was potential for competition to emerge in the supply of WLA and LLA therefore focused on identifying areas where builders of multi-service networks (**MSNs**) either had built or had identified plans to build in the forward-looking period. Postcode sectors where MSNs were expected to pass at least 50% of homes by the end of 2026 were included in the 'potentially competitive' Area 2 and those with no/lower levels of expected build were included in Area 3. Separately, Ofcom then identified those postcode sectors with higher levels of competition from the dedicated leased line only providers, continuing the approach it had adopted prior to 2021.
65. The figure below shows the split of postcode sectors between the different geographic markets identified for WLA and LLA in the 2021 WFTMR.

Figure 1.1 Representation of WFTMR WLA and LLA markets by postcode sector



66. This approach meant that, in the WFTMR, Ofcom defined the boundary between Area 2 and Area 3 in broadly the same way between WLA and LLA, with the only differences being that Ofcom had identified some postcode sectors in WLA Area 3 as having sufficient coverage of LLA-only providers to include them in the High Network Reach (HNR) area.
67. In 2021, in considering the extent of actual and planned build of MSNs, Ofcom had focused on the actual and planned coverage of two competing network operators: VMO2 and CityFibre. This reflected the relative scale of their actual and planned networks relative to other potential builders.

Table 1.1 Virgin Media and CityFibre coverage and announced rollout plans in the WFTMR Statement¹⁶

Provider	Current Coverage	Total Planned Coverage at 2025
Virgin Media	14.9 million	17 million
CityFibre	0.4 million	8 million

68. Ofcom did not take account of the actual and planned build of other network operators in the WFTMR, noting Hyperoptic had ambitions to build to c. 5 million

¹⁶WFTMR 21, Vol 2 Table 1.1

premises, but Ofcom believed that its focus on building to MDUs could make it a less material competitor in areas where it was the only competitor to Openreach:¹⁷ *"Other Altnets are significantly smaller, and their business plans are often more speculative"*.¹⁸

69. During the WFTMR consultation process, we argued that Ofcom's approach was likely to understate the scope for potential competition to emerge in what had been defined as Area 3. Many Altnets who had been excluded from Ofcom's assessment suggested Ofcom take a different approach to delineating between areas with the potential for competition to emerge and those with no potential for competition to emerge.
70. In the final WFTMR Statement, Ofcom was clear that its approach was only one way of making inherently uncertain judgments about future investment decisions, noting: *"we acknowledge that there is inherent uncertainty in defining geographic markets over the forward look, particularly during a dynamic period in which we are expecting substantial network build. We have used our regulatory judgment to assess the evidence we have gathered and take a view on likely developments over the period of the review, recognising that this can only ever be an approximation of reality"*.¹⁹
71. Furthermore, Ofcom reflected the fact that it could not rule out the scope for competitive investment in the postcode sectors it had put in Area 3 by applying remedies in a way that would support entry in any area of the UK:
 - i. PIA was available across the UK on the same regulated terms;
 - ii. Ofcom applied the same remedies on Openreach's commercial terms in Area 3 as Area 2;²⁰
 - iii. Pricing continuity (CPI-0% price caps) was applied across both Area 3 and Area 2, meaning price caps were set at the same level in both areas for anchor WLA services and LLA Ethernet baskets.

17 Although Ofcom also noted that the majority of Hyperoptic's planned build would be within the defined Area 2 postcode sectors in any event.

18 WFTMR Vol 2, para 7.44.

19 WFTMR, Vol 2, para 7.24

20 WFTMR, Vol 3, para 7.98 where Ofcom explain why constraints on geographic discounts were extended into Area 3

The growth in competitive full-fibre networks since 2021

72. Ofcom's Consultation sets out clear evidence of the growth in competition since 2021. In terms of the overbuild of Openreach's network, we note that the WFTMR framework has led to the following investment:
- i. The VMO2 network has expanded from 14.9m to over 18.3m²¹ premises: over 6m of this footprint is full-fibre and VMO2 has plans to upgrade the rest by 2028;²² this exceeds predictions set out in the WFTMR.
 - ii. The CityFibre network has expanded from 0.4m to 4.1m premises and continues to have a stated ambition to reach 8m homes through a combination of build and consolidation;²³
 - iii. Other Altnet build in aggregate has expanded to 14.7m premises.
 - iv. Our own analysis of publicly available information suggests build by these other Altnets breaks down as follows (by Total Homes Passed (THP)).²⁴

Table 1.2 THP by Altnet (as at December 2024)

Altnet	THP covered	% of UK THP (33.2m)
Netomnia / BRSK	2.1m	6.3%
Community Fibre	1.3m	3.9%
Hyperoptic	1.5m	4.5%
Gigaclear	0.6m	1.7%
Trooli	0.4m	1.2%
Full Fibre / Zzoomm	0.5m	1.8%
AllPoints Fibre Networks	0.3m	0.9%
Fibrus	0.4m	1.2%

²¹ [Q4 2024 Earnings Release](#)

²² [Virgin Media O2 announces 2028 full fibre upgrade plan - Liberty Global](#)

²³ <https://cityfibre.com/news/cityfibre-delivers-first-full-year-of-profitability-with-sky-to-launch-in-2025>

²⁴ Openreach insight as at February 2025 using publicly available sources

Altnet	THP covered	% of UK THP (33.2m)
G.Network	0.3m	1.0%
Tail of smaller builders	7.2m	21.7%

Ofcom's TAR proposals to define Area 3 for LLA fail to reflect this growth in competitive full-fibre networks

73. The clear growth in network coverage from a large number of Altnets means any assessment of the scope of actual and potential competition in the provision of fixed network access services in the TAR must start by looking at a wider range of network operators than were considered in the 2021 WFTMR. An assessment that focused solely on VMO2 and CityFibre would overlook a significant volume of full-fibre network in the ground and the expansion plans of Altnets looking to go even further. These other Altnets will offer growing competitive choice at the retail and/or wholesale level where available, depending on their strategic and commercial choices. With the acknowledged likelihood of industry consolidation over the coming years, the competitive strength of these networks will only grow.
74. We therefore agree with Ofcom's approach set out in the Consultation at Section 3 of Volume 2, where it considers the actual and planned build of a much wider range of network providers in identifying the area in which material and sustainable competition could develop in the provision of WLA services over the next five years. Once network is built, it remains there to be commercially exploited either by the current owner or a future owner (regardless of how that consolidation takes place or how large the network of an individual Altnet is). As set out in response to Question 2.6, we question why Ofcom limits the inclusion of Altnets to those with total build plans over 50,000 homes given the potential for all competitor build to be consolidated, but Ofcom is clearly correct in principle to broaden its assessment of competitor coverage from 2021.
75. By correctly including the actual and planned build by additional Altnets in its assessment of where competition could emerge in WLA services, Ofcom identifies

that 82% of postcode sectors (covering 90% of UK premises) could have competitive build from full-fibre networks by 2030.²⁵

