

RESPONSE TO PROMOTING INVESTMENT and COMPETITION in FIBRE NETWORKS

Section 1 Executive summary

Regulatory certainty to support long term fibre investment

1.1 As an overall strategy, I would agree with Ofcom's statement and the AIM as set out in 1.2.

1.4 "Before then (by 2021), we-----to implement certain key elements of our strategy more quickly." "We intend to implement unrestricted duct and pole access from spring 2019".

I consider this policy is short sighted, particularly in rural areas and connections to mobile base stations, because common duct and pole access will NOT PROVIDE RESILIENCE in operators networks necessary when Voice over Internet services are introduced in 2025/26.

1.5 "Openreach will no longer be required to provide wholesale access to its services". Does this mean that existing 'retail' providers will continue to use their existing wholesale contracts from BT / Openreach?

In this context of "wholesale services" the following issues need to be addressed from a regulation issue. In the past few years a number of 'new providers' have been approved for Code Powers. Some are providing "wholesale" agreements but not regulated to do so by Ofcom. Other situations are being implemented by developers of housing developments with exclusive deals for a single telecoms provider. These also require regulation to offer 'wholesale services' to other providers otherwise you get pockets of monopoly provision. Thirdly, in Community owned and maintained broadband areas how are Ofcom to achieve "at least two providers" in these area without "wholesale services" being available?

Approach to different geographic areas --- 1.10 and 1.11.

I would consider that a "competitive area" should be at least Ofcom Market Classification of TWO. Meaning two or three 'principle providers' as well as BT / Openreach wholesale retail services. The term 'retail' in this consultation requires a clearer definition in relation to the various Internet Providers (IP) who use BT / Openreach services and those with their own networks to BT exchanges.

I appreciate that in the 2012 and 2016 Open Market Review (OMR) the telecoms providers supplied information based upon their presence or otherwise in the postcode area. Hence, in this review it will be easier for them to continue with the same system. I would assume Ofcom data would be able to provide the information on the OMC for every exchange in the UK.

Refer also to Appendix 1.

Assessing network presence --- 1.12 and 1.13

From the evidence in my own research into availability of broadband in Scotland, I consider that BT / Openreach have considerable Significant Market Presence (SMP) in vast areas of rural Scotland. Refer also to Appendix 1.

For example: - Exchanges with NO Local loop unbundling (LLU) – 749. With LLU – 311.

Exchanges with an OMC of 1 – 743; with an OMC of 2 – 174; with an OMC of 3 – 143.

OMC 1 exchanges with NO fibre presence – 483; with some areas with FTTC – 171; with both FTTC and FTTP – 143.

The later two items, OMC 1 exchanges, are the ones I would consider to be 'attractive' for improved broadband performance to both 'retail' IP using BT / Openreach services and 'other principle operators' such as Sky, TalkTalk and Vodafone. Cable operators (predominately) Virgin Media – available (in parts of some areas) in 122 exchanges.

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Assessing network presence --- 1.15

Ofcom's proposed approach of a threshold of 65% of premises in a postcode area seems too low for an Urban area. In Rural areas the remaining 35% needs to be qualified in terms of open spaces and the number of premises in this part of the area.

Illustrative results --- 1.16 and 1.17

I find the statement – “we would expect to find that there are currently ‘NO AREAS’ where there are two competing network operators in addition to Openreach for all services” misleading as includes leased lines services. The ‘illustrative results should concentrate on broadband services only and OMC 2 exchange areas meet this criteria. Deal with the “all services” issue at the Business Review stage. Refer also to Appendix 1.

Section 2 Our approach to ‘ex ante’ regulation

In 2.4 the statement – “---- the key objectives of our regulation being to promote competition ---” is very significant and must be the paramount aim in this consultation.

2.9 I appreciate Ofcom's approach on the use of Openreach assets of ducts and poles to achieve competition more quickly. However. There is a very high risk of businesses being unable to conduct their trade because ALL alternative telecoms and IP services are being supplied through a common shared duct or pole. SME's need to be able to minimise their trading risks by utilizing alternative telecoms suppliers, including mobile services, to continue to trade when telecoms, internet or power supply are temporarily unavailable. The risks will increase significantly when telecoms (PSTN) services are migrated to Voice over Internet Protocol (VoIP) in the next few years.

