A close-up photograph of a technician with a beard and safety glasses, wearing an orange safety vest with the 'openreach' logo. He is focused on working with fiber optic cables, using a tool to strip or connect them. In the background, there is a rack of fiber optic equipment with various ports and labels. The overall scene is set outdoors, possibly at a utility site.

# openreach

Connecting you to your network

**Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026.**

**Openreach further submission in relation to Area 3 classification for certain locations in leased lines markets.**

October 2020

**NON-CONFIDENTIAL VERSION**

## Foreword

This response is provided by Openreach Limited<sup>1</sup>. Openreach is a wholesale network provider. We support more than 600 Communications Providers ('CPs') to connect the 30 million UK homes and business to their networks. We sell our products and services to CPs so they can add their own products and provide their customers with bundled landline, mobile, broadband, TV and data services. Our services are available to everybody and our products have the same prices, terms and conditions, no matter who buys them.

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<sup>1</sup> Openreach Limited is a wholly owned subsidiary of BT Group Plc.

## Further detail to Support the Openreach Consultation Response

### Area 3 Classification

#### Overview

For the avoidance of doubt, the comments made in this paper are by reference to leased lines and not Wholesale Local Access ('WLA') markets.

As set out in Openreach's May 2020 consultation response<sup>2</sup>, and at a follow-up meeting with Ofcom on Wednesday 12 July 2020, Openreach believes Ofcom's methodology for defining geographic areas has resulted in some "business" areas where we consider that good levels of competition exist (or prospectively exist) have been incorrectly categorised as Area 3, and so are subject to the greatest levels of regulation, including the proposed introduction of a Dark Fibre Access ('DFA') remedy.

Building on the evidence put forward on this subject in Openreach's May 2020 consultation response, the focus of this paper is on Area 3 "Islands", and we have included a list of 33 postcode sectors across the UK where further investigation is warranted by Ofcom. In addition, we have also included two other categories where we believe further investigation is appropriate before the final details are published in the Ofcom Statement, namely (i) the current inclusion of two cities within Area 3, and (ii) the omission of some postcode sectors from the Ofcom analysis.

Openreach considers that the Area 3 areas included in this report are anomalies that come about as a consequence of the Ofcom market definition methodology rather than through an accurate assessment of the competitive conditions that exist<sup>3</sup>. While Openreach broadly supports the approach to market definition taken by Ofcom, Openreach nonetheless considers that some overlay to deal with "exceptions" is needed for certain sites to properly reflect the competitive conditions present, and in turn to ensure that such sites have proportionate regulatory remedies applied. In particular, adding an overlay to Ofcom's methodology would allow Ofcom to decide not to mandate the DFA remedy in such areas, should that remedy be finally introduced in line with Ofcom's current proposals. This is important given that the proposed extension of a DFA remedy to such areas would actively undermine the development of infrastructure-based competition, contrary to Ofcom's declared strategic objectives.

To note, it is Openreach's understanding that, with the exception of postcode sectors forming the leased lines Access markets of Central London Area ('CLA') and High Network Reach ('HNR'), areas have been classified as either Area 2 or Area 3 based on the same Multi Service Network ('MSN') coverage methodology as used for the WLA markets (as proposed in Ofcom's January 2020 consultation at Volume 2 paragraph 7.93).

Openreach considers that Ofcom could address this issue in one of two ways:

- a) Ofcom could include another step in its market assessment / definition work to identify exceptions where competitive conditions in an area are heterogeneous to the rest of Area 3; or alternatively

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<sup>2</sup> Openreach response dated 15 May 2020, see: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/199213/Openreach.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/199213/Openreach.pdf)

<sup>3</sup> Openreach also makes further comments on the methodological issues in its response to the consultation dated 15 May 2020.

- b) Ofcom could apply differentiated remedies within identified markets. Openreach understands that defining a different Area 2/3 boundary for Wholesale Local Access ('WLA') and leased line services may be difficult in practice, and therefore Ofcom could apply the same approach as has been used for the interexchange market, where in the "BT Only" market, dark fibre services were not imposed in a subset of the defined market. A similar approach could exclude DFA being available in the "islands" of Area 3, for example. This differentiated remedy approach would be wholly proportionate and would better serve Ofcom's strategic objectives.

In summary, Openreach requests that Ofcom adopts an additional overlay approach for the areas set out in this report. In particular, it is important that these areas are not subject to a DFA remedy, as this would inappropriately hamper the development of infrastructure based competition in areas where competition, or the prospect of competition, exist.

