

21st May 2020

Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA.

By email only: wftmr@ofcom.org.uk

Dear Sir/Madam

Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26

BUUK has been providing gigabit ready full fibre broadband connections to the new build housing sector since 2008 and our fibre networks are often chosen by developers in preference to the solutions offered by BT Openreach or Virgin Media. We also operate a wholesale business, Open Fibre Networks (Wholesale) Limited, offering wholesale services to Communication Providers across the UK.

In this document BUUK sets out its response to Ofcom's Main Consultation Documents (volumes 2 to 4) and the 24 appendices published on 8th January 2020 as part of its Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26.

BUUK remains strongly supportive of Ofcom's continued mandate and expansion of PIA access and dark fibre remedy to BT's SMP as a barrier to 3rd party investment in full fibre networks. Subject to the reservations set out below, BUUK considers that the remedies proposed are a fair assessment of the infrastructure access market and provide workable regulatory tools and triggers to ensure that the controls evolve in-line with growth in competition, hopefully resulting in a continued improvement in the overall level of competition in the telecoms sector in the UK.

While BUUK supports Ofcom's approach to copper retirement to drive investment in Openreach deployment of fibre, we are keen that this does not create any unintended consequences for other Communications Providers (CPs) or Infrastructure Providers (IPs) who are also investing in the deployment of fibre networks. We have 2 key concerns in this area:

1. It is critical that where CPs or IPs have invested in connectivity services to local exchanges (predicated by a business case built on business services and LLU) either via its own dug fibre or by installing fibre using the PIA remedy that these assets do

not become stranded for its CP or IP customers and undermine 3rd Party investment as a result of the transition process from copper to fibre access.

2. The 100% Openreach build out requirement is not explicitly clear regarding connectivity to new housing developments, where it is common practice for developers to access fibre services through a competitive procurement process. The Department for Digital, Culture, Media and Sport are already consulting on new legally binding requirements to ensure all new homes are fitted with Gigabit broadband and a duct infrastructure to support more than one network provider. Requiring Openreach to obtain 100% penetration, including at new housing developments which are already gigabit capable fibre served, by one, two or more networks providers would serve no useful purpose, add to costs, undermine the competitive procurement process with developers and strand the asset of investors who have already provided gigabit fibre. Gigabit capable fibre fed new housing developments and existing 3rd party CP fibre access networks should be recognised as alternatives to the incumbent and excluded from the penetration target as this could encourage anti-competitive behaviour by Openreach.

We are disappointed that the decision has been taken not to implement QoS as part of Ofcom's approach to PIA. Delays to network access and network adjustments do have an impact on time, adding costs and delays to the CP customer experience. This issue could however be addressed through looking at closer control, through definitions, of the use of the clock stops (with a right of appeal) and to include long stop absolute completion dates for all applications as well as the current averaging of all applications. This could also enhance the transparency of the process.

Where Physical Infrastructure Access (PIA) is not possible, either due to lack of duct capacity or the distance to the exchange makes it commercially unattractive, we require the extension of the proposed dark fibre remedy beyond the defined Area 3, into Areas 1 and 2 to allow dark fibre to be provided from the Openreach Local Exchange to our fibre network in the local exchange serving area. As stated above in some circumstances unrestricted access to existing ducting does not provide a suitable solution for new connections as the infrastructure could be full or contain many blockages or if a single fibre is required the installation of a cable or sub-duct using PIA could be too expensive and ultimately wasteful of Openreach's valuable duct asset, where provision of a single dark fibre is more efficient use of duct capacity than a 3rd Party installing a fibre bundle. The extension of the dark fibre remedy to include Local Exchange to customer premise where spare fibre capacity fibre is available would be much more cost effective than the installation of new infrastructure. This would make many more fibre connections to customers commercially viable for alternative network providers further increasing the level of competition in the Telecoms market and maximise the availability of fibre access to customers that may otherwise be excluded due to financial viability under current dark fibre use restrictions. The above proposal would also benefit mobile networks and other network growth.

We would be happy to provide any further clarification to our responses if that would be helpful.

Yours sincerely

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Regulation Director

Appendix 1

(Volume 2)

Question 2.1: Do you agree with our description of retail markets? Please set out your reasons and supporting evidence for your response.

We agree with the description of retail markets as it takes account of the varying levels of competition, identifies where SMP is a barrier to competition and proposes transitional arrangements of regulation that can adapt in-line with the evolution of the market as a result of attracting investment to up-grade legacy networks.

Question 3.1: Do you agree with our provisional conclusion on physical infrastructure product market definition? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach to product market definition.

