Lindsey Fussell
Group Director for Networks and Communications
Ofcom
Riverside House
2S Southwark Bridge Road
London
SE1 9HA

By email only

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Dear Lindsey,

Wholesale Line Rental's place within the Wholesale Local Access Market

Further to our previous correspondence, ✂ when Wholesale Line Rental (WLR) is used as a bearer to deliver broadband, it is a firm constituent of the Wholesale Local Access Market (WLA). This confirms our view that WLR should continue to be price regulated.

Without price regulation of WLR, and in the absence of any meaningful pricing commitments from Openreach on WLR, the only solution open to broadband providers to achieve retail pricing certainty for consumers would be to migrate their underlying service to SOGEA. For the vast majority of consumers, this would be a completely unnecessary migration, given the evolution to FTTP. It would be disruptive and expensive for both retailers and consumers and pull resources away from Openreach's FTTP rollout, while offering no technical or service benefits to consumers. It also risks undermining any goodwill towards future and necessary FTTP migration.

Taking into account ✂ the impact on customers of removing price regulation from WLR, we are seeking a firm commitment from Ofcom that it will take the appropriate action to ensure WLR pricing, when sold alongside GEA, is linked to MPF pricing. ✂.

I have set out the basis for our concerns in more detail below, and look forward to hearing your thoughts.

Yours sincerely,

✂

WLR within the WLA

To date Ofcom has failed to propose sufficient pricing safeguards to protect broadband consumers reliant on Wholesale Line Rental (WLR). In our submission to the Wholesale Fixed Telecoms Market Review, we highlighted the near identical nature of WLR and Metallic Path Facilities (MPF) in both composition and primary usage, with both acting as copper bearers to underpin retail Fibre to the Cabinet (FTTC) broadband services.

✂. When WLR is used as a bearer to deliver broadband services, it is a constituent of the Wholesale Local Access Market (WLA). The reason for this is that GEA/VULA cannot be bought or used alone, and must be purchased and used with an associated copper bearer in order to secure the wholesale local access necessary to deliver broadband. Indeed, Ofcom's January 2020 Consultation description of the WLA market reinforces this point:

Ofcom's January 2020 Consultation description of the WLA market:[1]

"We have previously defined WLA to comprise access to network assets used by a retail telecoms provider to deliver a range of differentiated services and bundles to residential and business customers at a fixed point close to the end user. The services include: a) broadband; b) the ability to receive TV content; and c) the ability to make and receive voice calls. As in previous reviews, although multiple services can be provided over a local access connection, the key supply requirement is the local access connection itself. Once a connection is in place, a range of services can be supplied. Of the retail services listed, the most important is broadband."

Ofcom's current proposals fail to recognise that WLR is part of the WLA market and that it should be regulated accordingly. Given that WLR, when purchased alongside GEA/VULA, is a key constituent of the WLA, it is imperative that SMP remedies continue to apply to safeguard the wholesale price of WLR when it is purchased alongside GEA/VULA, thus underpinning consumer retail broadband access. This approach is entirely consistent with Ofcom's actions in the 2018 Wholesale Local Access Market Review:

"In the meantime, prior to the widespread deployment of SOGEA, the effectiveness of our decision to charge control VULA 40/10 services could be undermined if Openreach were able to require telecoms providers to purchase VULA with another service (e.g. voice telephony capability) to provide the copper bearer, and to set charges for this copper bearer above the costs of provision. In Section 10, we set a cost-based charge control on MPF so that for the case of MPF+GEA 40/10, both the copper bearer and the GEA service would be subject to cost-based charge controls. However, it may not be economic to use MPF in all situations. Existing telecoms providers using MPF have largely invested in their own equipment to provide retail packages including voice and SBB services and are unlikely to undertake further rollout. New entrant telecoms providers are unlikely to invest in exchange-based equipment and rent access connections in the form of MPF as they are likely to focus on providing retail packages offering superfast broadband services. Vodafone, for example, which is expecting to expand its broadband sales significantly from its currently small share, does not use MPF and instead relies on WLR as its copper support to FTTC.