Openreach notes that the 33 postcode sectors identified in this report represent around [XX] of the Openreach customer ends in Area 3, and around [XX] of Area 3 bandwidth (please note this analysis excludes the inter exchange market). This is significant, and should not be ignored by Ofcom. Further, Openreach notes that the fact the the bandwidth % is greater than the % of customer ends is itself indicative that the 33 postode sectors identified are areas where a higher proportion of high badnwidth services are sold. This is itelf indicative of greater competition (existing or prospective) where the imposition of a DFA remedy would be particularly negatively disruptive, and be disproportionate.

### Area 3 Islands

In the Business Connectivity Market Review ('BCMR') 2019 Ofcom investigated 23 Sectors which were included in the CLA but did not meet the revised Network Reach threshold. It concluded (see BCMR 2019 paragraph A12.94) that the majority of these were an anomaly and were not genuinely low network reach sectors. Openreach believes there are similar issues in other areas, not just the CLA, leading to the business areas set out in this report that are currently being classified as Area 3.

In its consultation response dated 15 May 2020, Openreach used the areas of Heathrow Airport and Stockley Park as examples where the presence of large structures, coupled with a low density of Connected Nations premises has led to an incorrect, in our view, Area 3 categorisation.

These examples had been identified during the consultation period by an examination of postcodes with high business demand which are designated as being in Area 3. This was based on Openreach circuits only.

In this report Openreach is submitting a complete list of postcode sectors where we believe this effect has happened. The further analysis conducted has resulted in a number of additional sectors being identified. This exercise has been primarily achieved by simple inspection of any Islands of "Area 3" that were surrounded by Area 2, HNR or CLA sectors. Using a combination of Ordnance Survey Maps, Google Maps and the number of Openreach circuits it is possible to identify sectors which contained large structures and businesses rather than more "rural" low density areas.

Openreach considers that the current Area 3 designation for the areas set out in this report is inappropriate and will lead to outcomes that run contrary to Ofcom's stated policy objectives.

In its January 2020 consultation<sup>4</sup> Ofcom defines Area 2 for leased lines markets as being *"..a geographic market comprising postcode sectors where there is already some material commercial deployment by rival networks to BT or where this could be economic"* and Area 3 for leased lines markets as being *"..a geographic market comprising postcode sectors where there is unlikely to be material commercial deployment by rival networks to BT."* (January 2020 consultation, Volume 2 paragraph 7.7).

Openreach considers that for the areas included in this report, on a forward looking assessment of market power (which is what Ofcom rightly proposes), it is simply not credible to argue that (i) infrastructure based competition does not exist now; and (ii) nor is there a prospect of infrastructure based competition existing in future given economic conditions. The areas included in this report are precisely the types of location where infrastructure based competition does exist, or where conditions exist to make such areas attractive for future investment in competitive infrastructure (for example due to prevalence of commercially attractive end customers). Openreach considers that the placement of the areas into Area 3 is a result of a methodology used by Ofcom to define geographic markets, and not because of the underlying competitive conditions that exist (where clearly the latter should be the driver of their designation and of the remedies applied).

The significant policy problem arising is that the DFA remedy is inappropriately imposed in certain geographic areas, and where this happens it will undermine Ofcom's broader policy objectives.

In the consultation Ofcom rightly proposes not to mandate the introduction of a DFA remedy in Area 2. In justifying this sensible course of action, Ofcom places significant weight on its wider strategic objective to encourage investment in very high capacity networks, noting also that Ofcom considers that competition between different networks is the best way to drive investment in services and drive positive outcomes for consumers (Volume 3, paragraph 6.10). Ofcom then goes on to say that *"We only want to impose dark fibre in areas where we believe there is unlikely to be material commercial deployment by rival networks. As such we are proposing to impose the dark fibre remedy in the leased lines access market in Area 3 only."* (Volume 3, paragraph 6.12). Ofcom notes, rightly, that introducing DFA in Area 2 would chill investment in alternative network-based competition, and the costs to competition arising from this impact would outweigh the potential benefits arising from introduction of the DFA remedy. Ofcom is right, and this means for its wider policy objectives to be supported, it is important that, should Ofcom impose DFA, it only does so in genuine Area 3 locations.

The areas set out in this report should not be in Area 3, and in particular should not be subject to a DFA remedy. Openreach considers that the competitive conditions in these areas means that they should actually be designated as Area 2 or HNR. Most importantly, though, it is imperative for Ofcom to remove DFA as a remedy, as failure to do this would undermine the development of infrastructure based competition in these areas, contrary to Ofcom's (correct) wider policy objectives.