76. We note that additional competition is likely to emerge beyond the proposed boundary between Area 2 and Area 3, given that further public funding is likely to be needed and made available in the TAR period to support deployment of full-fibre networks into the proposed Area 3 postcode sectors, and not all funding will be awarded to Openreach. We also expect many Altnets will see opportunities for incremental commercial infill build beyond the proposed boundaries. But we accept that Ofcom's approximation on the extent of potential competition in the WLA market is broadly reasonable.
77. However, it is inconsistent for Ofcom to take account of this additional competitor build in relation to WLA services but ignore this build when assessing the potential for competition to develop for LLA, as it does in Section 4 of Volume 2 of the Consultation. In its assessment of the scope for potential competition to emerge in the supply of LLA services, Ofcom continues to focus only on the actual and planned build of VMO2 and CityFibre (as well as the dedicated leased line-only providers who were always factored into Ofcom's analysis).
78. This is also inconsistent with Ofcom's 2021 approach, which correctly identified the likelihood of convergence in the supply of WLA and LLA over time given the technical capabilities of full-fibre networks. Furthermore, Ofcom has also shifted its approach to assessing the build coverage of VMO2 and CityFibre within postcode sectors: i.e. it is now not sufficient for those builders to have network covering over 50% of homes in the postcode sector, but they must have network within 50m of at least 65% share of leased lines 'demand sites' (without taking account of their potential use of PIA to reach demand sites), as identified by Ofcom's NRM. These differences in approach between WLA and LLA and between 2021 and 2026 are summarised below:

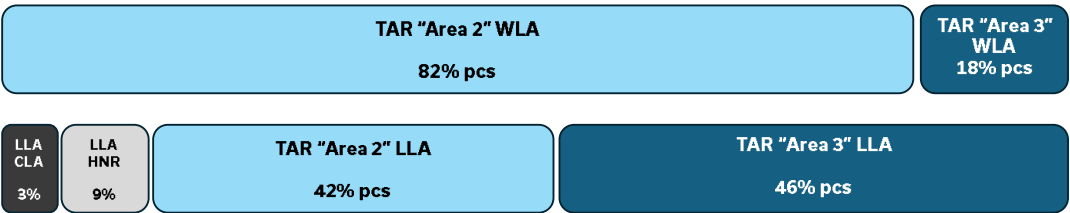
²⁵ TAR, Vol 2, Table 4.3

Table 1.3: Summary of approach between WFTMR and TAR geographic market definition

	WLA		LLA	
	Relevant builders	Postcode sector coverage metric	Relevant builders	Postcode sector coverage metric
2021	VMO2 CityFibre	>50% homes passed	VMO2 CityFibre	>50% homes passed
2026 PROPOSAL	VMO2 CityFibre All other Altnets with plans to cover min 50k homes	>50% homes passed	LL-only builders VMO2 CityFibre LL-only builders	Network within 50m of >65% demand sites

79. This significant change in approach results in a stark difference between the proposed size of Area 3 in WLA and the proposed size of Area 3 in LLA.

Figure 1.2: Representation of TAR WLA and LLA geographic markets



80. Ofcom’s change in approach reflects a much narrower and shorter-term assessment of competitive conditions in LLA services by focusing on the extent to which full-fibre MSNs included in the analysis of the competitiveness of WLA have

historically offered LLA services and are offering LLA services today, rather than on the potential for them to do so on a forward-looking basis during the TAR period. As set out in response to Question 2.10, we challenge Ofcom's analysis on its own terms here, and believe that there is much greater actual competition in the market today from a wider range of MSNs than just VMO2 and CityFibre and greater potential for future competition.

81. But the broader concern is that Ofcom's approach reverses its earlier position and 'calls time' on the market evolving as Altnets adapt their strategies to extract the maximum value from investments.
82. Our response includes The Network Technology Report from Openreach's Director of Technology, Trevor Linney, setting out the technical capabilities of full-fibre networks to offer LLA services and well as WLA services. We also note the commercial incentives on operators of full-fibre networks to extend to supply LLA are strong, given their need to maximise the value they can extract from their investments by pursuing all revenue streams – something that Ofcom itself accepts.²⁶
83. To be clear, we are not making new points here: the technical capabilities of full-fibre networks and commercial/strategic incentives on Altnets to diversify offerings were acknowledged in 2021.²⁷
84. However, what is new since 2021 is the clear evidence of actual build by Altnets other than VMO2 and CityFibre, and the acknowledged high likelihood of consolidation between Altnets over the TAR period. This factor is taken into account by Ofcom in proposing to draw the boundary of Area 2 and Area 3 for WLA at a much deeper level than in 2021, but that appears to carry no weight in Ofcom's assessment of the potential for growth in competitive supply of LLA services over the same period.
85. Ofcom does not justify why this additional evidence to support the likely trend in supply-side convergence is not reflected in its forward-looking assessment of the potential for LLA competition in the Consultation. Further, Ofcom itself acknowledges a number of long-term factors that do point to convergence, such

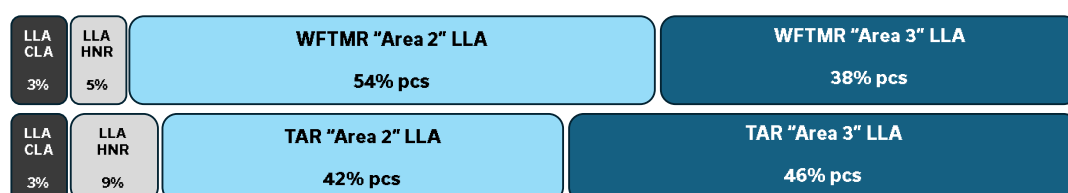
²⁶ TAR, Vol 3, paras 1.37, 1.49 and 7.39.

²⁷ WFTMR Vol 2 para 7.24

as the potential for providers to upgrade their PON technology²⁸ and recent entry of WLA providers into the LLA market.²⁹

86. In fact, in the face of stronger evidence supporting the potential for competition to emerge, Ofcom's approach not only defines a much larger Area 3 for LLA than WLA, but actually shrinks the overall size of LLA Area 2 relative to Area 3 as compared to the outlook in 2021.