Where the copper bearer is not provided via MPF, but e.g. via WLR or SOGEA, we have decided that any charges related to the copper bearer must be fair and reasonable, which we would interpret as reflecting the costs of providing that bearer. While we will consider Openreach's approach to pricing on a case-by-case basis, in our view the charge controlled MPF service provides a reasonable starting point for considering the cost-based

[1] 6.23 & 6.24 of the WFTMR Volume 2: https://www.ofcom.org.uk/__data/assets/pdf_file/0029/188822/wftmr-volume-2-market-assessment.pdf

charges for the copper bearer. Openreach raised a concern with this approach on the basis that it adds complexity to the fair and reasonable charging obligation imposed on WLR in the 2017 NMR.

In the 2017 NMR Statement we removed the charge controls for WLR when used to provide voice services, and imposed a fair and reasonable charging obligation, giving BT more pricing flexibility. In response to Openreach, we emphasise that it does not have to use its existing WLR service as the copper bearer to support its VULA service over FTTC. However, as WLR is currently the only alternative to MPF for providing the copper bearer, we would consider fair and reasonable charges for WLR to be those which reflect the costs of provision, in instances where it is used to provide the copper bearer to support the VULA 40/10 service.

For Openreach to be able to make full use of its pricing flexibility for WLR envisaged in the 2017 NMR, it will therefore need to provide the ability for telecoms providers to use the VULA 40/10 service without needing to also purchase WLR in its present form (or MPF). This may be when SOGEA is launched, but will depend on the effectiveness of SOGEA in allowing telecoms providers to provide retail packages of SFBB without relying on BT's WLR service (which sits downstream from the WLA market)."

SOGEA migration is unnecessary for most – driving cost and disruption

Today SOGEA is not an effective alternative to WLR/GEA in most cases, particularly for existing WLR/GEA customers. While SOGEA was, after much delay, eventually launched nationally by Openreach in 2020, the option for communications providers to utilise SOGEA for their installed base is not a realistic one.

While SOGEA can be utilised for new consumer broadband connections ahead of FTTP being available in a given area, the migration of existing WLR broadband consumers to SOGEA as an interim step would neither be cost effective nor prudent. Pushing WLR based broadband consumers onto SOGEA in situations where FTTP is anticipated in the medium term would inflict a material amount of cost and service disruption on to retailers in a product market where margins can be very low.

It would also cause a considerable amount of entirely unnecessary disruption for the impacted consumers. Many such consumers would be forced into a disruptive migration that would bring them no broadband speed or service benefit. Indeed, 80/20 WLR/GEA offers the same speed performance as 80/20 SOGEA – save for the SOGEA variant also having to accommodate any residual landline functionality over the broadband path, potentially slowing the connection for other services while a call is in progress.

It also needs to be kept firmly in mind that the majority of customers would in any event need to migrate away from SOGEA to FTTP in the short to medium term. On the strength of Openreach's plan to deliver FTTP to 20 million UK homes, this means that for the majority of UK consumers, an interim migration step to SOGEA would be counter to their interests.

Additional migration disruption

Imposing an additional migration journey on consumers for no service benefit is a prospect that all rational retail broadband providers seek to avoid. Openreach themselves have limited capacity to fulfil such migrations and the burden of completing them would fall upon an organisation already stretched to meet existing quality of service standards on copper.

Although Openreach has never published its physical capacity limits on WLR to SOGEA migrations, we understand that a maximum systems through-put of around ✂ migrations a week would be at the upper end of what is achievable across the industry. On this basis it would take Openreach several

years to complete all of the migrations. Completing migrations in these volumes is also likely to generate a wave of customer and quality of service concerns that would need to be resolved. With nearly one in ten Openreach copper installations experiencing an early life fault (a fault within the first 28 days of services), the damage that an entirely avoidable migration program would inflict upon Openreach QoS performance is likely to be considerable. All this of course would occur at a time when Openreach is firmly focused on its primary objective of mass fibre roll out.

