

NOTIFICATION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003

NOTIFICATION OF PROPOSED CONSENT UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITIONS 1 AND 2, CONSENTING TO BT NOT OFFERING COPPER-BASED NETWORK ACCESS SERVICES IN THE SALISBURY AREA

BACKGROUND

1. On 28 March 2018, following consultation, Ofcom published a statement entitled *“Wholesale Local Access Market Review: markets, market power determinations and remedies”* (**“WLA 2018 Statement”**)¹. That document sets out Ofcom’s decisions on its review of the WLA markets, by identifying markets, making certain market determinations and setting SMP conditions (including charge control conditions). At Annex 33 of that document, Ofcom published a notification under section 45 of the Act, containing its market identifications, market power determinations and setting of SMP conditions applied to BT (**“March 2018 Notification”**).
2. The obligations imposed on BT in the WLA market in the March 2018 Notification include a requirement to provide network access to a Third Party where that Third Party, in writing, reasonably requests it (SMP Condition 1), which includes network access in the form of MPF, Sub-Loop Unbundling Services and VULA (SMP Condition 2).
3. The obligations under SMP Conditions 1 and 2 are imposed as requirements “except in so far as Ofcom may from time to time otherwise consent in writing”.
4. On 17 June 2019 BT published a consultation on a copper network retirement trial which included a proposal for BT to give notice that it will implement a policy of stopping to offer new wholesale access to its copper network in the Salisbury Area from September 2020. In order to facilitate this, on 19 July 2019, BT requested that Ofcom consent to it not offering new Copper-based network access in the Salisbury Area from September 2020.

PROPOSED CONSENT

5. Having considered BT’s request in all the circumstances, Ofcom proposes to give consent under SMP Conditions 1 and 2 in the following terms:

“Ofcom consents to the requirement on the Dominant Provider under SMP Conditions 1 and 2 to provide network access to a Third Party where that Third Party, in writing, reasonably requests it, including the specific forms of network access comprising Metallic Path Facilities, Virtual Unbundled Local Access and Sub-Loop Unbundling Services, not applying in respect of new requests for Copper-based network access made on or after 1 September 2020 in respect of end users located in the Salisbury Area provided that Fibre-based network access is available to a Third Party on reasonable request in respect of any such end user.

¹ Wholesale Local Access Market Review; markets, market power determinations and remedies, 28 March 2018, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/112475/wla-statement-vol-1.pdf.

For the avoidance of doubt, the requirement on the Dominant Provider under SMP Conditions 1 to provide network access to a Third Party where that Third Party, in writing, reasonably requests it, including the specific forms of network access comprising Metallic Path Facilities, Virtual Unbundled Local Access and Sub-Loop Unbundling Services, continues to apply in respect of Existing Copper-based network access provided in respect of end users located in the Salisbury Area”.

6. The proposed consent is proposed to take effect from 1 September 2020.
7. The effect of, and Ofcom’s reasons for making, these proposals are set out in the accompanying explanatory consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

8. Ofcom is satisfied that the proposed consent satisfies the tests set out in section 49(2) of the Act in that it is: objectively justifiable in relation to the networks, services and facilities to which it relates; not such as to discriminate unduly against particular persons or against a particular description of persons; proportionate to what it is intended to achieve; and in relation to what it is intended to achieve, transparent.
9. In making the proposals referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six Community requirements in section 4 of the Act and the duty to take account of European Community recommendation for harmonisation in section 4A of the Act.

MAKING REPRESENTATIONS

10. Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying consultation document by no later by 6 September 2019.
11. Copies of this notification and the accompanying consultation have been sent to the Secretary of State in accordance with section 49C of the Communications Act 2003.

INTERPRETATION

12. For the purpose of interpreting this notification –
 - a. except in so far as the context otherwise requires, words and expressions shall have the meaning assigned to them in paragraph 13 below, and otherwise any word or expression shall have the same meaning as it has in the March 2018 Notification and the Communications Act 2003;
 - b. headings and titles shall be disregarded;
 - c. expressions cognate with those referred to in this notification shall be construed accordingly; and

- d. the Interpretation Act 1978 (c.30) shall apply as if this notification were an Act of Parliament.

13. In this notification

“Act”	means the Communications Act 2003 (c.21);
“BT”	means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
“Copper-based network access”	means the provision of network access where the physical connection between the local access node and the network termination point comprises copper wires either in whole or in part;
“Existing Copper-based network access”	means the particular form of Copper-based network access that is being used in respect of the relevant end user located in the Salisbury Area as at 31 August 2020;
“Fibre-based network access”	means the provision of network access where the physical connection between the local access node and the network termination point comprises entirely of optical fibre;
“March 2018 Notification”	means the notification described in paragraph 1 above;
“Salisbury Area”	means the geographic area in Salisbury, Wiltshire, which is served by the telephone exchange represented by the exchange code ‘STSALIS’;
“WLA”	means wholesale local access;
“WLA 2018 Statement”	means the statement described in paragraph 1 above.