Figure 1.3: Representation of LLA geographic markets between WFTMR and TAR



87. This scale of this change is driven by Ofcom's use of the NRM in the Consultation to provisionally define the limit of potential competition. As we set out in response to Question 2.10, the NRM is unstably sensitive and has been calibrated on assumptions that do not take into account market developments, such as the availability of unrestricted PIA and the growth in its use.
88. This error in assessing the potential for competition to emerge in leased lines is then compounded by proposals to re-introduce cost-based charge controls on active leased line services into this expanded Area 3, to extend our obligations to supply dark fibre to more areas, and to cut connection charges for dark fibre.
89. As noted, in the 2021 WFTMR Ofcom acknowledged that it was undertaking an exercise to try to understand potential future behaviour, and its outputs could only be an *"approximation of reality"*.³⁰ Ofcom reflected this to some extent in its approach to setting remedies across WLA and LLA, with Altnets still facing incentives to invest beyond Ofcom's defined boundary of Area 2 and Area 3. But

²⁸ TAR, Vol 2, para 5.24.

²⁹ TAR, Vol 2, para 5.65.

³⁰ WFTMR Vol 2 7.22

the TAR proposal to expand LLA Area 3 extends Openreach's obligations to supply dark fibre at regulated prices, while Ofcom also proposes to significantly reduce dark fibre connection prices and Openreach charges for 1Gb and below Ethernet services. The effect of these regulatory changes would be to: (i) remove significant value from all full-fibre networks in the ground in the proposed Area 3, and (ii) have a chilling effect on future industry decisions to invest and innovate in this area. This would also undermine the Government's growth agenda.

90. We understand that many Altnets share our concerns about Ofcom's assessment of the potential for competition in LLA services to grow and its proposed remedies. We understand they challenge the basis on which Ofcom has assessed their existing and planned capabilities in defining markets. Ofcom should ensure that its assessment captures plans from Altnets to provide leased lines and/or equivalent services from deployed full-fibre networks during the TAR period. Ofcom should also consider the impact its proposed intervention could then have on the value of Altnets in the event of consolidation, which may also affect investment incentives.
91. Ofcom should therefore revisit and adjust its proposed approach in the Consultation to:
 - i. Define LLA Area 3 in the same way as proposed for WLA, to reflect the ability of all full-fibre networks to supply leased lines or other services to meet the needs of business end customers, and to reflect the plans of Altnets to supply LLA services over the TAR period.
 - ii. Maintain CPI-indexed caps on services across Area 2 and Area 3 until the end of the decade to maintain incentives to invest and innovate, and to allow competition to play out.

Geographic market definition: (ii) Ofcom's assessment of the strength and variability of competition within the proposed Area 2 for WLA

How Ofcom should approach defining geographic markets

92. In seeking to define geographic markets, Ofcom should be looking to identify areas where competitive conditions are sufficiently homogenous and areas where they significantly differ. Ofcom does this in defining Area 3 on the basis that it has identified areas where there are lower levels of actual or planned network build by competitors to Openreach compared to the rest of the UK. Specifically, and as

noted, Ofcom has identified that, by 2030, competing full-fibre networks could be available in up to 82% of UK postcode sectors.³¹

93. Ofcom also identifies that 19% of UK postcode sectors, covering 22% of UK homes, had two or more rival networks available to at least 50% of premises at the end of July 2024 and expects this figure to rise to 45% of UK postcode sectors, covering 53% of homes, by the end of the review period.³²
94. However, while Ofcom captures the clear evidence of increased levels of competitor presence over the period of the TAR in identifying a smaller Area 3 for WLA compared to 2021, Ofcom fails to appropriately reflect variances in current and forward-looking competitive dynamics within the rest of the UK.
95. Specifically, Ofcom provisionally finds no areas are effectively competitive on a forward-looking basis (i.e. no geographic areas are defined as Area 1 with SMP removed) and then considers that competitive conditions across the entirety of the 82% of postcode sectors that are not within Area 3 are "*sufficiently homogeneous*" to justify defining a single Area 2.
96. We believe Ofcom's preliminary assessment of competitive dynamics within the areas outside of Area 3 is inadequate and drives it to reach a provisional conclusion that is demonstrably flawed. As we set out further below, Ofcom has done no more than a broad-brush filtering exercise that is primarily focused on Openreach's current market share across and within certain selected subgroups of postcode sectors within the proposed Area 2. At the conclusion of this exercise, Ofcom provisionally concludes that competition in all postcode sectors is "*sufficiently homogeneous*" such that it defines the single wide Area 2. We think this is wrong.
97. The impact of this error in defining the geographic market is that, through the TAR period, Openreach faces the prospect of facing regulatory restrictions on its commercial activity in areas where competition is effective (and SMP should be removed) and across areas where competitive conditions differ significantly. The overall set of proposed regulatory restrictions is therefore disproportionate to the true nature of competition in large parts of the proposed Area 2.
98. To appropriately assess similarities or significant differences in competitive conditions between different geographic areas within the proposed Area 2, Ofcom must take account of a wide range of factors in different areas. In this regard, the

³¹ TAR, Vol 2, Table 4.3

³² TAR, Annex 7 Tables A7.1 and A7.2.

European Commission's Recommendation on relevant product and service markets clearly states that: *"National regulatory authorities should assess competitive conditions in a forward-looking manner, by looking at structural and behavioural indicators, taking into account in particular, in line with Article 64(3) of the Code the importance of infrastructure-based competition. Such indicators can be, inter alia, the networks footprint, the number of competing networks, their respective market shares, trends in market shares, localized or uniform pricing behaviour, characteristics of demands and customer switching and churn".*³³

99. Ofcom's assessment should therefore consider market share data of Openreach and any competitors, and also assess other factors that will shape competitive dynamics within different parts of Area 2, including:
- i. the specific suppliers competing in an area;
 - ii. market share data of Openreach and any competitors;
 - iii. trends in market share data;
 - iv. price differentials between areas at wholesale and/or retail level;
 - v. differences in the technical capabilities and product offerings of retail and wholesale suppliers;
 - vi. market maturity of suppliers and strength of customer relationships;
 - vii. current coverage and future investment plans of suppliers; and
 - viii. willingness / ability of suppliers to wholesale to ISPs and strength of countervailing buyer power.
100. This should be a forward-looking exercise to determine competitive dynamics in different areas and how these are likely to evolve over the period of the TAR. This is not in itself an exercise that should be primarily focussed on whether competitive conditions within any selected area are sufficiently strong on a forward-looking basis such that no SMP findings should be found.³⁴ That is a subsequent step.
101. The focus should instead be on identifying sufficient differences between areas considering a range of factors, including those set out above, that provide a clear

³³ Commission Recommendation of 18 December 2020 on relevant product and service markets within the electronic communications, para. 38.