Consumer harm from SOGEA migrations

Quite apart from the practical considerations around Openreach's ability to resource these unnecessary migrations to SOGEA, the direct harm caused to consumers by such fruitless activity would also be considerable. In practical terms this harm is likely to manifest itself in number of ways:

Cost Impact

Openreach migration charges are set at £3.50 for ✂ of the installed WLR broadband base and £90 for the remainder. This averages out at ✂per customer, a cost that would need to be covered by increases in retail charges.

A VOiP licence cost of ✂ to establish landline functionality over the broadband path would be required (also needed in FTTP migrations, with some re-use between SOGEA and FTTP possible).

Retailer operational costs of at least ✂ per connection are anticipated to both prepare, support and manage the customer through the migration. This could be much higher for some customers, particularly those who are less confident with technology change and those customers considered vulnerable.

Given ✂ it is reasonable to assume that the addition of a ✂cost burden will need to be passed through. This could raise retail pricing by between ✂a month on a typical 24 month contract. This in turn could hamper the ability of retailers offering services at a lower price point to compete effectively, leading to wider detriment beyond their own customer base. The Alvarez and Marsal report[2] into retail broadband competition "*estimated consumer harm resulting from small provider exit and relaxation of pricing pressure, may ultimately amount to between £340 and £400 million per annum"* for the UK retail broadband market.

Customer Disruption

In addition to the cost of the migration, obvious practical disruption will occur, with no apparent benefit to customers. Customers would have to unplug their landlines from the Openreach wall socket within the home and plug their telephones directly into their routers. The timing of this (and transfer of their landline number to the VoIP platform) would need to be co-ordinated between the retailer and the customer to ensure there was as little disruption as possible to outbound and inbound telephony. While a smooth number migration could take under an hour, there remains the potential for it to take far longer if problems are encountered.

[2] https://www.ofcom.org.uk/__data/assets/pdf_file/0025/199231/vodafone-annex-2.pdf

Depending on a customer's home wiring set up, the migration to SOGEA could raise problems around equipment in the home that is incompatible with VoIP telephony. House alarms and other equipment may need to be modified or replaced. While these issues are likely to be experienced with the move FTTP, SOGEA will bring these concerns forward at a time when there is both less awareness of the potential issues amongst consumers and fewer solutions on offer from kit manufactures (industry working groups with CPE vendors are ongoing in relation to finding solutions for FTTP).

Some consumers, and in particularly vulnerable users, will require battery back-up solutions as their SOGEA landline will cease to function in a power cut. This is either a direct cost to the consumer, or funded by the retailer (with funding recovered indirectly through retail charges). This is expected to cost at least ✂ per relevant user, and while a similar solution will be needed for FTTP, a migration to SOGEA would again bring this problem forward, without the obvious bandwidth and reliability benefits that FTTP will bring.

For some of the most vulnerable customers, home visits may be required to make the switch. This is both costly ✂and unnecessary in most instances given the anticipated roll-out of FTTP. For most customers, given FTTP will require a physical installation of the fibre line within the home, any simple home wiring changes (such as migrating the landline to the router or installing battery backup) would be accomplished at the same time as the FTTP fibre line is provisioned, with little or no additional cost. However with a migration to SOGEA a special visit would need to be made for these customers.

For the vast majority of broadband consumers using a WLR/GEA based service, the move to SOGEA is impossible to justify. It would bring with it an inevitable level of disruption, and a complete absence of any service benefits, coupled with additional costs, swiftly followed by a requirement to undertake a subsequent migration to FTTP. We are concerned that forcing consumers to undertake a migration that offers no benefits and drives cost increases will inevitably damage future goodwill for FTTP when it eventually arrives, with many consumers under the impression they had already migrated. Should WLR prices rise above CPI, many consumers may find themselves being asked to move to SOGEA or face higher charges.

Consumer awareness of the different flavours of broadband and especially the difference between FTTC and FTTP is already low. Imposing SOGEA as an interim step will confuse matters further, reducing the perceived benefits of having FTTP.