Question 4.1: Do you agree with our provisional conclusion on physical infrastructure geographic market definition? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach, however the terms of reference and optimised system access to procure the ubiquitous infrastructure will be key to timely and efficient access to infrastructure. Failure to address this could see the approach to access become complex, time consuming and unworkable.

Question 4.2: Do you agree with our provisional conclusion on the application of the three criteria test to the physical infrastructure market? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach and believe that ex ante competition regulation is required to facilitate a timely and predictable investment environment.

Question 5.1: Do you agree with our provisional finding on SMP and resultant competition concerns in the physical infrastructure market? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach to imposed network access obligations on Openreach to provide particular forms of network access in each product market.

Question 6.1: Do you agree with our provisional conclusions on product market definition for wholesale networks? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach.

Question 7.1: Do you agree with our provisional conclusions on geographic market definition for wholesale networks? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach.

Question 7.2: Do you agree with our provisional conclusion on the application of the three criteria test to the wholesale inter-exchange connectivity market? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach, and support re-imposing a requirement for Openreach to provide access to dark fibre for the supply of inter-exchange connectivity.

It is critical that where CPs or IPs have invested in connectivity services to Local Exchanges (predicated by a business case built on business services and LLU), either via its own dug fibre or by installing fibre using the PIA remedy, that these assets do not become stranded for its CP or IP customers undermining 3rd Party investment as a result of the transition process from copper to fibre access. However, the introduction of an inter-exchange dark fibre product in all Areas, that do not preclude Areas 1 and 2, would help address these issues as fibre currently terminating in a Local Exchange could be extended via Openreach fibre to close-by exchanges enabling CPs and IPs to consolidated fibre hubs to improve density and business cases. Further information relating to the transition strategy in these areas would be helpful.

Question 8.1: Do you agree with our provisional SMP findings and resultant competition concerns for wholesale networks? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach.

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? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach. These are now legacy technologies which are being superseded by alternative voice delivery solutions.

Question 10.1: Do you agree with our proposal not to regulate WBA market on the basis that it no longer fulfils the three criteria test set out in the EC Recommendation? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach.

(Volume 3)

Question 1.1: Do you agree with our proposed approach to remedies? Please set out your reasons and supporting evidence for your response.

We share Ofcom's concerns regarding Openreach's dominant market position which could result in delays or refusal to supply timely access and thus restrict competition in the provision of products and services in the relevant downstream markets and to favour its downstream retail businesses to the detriment of its competitors in the relevant retail markets, by both price and non-price discrimination such as process variations, input requirements and maintaining service levels.

Question 2.1: Do you agree with our proposed approach to Copper retirement? Please set out your reasons and supporting evidence for your response.

We support the shifting the focus of regulation from copper to fibre to support the migration to fibre services so that the old copper network can be retired.

Volume 3, section 2.27 of the consultation appears to set a target for 100% Openreach build out of fibre penetration, but is not explicitly clear regarding connectivity to new housing developments, where it is common practice for developers to access fibre service through a competitive procurement process.

The Department for Digital, Culture, Media and Sport are already consulting on new legally binding requirements to ensure all new homes are fitted with Gigabit broadband and a duct infrastructure to support more than one network provider. Requiring Openreach to obtain 100% penetration, including at new housing developments which are already gigabit capable fibre served, by one, two or more network providers would:

- a) serve no useful purpose
- b) add to costs
- c) undermine the competitive procurement process operated by developers
- d) potentially strand the asset of investors who have already provided gigabit fibre.

Gigabit capable fibre fed new housing developments and existing 3rd party CP fibre access networks should be recognised as alternatives to the incumbent and excluded from the penetration target as this could encourage anti-competitive behaviour by Openreach.

We believe our proposed approach would still align with government full fibre objectives, which do not require all fibre penetration to come from Openreach. It would also be in the consumers best interest for Openreach to focus on copper retirement as this would restrict any unnecessary expenditure on fibre areas that can access a competitive fibre market and stop any avoidable capital costs being passed on to consumers through the RAB process or similar price controls.

Question 3.1: Do you agree with our proposed general remedies? Please set out your reasons and supporting evidence for your response.

We support the Ofcom's approach, however to ensure smooth implementation it will be essential to see a process for requests for new forms of network access (SoR) and a published Reference Offer (RO).

Question 4.1: Do you agree with our proposed specific PIA remedies? Please set out your reasons and supporting evidence for your response.

While we accept that imposing an EOI obligation on Openreach for its PIA access service may require Openreach to alter some of its systems, we believe that a transitional plan is necessary to incentivise Openreach to ensure that a single process for Openreach and 3rd party access to ensure optimised system is accessible to all on an equivalent basis. Openreach market engagement with its CPs customers would help prioritise it customer priorities for development.