³⁴ Though noting the factors relevant to assessing geographic market boundaries will be very similar to factors relevant to considering SMP

indication of how competition is developing and is likely to develop over the forward look and the extent to which this significantly differs between different parts of proposed Area 2.

102. This forms the correct basis on which to then assess whether Openreach holds a position of SMP. Where SMP is not found, Ofcom must step back from all regulatory interventions and allow competition to play out. If SMP is found, Ofcom should then identify the nature of the forward-looking competition concerns in that defined geographic market which would likely be different in nature from competition concerns in other geographic areas where, for instance, competition is less extensive or less mature. This assessment should then inform Ofcom's approach to setting proportionate and necessary remedies in different geographic markets. We note that this approach has been followed in LLA where Ofcom has defined a Central London Area (CLA) market where SMP fell away and an HNR market where SMP has been retained but where the different nature of competition concerns in HNR then leads to differences in remedies compared to Area 2.
103. Our view is that Ofcom has focussed its broad-brush assessment of whether to sub-divide the proposed wide Area 2 on seeking to identify areas where SMP has fallen away. But, as explained below, it has done so based on very cursory evidence and limited analysis of a narrow range of factors rather than based on consideration of the full range of factors set out above. As explained below, there are clear objective reasons supported by evidence and analysis to believe that competitive conditions will be different in postcode sectors within the proposed Area 2 where one or more of VMO2, CityFibre and other vertically integrated Altnets have built network and are offering services.
104. Ofcom has also been unduly conservative compared to other national regulatory authorities. Alongside this submission, we provide a research report by Assembly Research titled *"Criteria for Geographic Deregulation in Wholesale Broadband"*. This benchmarks twelve European markets with in-depth reviews of five countries. The consistent theme is one of a progression to deregulation, with the European Commission (EC) pushing regulators to take differing competitive conditions into account. For example:
 - i. In Italy there has been greater geographic consideration of competitive conditions, with some municipalities designated with no SMP and others as more competitive. The regulator will annually review the designations, which will see a progressive rolling back of SMP remedies.

- ii. In 2025, Estonia identified differing competitive conditions where coverage from two network was at least 40% and the market share of the SMP operator was less than 50%. This was after the previous notification was withdrawn, following EC criticism that competitive conditions had not been taken into account.

There is clear evidence of different competitive conditions within the proposed WLA Area 2

105. There is significant diversity in the specific competition that Openreach will face within the proposed Area 2 which is composed of postcode sectors with one or more competing networks in the ground today, and postcode sectors with varying degrees of planned future build. Different network operators will also be present in different postcode sectors. A logical starting point for considering differences in competitive dynamics is therefore to focus on the differences between those network operators.

VMO2

106. Ofcom's methodology means that the majority of the 18.3 million homes passed by VMO2's ultrafast capable network³⁵ will be within the proposed Area 2 postcode sectors (the only exceptions will be build that covers less than half of the proposed Area 3 postcode sectors). There are clear reasons why competitive conditions within these postcode sectors will be different from other postcode sectors within Area 2 across the TAR period.
107. VMO2 is by far the largest network access competitor to Openreach with a growing ultrafast-capable network passing almost 60% of UK homes and with stated ambitions to cover up to 75%. VMO2 currently operates as a vertically integrated retail provider and has a sizeable, established customer base with reported take-up of 5.8m broadband connections³⁶ – i.e. c. 31% of its current growing footprint, equating to around 37% broadband market share.³⁷ Reflecting this, Ofcom

³⁵ [Q1 2025 Earnings Release](#)

³⁶ 5.8m fixed broadband lines in 18.3m footprint <https://news.virginmediao2.co.uk/wp-content/uploads/2025/02/Full-Year-2024-Results-Infographic.pdf>

³⁷ Assuming broadband penetration at national average of 85%

correctly identifies VMO2 as a "*material and sustainable*" competitor to Openreach in the provision of WLA and LLA services, although as we explain below, it errs in identifying VMO2 as the only "*material and sustainable*" competitor to Openreach and, in any event, also uses this as a proxy for determining SMP.³⁸

108. Our analysis suggests that Openreach's share of WLA connections in postcode sectors where VMO2 is present under Ofcom's criteria (greater than 50% coverage [X]) while our share in postcode sectors within the proposed Area 2 where VMO2 is not present is [X]. This is a significant difference revealing the relative strength of competition. But Ofcom states that 38% of premises passed by VMO2 are also passed by an Altnet,³⁹ and analysis from NERA suggests Openreach's market share in these areas drops by a further [X] where Altnets reach maturity.⁴⁰
109. Analysis from NERA also suggests that Openreach's share of WLA connections is [X] within the specific VMO2 footprint⁴¹ – i.e. focusing on premises that VMO2 can directly serve from its network and excluding premises within postcode sectors that VMO2 cannot currently serve. NERA also estimates that the maturity effect of nexfibre build on Openreach's market share could be a low of a further [X] percentage points, suggesting that the Openreach's market share could be trending to close to [X] in VMO2 areas.
110. The presence of VMO2 in any area places indirect constraints on Openreach's pricing of WLA services as our wholesale customers need to compete to defend against VMO2. The retail strength of VMO2 in selling gigabit-capable services across its footprint was one key factor in providing Equinox 2 pricing assurance to our ISP customers over a 10-year period.
111. VMO2 has a stated ambition to wholesale to external ISP customers across its footprint,⁴² where it would clearly be in strong position to act as a direct constraint on Openreach's commercial options, and has taken preparatory steps to do so through its nexfibre subsidiary.

³⁸ CityFibre and all other network operators with planned footprint of at least 50,000 homes are categorised as having the potential to be material and sustainable competitors.

³⁹ TAR Vol 3, footnote 7

⁴⁰ Annex 1 - NERA Report Section 2.3.1.2

⁴¹ Annex 1 - NERA Report section 2.4.2

⁴² [Virgin Media O2, Liberty Global and Telefónica kick off plans to create a national fixed NetCo in the UK - Virgin Media O2](#)

CityFibre

112. CityFibre is the biggest Altnet with a 4.1 million footprint (ready for service) and a stated ambition to grow to 8m.⁴³ Most of this build will be within the proposed Area 2 postcode sectors under Ofcom's methodology and the competitive conditions within these sectors will differ from other postcode sectors within Area 2.
113. While CityFibre has relatively low overall take-up today on its growing network (13% at the end of 2024), take-up on its most mature build is much higher at 40%.⁴⁴
114. CityFibre is unique among Altnets in having wholesale deals in place with all major independent ISPs: i.e. Sky, TalkTalk, Vodafone and Zen, who collectively account for 45% of the national UK retail broadband market.
115. With these deals in place and ISPs establishing necessary IT interfaces with CityFibre, all demand for WLA services from ISPs within the CityFibre footprint is effectively contestable as ISPs:
- i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED].
116. This means there will be clear and increasing direct constraints on Openreach's pricing in the entirety of this growing overbuild area and clear countervailing buyer power being exerted by ISPs.
117. In the Consultation, Ofcom makes a general reference to wholesale agreements being "*at an early stage*" and notes that work is still underway to enable Sky's broadband services on the CityFibre network from 2025. Our understanding is that Sky is [REDACTED].
118. We understand that, as of now, [REDACTED].
119. The evidence is clear, therefore, that competitive conditions in any area where CityFibre has network available are different from areas where it is not present.

