

Wholesale Fixed Telecoms Market Review 2021-26
Response to Consultation from
Ofcom's Advisory Committee Northern Ireland
March 2020

The Advisory Committee for Northern Ireland advises Ofcom about the interests and opinions, in relation to communications matters, of people living in Northern Ireland.

The Advisory Committee for Northern Ireland (ACNI) has strongly supported the Broadband Universal Service Obligation (USO) and taken an interest in its design and implementation. It considered a briefing from Ofcom on progress, including the funding consultation, at its meeting on 27 November 2019. A subgroup of members received a further update on 7 January 2020

In general, ACNI is satisfied that the evidence presented by Ofcom supports the position they have outlined in the consultation.

ACNI limits its more detailed responses to a subset of the consultation's questions, with a particular focus on how these proposals will affect consumers in Northern Ireland.

Volume 2 / Question 2.1: Do you agree with our description of retail markets?

ACNI agrees with the description of the retail market. However, ACNI is concerned with the statement in Section 2.38 that says "The review found a wide variation in prices paid for the same broadband service. It found that for customers who stay with their provider beyond their original contract period, prices appear to be linked to factors such as their willingness or ability to engage with their provider and negotiate a new deal, and their provider's approach to re-contracting, as well as broadband speed."

ACNI trusts that the new Ofcom rules that came into force from 15 February this year (whereby providers must tell customers when their contract is coming to an end and highlight the best available deals) will address this issue of comes customers needlessly paying over the odds for the same service that others are receiving more competitively from the same supplier.

Volume 2 / Question 5.1: Do you agree with our provisional finding on SMP and resultant competition concerns in the physical infrastructure market?

The evidence presented supports the position that BT retains SMP. ACNI is not aware of any evidence which would suggest a different position for the Northern Ireland market.

Volume 2 / Question 8.1: Do you agree with our provisional SMP findings and resultant competition concerns for wholesale networks?

The evidence presented supports the SMP findings.

ACNI notes that the potentially competitive and non-competitive geographic area split in Northern Ireland has markedly changed since Ofcom's initial analysis in April 2019 (which relied on December 2018 figures) from 40/60 to 55/45. We understand that the underlying reason for this shift is due to the use of updated operator build plans that now forecast growth over a significantly longer period and have increased the size of Area 2.

The change in applying a coverage threshold of 65% of premises passed in a postcode sector to just 50% on the back of stakeholder submissions to the previous consultation is potentially to the detriment of consumers, more of whom will now be deemed to live in more competitive areas even though up to half of the premises may not be passed.

ACNI question whether 50% is a reasonable proportion in the eyes of consumers.

Volume 2 / Question 9.1: Do you agree with our proposal not to regulate WFAEL, ISDN2 and ISDN30 markets on the basis that they no longer fulfil the three criteria test set out in the EC Recommendation?

ACNI recognises that WFAEL is a declining product set and in a significant transition phase. However, it recognises that vulnerable customers may be users of these service and welcomes Ofcom's proposed transitional arrangements.

Similarly, ISDN2, and particularly ISDN30, whilst declining products, may still be used by significant SMEs in Northern Ireland who do not have the financial capacity for forced technology change.

ACNI acknowledges Ofcom's view that these products do not fulfil the three criteria test; however, it would strongly urge Ofcom to monitor BT as per section 9.69 of Volume 2 to: "continue to provide network access with respect to the WLR and ISDN2/30 products on fair and reasonable terms; will not unduly discriminate; will supply on Equivalence of Input (EoI) terms; will maintain published reference offers; and will notify changes to terms and conditions on the same basis as for SMP products; price these products on a 'fair and reasonable' basis until withdrawal i.e. on wholesale terms that do not distort downstream competition by squeezing margins."

Volume 3 / Question 2.1: Do you agree with our proposed approach to Copper retirement?

ACNI acknowledges that the Copper retirement approach is multi-faceted and has many different variables. ACNI is concerned that vulnerable customers could be left with unaffordable or unwanted services and welcome Ofcom approach. However, ACNI feel strongly that this area should be closely monitored throughout the period of Copper retirement to ensure the approach taken has no unintended consequences that are detrimental to vulnerable customers.

Volume 3 / Question 6.1: Do you agree with our proposed dark fibre access and dark fibre inter-exchange remedies?

ACNI believes that the proposed dark fibre access could have significant benefits for many parts of Northern Ireland which are designated as Area 3 and could open up the market to other potential players, thereby improving competition.

Volume 3 / Question 7.1: Do you agree with our proposed approach to QoS?

ACNI welcomes the Ofcom's proposal to impose the same QoS standards across all geographic areas in each of the wholesale local access, leased lines access and inter-exchange connectivity markets.

Volume 4 / Question 1.1: Do you agree with our proposals for charge controlling WLA and LL access services in Area 2?

ACNI believes that the proposals on price continuity in Area 2 on WLA and LL access services strike the correct balance between protecting customers in the short term and promoting network competition in the medium term.

Volume 4 / Question 2.1: Do you agree that a RAB based control will achieve our objective in Area 3?

ACNI appreciates that a RAB approach seems an appropriate model. ACNI particularly welcomes the reassurance that Ofcom will protect consumers taking copper services from the risk of price increases by proposing that the costs of legacy services such as MPF and FTTC would continue to be entirely recovered from the consumers that purchase the legacy services.

ACNI notes that Ofcom recognises the need to work with public policy-makers, and in Northern Ireland it is vital that Ofcom continue to engage with and consider the implications of Northern Ireland Executive's Department for the Economy projects, such as Project Stratum, and how these might impact the RAB model in Northern Ireland.

Volume 4 / Question 2.4: Do you agree with our proposals to charge control LL access services and dark fibre in Area 3?

For Area 3, ACNI agrees that the proposals which seek to maintain stable prices provides the right balance between providing customer protection from excessive prices while also encouraging take up of dark-fibre and allowing for a smooth transition for customers.

ENDS