

**Telecoms Access Review 2026-31***Openreach follow-up on the proposed "geographic discrimination prohibition"*

1. Ofcom's March 2025 TAR Consultation proposed to retain the so-called "geographic discrimination prohibition" on rental charges in WLA Area 2 and LLA Area 2 and extend its application to cover connection prices and other "retail inducements". Under this proposed approach, differences in Openreach pricing *within* these proposed geographic markets *may* be considered unduly discriminatory unless Ofcom grants consent for such pricing. The TAR Consultation set out guidance on how Ofcom would assess requests to grant consent for any geographic pricing schemes and provided details of the process it would follow.<sup>1</sup> This indicated that consent would be less likely to be granted if targeted at areas where competition was present.
2. In the 2021 WFTMR, Ofcom positioned the geographic discrimination prohibition as a time-bound remedy focussed on supporting planned new altnet build at a time when actual altnet build was limited. Ofcom stated that in considering requests to grant consent for geographic pricing its "... primary consideration ... [would be] whether there could be a detrimental impact on new network build/incentives to build."<sup>2</sup> The specific concern was that by targeting price reductions in areas where new build had taken place and/or was planned, Openreach might deter further build and expansion with implications for long-term competition. Ofcom was clear that it would review the need for the geographic discrimination prohibition at each market review and that it would remove it "...when network competition is more established".<sup>3</sup>
3. It is accepted that network competition has grown significantly since 2021, with extensive altnet build now in the ground and clear evidence of much higher and growing take-up of both wholesale and retail altnets. In this context, we have and continue to challenge Ofcom's proposals to retain a geographic discrimination prohibition in any form and any market in the TAR period to 2031, let alone to extend its scope of application. To be clear on our overall position:
  - a. In our June 2025 submissions responding to Ofcom's March 2025 TAR Consultation (and our further WLA submission in October 2025), we set out why we believe Ofcom should revisit its proposed approach to geographic market definition in both WLA and LLA markets to better reflect forward-looking competition. In particular, we argued that Ofcom should segment its proposed WLA Area 2 to reflect clear differences in competitive conditions in areas where VMO2 is present and areas where there are already two rival networks offering WLA services.<sup>4</sup> Our primary position remains that the evidence of strong and strengthening competition in these sub-parts of the proposed Area 2 – as set out in the report we submitted from NERA in our June submission<sup>5</sup> - ought justifiably lead to different market definitions and ultimately the removal of SMP in those

---

<sup>1</sup> Ofcom's March 2025 TAR Consultation, volume 3, paragraphs 9.36 to 9.45.

<sup>2</sup> WFTMR Statement, volume 3, para 7.132.

<sup>3</sup> WFTMR Statement, volume 3, para. 7.74.

<sup>4</sup> Openreach response to Ofcom TAR Consultation, Document 3, 12 June 2025.

<sup>5</sup> NERA, *Response to Ofcom's TAR*, 11 June 2025.

areas. It follows that we would then face no geographic discrimination prohibitions in these markets.

- b. But even if SMP is retained in all/any defined geographic markets, it is clear that network competition is “more established” than it was in 2021 and Ofcom’s 2021 concerns that targeted geographic pricing could deter nascent new build are no longer relevant. Our position, therefore, is that based on its reasoning in 2021, Ofcom should remove the geographic discrimination prohibition as an SMP remedy in areas where there has already been extensive altnet build.
4. Furthermore, and again, as we set out in our earlier submissions,<sup>6</sup> we see no basis for Ofcom to pivot its WFTMR competition concern away from potential impacts on new build from nascent altnets to more generally framed concerns around the level of take-up on existing altnet networks (together with the implications for their long-term financial positions). We remain concerned that Ofcom’s commentary in the March 2025 consultation placed too much weight on the extent to which individual altnets could be considered financially viable without further growth in take-up. Specifically, we do not accept that the geographic discrimination prohibition should be applied in a way that could blanket protect altnets from efficient competitive responses from Openreach (regardless of altnets’ ability to compete with the offer) in order to allow them to improve their financial positions.
5. The relevant question for Ofcom in assessing geographic pricing offers should be whether efficient altnets are able to compete effectively in the relevant area – i.e. whether they can compete against the discounted price levels and/or any associated terms of supply. Ofcom has tools within the proposed regulatory framework and competition law to assess price levels and the specific terms within any offer and take appropriate action if these raise legitimate competition concerns. Any additional restrictions that prohibit otherwise compliant offers simply on the basis that they would only apply in certain geographies and not others are not necessary and would be disproportionate. At the very least, Ofcom needs to explain more clearly when, why and how geographic discounting may in and of itself – i.e. regardless of the level, duration or nature of the discounting (and therefore regardless of any harm arising from the offer) – raise competition or broader policy concerns.
6. Notwithstanding this position, if Ofcom retains a geographic discrimination prohibition in any form in any geographic market, it should expand and clarify the guidance on the assessments it will make and the process it will follow in considering any requests for consent to be given to allow geographically differentiated pricing that is not harmful to competition. More detailed guidance is needed to ensure that Ofcom’s process is transparent, and its approach is proportionate to allow consent to be given to geographic pricing offers in a timely manner where there is no clear evidence that this would unfairly harm efficient competition – in essence, where it comprises competition on the merits. Our position is that this guidance would need to:
  - a. Clearly set out proportionate timeframes within which any geographic pricing would be assessed and consent granted. We would expect that the process, including any wider

---

<sup>6</sup> Openreach response to Ofcom TAR Consultation, Document 3, 12 June 2025.

consultation with stakeholders, should take no longer than two months and allow for expedited review in relation to shorter term offers.

- b. To support this timeframe, clarify that geographic pricing in areas of strong competition is an expected outcome in efficiently operating markets and that the consent process will therefore not simply focus on whether pricing was “targeted” at areas where there was competition, but on the likely effects of the pricing on that competition.
  - c. Place weight primarily on the price levels and/or duration of any proposed pricing offers that apply in a given geography when considering the extent to which efficient altnets in the relevant areas could compete on the merits. Here we would expect Ofcom to assess the price levels within any geographic offer in the same way it would assess price levels within a wider national offer and take account of the expected impact of any offer on volumes sold.
7. If Ofcom still believes that Openreach could structure geographic offers in ways that could unfairly limit the emergence of new competitors or the expansion of existing competitors, it should clearly set out its reasoning and frame its guidance to directly focus on such concerns.<sup>7</sup> In doing so, Ofcom should be clear about what it considers to be new / nascent competition and what it considers to be established competition in this context. As noted, we do not believe this should focus on the financial performance of individual altnets but on the progress they have made in building networks and acquiring end customers at the wholesale and retail levels. Indeed, the blanket prohibition of offers such as these is contrary to Ofcom’s goal of network competition – creating a structure by which altnets are able to move at pace to drive competition whilst Openreach is prevented in doing so. This will deny UK consumers the full benefits of competition.

[§<]

---

<sup>7</sup> In the March 2025 TAR Consultation, Ofcom provides only limited guidance, noting that it is difficult to provide guidance covering every eventuality and that it has provided only “some indications” of what it considers to be undue discrimination.