⁴³ [CityFibre delivers first full year of profitability, with... | CityFibre](#)

⁴⁴ [CityFibre delivers first full year of profitability, with... | CityFibre](#)

Vertically integrated full-fibre providers:

120. As set out above in Table 1.4 and acknowledged by Ofcom in the Consultation, the Altnet sector is fragmented, although all of the principal Altnets are increasing their scale. The three biggest Altnets after CityFibre have coverage of over 1.3m homes each, six other Altnets have coverage over 300,000 homes and there is a long tail of over 100 Altnets with a total build to over 7m homes. While these Altnets are mainly focused on retail sales of full-fibre services to residential and business end customers in the WLA space, many are looking also to secure wholesale deals with ISPs.
121. Ofcom states that Altnets had an average take-up rate of c. 15% at the end of 2023, a figure that increased to 16.5% at the end of 2024 according to PointTopic in their latest report for INCA published in April 2025.⁴⁵
122. The positions of each of these vertically integrated Altnets clearly differ but it is clear that they are gaining lines from Openreach and have been the main source of the increase in overall Openreach broadband line losses.

Table 1.4: Summary of main Altnets scale and take up⁴⁶

	<i>Current footprint</i>	<i>Ambition</i>	<i>Reported take-up</i>	<i>Take-up on older cohort⁴⁷ (where available)</i>
<i>Netomnia/brsk</i>	2.2m	5m by 2027	11%	40%
<i>Community Fibre</i>	1.3m	2.2m by 2025	25%	45%
<i>Hyperoptic</i>	1.5m	2m by 2025	20%	Not known
<i>Gigaclear</i>	0.6m	1m by 2027	22%	Not known
<i>Trooli</i>	0.4m	0.5m	5%	40%
<i>Fibrus</i>	0.4m	1m by 2026	28%	50%
<i>G.network</i>	0.3m	1.3m by 2026	5%	Not known
<i>Full Fibre/Zoom</i>	0.6m	1m by 2027	15%	45%
<i>AllPoints</i>	0.3m	Not known	Not known	Not known

⁴⁵ [Independent Network report for INCA Spring 2025_PT_v1.4](#)

⁴⁶ Openreach insight sourced from publicly available documents

⁴⁷ [Eight Advisory Takeup Tracker - Eight Advisory](#)

123. As shown in Table 1.4, analysis from EightAdvisory highlights significant take-up by a number of Altnets on their older cohorts of build giving a clearer indication of their ability to drive take-up in areas where build is more mature and to reduce Openreach volumes by winning business from our ISPs.
124. Many retail Altnets are pushing low prices for high bandwidth full-fibre connections leading to geographic differences in price at the retail level. For instance, Community Fibre – a successful vertically integrated Altnet with reported take-up of 25% across its 1.3m footprint – is offering 500Mb full-fibre broadband for £20 per month and 1Gb full-fibre broadband for £25 offering savings of c. £350 over 24 months to end customers against BT/EE.⁴⁸ These retail prices compare to current Openreach wholesale prices under Equinox 2 of £20.14 for 500Mb and £22.24 for 1Gb.⁴⁹
125. We have also seen the rise of aggregators, with recent launches from Zen and AllPoints Fibre Network (both in May 2025). The aggregation of multiple networks (including Openreach and CityFibre) will allow ISPs to shift their supply between networks even more easily and will increase the attractiveness of Altnets to smaller ISPs, who will only need to integrate once with the aggregator in order to access multiple Altnets.
126. Consolidation across the Altnet sector is likely over the next five years given overall industry fragmentation, which will further change market dynamics. Retail Altnets may also expand to offering wholesale services, as seen with Community Fibre wholesaling to Vodafone.⁵⁰
127. The presence of vertically integrated Altnets is therefore having an increasing effect on competitive conditions and constraint on Openreach's commercial behaviour as we seek to stem the flow of line losses. This effect will differ by Altnet but is notably stronger where networks have been in the ground in an area for longer as demonstrated by NERA's assessment of Altnet 'maturity effects' which it estimates can reduce longer term Openreach share [X].⁵¹ It will also be notably

⁴⁸ [Full Fibre Broadband & WiFi Provider | TV & Phone Deals | Community Fibre](#) (offer available on 5/6/25)

⁴⁹ [NGA2024/24](#)

⁵⁰ [London full fibre boom with VodafoneThree and Community Fibre](#)

⁵¹ See NERA Report section 2.3.1.2

stronger where vertically integrated networks are present alongside VMO2, CityFibre or other vertically integrated networks.

Overall effect of increased competition on Openreach

128. In the face of the growth in competitive network availability from VMO2, CityFibre and vertically-integrated Altnets, Openreach has seen increasing competitor losses.

Figure 1.4: Quarterly broadband losses to competitors (in thousands)

[X]

Identifying sufficient differences in competitive conditions within the proposed Area 2 postcode sectors

129. The proposed Area 2 includes postcode sectors where Ofcom has identified actual build by the range of network operators described above as well as planned build. In some postcode sectors only one rival to Openreach may be present and in others two or more rivals may be present. It follows that there will be differences between competitive conditions in different areas and that these have the potential to be significant on a forward-looking basis.
130. We note that Ofcom acknowledges that competitive conditions within the proposed Area 2 are not "*perfectly homogeneous*" and states that there is likely to be a "*continuum of competitive conditions*" in the area.⁵² Nevertheless, Ofcom's provisional conclusion is that competitive conditions in each Area 2 postcode sector are "*sufficiently homogeneous*" such that Ofcom proposes to set the same remedies to address the same set of stated competition concerns across the whole of Area 2. This includes proposed restrictions on any geographic discounting within any part of Area 2 (regardless on the number and combination of competitors) for the duration of the TAR.
131. We set out further below why we challenge Ofcom's reasoning in reaching this provisional view before setting out our proposals for how Ofcom should define geographic boundaries, consistent with the legal test, before assessing SMP and –

⁵² TAR Vol 2 para 5.148

if SMP is found – setting necessary and proportionate remedies to address any competition concerns identified (and noting that the legal framework requires Ofcom to take account of sustainable competition (not specific competitors) only when imposing remedies and not in the earlier steps of defining the market and assessing SMP).

