

Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
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By email only

September 2019

Dear Competition Group

Passive Access Group – Promoting competition in fibre networks – Initial consultation on the approach to modelling the costs of a fibre network (Modelling consultation)

1. The PAG (TalkTalk, Vodafone, Colt and Sky) welcome that Ofcom is proposing to model the costs of fibre networks rather than simply accepting what BT claims the costs of a network are (as happened in the 2019 BCMR).
2. However, the PAG finds it difficult to support Ofcom's approach or respond to the consultation as the consultation does not make it sufficiently clear how or what Ofcom intends to use the model for. For example, the PAG would like to know which services will be included and which unit costs in which market will be in or out of the scope of the model.
3. The PAG is pleased that Ofcom is engaging with stakeholders at an early stage of the modelling design process. We strongly agree it is good practice for Ofcom to explain the principles it is proposing to adopt before it moves to the design phase and then consults on both simultaneously, at which stage Ofcom could have already invested significant resource, which may be based on wrong premises.

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4. The PAG encourages Ofcom to exercise caution by building appropriate flexibility into the model structure given that it has not yet settled on the precise remedy that it intends the model to apply to. Building in flexibility will help Ofcom to avoid prejudging any remedy and have to retrofit it into the model. As part of this encouragement, the PAG reminds Ofcom that it must act on a rigorous evidential basis in line with best regulatory practice¹.
5. Before Ofcom takes its modelling further, the PAG strongly encourages Ofcom to provide a more detailed explanation of the model's intended use and explain how it will avoid prejudging the remedy that the model applies to as a supplement to this consultation.

Yours sincerely,

A handwritten signature in blue ink that reads "Towerhouse LLP". The signature is written in a cursive style and is positioned to the left of a vertical line.

Towerhouse LLP

¹ In performing its duties Ofcom must have regards to principles of best regulatory practice under the Communications Act 2003. One of Ofcom's Regulatory Principles is to 'ensure interventions are evidence-based'. See Ofcom Annual report 2018/2019 at page 52 (https://www.ofcom.org.uk/_data/assets/pdf_file/0024/156156/annual-report-18-19.pdf).