

Dame Melanie Dawes

February 4, 2021

CEO Ofcom

Dear Dame Melanie,

Competitive providers have announced more than £8bn of investment to deliver fibre infrastructure across rural and urban areas of the UK by 2025. This letter sets out concerns held by a large number of these operators and their investors regarding Ofcom's conduct during the Wholesale Fixed Telecoms Market Review ('WFTMR'), and what seems to be a significant risk that the WFTMR outcomes will be inconsistent - or in direct conflict - with Government policies. This will be to the detriment of the chances of achieving Government's target of 85% UK FTTP coverage by 2025.

The signatories and their investors wish to engage with Ofcom urgently to discuss these concerns and help prevent damage to the UK's plans for full-fibre rollout.

Annex A sets out where we believe that Ofcom's approach is at odds with its procedural duties; where its WFTMR proposals conflict with its own strategy and Government policies; and the consequential impact on investment and deployment of FTTP across the country, should those proposals be implemented.

Ofcom's proposals are inconsistent with Government policy and strategic objectives

Following its Fixed Telecoms Infrastructure Review (FTIR) in July 2018, in October 2019 the Government issued its Statement of Strategic Priorities (SSP) - which instructs Ofcom how it should implement Government policies. Ofcom issued its own Strategic Statement in July 2018, to coordinate with the FTIR.

These three documents set out pro-competitive principles to incentivise investment in rapid FTTP deployment by Openreach **and** existing and new competitive providers. Competition was front and centre of all of these policies and statements. This has encouraged significant investment into the sector, which is now bearing fruit.

Some of Ofcom's current WFTMR proposals, however, run directly counter to the SSP, and do not support competitive provision wherever viable; in many instances, they tilt the balance unduly towards maximising BT fibre coverage at the expense of the viable competition. Examples include:

1. Including into Area 3, and therefore in the scope of the BT Commitment, which:
 - a. are clearly commercially viable for BT and competitive providers alike;
 - b. Government has categorised as commercially viable; and
 - c. already have competitive FTTP deployment completed, commenced, or fully funded and due to commence¹.
2. Creating exclusive "franchise areas" through the BT Commitment, which include commercially viable and attractive areas - some with existing competitive deployment and many where fully

¹ For example, Ofcom has included the town of Taunton in Area 3, despite an altnet already being in the process of deploying full fibre there.

funded competitive deployments are planned. The BT Commitment deters competitive provision in Commitment locations, despite the Government having categorised them as commercially viable for competitive provision.

3. Obliging BT to overbuild competitive fibre deployments in areas where BT wants to retire its copper-based services.
4. Destabilising the PIA charging levels and principles at a time when competitive provision is gaining pace and is significantly reliant on the use of PIA.
5. Defining the markets in which BT has SMP to exclude connections to aggregation points in competitive FTTP networks.

Although the pro-competitive price regulation, now proposed for both Areas 2 and 3, is welcome, numerous proposals within the WFTMR framework appear designed to favour investment by BT, to the detriment of competition. In particular, it is difficult to avoid the conclusion that Ofcom considers competitive deployment in both Areas 2 and 3 as incidental to BT deployment, and expendable in the interest of achieving commitments from BT.

The signatories to this letter consider Ofcom's proposals, and its overall focus on ensuring BT deployment in preference to competitive deployment, to be in conflict with Ofcom's own duties and strategy, Government policies in general, and with the SSP specifically.

Ofcom's conduct and processes

Ofcom's focus on maximising investment incentives for BT is reflected in the way it has conducted the WFTMR process, as well as its proposals. For example, Ofcom's follow-up consultations (after the main WFTMR consultation issued in January 2020), reflected issues raised by BT/Openreach in their consultation responses or during their discussions with Ofcom during the consultation. By contrast, none of several significant issues raised by competitive providers (outlined in Annex A) have resulted in additional consultations or analyses by Ofcom.

This asymmetry in Ofcom's focus, consultations, and analytical activities, appears inconsistent with Ofcom's duties to not discriminate between how it treats different providers of electronic communications services and networks and is a source of deep concern for the signatories.

Ofcom's follow-on consultations to the January WFTMR consultation have not presented sufficient analysis to support the proposals made, despite these being complex and apparently counter-intuitive. For example, the proposal to fundamentally change the way PIA costs should be shared, was presented in a 6-page section of a consultation addressing a variety of proposals for changes to the January WFTMR proposals and included no data or analysis to justify the proposals. Likewise, the supplementary consultation on copper retirement devoted one cursory paragraph to considering the impact of Ofcom's approach on infrastructure competition and dismissed it as insignificant.

Further, the Area 3 consultation, which proposed the introduction of the BT Commitment, did not even include a pro-forma impact assessment, and none of the consultations issued since June 2020 have included any meaningful impact assessment. Consultations without impact assessments are incomplete and make it impossible for stakeholders to produce complete and comprehensive responses. It is not enough to rely on the original WFTMR Impact Assessment when making new proposals which change impacts.

Lastly, the follow-on consultations issued in the past 6 or 7 months have allowed only very short timeframes for stakeholders to respond to Ofcom's complex and material proposals. For example, the further consultation on certain proposed remedies barely lasted four weeks and was tacked on to the very end of the WFTMR process despite the significance of the real-terms price increases proposed.

Summary and proposals

Ofcom should, as a matter of urgency, address the conflict between its proposals and the clearly pro-competitive policies of Government and Ofcom's own Strategic Statement, and pay closer attention to the SSP. Viewing Ofcom's specific proposals in combination with Ofcom's conduct throughout the WFTMR process, there are real risks that Ofcom's Final WFTMR Statement could be unfit for purpose, and could slow down full-fibre delivery in the UK.

The points raised in this letter are sufficiently material to cause a large group of competitive fibre providers to come together to voice their concerns. This in itself is unusual and is hoped to encourage Ofcom to pause and reflect, and not to rush out its statement purely to meet its 1 April 2021 deadline. The signatories would welcome the opportunity to meet with Ofcom on these matters.

Ofcom should also consider direct engagement with the investors behind the £8bn competitive FTTP deployment planned for the next 5 years. Below is a list of investors that have expressed interest in meeting with Ofcom to discuss the negative impact on investment incentives of the current WFTMR proposals. The signatories would be pleased to work with Ofcom to arrange this.

Yours sincerely,

Airband, Community Fibre, County Broadband, euNetworks, Full Fibre, Glide, Grayshot, INCA, ITS, Jurassic Fibre, Spectrum, Swish Fibre, Truespeed, WightFibre, Zayo, and Zzoomm

FTTP investors interested in participating in a meeting with Ofcom to discuss the impact of Ofcom's WFTMR proposals:

Alinda Investment Partners, Aviva Investors, Infracapital Partners, Oaktree Capital Management, and Octopus Investments.

CC:

Lindsey Fussell, Group Director for Networks and Communication

Dave Clarkson, Competition Policy Director