Ofcom's reasoning in not defining an Area 1 and provisionally concluding that all of the defined WLA Area 2 has "sufficiently homogenous" conditions

132. In the TAR, Ofcom considers whether *"there are any areas where competition is sufficiently well-established to constitute a separate geographic market"*.⁵³ We identify five key reasons why Ofcom provisionally concludes that: (i) no area within the proposed Area 2 is effectively competitive; and (ii) the whole of the defined Area 2 for WLA has *"sufficiently homogeneous"* competitive conditions. We believe each of these reasons are flawed.

Ofcom wrongly claims that VMO2 alone is not sufficient to undermine Openreach's market position

133. Ofcom states that *"the evidence... suggests that a single competitor would not be able to exert a sufficiently strong constraint on BT"* and that it does not consider that competition from VMO2 alone is sufficient to undermine Openreach's market position.⁵⁴
134. But as NERA sets out clearly in its report,⁵⁵ this conclusion is not adequately evidenced and Ofcom provides no clear evidence in the Consultation as to why Openreach holds SMP in the VMO2 footprint. Ofcom seems to rely almost exclusively on brief evidence and analysis in the 2021 WFTMR Statement that concludes that if Ofcom had considered VMO2 areas and non-VMO2 areas separately, it would find Openreach to have SMP in both.⁵⁶ This is clearly an outdated and inadequate basis on which to conclude competitive conditions are

⁵³ TAR Vol 2, paras 4.89 to 4.108

⁵⁴ TAR Vol 2, Footnote 250

⁵⁵ NERA report, Section 2.4.3

⁵⁶ WFTMR, Vol 2, para 8.149

not sufficiently different in the VMO2 footprint as compared to elsewhere in the proposed Area 2.

135. We refer to evidence set out in the NERA report that demonstrates the strength of competition from VMO2 on Openreach in areas where it is present.⁵⁷
136. Ofcom should also, but does not, consider how VMO2's position could impact other Altnets given that 38% of the VMO2 network is overbuilt by an Altnet (or c. 40% of Altnet build is in VMO2 areas).⁵⁸ As we set out further below, the key consequence of Ofcom finding that no part of the proposed WLA Area 2 should be defined as Area 1 and that no additional sub-markets should be defined is that Openreach then faces significant restrictions on its commercial flexibility in competing with wholesale and retail Altnets as a result. But where VMO2 – a material, sustainable and well-established network provider according to Ofcom's own definitions – is a competitor to those Altnets, it faces no constraints. This means that the intended effectiveness of Ofcom's restrictions on Openreach will be significantly limited, and competition will be clearly distorted as a result.

Ofcom takes a narrow approach to identifying potential Area 1 postcode sectors that is focussed on observed market share data

137. Having wrongly rejected defining separate markets based on the presence of a single competitor, including VMO2, Ofcom's assessment then focusses on 1,812 postcode sectors where it identifies a minimum of two network operators competing against Openreach today.⁵⁹
138. As a first step, Ofcom identifies that Openreach's market share across these 1,812 postcode sectors is above 50%, VMO2's share is 21-30%, CityFibre's share is less than 10% and the share of other Altnets is "even lower". Ofcom suggests that, on this basis, the incremental competitive impact of the second rival network is likely to be limited.
139. Ofcom then filters those 1,812 postcode sectors to identify a smaller subset of 321 postcode sectors where it identifies that Openreach's current market share is lower

⁵⁷ Annex 1 - NERA report, Section 2.4

⁵⁸ TAR Vol 3, footnote 6

⁵⁹ Note "today" in the TAR consultation is assessed by reference to July 2024 Connected Nations data

than 50%.⁶⁰ For these 321 postcode sectors, Ofcom identifies that Openreach's share is 41-50%, VMO2's share is 31-40%, CityFibre's share is less than 10% and other Altnets' share is again "even lower". On this basis, Ofcom again suggests that the incremental constraint from the second rival is likely to be limited.

140. This demonstrates that Ofcom's analysis is solely focussed on the latest available market share data across and within postcode sectors with two or more competing networks to Openreach. No other factors even feature in Ofcom's analysis of potential differences in competitive conditions – for example, market share trends and the strength of countervailing buyer power in areas where CityFibre competes. This extremely narrow focus of analysis is clear evidence that Ofcom has failed to carry out an adequate forward-looking assessment.

Ofcom uses flawed and limited market share data in postcode sectors with two rival networks to suggest there is limited competitive impact from second rival

141. As noted above, in dismissing the possibility that it should define a separate sub-market, Ofcom places specific weight on the share of the second rival across the subset of 1,812 postcode sectors with two or more rival networks and the subset of 321 postcode sectors where Openreach's share is below 50%. Specifically, Ofcom references the share of CityFibre (less than 10%)⁶¹ and other Altnets ("even lower") across these subset of postcode sectors to evidence its view that the "incremental competitive impact of a second rival network is likely to be limited".⁶²
142. But this appears to calculate the market shares of CityFibre and of other Altnets within the full area where Ofcom has identified at least two rivals to Openreach – i.e. across all 1,812 postcode sectors and across 321 postcode sectors. But CityFibre nor any single Altnet will be the second rival in all of those postcode sectors. Therefore, the figures quoted by Ofcom will be significantly diluted in considering the specific strength of individual Altnets. As such, even on Ofcom's own narrow terms – which are inadequate to assess differences in forward-looking competitive conditions – it is basing conclusions on flawed market share data for the second rival.

⁶⁰ TAR, Vol 2, para 4.100

⁶¹ TAR Vol 2, para 4.100

⁶² TAR Vol 2 para 4.90

143. Furthermore, to the extent that Ofcom is placing sole weight on market share data, it should acknowledge that there will be dilution effect on observed shares across postcode sectors where the two rivals will have less than 100% coverage.
144. The share data will also be skewed by the recency of Altnet build. NERA's analysis clearly shows that take-up of Altnets increases with the maturity of their build and that there is clearly a high impact after at least two years. This echoes the analysis from Eight Advisory that references higher take-up on older cohorts of Altnet build.⁶³
145. More generally, this focus on the observed static share data of the second rival reveals that Ofcom is failing to take a forward-looking assessment of competitive conditions.