Question 5.1: Do you agree with our proposed specific remedies in the WLA, LL Access and IEC markets? Please set out your reasons and supporting evidence for your response.

We agree with Ofcom's approach.

Question 6.1: Do you agree with our proposed dark fibre access and dark fibre inter-exchange remedies? Please set out your reasons and supporting evidence for your response.

While we support the remedies outlined, we would like to see the availability of dark fibre access expanded to cover Areas 1 and 2. Lack of duct capacity or the distance to the exchange can make sites commercially unattractive for PIA, however access to a dark fibre product in these areas could enable a full fibre solution to more consumers, improving the penetration of full fibre services.

An unintended consequence of the copper retirement could mean that exchanges are decommissioned limiting the usefulness and affordability of PIA to access exchanges due to the distance of the required connection. Therefore, access to a dark fibre inter-exchange service, rather than dark fibre exchange access, in Areas 1 and 2 would be an essential service for CPs.

Question 7.1: Do you agree with our proposed approach to QoS? Please set out your reasons and supporting evidence for your response.

We are disappointed that the decision has been taken not to implement QoS as part of the proposed approach to PIA. Delays to network access and network adjustments can often impact on time, resource and the end customer experience.

We request that Ofcom increase the scope and effectiveness of the SLAs with regards to PIA access. We remain concerned that the use of clock stops and the scope of the SLA measure of performance can lead to significant delays in the provision of certain types of services. This remedy could be achieved in a number of ways, but we are looking for the closer control, through definitions, of the use of the clock stops (with a right of appeal) and to include long stop absolute completion dates for all applications as well as the current averaging of all applications. For example, improved transparency when a CP identifies a blocked duct as part of a PIA installation. Currently there appears to be a lack of visibility around the Openreach end-to-end repair process and associated SLA, which can then impact the CPs ability to effectively communicate with its customer(s).

(Volume 4)

Question 1.1: Do you agree with our proposals for charge controlling WLA and LL access services in Area 2? Please set out your reasons and supporting evidence for your response.

We support Ofcom's desire to maintain pricing continuity in the WLA market in Area 2, to meet the objective of supporting network competition through promoting competition, while protecting consumers against excessive pricing and maintaining retail competition in the short term.

Question 2.1: Do you agree that a RAB based control will achieve our objective in Area 3? Please set out your reasons and supporting evidence for your response

RAB based controls have been successfully implemented in other sectors such as Gas, Electric and Water, so there is no reason to believe, that if implemented with clear outputs and price controls, this would not work for large scale fibre deployment. Any RAB based controls put in place would need to be reflective of the telecoms market conditions.

Question 2.2: Do you agree that it's appropriate to impose a post-build RAB charge control in Area 3? Please set out your reasons and supporting evidence for your response.

It's critical that appropriate controls are in place to establish clear outcomes of the RAB. Any RAB based controls put in place would need to be reflective of the telecoms market conditions.

Question 2.3: Do you have any comments on our proposed design and method for calculating the proposed post-build RAB charge controls? Please set out your reasons and supporting evidence for your response.

No further comment.

Question 2.4: Do you agree with our proposals to charge control LL access services and dark fibre in Area 3? Please set out your reasons and supporting evidence for your response.

We recognise the need to attract investment into Area 3 and believe cost effective access to dark fibre will act as a key facilitator of 3rd party access. In addition to dark fibre access in Area 3, we would also like to see dark fibre access in Areas 1 and 2 to facilitate joining new fibre development access networks with backbone infrastructure to expand the viability of smaller fibre developments that otherwise may not have access to existing spare dark fibre, thus improving the utilisation of existing network infrastructure.

Question 3.1: Do you agree with our proposals in relation to charge control design and implementation? Please set out your reasons and supporting evidence for your response.

We support Ofcom's approach.

Question 4.1: Do you agree with our proposals for charge controlling in the IEC markets? Please set out your reasons and supporting evidence for your response.

No further comment.

Question 5.1: Do you agree with our proposals relating to calculating PIA rental charges? Please set out your reasons and supporting evidence for your response.

We Support Ofcom's assessment of the benefits of a fibre network compared with old copper networks. Full fibre networks will deliver higher reliability as well as support higher speeds.

Question 5.2: Do you agree with the above proposal to introduce the PIA simplified underground lead-in service and the associated timings? Please set out your reasons and supporting evidence for your response.

We support Ofcom's approach.

Question 6.1: Do you agree with our proposed approach to charge controls for ancillaries? Please provide evidence to support your views. Please set out your reasons and supporting evidence for your response.

We support Ofcom's approach.

Question 6.2: Do you agree with our proposals for fair and reasonable obligations for ancillaries not covered by a charge control? Please set out your reasons and supporting evidence for your response.

No further comment.