The table below lists the postcode sectors where we believe there is sufficient evidence to warrant Ofcom making changes to the geographic designation of the areas from Area 3 to either Area 2 or HNR or

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<sup>4</sup> See <https://www.ofcom.org.uk/consultations-and-statements/category-1/2021-26-wholesale-fixed-telecoms-market-review>

adjusting the remedies imposed. In both cases, it would be appropriate for Ofcom to eschew imposition of a DFA remedy. Further detail and maps covering these areas are included in Annex A.

Location	Postcode Sector
Heathrow	TW61
Heathrow	TW62
Heathrow	TW63
Stockley Park	UB11 1
[XX]	[XX]

[XX]	[XX]

### Area 3 Cities

In addition to the Islands of Area 3, it is also apparent that there are two complete cities that have been classified as Area 3. This is a result of Ofcom's revised approach to only include the announced plans of the MSNs when defining Areas 2 and 3. Although these cities may not be on MSNs current plans, we think the consequential imposition of DFA that follows an Area 3 designation is not appropriate. Indeed, Ofcom's own characterisation of Area 3, as part of its analysis of DFA being appropriate and proportionate, is that comprises largely rural areas and smaller urban areas. Openreach submits that such conditions do not prevail in the "Area 3" cities identified.

The two cities that have been identified are [XX]. Openreach considers that it is implausible that cities should have limited / no scope for competitive entry and that again, this is a consequence of the market definition methodology used rather than from an assessment of the actual competitive conditions. We request that Ofcom consider the Postcode Sectors in these cities in more detail and assess if an Area 3 classification / imposition of DFA remedy is appropriate. As with the Area 3 islands, Openreach does not accept that it is reasonable for city centres to be designated as Area 3, i.e. where there is no current infrastructure based competition, nor the prospect of infrastructure based competition.

## BCMR Sectors missing from WFTMR

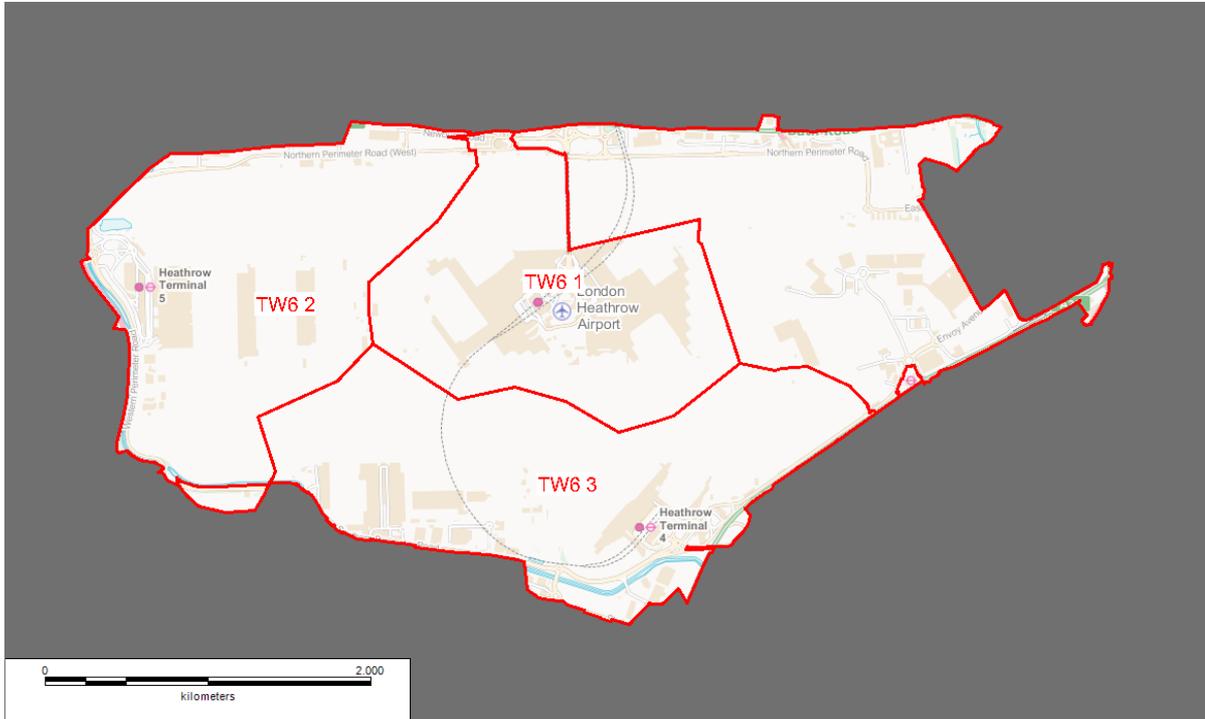
Annex 8 in the Ofcom consultation refers to differences in the postcode sector lists in the BCMR 2019 and the recent January 2020 consultation. There were significant differences between the lists: 74 out of 579 in CLA, and an additional 342 in the rest of the UK. Whilst some of these may be due to changes in postcodes, Openreach suspects that the majority of them will be due to the way the Connected Nations dataset is created. Openreach understands that the 'Connected Nations' report was developed primarily for calculating broadband coverage at a premise level.