Ofcom fails to compare competitive conditions between areas with 2 rival networks and other parts of the proposed Area 2

146. As noted above, Ofcom's limited analysis of the 1,812 postcode sectors with two identified rivals to Openreach focuses on observed market share data. But it does not go on to consider how even this narrow set of share data compares with shares in the rest of Area 2. NERA's estimates Openreach's share of broadband connections in postcode sectors with at least two rivals is [X] (prior to application of any maturity effects or wholesale effects) and its share in the rest of Area 2 is [X].

Ofcom misapplies the modified greenfield approach in seeking to retain SMP on a wider area to address concerns with alleged "incumbency advantages"

147. In the filtering exercise described above, Ofcom does identify 13 postcode sectors in contiguous areas with at least three networks present where Openreach's share is below 50% and the shares of both of the two rivals are relatively higher (noting the specific figures for shares of the second rivals are redacted).⁶⁴
148. But in rejecting any finding that competitive conditions within/across these 13 postcode sectors are significantly different, Ofcom states that this outcome has

⁶³ [Eight 22 Takeup Tracker - Eight Advisory](#)

⁶⁴ TAR, Vol 2, para 4.102

been achieved with SMP findings and conditions in place under the WFTMR framework, including restrictions on Openreach's commercial activity. On this basis, Ofcom states that, under the modified greenfield approach, it has to consider the position of rivals if those SMP protections were not in place.

149. As NERA highlights in its report, this fundamentally misapplies the modified greenfield approach, which is relevant in ensuring that findings of downstream retail market competition do not lead to inappropriate deregulation of upstream markets where competition concerns exist.⁶⁵
150. Moreover, when asking the question of whether a subset of postcode sectors (whether that be 1,812, or 321 sectors) are sufficiently competitive as to be placed into their own distinct market, it is not logical to assume the lifting of regulation across *all* sectors. The logical reason for considering a world without regulation of those 1,812 (or 321) sectors is to consider whether, if regulation were to be lifted *in those areas*, competition would be sustainable *in those areas*. There is no suggestion that regulation ought to be lifted *across all areas*, and it is therefore not logical to consider the competitive conditions in those 1,812 (or 321) sectors on the basis of a wholly unrealistic assumption to that effect.
151. But this reference to the modified greenfield approach is then linked to a key overarching argument which appears to shape Ofcom's overall consideration of the case for geographic deregulation in the TAR. That is, Ofcom believes that withdrawing SMP regulation in any part of any Altnet's footprint in the TAR would be premature given Ofcom's position that Altnet competition is still developing. Specifically, Ofcom states: *"... Altnets are still in the process of competing to gain sufficient take-up to ensure continued funding, complete any additional build, and sustain ongoing network operations. Increasing take-up has been challenging to date, and absent regulation in the WLA market, this is likely to be even more challenging given BT's incumbency advantages"*⁶⁶ (noting further that *"...in the absence of regulation, BT could have the ability and incentives to deter additional network build and make it more difficult for Altnets to gain take-up"*).⁶⁷
152. This concern is expanded on when Ofcom assesses SMP in the proposed Area 2, where it notes: *"... over the 2026-31 review period, most Altnets will need to focus on gaining additional take-up and revenues to achieve financial sustainability and*

⁶⁵ See NERA Report Appendix 2

⁶⁶ TAR Vol 2 para 4.170

⁶⁷ TAR Vol 3 footnote 257

attract further investment, which is required to fund any residual build and fund customer connections to the network they have already built".⁶⁸

153. In this context, Ofcom claims – again misapplying the modified greenfield approach – that Openreach has the incentive and, absent regulation, the ability to “leverage... incumbency advantage” to deter ISPs from switching or multi-sourcing and directly references “exclusionary behaviour” including “offering geographic discounts to wholesale prices”⁶⁹ in competitive areas and “other commercial terms” including certain kinds of volume discounts.
154. And Ofcom’s position is further developed when it explains its objectives in proposing to set remedies that include restrictions on geographic discounts and requirements to notify conditional terms in Volume 3, Section 1. Specifically, Ofcom makes reference to the importance of Altnets increasing take-up to: (i) become financially sustainable and reach positive operational free cash flow to reduce reliance on further debt or equity to fund ongoing operations; (ii) raise further funding for capex to support ongoing connections and; (iii) benefit from economies of scale. This is then reflected in Ofcom arguing that there is a “continuing role for our regulation to promote network competition, by preventing Openreach from abusing its SMP to undermine take-up as well as further network rollout...”.⁷⁰
155. It may be the case that some Altnets will need to increase take-up on their network to improve their financial position and meet the needs of their investors over the long-run. We also understand that Openreach should not abuse any market power by engaging in exclusionary behaviour aimed at rivals, which competition law already prevents. But Openreach should not be prevented from competing fairly on the merits against rivals where competition is effective (such competition would benefit end customers), and any SMP restrictions placed on Openreach must be necessary and proportionate to address a reasonable identified competition concern. As proposed, and noting Ofcom’s proposed guidance, the remedies Ofcom is looking to set would go way beyond preventing ‘abuse’ or ‘exclusionary behaviour’ based on specific concerns about unfair, anti-competitive behaviour, and would more simply limit Openreach’s commercial options to the benefit of rivals and detriment of consumers.

⁶⁸ TAR Vol 2 para 4.178

⁶⁹ TAR Vol 2 para 4.194

⁷⁰ TAR Vol 3 para 1.36

156. Ofcom's position and logic seems to be that the general position of Altnets across the UK in terms of overall take-up levels and their financial position means that Openreach should be restricted from competing fairly on the merits in order to provide Altnets with an opportunity to gain take-up at Openreach's expense. We interpret Ofcom's position on these points to mean that even if it had identified more postcode sectors as meeting its filtering criteria – three networks present, Openreach share less than 50% and higher second rival share – it would not have identified separate geographic markets within the proposed Area 2.
157. As NERA points out in its report,⁷¹ the form of restriction Ofcom is placing on Openreach through the geographic discounts remedy and through restrictions on introducing conditional terms will prevent Openreach pricing to meet competition in an efficient way, allowing rivals to gain market share at higher prices than would be the case if competition were allowed to play out, to the detriment of end customers. This tight restriction was introduced with the explicit objective of protecting Altnets from targeted discounts during a period of nascent build, when the concern was that targeted discounts could be used to undermine investment cases and build plans of the new entrants. Ofcom is now, without sufficient justification, expanding the purpose of the restriction and therefore the scope of the remedy. This is particularly counter-intuitive given the market conditions are demonstrably more competitive than when the original geographic pricing restriction was first imposed.
158. Ofcom should not be looking to pick winners and set regulation to underwrite specific business cases (as it notes itself),⁷² but it has justified the necessity of retaining these tight SMP restrictions by clear reference to the desirability of protecting all Altnets and improving all Altnets' financial performance.
159. Furthermore, by using the modified greenfield approach and working backwards to justify the retention of SMP in order to retain the remedies – contrary to the regulatory framework – Ofcom is relying on a logic that suggests SMP would be retained across the UK regardless of evidence of the strength of more localised competitive constraints. That is, Ofcom's general view seems to be that the UK Altnet sector is still developing and is not yet considered sufficiently established as the market moves towards potential competition in Area 2. This general view outweighs any evidence on the strength of geographic competition. This ultimately

⁷¹ See NERA Report, Section 4

⁷² TAR Vol 4 para 1.49

seems to explain why Ofcom takes the position that conditions in Area 2 are "*sufficiently homogeneous*". That is, the concern with the overall position of Altnets across all parts of Area 2 is outweighing all other evidence of appreciably different, stronger competition in parts of the widely defined area.