Geographic aspect of our analysis

2.14 Agree

2.15 Non- competitive areas. I consider this approach to be a significant burden on BT / Openreach and to a certain extent seems to ignore the benefit of the providers of advanced wireless systems such as ‘White Noise’ spectrum implementation in Rural areas especially where Communities are currently investigating these wireless systems in their area.

Why restrict this approach to only Openreach? The cluster of exchange areas around where Sky, TalkTalk, Vodafone and Virgin Media are currently operational could well be considered for extending their networks.

From my research these ‘principle providers’ have their own networks into BT exchanges; Sky – 290; TalkTalk – 311; Vodafone – 90; Virgin Media – 122. These ‘principle providers’ are collectively responsible for the ONC 2 and ONC 3 results in 311 exchange areas in Scotland. Refer also to Appendix 1.

Categorising geographic areas according to network presence

2.17 – Refer to 2.15 above.

Category 1 Competitive areas

2.18 to 2.20 Agree with statements “ ---- would be the minimum requirement to find effective competition.”; “---- will allow us to assess whether rival networks are a competitive constraint --” and “ --- need to look at other metrics---- ”.

Category 2 Potentially competitive areas

2.21 – Refer to 2.15 above.

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Category 3 Non – competitive areas

2.25 – Agree that the impact will be in Rural areas, small villages and Communities with their own broadband systems.

2.26 – Agree that Ofcom “ -----err on the side of assuming that there are reasonable prospects of network rollout --- “.

Approach to categorising areas

2.27 to 2.31 Overall, I would agree that Ofcom’s approach should be effective in achieving the competitive aims. Refer also the comments above.

Question 2.1

I would consider a two stage approach in categorising areas. Firstly the ultrafast broadband networks and then in the Business Review the networks more likely to provide leased lines and other services.

Refer also to comments in Section 1 and 2 above.

Section 3 Approach to assessing network presence

Geographic units for our analysis

3.6 Agree that either postcode sectors or BT / Openreach exchanges should be used for analysis.

3.7 Agree that applying a common approach to regulation to geographic units where competition conditions look the same or are sufficiently similar.

3.8 Agree to assess the impact of existing network rollout Ofcom does not consider it necessary to carry an assessment at the level of individual premises.

3.15 Agree in areas where Ofcom are likely to see scale network development, the footprint of the postcode sectors will be sufficiently granular that conditions of competition are not likely to vary widely within a postcode sector.

3.19 Agree with reference to the details as set out in 3.17 and 3.18.

3.20 The BT/ Openreach exchange areas are more precise as postcode sectors can extend over exchange boundaries. The number of premises is also known for an exchange area.

3.25 The analysis of the level of threshold from past WLA Statements and BCMR Consultation (as set out in 2.24) would provide certainty of the 65% threshold.

3.31 Agree with the analysis regarding network that only supply leased lines.

3.32 and 3.33 Agree.

Approach to operators’ plans

3.35, 3.37, 3.40, 3.41, and 3.44 – Agree.

3.46 Agree to the three common considerations in economics of building or extending fibre networks.

3.49 Agree to Ofcom’s provisional approach to identifying areas.

Question 3.1 In semi – rural areas a postcode sector could cross exchange boundaries. Hence, the exchange area would provide a more precise “premises covered” mapping result.

Question 3.2 Agree. Refer also to comments above.

Question 3.3 Agree. Refer also the comments above.

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Question 3.4 Agree. However, I would consider a two stage approach as indicated in Question 2.1.

Section 4 Illustrative assessment

The illustrative number of postcodes and premises by category as shown in Table 4.9 and Figure 4.10 presents a DIRE situation outwith the main cities and large towns in Scotland. In Table 4.1, the Non – Competitive postcode areas is shown as representing 39% covering 9.1 million premises. What are the figures for Scotland?

The situation shown CANNOT BE ACCEPTED from a resilience of networks or the needs of SMEs' to minimise trading risks by using alternative suppliers.

Stimulation and field trials must be funded and implemented into “white noise” wireless and “LightFi” systems to provide services for these areas.

Question 4.1 From the details provided for the UK I find the overall situation for Non – Competitive areas to be totally UNACCEPTABLE and would increase significantly the problems associated with the migration from PSTN to Voice over IP, or at least increase the timescale to implement the migration.

APPENDIX 1. Consists of a summary page and three spreadsheets – Rural Council areas; Central Scotland Council areas and Four Main City council areas. These are attached to this reponse.

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