Examining these sectors using the Codepoint file published by Ordnance Survey shows that the majority are still current postcode sectors but appear to contain no "domestic" delivery points, possibly explaining their omission from the Connected Nations dataset. A number of them also contain a large numbers of "PO box" delivery points, indicating there may be a significant number of non-geographic postcodes often associated with Royal mail sorting offices.

There does however appear to be many "real" business only postcodes in these sectors and we ask Ofcom to investigate the differences between the BCMR sectors and those of the Connected Nations so that a complete list of relevant sectors is included in the Final Statement.

## Annex A

### Heathrow



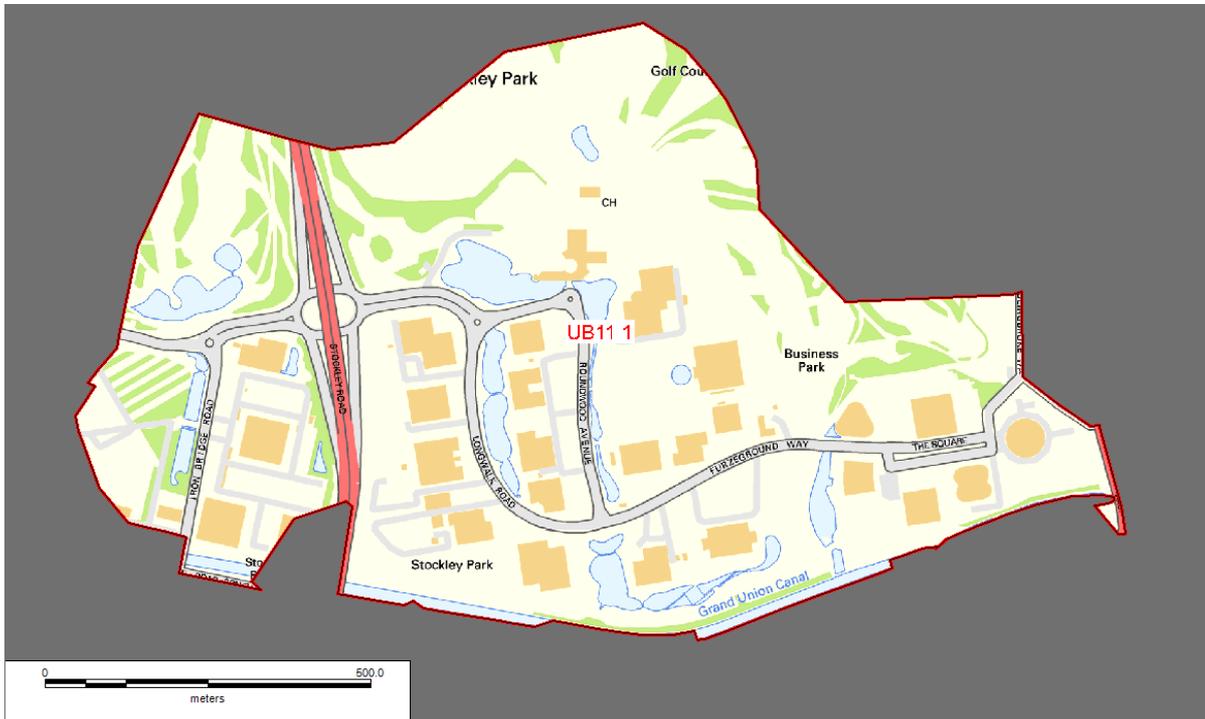
TW6 1.

TW6 2 (split across the 2 areas either side of TW6 1).

TW6 3.

Low density area comprising of large buildings.

Stockley Park



UB11 1 Business park with large buildings.

[XX]