Ofcom's analysis of SMP across the proposed Area 2 is inevitably skewed by its flawed approach to sub-dividing geographic markets

160. When Ofcom assesses whether Openreach has a position of SMP in the proposed wide Area 2, it takes account of a wider set of factors and evidence than the market share data it relies on in defining geographic markets.⁷³ But its assessment of SMP is inevitably skewed by the fact that each factor – such as market shares and the strength of countervailing buyer power – is considered in the context of that wide area. So, for example, to the extent that Ofcom identifies some countervailing buyer power arising from CityFibre wholesale deals, its provisional conclusion is that this will not be strong enough across the whole of the proposed Area 2 given CityFibre is available at only 14% of UK premises in Area 2.
161. Our view is that once Ofcom has appropriately defined a set of submarkets within the proposed Area 2 that reflect differences in competitive conditions, a properly applied SMP assessment based on the same factors would come to a different conclusion and Ofcom would, therefore, identify a significant number of postcode sectors as falling within Area 1 as set out below.

Ofcom's proposed remedies in the wide Area 2 are disproportionate given the varying competitive conditions

162. Ofcom's flawed finding of SMP across the inappropriately wide Area 3 then results in Ofcom proposing to apply a set of remedies that are inevitably disproportionate in that they fail to reflect the diverse set of forward-looking competitive conditions across the postcode sectors. This results in Openreach facing a set of commercial restrictions that impact our ability to compete fairly on the merits with all/any rivals over the 5-year period, to the detriment of the end customer. Specifically:

⁷³ TAR, Volume 2, para 4.155 onwards

- i. Rigid restrictions are proposed on any geographic discounts on connections, rentals or retail inducements that are targeted at any Altnet during the five year period. By design, these restrictions would prevent Openreach competing fairly on the merits (meeting competition from Altnets) in geographic areas where competitors were present unless the same terms of supply were applied across the whole of the proposed Area 2 footprint.
 - ii. Ofcom retains restrictions to address "other commercial terms" that include conditionality but expands its guidance to suggest it may block offers aimed at accelerating migrations.
163. Section 4 of the NERA report explains why these restrictions should not be retained for another five-year period when they were initially introduced to address specific concerns about Altnets during their initial phase of build. It further notes that the 'short window' to consider Altnets as nascent is now over and it is not appropriate to impose remedies to restrict our ability to compete fairly simply to support Altnets in gaining market share to improve their financial position. We agree: there is a strong case to remove these remedies across markets where SMP is found
164. Imposing such restrictive remedies on Openreach is particularly flawed across a period where Ofcom's own assessment acknowledges likely shifts in market dynamics as we move closer to a competitive full-fibre future and in areas where the progress has been and will be faster. This is why it is critical that Ofcom appropriately defines geographic markets to capture significant differences in competitive dynamics. Where SMP falls away, Openreach must clearly be able to compete on the merits. Where SMP remains, Ofcom must reassess the need for and proportionality of any remedies in to reflect the specific competitive dynamics in each identified submarket. At the very least we see no basis to retain these restrictive remedies in Area 1s, where there are at least two rivals to Openreach, or in the VMO2 footprint.

Correcting the flaws in Ofcom's approach to assessing competitive conditions within the proposed WLA Area 2

165. From the evidence summarised above and set out in more detail in the NERA report, we believe that: (i) there is a strong and clear case to define some parts of the proposed WLA Area 2 as falling in areas where competitive conditions are sufficiently different; (ii) a wider set of geographic markets should be defined; and (iii) a different set of remedies should be set in those areas to those proposed,

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similar to the way Ofcom has defined the CLA in LLA and removed SMP, and continues to define the HNR area in LLA and applies different remedies.

166. Specifically, NERA proposes that all postcode sectors with at least two rivals with network passing 50% or more of homes should be defined as "Area 1s" and Ofcom should assess whether Openreach holds SMP
167. NERA sets out analysis and evidence to suggest that it is likely that no SMP will be found within the Area 1s. Specifically, NERA notes that any overreliance of actual market share data (volume of losses) would be problematic and produces alternative views which:
 - i. highlight the difference in actual shares between the Area 1s and rest of Area 2;
 - ii. estimate the combined future impact on market [X]; and
 - iii. notes that the recent timing of the Sky / CityFibre wholesale deal will not be reflected in actual figures.
168. If Ofcom does conclude that Openreach has SMP in Area 1s in 2026, it should implement a framework that can adapt to dynamic changes over the period and consider alternative remedies that reflect the fact that competition is 'strong'. This would include ending geographic pricing restrictions and using competition law to address any residual, theoretical concerns over Openreach leveraging its position in other areas.
169. We would note that in assessing competition across the proposed Area 1s, there will be different degrees of competition based on the two rivals present in a postcode sector and the maturity of those networks. This should be factored into Ofcom's analysis if it concludes that the area as a whole is not effectively competitive in the final TAR statement.
170. NERA also recommends that Ofcom defines a separate geographic market for the VMO2 footprint on the basis that competitive conditions are significantly different to the rest of the UK. Different remedies should again apply to this area, including the lifting of all geographic pricing restrictions.
171. This would leave the rest of the proposed Area 2 as including CityFibre or other vertically integrated Altnet areas or areas with planned build for the 2026-31 period, but no actual build to date. Ofcom should at least consider the case for defining a separate market for the CityFibre only areas reflecting on the recent timing of the Sky deal, [X] and the strong evidence of forward-looking

countervailing buyer power that arises from this. Consolidation, wholesale deals and/or the specific strength of individual vertically integrated Altnets in the retail space should also be reflected in Ofcom's approach to assessing competition in this 'residual' Area 2. The expectation that the market will evolve materially over the 5 years of the TAR is why it is vital Ofcom implements a dynamic framework that reassesses competitive dynamics at regular intervals and adjusts regulation.